BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/SM/AE/2022-23/16643]

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

In respect of

Share India Securities Limited

(SEBI Registration No.: INZ000178336)

(PAN: AAACF6462E)

In the matter of NSE Co-Location.

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as "**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 Limited (**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. Share India Securities Limited (hereinafter referred to as "**Noticee/ SISL**") 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 forensic audit of the Noticee, which submitted the final report to SEBI.

2. Thereafter, SEBI initiated adjudication proceedings under Section 15HA of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the "**SEBI Act**") and Section 15HB of the SEBI Act read with Regulations 26(xvi) and 26(xx) of SEBI (Stock Brokers & Sub Brokers) Regulations, 1992

(hereinafter referred to as "**Stock Broker Regulations**") 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 read with Clause A(5) of the Code of Conduct specified under Schedule II read with regulation 9(f) of the Stock Broker Regulations, Clause A(2) of the Code of Conduct specified under Schedule II read with Regulation 9(f) of the Stock Broker Regulations 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**") read with Sections 12A(a), 12A(b) & 12A(c) of the SEBI Act by Noticee.

APPOINTMENT OF ADJUDICATING OFFICER

3. SEBI, vide communication order dated July 14, 2020, appointed Shri B J Dilip, Chief General Manager, as Adjudicating Officer (hereinafter referred to as "**AO**") under Section 15I of the SEBI Act read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as the '**Adjudication Rules**'), to inquire into and adjudge, under Sections 15HA and 15HB of the SEBI Act, the aforesaid alleged violations by the Noticee. Subsequently, upon transfer of Shri B J Dilip, this case was transferred to undersigned by SEBI vide a communication order dated December 31, 2020. It has been advised that except for the change of the AO, the other terms and condition of the original order (whereby the erstwhile AO was appointed) shall remain unchanged and shall be in full force and effect. It has also been advised that the undersigned shall proceed in accordance with the terms of reference made in the Original Order read with this Order.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. Show Cause Notice No. EAD-6/BJD/MKG/18896/2020 dated November 06, 2020 (hereinafter be referred to as, the "**SCN**") was issued to the Noticee under Rule 4(1) of the Adjudication Rules to show cause as to why an inquiry should not be held against Noticee and penalty, if any, be not imposed against it under the provisions of Sections 15HA and 15HB of SEBI Act read with

Regulations 26(xvi) and 26(xx) of Stock Broker Regulations for the alleged violations of Point 2(a) of Chapter V of NSE bye-laws read with Clause A(5) of the Code of Conduct specified under Schedule II read with regulation 9(f) of the Stock Broker Regulations, Clause A(2) of the Code of Conduct specified under Schedule II read with regulation 9(f) of the Stock Broker Regulations and Regulations 3(b), 3(c), 3(d) and 4(1) of PFUTP Regulations read with Sections 12A(a), 12A (b) & 12 A(c) of SEBI Act, committed by Noticee.

5. The main allegations levelled against the Noticee in the SCN are summarized as below:
   i. The period for the investigation with respect to the various segments are given below:

Sl. No.	Segment	Period
1	Futures and Options (FO) Segment	June 12, 2010 to April 06, 2014
2	Cash Market (CM) Segment	October 15, 2010 to November 09, 2014
3	Currency Derivatives (CD) Segment	January 02, 2012 to April 06, 2014

   ii. The investigation period as above, covers the period from the time of introduction of TBT data dissemination through TCP/ IP till the date of introduction of MTBT by NSE in the respective segments.
   iii. Deloitte has made the following findings/ observations with respect to the Noticee, in its report:
   A. Issues pertaining to connection to the secondary server:
   Based on review of logs, it was observed that:
   iv. Based on the discussions with representatives of the Noticee, Parveen Gupta (Director, SISL), Sachin Gupta (Director, SISL) and Amit Sharma (IT Head, SISL) on May 20, 2019 and September 04, 2019, and review of emails provided by the Noticee, it appears that NSE COLO Support had sent a document, "NSE Colocation Guideline ver_1.2" to Share India via an email dated August 30, 2012 and a document, "NSE Colocation Guideline ver_2.1" via an email dated September 19, 2013. Further, as per an email dated December 02, 2011, from NSE COLO Support with BCC to Amit Sharma, it was stated that the member should intimate the NSE before connecting to the secondary server. (Annexure III – Copies

of NSE emails dated August 30, 2012, September 09, 2013 and December 02, 2011)

v. However, during discussion with the representatives of the Noticee, Deloitte was made to understand that the representatives were not aware that connection to the secondary server should be done only after intimating and getting approval from the NSE. (Annexure IV – Copy of Statement of Sachin Gupta, Parveen Gupta and Amit Sharma dated May 20, 2019) Further, Deloitte was made to understand that the Noticee had appointed multiple vendors, namely, Greeksoft (from 2010 to 2016), Omnesys (from 2011 to 2013), UTrade Solutions Private Limited (Herein after referred to as "Utrade") (from 2012 to 2016) and Algowire Trading Technologies Private Limited (Herein after referred to as "Algowire") (from 2012 to 2016) to carry out the BoD activity and to log on to the NSE servers via a remote access provided by the Noticee.

vi. In case of disconnections, SISL personnel would coordinate with NSE COLO Support who would suggest either retrying the connection to primary server or in some instances, connecting to the secondary server in case connection issues were persistent on the primary server (Annexure IV – Copy of Statement of Sachin Gupta, Parveen Gupta and Amit Sharma dated May 20, 2019).

vii. During the review of emails of the Noticee, discussions with them and additional submissions made by the Noticee thereon, Deloitte noted several occasions where the Noticee had connected to the secondary server instead of the prescribed primary server in the CM segment.

viii. In an email dated May 04, 2012 from NSE COLO Support to Amit Sharma (IT Head, SISL), Vikas Agarwal (Company Secretary, SISL), Deepak Deshmukh (Senior System Executive), Sachin Gupta (Director, SISL) and Vishal (an employee of SISL), NSE informed the Noticee that one of the TBT TCP IP "10.230.60.140" was connecting to the CM secondary server and asked them to connect to the primary server. In response to this, via an email dated May 05, 2012, Amit Sharma stated that they changed the IP server from secondary to primary. (Annexure V

– Copies of NSE email dated May 04, 2012 and email from the Noticee (Mr. Amit Shamra) to NSE dated May 05, 2012)

ix. However, Deloitte observed that the Noticee connected the IP "10.230.60.140" to the secondary server in the CM segment for 87 days after May 05, 2012 between October 26, 2012 and April 01, 2013. Deloitte also noted that these connections to the secondary server were not backed by a corresponding complaint by the Noticee in NSE's complaint logs data. (Annexure VI – Copies of Secondary connects made by Share India Securities Limited during the review period with TBT TCP IP "10.230.60.140")

x. In an email dated May 18, 2012, NSE COLO Support wrote to Amit Sharma, Vikas Agarwal and Deepak Deshmukh stating that an IP "10.230.60.141" was connected to the secondary server and requested to disconnect from the secondary server, and to not connect to the secondary server without intimating NSE. (Annexure VII – Copy of Email from NSE COLO Support dated May 18, 2012)

xi. However, Deloitte observed that Share India connected the IP "10.230.60.141" to the secondary server in the CM segment for 403 days after May 18, 2012 between May 21, 2012 and November 07, 2014. Deloitte also noted that these connections to the secondary server were not backed by a corresponding complaint by the Noticee, in NSE's complaint logs data. (Annexure VIII – Copy of Secondary connects made by Share India Securities Limited during the review period with TBT TCP IP "10.230.60.141")

xii. Further, during discussion with the representatives of the Noticee on May 20, 2019, they stated that, "It seems that IP 10.230.60.141 was mistakenly left connected to the secondary server. As we did not have an internal mechanism to check the primary and secondary connections to the servers. Also, we did not get any information or warning from the exchange post October, 2012, until November 2014, we remained connected on the secondary server."

xiii. In an email dated June 07, 2012, from NSE COLO Support to Amit Sharma, Vikas Agarwal, Deepak Deshmukh and Sachin Gupta and

Vishal, NSE mentioned that in spite of several reminders, the TBT TCP IP “10.230.60.141” was still connected to the secondary server in the CM segment. Further, the email stated that connection to the secondary server was considered an offence and this might result in the Noticee’s ports being blocked. In response to the aforementioned email, Amit Sharma replied via email dated June 08, 2012 stating that the problem had been resolved and the said IP was now connecting to the primary server. (Annexure IX – Copy of Email from NSE COLO Support dated June 07, 2012 and reply email dated June 08, 2012)

xiv. On May 04, 2017, NSE sent a letter to Sachin Gupta asking for an explanation with regard to connections to the secondary server of NSE. In response to the letter, the Noticee wrote to NSE stating that it was solely dependent on their vendor, Greeksoft for its NSE co-location connectivity and was not aware about the TBT TCP IPs that were being connected to the NSE servers. The said matter was escalated to NSE’s Disciplinary Action Committee (Herein after referred to as “DAC”), who in an order dated September 04, 2017 concluded that the Noticee should have ensured appropriate controls over the activities of its vendor. The DAC order further stated that “keeping note of the fact that there were no repetitions after June 07, 2012, the DAC decided to warn SISL to adhere to directions of Exchange in all matters related to operations on NSE technology platform.” (Annexure X – Copy of Email from NSE COLO Support dated May 04, 2017) (Annexure XI – DAC order dated September 04, 2017 – Annexure to the DAC order)

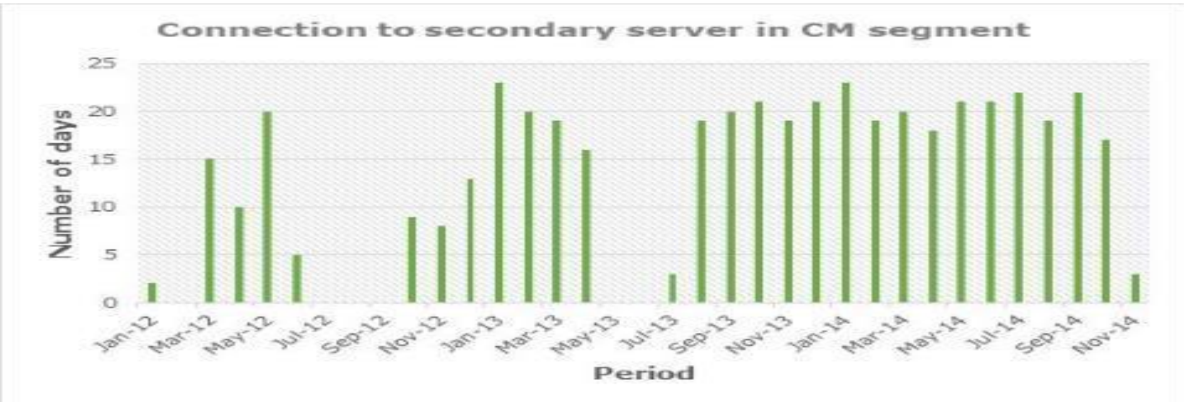
xv. During discussion with representatives of Greeksoft, Ajit Hakani (Director, Greeksoft) and Vivek Sheth (Compliance Officer, Greeksoft), on May 31, 2019, with regards to the login process followed by Greeksoft’s users, they stated that, "the client would have to insert details such as segment, user 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." (Annexure XII – Statement of Ajit Hakani and Vivek Sheth dated May 31, 2019)

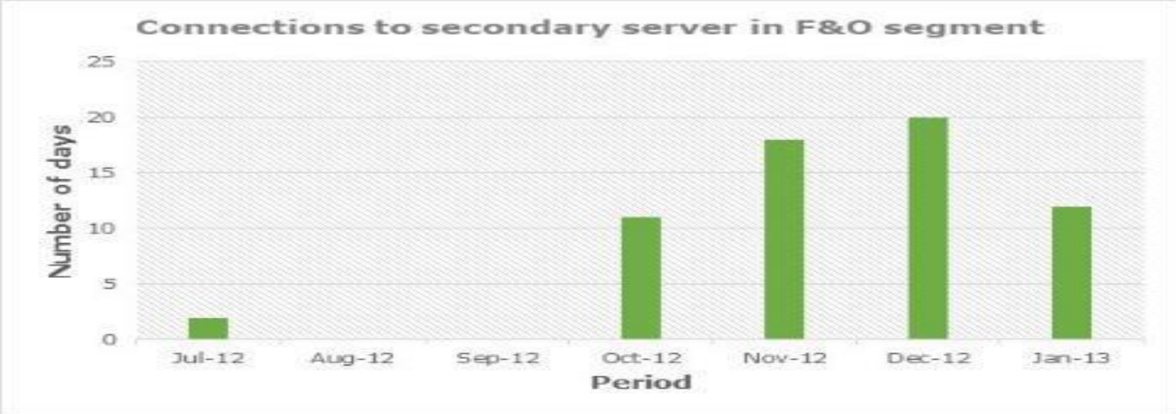
xvi. During discussion with the representatives of the Noticee on September 04, 2019, in response to managing their BoD and EoD activities, they stated that, “When we on boarded a new vendor, in the initial stage, the vendor assisted us with BoD, EoD activities and change in parameters, for approximately 10-15 days. After that, our IT team managed the said activities”. (Annexure XIII – Statement of Sachin Gupta, Parveen Gupta and Amit Sharma dated September 04, 2019)

xvii. Further, Deloitte observed that the Noticee connected the IP “10.230.60.141” to the secondary server in the CM segment for 389 days after June 07, 2012 between October 25, 2012 and November 07, 2014. Deloitte also noted that these connections to the secondary server were not backed by a corresponding complaint by the Noticee in NSE’s complaint logs data. (Annexure XIV – Secondary connects made by Share India Securities Limited during the review period with TBT TCP IP “10.230.60.141”)

xviii. On review of the data for connections made to the secondary server, the following was observed:

Segment	TBT Server	Days	Period
CD	TBTCOLO17	1	March 07, 2014
CM	TBTCOLO17 & TBTLV18	468	January 23, 2012 to November 07, 2014
FO	TBTCOLO27	63	July 10, 2012 to January 16, 2013





xix. Further, on review of the complaints log data provided by NSE, Deloitte noted only 12 documented complaints by the Noticee during the review period regarding performance issues or disconnections related issue for TBT TCP IP. (**Annexure XV** – Complaint log data provided by NSE).

Observations:

xx. NSE introduced TBT data feed services to the market in 2009, and notified the market of this vide its Circular No: NSE/MEM/13599 dated December 03, 2009, TBT architecture at NSE changed over the period of time since its introduction in 2010. The number of servers were increased as the demand for the same increased. Moreover, older servers were also replaced/ renamed. Dates of TBT rollout in various market segments under TCP/ IP and Multicast transmission protocol:

a) Connection to secondary server:

xxi. Secondary server was provided by NSE in order to enable members to connect to the same in case of disconnection / failure to connect to primary server. NSE had issued colocation guidelines. This is apparent from Clause 2 of the colocation guidelines issued by NSE (Document no SEIL/ITSM/INT/072 (Annexure - 8), revised on April 16, 2012), which reads as: "*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.*".

xxii. It is observed that the Noticee had frequently connected to the secondary server in the CM segment, especially during calendar years

2013 and 2014. NSE had reprimanded Share India for connecting to the secondary server through e-mails dated May 04, 2012; May 18, 2012 and June 07, 2012. NSE, vide its e-mail dated May 04, 2012 informed the Noticee that one of its TBT TCP IP "10.230.60.140" was connecting to the CM secondary server and vide email dated May 18, 2012, NSE had asked the Noticee not to connect on fallback (secondary) server without exchange intimation. Further, vide e-mail dated June 07, 2012, NSE mentioned that in spite of the Noticee being informed several times, they were connecting to TBT fallback server. This was considered as an offence and due to the same ports of the Noticee might get blocked in the future. The Noticee was once again requested to connect to the TBT primary server only.

xxiii. Summary of observations made regarding secondary server connections made by the Noticee during the review period:

Particulars	**Data**
No. of trading days connected to secondary server on CM	466 days
No. of trading days connected to secondary server on CD	1 day
No. of trading days connected to secondary server on FO	62 days
Whether reprimand emails were sent by NSE for connecting to secondary server on either of the segment	CM - 3 emails[1] 1. May 04, 2012 2. May 18, 2012 3. June 07, 2012
Whether the trading member connected to secondary server post reprimand	Yes
No. of trading days connected to secondary server post reprimand in either of the segments	403 days
No. of trading days when member connected only to secondary server in either segment	489 days
Had heard hearsay information about secondary server advantage	No
Algo vendors used	· Omnesys · Greeksoft · UTrade Solutions · Algowire Trading Technologies
Whether there was a profit-sharing agreement with Algo vendors?	No

[1] Annexure V, VII & IX: E-mails dated May 04, 2012; May 18, 2012 and June 07, 2012 from NSE to the Noticee

xxiv. Summary of connection to secondary server in F&O segment during February 02, 2012 to April 06, 2014; in CM segment during February 02, 2012 to November 09, 2014 and in CD segment during February 02, 2012 to April 06, 2014 are provided in the table below:

Segment	**Period**	**No. of trading days [A]**	**No. of trading days connected to secondary Server [B]**	**%-age of connection to secondary Server [B as %-age of A]**
FO	Feb. 02, 2012 – Dec. 31, 2012	228	51	22.37%
	Jan. 01, 2013 – Dec. 2013	250	12	4.80%
	Jan. 01, 2014 – Apr. 06, 2014	67	0	0.00%
	Sub-total	**545**	**63**	**11.56%**
CM	Feb. 02, 2012 – Dec. 31, 2012	230	80	34.78%
	Jan. 01, 2013 – Dec. 2013	250	181	72.40%
	Jan. 01, 2014 – Nov. 09, 2014	207	205	99.03%
	Sub-total	**687**	**466**	**67.83%**
CD	Feb. 02, 2012 – Dec. 31, 2012	220	0	0.00%
	Jan. 01, 2013 – Dec. 2013	245	0	0.00%
	Jan. 01, 2014 – Apr. 06, 2014	62	1	1.61%
	Sub-total	**527**	**1**	**0.00%**

xxv. Further, as mentioned earlier, on review of the complaints log data provided by NSE, Deloitte noted only 12 documented complaints by Share India during the review period regarding performance issues or disconnections related issue for TBT TCP IP. (Annexure XV – Complaint log data provided by NSE).

b) Connection to secondary server post NSE reprimand:

xxvi. NSE, vide an e-mail dated December 02, 2011 addressed to several TMs, including Share India, advised that "Members are not supposed to connect to Secondary server until exchange intimates to do so." Further, NSE specifically reprimanded the Noticee for connecting to the secondary server through e-mails dated May 04, 2012; May 18, 2012 and June 07, 2012. NSE, in its e-mail dated May 04, 2012, informed the Noticee that one of the TBT IP of the Noticee was connecting to CM fallback server and asked it to connect to primary server and revert accordingly. Subsequently, vide e-mail dated May 18, 2012, NSE had asked the Noticee not to connect on fallback (secondary) server without exchange intimation. Moreover, vide e-mail dated June 07, 2012, NSE warned the Noticee that despite being informed several times, they were still connecting to TBT fallback server. NSE further specified in this e-mail that they had considered this as an offence and due to the same ports of the Noticee might get blocked in the future. NSE once again requested the Noticee to connect to the TBT primary server only.

xxvii. It is observed that post reprimand of June 07, 2012, the Noticee connected to the secondary server for the following number of days:

Segment	**Period**	**No. of trading days [A]**	**No. of trading days connected to secondary Server post last reprimand [B]**	**%-age of connection [B as %-age of A]**
FO	Jun. 07, 2012 – Dec. 31, 2012	141	51	36.17%
	Jan. 01, 2013 – Dec. 2013	250	12	4.80%
	Jan. 01, 2014 – Apr. 06, 2014	67	0	0.00%
	Sub-total	**458**	**63**	**13.75%**
CM	Jun. 07, 2012 – Dec. 31, 2012	141	30	21.28%
	Jan. 01, 2013 – Dec. 2013	250	181	72.40%
	Jan. 01, 2014 – Nov. 09, 2014	207	205	99.03%
	Sub-total	**598**	**416**	**69.56%**
CD	Jun. 07, 2012 – Dec. 31, 2012	139	0	0.00%
	Jan. 01, 2013 – Dec. 2013	245	0	0.00%
	Jan. 01, 2014 – Apr. 06, 2014	62	1	1.61%
	Sub-total	**446**	**1**	**0.00%**

xxviii. From the above table, it is observed that the Noticee had connected frequently to secondary server in CM segment in 2013 and 2014. Thus, the Noticee has ignored NSE reprimands dated May 04, 2012, May 18, 2012 and June 07, 2012, and continued to connect to the secondary server.

xxix. 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."*

xxx. NSE, vide an e-mail dated December 02, 2011 addressed to several TMs, including Share India, advised that "*Members are not supposed to connect to Secondary server until exchange intimates to do so*."

xxxi. 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.*" (Annexure XX – Copy of NSE Byelaws).

xxxii. Further, NSE specifically reprimanded the Noticee for connecting to the secondary server through e-mails dated May 04, 2012; May 18, 2012 and June 07, 2012.

xxxiii. Therefore, it is alleged that Noticee has violated Point 2(a) of Chapter V of the NSE bye-laws by failing to comply with operational guidelines and instructions issued by NSE.

xxxiv. Moreover, Clause A(5) of the Code of Conduct specified under Schedule II read with Regulation 9(f) of the Stock Broker Regulations mandates that "*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.*" Also, Clause A(2) of the Code of Conduct specified under Schedule II read with Regulation 9(f) of the Stock Broker Regulations obligates a stock broker to exercise due skill and care. Further, Regulation 26(xvi) of the Stock Broker Regulations stipulates that a stock broker shall be liable for monetary penalty for "*…Failure to exercise due skill, care and diligence.*"

xxxv. Being a registered intermediary, Share India has, by its aforesaid conduct of connecting to secondary server repeatedly without valid reason as well as connecting to secondary server despite reprimand by NSE, It is alleged that Noticee has violated Clause A(2) and A(5) of Code of Conduct as specified in Schedule II of Regulation 9 of Stock Brokers Regulations.

xxxvi. Further, as the Noticee has connected to the secondary server, which was meant to be used only in case of non-availability of data from TBT primary server. However, it was observed that Noticee continued connecting to secondary server despite repeated reprimand by NSE and such continuation was without any valid reason or any issues in primary source. Thus it is alleged that Noticee had indulged in unfair trade practices by blatantly disregarding the directions of NSE. Therefore, it is alleged that the Noticee has violated Regulations 3(b), 3(c), 3(d) and 4(1) of PFUTP regulations, read with Sections 12A(a), 12A (b) & 12 A(c) of SEBI Act.

xxxvii. In view of above, it is alleged that Noticee being an intermediary failed to comply with operational guidelines and instructions issued by NSE and thereby failed to exercise due skill, care and diligence. Therefore, the Noticee is in violation of Point 2(a) of Chapter V of NSE bye-laws read with Clause A(5) of the Code of Conduct specified under Schedule II read with regulation 9(f) of the Stock Broker Regulations, Clause A(2) of the Code of Conduct specified under Schedule II read with regulation 9(f) of the Stock Broker Regulations. Further, it is also alleged that Noticee has connected to the secondary server, which was meant to be used in case of non-availability of data from TBT primary source, repeatedly without valid reason, thus it has indulged in unfair trade practices and is violation of Regulations 3(b), 3(c), 3(d) and 4(1) of PFUTP Regulations read with Sections 12A(a), 12A(b) & 12A(c) of SEBI Act.

6. The SCN was duly served upon the Noticee. Vide letter dated November 18, 2020, Noticee, *inter alia*, requested for extension of time by atleast 2 weeks to submit its reply to the SCN. Thereafter, vide letter dated December 04, 2020 (received through email dated December 07, 2020), Noticee, *inter alia*, requested for inspection of documents in the matter. Vide email dated January 11, 2021, the request of Noticee for inspection of documents was acceded to. From the available reocrds, it is noted that inspection of documents was carried out by the Noticee on February 09, 2021. Vide letter dated February 10, 2021,

Noticee contended that during the abovementioned inspection of documents, inspection of only those documents which were annexed with the SCN was provided. Further, Noticee reiterated the list of documents which it had sought in its letter dated December 04, 2021. The said list of documents are mentioned below –

i. Details of analysis done by Investigations Department, SEBI on our day wise turnover using TBT secondary servers.
ii. Copy of detailed Investigation Report along with annexures enclosed therewith
iii. Copy/ies of complaints received by-SEBI-pertaining to allegations of malpractices with respect to the co-location facility being provided by the NSE.
iv. Details of telephonic calls and email communications exchanged between Share India and NSE as submitted by NSE to SEBI.
v. Copy/ies of communications exchanged between SEBI and NSE as it relates to us.
vi. Copy/ies of communications exchanged with other Brokers/ Trading Members and other service providers to NSE on the subject matter of present proceedings.
vii. Copy/ies of statements recorded in the course of Investigation proceedings conducted by SEBI other than what is provided along with the SCN dated 06.11.2020.
viii. Any other and additional documents in possession of SEBI on the subject matter of present proceeding which can be helpful to us for our defense.

7. Vide email dated April 23, 2021, it was communicated to the Noticee that inspection of documents relied upon by SEBI has already been conducted on February 09, 2021. Accordingly, Noticee was granted an opportunity of personal hearing before the undersigned on May 05, 2021. Vide letter dated April 26, 2021, Noticee requested for adjournment of the abovementioned hearing. Thereafter, vide email dated April 28, 2021, Noticee was granted another opportuntity of hearing on May 11, 2021. However, vide email dated May 07, 2021 received from Prakash Shah & Associates, authorized representative(**AR**) of the Noticee, it was requested that they be granted 3 weeks's time to file their reply and thereafter the hearing should be scheduled.

Vide email dated May 11, 2021, Noticee was granted one more opportunity of personal hearing on May 24, 2021. However, vide email dated May 19, 2021, the AR once again requested for a short adjournment of the above scheduled hearing. Vide letter dated May 31, 2021, Noticee submitted its reply to the SCN. The main submissions made therein are summarized as below –

i. *They have duly followed all the guidelines and recommendations issued by NSE from time to time and shifted to secondary server in line with the policy of the exchange and with due consideration of colo support team. The same has also been confirmed vide Order dated 04.09.2017 passed by the Hon'ble Disciplinary Action Committee of the NSE, after considering all facts of the case and submission made by them.*

ii. *Delay in proceedings - the present SCN has been issued after a gap of almost 8 years from the date of alleged violations as mentioned in the SCN. Hence, there is an inordinate delay in initiation of proceedings by SEBI. Pertinently, the maximum period for which Brokers are required to maintain their records is 5 years. In fact, complete details w.r.t TBT IPs assigned to them by NSE in relation to co-location facility during the review period is not available in our records. Therefore, in the past they had sought relevant data from the Stock Exchanges i.e. NSE and BSE. For example, they had by their email dated 14.05.2019 requested NSE to provide them the complete details of TBT IPs allotted to them during the period for Financial Years 2010-11 to 2014-15.*

iii. *As stipulated u/ s 658 (4) of the Indian Evidence Act, 1872 in so far as the electronic evidence is concerned, it must be accompanied by an appropriate certificate. Thus, it is submitted that in case any document relied upon or referred to by SEBI which have been obtained on email/extracted from the database or electronic system, ensure that the aforesaid requirement of law has been submitted.*

iv. *SEBI failed to conduct Independent investigation and reliance is placed entirely upon the third-party Expert Report i.e. Deloitte report. The material on the basis of which he is alleged to have violated certain provisions of law is not full proof and have deficiencies. In absence of independent verification of facts and figures, no action ought to be initiated against Noticee.*

v. *Noticee submitted that comparison of no. of days connected to secondary server has not been properly done. As per Noticee, the right way of the calculation should be the no of TBT counts days (No of TBT IP's * Trading days pertaining to particular year) and see percentage of his connection to secondary server based on TBT days' count. The basis for calculation of days is erroneous considering that all our*

IP's on those days were connected to secondary server, whereas the fact is that we have multiple TCP-TBT IP's and only a few out of the same were connected to secondary server on those days. Analysis regarding the secondary server connects based on TBT counts days has been provided by the Noticee.

vi. *On perusal of the SCN, they understand that reliance has been placed on several documents/ statements in order to allege the charges against them. In this regard, they respectfully submit that Inspection of Documents and Cross examination is an essential part of all legal proceedings and a fundamental principle of Natural Justice. In this regard, they humbly reiterate their request to your kind selves to kindly grant us an opportunity of inspection of documents as mentioned in their letters dated 04.12.2020 and 10.02.2021 since in their view they are vital and relevant.*

vii. *SEBI had issued SCNs in the NSE Colo matter to several other entities also. During the course of proceedings for one such entity viz. OPG Securities, 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 far from benefitting from alleged preferential access or secondary connections, OPG made lesser profits from secondary connections.*

viii. *NSE had made submissions before SEBI wherein under Para 8.2.16.3. (Internal Page No. 72) of Order 30.04.2019 passed by Hon'ble Whole Time Member, SEBI in the matter of NSE Colocation, wherein it is mentioned that "To ensure that members could easily and quickly switch to the Secondary Server if the primary server failed, the backup server was always in active-active mode — i.e., the members would be able to connect to the Secondary Server at all times and receive data". Thus, Noticee submitted that there was no stringent requirement adopted by NSE at the relevant time as far as connection to Secondary, TBT server is concerned.*

ix. *It is the prime responsibility of NSE to ensure that no one should face any difficulty to log in primary server. So, there would be no need to have logged in secondary server.*

x. *Besides, the constitution of Disciplinary Action Committee (DAC) is under NSE Rules, Regulations and Bye laws as approved by SEBI and which has been functioning as quasijudicial / semi quasi-judicial body. Therefore, SEBI ought not* *to have initiated action against us in contradiction to DAC's conclusive findings on the subject matter in our favour.*

xi. *NSE Co-location service is a legal, paid premium services to get tick by tick data faster and any TM who has availed the Colo facility has an advantage over those who have not availed the Colo facility. Therefore, the question of preferential data cannot be applied w.r.t. any non-Colo access. The entire purpose of availing the Colo facility is high speed connectivity and importantly better market data dissemination infrastructure, as approved by SEBI.*

xii. *Colo facility was available only for Algo trading, and as such no "Investor" was accessing the Colo facility, other than the algorithmic traders. Irrespective of whether a member accessed the primary or secondary server, by virtue of being in Colo, it had faster access to data than anyone else who was not in Colo (i.e. "Investors"). Thus, there cannot be any case that "Investors" were put to any disadvantage on account of secondary server login or that they suffered any loss on this count.*

xiii. *While TAP-IP was provided by NSE for sending orders to the Exchange server, TCP-TBT-IP was provided to TM to obtain broadcast from the Exchanges' server. NSE's real time tick-bytick data feed was disseminated to TMA only in TCP-IP format until April 2014, when the alternative of multicast was introduced, initially to replace the TCP feeds. Eventually, both systems of data dissemination i.e. TBT as Multicast were provided to members in parallel. Vide Circular dated Spetember 19, 2016, NSE announced its intention to discontinue TCPbased TBT data broadcast with effect from November 30, 2016. Hence, the subject matter of connecting to secondary server has become redundant.*

xiv. *Noticee submitted that circular/guidelines issued by NSE to its trading members in respect of the Colocation Facility during the relevant period are: i) Circular No. 693 bearing reference no. NSE/MEM/ 12985 dated 31.08.2009, (ii) NSE Colocation Guidelines Document No. NSEIL/ITSM/ INT/072 dated 08.08.2011, (iii) NSE Colocation Guidelines Document No. NSEIL/ITSM/INT/ 072 dated 08.08.2011 (as revised on 16.04.2012). None of the aforesaid regulation/guideline barred the Noticee connection to the secondary server. In fact, the updated Colocation Guidelines (as on 31.07.2012) contained one of the 'processes' (which were in the nature of guidance) which made reference to the Secondary Server while stating that "Member's should always check the secondary TBT parameters are working fine with their application in case of nonavailability of data from TBT primary source they can move to secondary source". Thus, it only advised the TMs to connect to* *the Secondary Server for smooth functioning and did not bar connections as alleged in the SCN. Pertinently, 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.*

xv. *NSE has also in all its communications to the trading members and to SEBI during the course of investigation, admitted to the fact that there was no bar whatsoever on trading members' accessing the Secondary Server. In fact, on several occasions NSE encouraged its members to avail of the Secondary TBT Server facility as is sufficiently evident from the above as well as succeeding paras.*

xvi. *Merely because we connected to an allegedly lesser loaded server it cannot be assumed that we received information ahead of others. There are numerous factors that have to remain constant for all the members to enable us to receive information first. Even if all such factors and assumptions are fulfilled even then possibility of 'gaining advantage' thereafter is again contingent on a plethora of factors and assumptions. In fact, there is vast a difference between 'receipt of tick' and 'dissemination of a tick'. Further, reference has been drawn towards 2 blogs articles for this purpose: i) Did early login help in NSE TBT architecture? (ii) Data Dissemination part 5: Secondary TBT servers.*

xvii. *Noticee has relied on the order dated 09.11.2011 passed by Hon'ble Securities Appellate Tribunal (SAT) in the case of Kalpena Plastiks Limited vs BSE (Appeal No. 78 of 2011).*

xviii. *Clarification on connection to secondary server: At the outset it is stated that, they had connected to the secondary server only in case of disconnections in primary server. It was not done intentionally and they were not aware of any advantages of connecting to the secondary server. They had not made any gains out of these connections otherwise it would have reflected in their turnover. It can be seen from their turnover records that there was no substantial rise in their turnover during the period of TCPIP. Pertinently at all times, the connection to the secondary server was known and within the knowledge of the Exchange who kept on monitoring the usage of the servers by all the members and therefore warnings were issued by Exchange whenever there was a need to disconnect from secondary server. They confirm having complied with all such directions. Exchange used to provide login credentials for secondary servers and was keeping the secondary ports open. Hence, it is reasonable to understand that the connection to the secondary server was left to the discretion of the Member who required using the secondary server based on their requirement of contingency. As per email received on 07.06.2012* *from NSE, which mentioned that· " ..... it has been observed that in spite of informing you several times still you are connecting to the TBT fall back server which is considered as an offense due to which your ports might get blocked in future." So they believed that in case of any mistake from our side, they would receive some communication from the exchange in this matter. However, this never happened. Importantly, since after June 2012, Exchange never issued any directions to them to disconnect from the secondary server, which amounts to acquiescence and hence the Regulator is now estopped from raising the issue. Pertinently post reprimand whenever they faced any login issues, they connected to secondary server on the basis of the suggestion of NSE Colo team which was provided to them verbally. However, no documented support for the same is available; further, they were never reprimanded/ communicated by NSE in relation to their connections to the secondary server. They were aware that TCP/IP TBT was sequential dissemination.*

xix. *In response to what is mentioned under Para 10.2.1 of SCN, they state that the document no. NSEIL/ITSM/INT/072 w.r.t. NSE Colocation Guidelines was revised by NSE on 31.07.2012 and communicated to them vide e-mail dated 30.08.2012. Even in this document, it is 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". The said document was also completely silent about requirement of NSE's prior approval before connecting to Secondary Server. The operative words being "always check". The only possible way to always check that the secondary parameters are 'working fine' was to initiate a connection and then stay connected. The technological infrastructure at Exchange server was such that at any time after a connection was initiated to the server, it was not possible to stay connected to any TBT server without actually reading the data because if the member did not read the data, the connection would break and the member would not be able to effectively "always check" that secondary parameters worked fine with their application.*

xx. *Both of the afore-mentioned communications are pointer to the fact that post their afore-mentioned email dated 07.06.2012 NSE itself had changed its stance w.r.t. requirement of NSE's prior approval before connecting to Secondary Server .*

xxi. *Pertinently, the observation made by DAC of NSE in their order dated 04.09.2017 "keeping note of the fact that there were no repetitions after June 07, 2012, the DAC decided to warn SISL to adhere to directions of Exchange in all matters* *related to operations on NSE Technology platform" (Para 8.A.iv.d of SCN) shows that even NSE was unaware about our further connections to Secondary TBT Server, at least till 04.09.2017.*

xxii. *Noticee submitted that the SCN merely refers to general legal provisions being Regulations 3(b), 3(c) and 3(d) of the PFUTP Regulations without even attempting to apply the facts and circumstances to the ingredients of the above regulations. Further, the definition of 'fraud' under the PFUTP Regulations requires a person to do an act or omission with a view to 'induce another person to deal in securities'. The SCN has failed to attribute any such conduct against it. The test for determining 'inducement' under the PFUTP Regulations has been laid down by Supreme Court of India (Hereinafter referred to as "SC") in* ***SEBI vs Kanaiyalal Baldevbhai Patel*** *(Civil Appeal No.2595 of 2013), dated September 20, 2017. SC held that "56. The test to determine whether the second person had been induced to act in the manner he did or not to act in the manner that he proposed, is whether but for the representation of the facts made by the first person, the latter would not have acted in the manner he did…."*

xxiii. *Noticee submitted that for the applicability of regulations 3 and 4 of the PFUTP Regulations, an act alleged to be fraudulent should have an element of some motive or ill- conceived idea or design. From the above contention, it is inferred that connection to secondary server was not with the motive or ill-conceived idea or design to defraud or induce any other person to deal in securities. Further, the connection to secondary server is fair and equitable and not prone to market abuse and the same was done in good faith. In light of the above and owing to the absence of any evidence to suggest connivance, Noticees's connection to secondary server cannot be deemed to be per se fraudulent.*

xxiv. *Noticee submitted that contravention of 4(1) of PFUTP regulation denied. As stated in the foregoing paragraphs, our conduct or the connection to secondary server does not satisfy the ingredients of fraud. As regards, 'unfair trade practices', we submit that the concept of 'fairness' in relation to the PFUTP Regulations has been explained by SC in the* ***SEBI vs Kanaiyalal Baldevbhai Patel*** *(Supra) "45. Now we come back to Regulations 3 and 4(1) which bar persons from dealing in securities in a fraudulent manner or indulging in unfair trade practice. Fairness in financial markets is often expressed in terms of level playing field. A playing field may be uneven because of varied reasons such as inequalities in information, etc. Possession of different information, which is a pervasive feature of markets, may not always be objectionable. Indeed, investors who invest resources in acquiring* *superior information are entitled to exploit this advantage, thereby making markets more efficient. The unequal possession of information is fraudulent only when the information has been acquired in bad faith and thereby inducing an inequitable result for others." Further, the standard for determining equality had been discussed by SC in* ***Khandige Sham Bhat & Anr vs Agricultural Income Tax Officer, Kasaragod*** *(Petition No. 103 and 104 of 1961), dated August 29, 1962, If there is equality and uniformity within each group, the law will not be condemned as discriminative, though due to some fortuitous circumstance arising out of a peculiar situation some included in a class get an advantage over others, so long as they are not singled out for special treatment. Noticee submitted that its actions are completely honest with respect to connection to secondary server and the same was done in good faith.*

xxv. *Noticee placed reliance upon Orders passed by Ld. Adjudicating Officer, SEBI wherein the captioned subject matter is similar and no allegation of PFUTP Regulations was alleged against them:*

   a. *Adjudication Order dated 25.09.2019 bearing reference no. ORDER/SS/SK/2019-20/4608 passed in the matter of SMC Global Securities Ltd*

   b. *Adjudication Order dated 25.11.2020 bearing no. ORDER/ AP/SK/2020-21/9661 in the matter of Crosseas Capital Services Pvt. Ltd*

xxvi. *In light of the above, they submit that there is no allegation of unfair advantage accrued/loss suffered by investors in their case also. Also, there are no investor/s complaints against them. On consideration of the orders passed in the matter of SMC Global and Crosseas referred by them in the preceding paragraphs, they respectfully submit that doctrine of 'Stare Decisis' obligates Hon'ble courts/ quasijudicial bodies to look to precedents adjudicating the matter. Admittedly, this is a set legal principle and even the Hon 'ble Tribunal has acknowledged the same in numerous cases including in the Order dated 07.08.2014 passed in the matter of M/s R. M. Shares Trading Private Limited Vs. SEBI. Further, reliance is placed on Hon'ble SAT's Order dated 20.04.2016 in the matter of Krishna Enterprises vs. SEBI.*

xxvii. *They humbly submit that it is settled law that in Adjudicating proceedings, if a party relies on any Adjudication Order passed in another case, then judicial discipline warrants that the Ld. Adjudicating Officer ought to pass an order in lines with what was already decided in previous similar case.*

xxviii. *Noticee submitted that CoLo guidelines dated April 16, 2012 has been relied upon by SEBI in which no parameters were laid down. NSE maintained no policing system, and therefore NSE never 'warned' or 'reprimanded' us 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. There was no mechanism was available to verify whether primary connections are now available, hence on receipt of communication from NSE, Noticee used to shift to primary server again as soon as possible. In any case there is not any violation of any rule, regulation, guideline or circular as he connected to secondary server only when he was facing non-availability and/or inefficient/ inadequate data. Further, not all of its IP's got connected on any given day to secondary server.*

8. A personal hearing was held in respect of the Noticee on June 04, 2021, through videoconference on the webex platform in view of the covid pandemic. In the said hearing, the authorized representatives (ARs), viz., Mr. Prakash Shah and Mr. Meit Shah, appeared on behalf of the Noticee and reiterated the contents of Noticee’s earlier replies dated December 04, 2020, February 10, 2021 and May 31, 2021. Since the Noticee raised the issue of inspection and supply of documents sought by it during the aforesaid hearing, vide email dated April 13, 2022, the Noticee was granted an opportunity of inspection of dcouments on April 21, 2022. The said inspection of documents was carried out by Mr. Meit Shah on behalf of the Noticee on April 21, 2022. The description of documents requested by Noticee and inspected are as follows –

Sl.	Documents Sought	Remarks
1.	Details of analysis done by Investigations Department, SEBI on our day wise turnover using TBT secondary servers.	Investigation Report of SEBI provided in point 2 below.
2.	Copy of detailed Investigation Report along with annexures enclosed therewith	Relevant portion of Investigation Report provided.
3.	Copy/ies of complaints received by-SEBI-pertaining to allegations of malpractices with respect to the co-location facility being provided by the NSE.	Confidential. Complainants details cannot be provided.

4.	Details of telephonic calls and email communications exchanged between Share India and NSE as submitted by NSE to SEBI.	All relevant communications as per available records already provided as Annexures to SCN.
5.	Copy/ies of communications exchanged between SEBI and NSE as it relates to us.	Deloitte Report and Investigation Report along with annexures provided.
6.	Copy/ies of communications exchanged with other Brokers/ Trading Members and other service providers to NSE on the subject matter of present proceedings.	Not Relevant to the present Adjudication proceedings. Not related to the Noticee.
7.	Copy/ies of statements recorded in the course of Investigation proceedings conducted by SEBI other than what is provided along with the SCN dated 06.11.2020.	All relevant statements as per available records already provided as Annexures to SCN as follows - Annexure IV — Copy of Statement of Sachin Gupta, Parveen Gupta and Amit Sharma dated May 20, 2019. Annexure XII — Statement of Ajit Hakani and Vivek Sheth dated May 31, 2019. Annexure XIII — Statement of Sachin Gupta, Parveen Gupta and Amit Sharma dated September 04, 2019. Annexure XVI — Copy of Statement on Oath of Parveen Gupta, Sachin Gupta and Amit Sharma of Share India dated September 04, 2019.
8.	Any other and additional documents in possession of SEBI on the subject matter of present proceeding which can be helpful to us for our defense.	All relevant documents and information already provided.

9. The proceedings of inspection of documents was duly concluded and the Noticee was granted time of 14 days (i.e. till May 5, 2022) to file additional submissions, if any. Vide letter dated May 05, 2022, Noticee filed additional submissions. The main submissions made therein are summarized as follows :-

Submissions on Alleged Reprimand vide NSE email dated 07.06.2012:

i. *There is no concrete evidence placed on record to prove that they had actually connected to Secondary TBT servers post-issuance of alleged reprimand dated 07.06.2012.*

ii. *In fact, NSE' email dated 07.06.2012, inter alia states that " .....it has been observed that in spite of informing you several times still you are connecting to the TBT fallback server which is considered as an offense due to which your ports* *might get blocked in future." So they believe that in case of any mistake from their side, they would have received at least some communication from the exchange in this matter. But, this never happened. Importantly, since after June 2012, Exchange never issued any directions to us to disconnect from the secondary server, which amounts to acquiescence and hence the Regulator is now estopped from raising the issue.*

iii. *The observation of the alleged reprimand inter alia portrays the conclusion that the SCN is in itself issued without any basis and therefore bad in law. The only basis available with SEBI for alleging various violations i.e.the Deloitte's report of September 2019 is invalid and unsustainable because the said report itself contains disclaimer Notice to readers on the page 4 of the Deloitte's report.*

iv. *Further, the observation made by Disciplinary Action Committee ("DAC") of NSE in their order dated 04.09.2017 "keeping note of the fact that there were no repetitions qfter June 07, 2012, the DAC decided to warn SISL to adhere to directions of Exchange in all matters related to operations on NSE Technology platform" (Para 8.A.iv.d Of SCN) portrays that even as per NSE's records, they hadn't connected to Secondary TBT Server after 07.06.2012.The said observation made by NSE's DAC when read along with afore-mentioned "Notice to the reader" given by Delloitte in its report clearly shows that the various allegations leveled against them through the SCN insofar as they relate to connection to Secondary TBT Server may well be false and unfounded.*

v. *Further, the NSE Colocation Guidelines as revised by NSE on 31.07.2012 and communicated to members vide e-mail dated 30.08.2012 inter alia states that "Member's should always check the secondary IBT parameters are working fine with their application in case of nonavailability of data from T'BT primary source they can move to secondary source. ". It is noteworthy that the neither the afore-mentioned NSE's email dated 2606.2012 nor the afore-mentioned revised guidelines (both issued by NSE post reprimand email dated 07.06.2012) had required members to seek prior permission from or give prior intimation to NSE before making any connection to the Secondary TBT Server.*

Submission on alleged Violations:

vi. *They understand that in the matter of NSE Co-Location the following orders have been passed by the Lad. Adjudicating Officer, SEBI amongst others:*

(a) *Silver Stream Equities Private Limited — Order dated 16.02.2022*

(b) *Adroit Financial Services Private Limited —Order dated 16.02.2022*

(c) *PACE Stock Broking Services Pvt. Ltd — Order dated 29.04.2022*

vii. *In all the aforesaid 3 orders, it is held that the Noticees therein cannot be held to have 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. Hence, in the similar matter,nothing in respect of the aforesaid sections can alleged against them.*

viii. *Notably when SEBI in similar cases has concluded that there is no violation 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 no charge of unfair trade practice is sustainable on facts and in law, since u/r 4(2), it was inter alia mentioned that dealing in securities shall be deemed to be unfair trade practice only if it involves fraud.*

ix. *In similar cases, SEBI has exonerated Noticees therein from the allegation of fraud and there is no allegation of any violation u/s 4(2) of PFUTP regulation against them. In light of the above, they humbly submit that there is no allegation of unfairadvantage accrued/loss suffered by investors in their case also. Also, there are no investor/scomplaints against them. In view of the aforesaid, the allegation of alleged violation of Regulation 4 (I) of the PFUTP Regulations, 2003 against them is also not sustainable in fact and in law.*

10. Thereafter, vide email dated May 06, 2022, the Noticee was granted another opportunity of personal hearing on May 11, 2022. The said hearing was held through videoconference on the webex platform and was attended by the authorized representatives (ARs), namely, Mr. Prakash Shah, Advocate and Mr. Vikas Aggarwal, Compliance Officer of Noticee. During the hearing, the ARs reiterated the earlier submissions made by the Noticee. Further, the AR drew attention to two of the items in the inspection minutes dated April 21, 2022, where they requested for further clarifications/details. Vide email dated May 11, 2022, Noticee rephrased their queries at sl. nos. 3 and 6 in the minutes of inspection dated April 21, 2022 as given and which were addressed as given hereunder:-

Query of Noticee	Clarification/Comments provided
Sl. 3: details about the number of complaints, if any, received by SEBI with respect to our connection to the servers under	*There are no complaints received by SEBI specifically against Noticee's connection to the servers under colocation facility provided by NSE to it.*

colocation facility provided by NSE to us	
Sl. 6: Copy/ies of communications exchanged, if any, with other Brokers/ Trading Members and other service providers to NSE pertaining to the allegation of malpractices purported to be levelled against us with respect to co-location facility being provided by NSE to us which is the subject matter of the SCN	*Statements of officials of Greeksoft as per available records have been provided to Noticee as Annexure XII to the SCN. The Investigation Report and its annexures have also been already provided to the Noticee during the course of inspection of documents. Other than above, there is no record of any communication exchanged with other Broker/ Trading Members pertaining to the allegation of malpractices purported to be levelled against Noticee with respect to co-location facility being provided by NSE to Noticee which is the subject matter of the SCN.*

11. During the course of aforesaid hearing, Noticee requested for time till May 17, 2022 for filing of additional submissions in the matter, including on the above two aspects and the same was acceded to. Vide letter dated May 16, 2022, Noticee made post hearing submissions. The main contentions made therein are summarized below –

   i. *They state that by their letter dated 11.05.2022, they had made request to provide them details about number of complaint, if any, received by SEBI w.r.t our connection to the servers under colocation facility provided by NSE to them. In response thereto vide Minutes; they are informed that "There are no complaints received by SEB/ specifically against Noticee's connection to the servers under colocationfacility provided by NSE to it".*

   ii. *They humbly submit that neither any complaints have been received against them nor any communications have been exchanged with other Brokers/ Trading Members in respect to their connection to the servers under co-location facility being provided by NSE to them.*

   Clarification on the Instances of connection to secondary servers:

   iii. *On perusal of the details about connection to secondary server in the SCN, they find that calculation of % of connection to secondary server is incorrect. (Ref. Para 10.2, Point No. Ill on Page No. 15 to 17 of the SCN). In this regard, they submit that allegation in the SCN pertains to connection of only one of the TBT IPs' connection to secondary server. In fact, they had multiple connections on every single trading day and therefore for the purpose of comparison, total connections to the secondary server on trading day/s needs to be considered.*

Hence, they respectfully submit that the calculation of connection to the secondary server as mentioned in the SCN is arbitrary, disproportionate and not holistic.

iv. *Further they state that during the relevant time, they had connected to the secondary server only when they had an issue for connection to primary server. In fact, at times they might have connected to secondary TBT server owing to some issue and remained connected to the same without their knowledge.*

v. *Legal Submissions: In the SCN the allegations have been leveled against them on the ground that we they indulged into unfair trade practices. In fact, at the relevant time the Section 4(2) of the PFUTP regulation inter alia stated that "Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and mav include all or any of the following, namely:- Further as per legal dictionary unfair trade practices is defined as any business practice or act that is deceptive, fraudulent, or causes injury to a consumer. Notably, none of the aforesaid factors are applicable in their case. Hence, since there is no fraud they have not indulged into any unfair trade practices. Further they place reliance on the following orders passed by Ld. Adjudicating Officer, SEBI.*

   i. *Order dated 15.062021 passed in the matter of IKM Investors Private Limited.*
   ii. *Order dated 29.09.2021 passed in respect of Master Capital Services Ltd.*

CONSIDERATION OF ISSUES AND FINDINGS

12. I have carefully examined the allegations made in the SCN, material available on record, and the submissions made by the Noticees. The issues that arise for consideration in the present case are :

Issue No. I *Whether Noticee has violated the provisions of Point 2(a) of Chapter V of NSE bye-laws read with Clause A(5) of the Code of Conduct specified under Schedule II read with regulation 9(f) of the Stock Broker Regulations, Clause A(2) of the Code of Conduct specified under Schedule II read with regulation 9(f) of the Stock Broker Regulations and Regulations 3(b), 3(c), 3(d) and 4(1) of PFUTP Regulations read with Sections 12A(a), 12A (b) & 12 A(c) of SEBI Act as alleged in the SCN?*

Issue No. II *If yes, whether the failure on the part of the Noticee would attract monetary penalty under Sections 15HA and 15HB of the SEBI Act read with Regulations 26(xvi) and 26(xx) of Stock Broker Regulations?*

Issue No. III *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 read with Rule 5(2) of the Adjudication Rules?*

13. Before proceeding further, I would like to refer to the provisions of SEBI Act, PFUTP Regulations and Stock Broker Regulations which are relevant in the instant matter. The same are reproduced below:

SEBI ACT

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.

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.*

SEBI Act:

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.*

STOCK BROKER REGULATIONS

CHAPTER VI

PROCEDURE FOR ACTION IN CASE OF DEFAULT

Liability for monetary penalty.

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

(xvi) Failure to exercise due skill, care and diligence.

(xx) Violations for which no separate penalty has been provided under these regulations.

Issue No. I ***Whether Noticee has violated the provisions of Point 2(a) of Chapter V of NSE bye-laws read with Clause A(5) of the Code of Conduct specified under Schedule II read with regulation 9(f) of the Stock Broker Regulations, Clause A(2) of the Code of Conduct specified under Schedule II read with regulation 9(f) of the Stock Broker Regulations and Regulations 3(b), 3(c), 3(d) and 4(1) of PFUTP Regulations read with Sections 12A(a), 12A (b) & 12 A(c) of SEBI Act as alleged in the SCN?***

14. I note that Noticee has raised the preliminary issue with regard to inordinate delay in issue of SCN after a gap of almost 8 years from the date of alleged violations. I note that investigation generally is a detailed process involving analysis of various data, gathering of evidences, etc. that shall stand the test of legal scrutiny at various judicial fora. This fact finding generally consumes considerable time and effort depending on the number of entities involved, the complexity of the transactions, correspondences with the entities involved etc.

15. In the present case, after receiving multiple allegations with reference of preferential access to Tick by Tick ("**TBT**") data feed given by NSE to certain TMs, SEBI initiated detailed investigation. The investigation period pertained to June 2010 to April 2014 in Future and Option (**F&O**) Segment, October 2010 to November 2014 in Cash Market (**CM**) Segment and January 2012 to April 2014 in Currency Derivative (**CD**) segment. For this purpose, Noticee had been identified as one of Stock Brokers for investigation including forensic audit.

After completion of forensic audit, Deloitte (forensic auditor for the Noticee) submitted the forensic report i.e. Deloitte report dated November 07, 2019 to SEBI. Pursuant to receipt of the Delloitte report, the investigation was completed on June 17, 2020. After the completion of investigation by SEBI, adjudication proceedings have been initiated against Noticee. For this purpose, Shri B J Dilip was appointed as AO vide communiqué dated July 14, 2020. Thereafter, SCN dated November 06, 2020 has been issued to the Noticee. Pursuant to the transfer of erstwhile AO, vide communiqué dated December 31, 2020, the case has been transferred to undersigned. Further, in the interest of natural justice, the Noticee has been provided opportunities to carry out inspection of documents and make its submissions and has also been granted opportunities of hearing in the instant proceeding which has been elaborated in the previous paragraphs. Therefore, in the view of above facts and circumstances, I find that there is no unreasonable delay in the present adjudication proceedings. In this regard, I place my reliance on the judgment of Hon'able SAT, in the matter of *Hemant Sheth vs SEBI* (Appeal No. 521 of 2021, DoD: 07.01.2022) wherein it was held that: "*….. Insofar as the delay is concerned, we find that after the observation made by the WTM in its order of May 10, 2013 SEBI took action and appointed the AO dated July 4, 2013. No doubt the show cause notice was issued in January 2016 but the delay in the issuance of the show cause notice in the instant case will not vitiate the proceedings initiated against the appellants in the peculiar facts and circumstances of the case. Consequently, we are not inclined to quash the proceedings only on the ground of inordinate delay as asserted by the learned counsel for the appellant.*". Further, I would like to rely upon the judgement of Hon'ble SAT in the case of *Ravi Mohan & Ors. vs. SEBI* (SAT Appeal No. 97 of 2014, DoD 16/12/2015) wherein it was held that : -

> *"....................Based on decision of this Tribunal in case of HB Stockholdings Ltd. vs. SEBI (Appeal no.114 of 2012 decided on 27.08.2013) it is contended on behalf of the appellants that in view of the delay of more than 8 years in issuing the show cause notice, the impugned order is liable to be quashed and set aside. There is no merit in this contention, because, this Tribunal while setting aside the decision*

of SEBI on merits has clearly held in para 20 of the order, that delay itself may not be fatal in each and every case. Moreover, the Apex Court in case of Collector of Central Excise, New Delhi vs. Bhagsons Paint Industry (India) reported in 2003 (158) ELT 129 (S.C) has held that if there no statutory bar for adjudicating the matter beyond a particular date, the Tribunal cannot set aside the adjudication order merely on the ground that the adjudication order is passed after a lapse of several years from the date of issuing notice.................."

16. Further, I note that Noticee has contended that insofar as the electronic evidence is concerned, it must be accompanied by an appropriate certificate as stipulated under section 65B(4) of the Indian Evidence Act, 1872. Noticee has also contended that due procedure was not followed by the forensic auditor. In this regard, I note that the data relied upon by the forensic auditor was from the device of NSE and as such they are not in possession of the said device from which the document is produced and hence, they are not required to produce the certificate under Section 65B(4) of the Evidence Act. In this regard, I place reliance on the judgement of Hon'ble Supreme Court in the matter of *Shafhi Mohammad vs The State Of Himachal Pradesh* [SLP(Crl.) No.2302 of 2017] on 30 January, 2018, wherein it has been, *inter alia,* held that –

    "(*11) The applicability of procedural requirement under Section 65B(4) of the Evidence Act of furnishing certificate is to be applied only when such electronic evidence is produced by a person who is in a position to produce such certificate being in control of the said device and not of the opposite party. In a case where electronic evidence is produced by a party who is not in possession of a device, applicability of Sections 63 and 65 of the Evidence Act cannot be held to be excluded. In such case, procedure under the said Sections can certainly be invoked. If this is not so permitted, it will be denial of justice to the person who is in possession of authentic evidence/witness but on account of manner of proving, such document is kept out of consideration by the court in absence of certificate under Section 65B(4) of the Evidence Act, which party* *producing cannot possibly secure. Thus, requirement of certificate under Section 65B(h) is not always mandatory.*

(12) Accordingly, we clarify the legal position on the subject on the admissibility of the electronic evidence, especially by a party who is not in possession of device from which the document is produced. Such party cannot be required to produce certificate under Section 65B(4) of the Evidence Act. The applicability of requirement of certificate being procedural can be relaxed by Court wherever interest of justice so justifies."

Therefore, applying the rationale of the aforesaid judgement in the case under consideration, I do not find merit in this contention of Noticee.

17. I note that Noticee has made another contention that SEBI has not conducted independent investigation and that reliance has been placed upon third party Expert Reports and further that the SCN selectively relies upon the opinions given in the Expert Report i.e. Deloitte Report. Noticee has also quoted the limitation provided under Deloitte report. In this regard, I note that SEBI has requested Deloitte to conduct a forensic review of certain members including the Noticee with the objective to determine if any member availing Colo facility were given preferential access/treatment at NSE either by possessing confidential information of NSE's TBT architecture or by way of collusion with the exchange officials and/or third parties. In the view of these circumstances, it is clearly established that Delloitte, who is the one of the experts in the areas of forensic audit, has been co-opted to aid in SEBI's investigation and also that Deloitte's forensic audit is part of SEBI's independent investigation. Therefore, I am unable to accept this contention of Noticee.

18. I further note that Noticee's contention that **maximum period** for which Stock Broker are required to maintain records is 5 years, is factually incorrect and Noticee has not provided any documentary evidence/placed reliance on any rules or regulation for the said contention. Therefore, I am unable to agree with this contention of Noticee.

19. Now coming to the merits of the case, it is noted that the limited question for determination is whether the Noticee repeatedly continued to login to the secondary server significant times without valid justifications i.e. without making any complaint/reference about non-availability of data from TBT primary server, thereby committing fraud and indulging in unfair trade pratices as well as violating the provisions of NSE bye-laws and Code of Conduct specified in the Stock Broker Regulations.

20. I note that secondary server was provided by NSE in order to enable its members to connect to the same in case of disconnection / failure to connect to primary server. NSE had also issued co-location guidelines. This is apparent from Clause 2 of the co-location guidelines issued by NSE (Document no SEIL/ITSM/INT/072, revised on April 16, 2012), which reads as: "*Members 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.*". Hence, I note that Noticee was well aware of the condition under which it could connect to the secondary server of NSE.

21. It is observed that the Noticee had frequently connected to the secondary server in the CM segment and F&O segment. Summary of observations made regarding secondary server connections made by the Noticee during the reference period (i.e. F&O segment : February 02, 2012 to April 06, 2014; CM segment : February 02, 2012 to November 09, 2014; and CD segment : February 02, 2012 to April 06, 2014) are as follows:

Table - 1

Particulars	**Data**
No. of trading days connected to secondary server on CM	466 days
No. of trading days connected to secondary server on CD	1 day
No. of trading days connected to secondary server on F&O	63 days
Whether reprimand emails were sent by NSE for connecting to secondary server on either of the segment	CM - 3 emails 1. May 04, 2012 2. May 18, 2012 3. June 07, 2012

Whether the trading member connected to secondary server post reprimand	Yes
No. of trading days connected to secondary server post reprimand in either of the segments	403 days
No. of trading days when member connected only to secondary server in either segment	489 days
Had heard hearsay information about secondary server advantage	No
Algo vendors used	· Omnesys · Greeksoft · UTrade Solutions · Algowire Trading Technologies
Whether there was a profit-sharing agreement with Algo vendors?	No

22. A summary of connection to secondary server by Noticee during the reference period, is provided in the table below:

Table - 2

Segment	Period	No. of trading days [A]	No. of trading days connected to secondary Server [B]	%-age of connection to secondary Server [B as %-age of A]
F&O	Feb. 02, 2012 – Dec. 31, 2012	228	51	22.37%
	Jan. 01, 2013 – Dec. 2013	250	12	4.80%
	Jan. 01, 2014 – Apr. 06, 2014	67	0	0.00%
	Sub-total	**545**	**63**	**11.56%**
CM	Feb. 02, 2012 – Dec. 31, 2012	230	80	34.78%
	Jan. 01, 2013 – Dec. 2013	250	181	72.40%
	Jan. 01, 2014 – Nov. 09, 2014	207	205	99.03%
	Sub-total	**687**	**466**	**67.83%**
CD	Feb. 02, 2012 – Dec. 31, 2012	220	0	0.00%
	Jan. 01, 2013 – Dec. 2013	245	0	0.00%
	Jan. 01, 2014 – Apr. 06, 2014	62	1	1.61%
	Sub-total	**527**	**1**	**0.00%**

23. As seen in the aforementioned table, Noticee connected on to the secondary server for 63 days in F&O segment, 466 trading days in CM segment and 1 trading days in CD segment. In the F&O segment, Noticee was seen to have

connected to the secondary server on 11.56% of the trading days during the period from February 02, 2012 to April 06, 2014. Further, in the CM segment, Noticee connected to the secondary server on 67.83% of the trading days during the period from February 02, 2012 to November 09, 2014. In the CD segment, Noticee connected to the secondary server on negligible trading days during the period from February 02, 2012 to April 06, 2014. I note that Noticee has not disputed the above facts.

24. The relevant co-location 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.*" I note from the available records that NSE had duly emailed the copy of NSE co-location guidelines to the Noticee. In this regard, I note that vide email dated August 30, 0212, NSE had emailed "*NSE Colocation Guideline ver_1.2*" to the Noticee and vide email dated September 19, 2013, NSE had emailed "*NSE Colocation Guideline ver_2.1"* to the Noticee. The objective of the aforesaid guidelines is mentioned as "*to provide guidance to the member to follow the NSE Colocation Datacenter processes*" (Both the guidelines are hereinafter referred to as '**NSE colo guidelines'**). Therefore, I note that the aforesaid 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. Further, I note that NSE, vide an e-mail dated December 02, 2011 addressed to several TMs, including the Noticee, advised that "*Members are not supposed to connect to Secondary server until exchange intimates to do so.*". However, Noticee continued to login to the secondary server without valid reasons. This can be seen from the exceptionally high number of connections (as discussed above in Table Nos. 1 and 2).

25. I note that NSE had, through e-mails dated May 04, 2012, May 18, 2012 and June 07, 2012, specifically reprimanded Noticee for connecting to the secondary server.

26. In this regard, I note as follows –

a. In an email dated May 04, 2012 from NSE COLO Support to Noticee, NSE informed the Noticee that one of the TBT TCP IP “10.230.60.140” was connecting to the CM secondary server and asked them to connect to the primary server.

   However, Deloitte observed that the Noticee connected the IP “10.230.60.140” to the secondary server in the CM segment for 87 days after May 05, 2012 between October 26, 2012 and April 01, 2013. Deloitte also noted that these connections to the secondary server were not backed by a corresponding complaint by the Noticee in NSE’s complaint logs data.

b. In an email dated May 18, 2012, NSE COLO Support wrote to Noticee stating that an IP “10.230.60.141” was connected to the secondary server and requested to disconnect from the secondary server, and to not connect to the secondary server without intimating NSE.

   However, Deloitte observed that Noticee connected the IP “10.230.60.141” to the secondary server in the CM segment for 403 days after May 18, 2012 between May 21, 2012 and November 07, 2014. Deloitte also noted that these connections to the secondary server were not backed by a corresponding complaint by the Noticee, in NSE’s complaint logs data.

c. In an email dated June 07, 2012, from NSE COLO Support to Noticee, NSE mentioned that in spite of several reminders, the TBT TCP IP “10.230.60.141” was still connected to the secondary server in the CM segment. Further, the email stated that connection to the secondary server was considered an offence and this might result in the Noticee’s ports being blocked. NSE once again requested the Noticee to connect to the TBT primary server only.

27. I note that post NSE's email of June 07, 2012, the Noticee connected to the secondary server for the following number of days:

Table - 3

Segment	Period	No. of trading days [A]	No. of trading days connected to secondary Server post last reprimand [B]	%-age of connection [B as %-age of A]
F&O	Jun. 07, 2012 – Dec. 31, 2012	141	51	36.17%
	Jan. 01, 2013 – Dec. 2013	250	12	4.80%
	Jan. 01, 2014 – Apr. 06, 2014	67	0	0.00%
	Sub-total	**458**	**63**	**13.75%**
CM	Jun. 07, 2012 – Dec. 31, 2012	141	30	21.28%
	Jan. 01, 2013 – Dec. 2013	250	181	72.40%
	Jan. 01, 2014 – Nov. 09, 2014	207	205	99.03%
	Sub-total	**598**	**416**	**69.56%**
CD	Jun. 07, 2012 – Dec. 31, 2012	139	0	0.00%
	Jan. 01, 2013 – Dec. 2013	245	0	0.00%
	Jan. 01, 2014 – Apr. 06, 2014	62	1	1.61%
	Sub-total	**446**	**1**	**0.00%**

28. From the above table, it is observed that the Noticee had connected frequently to secondary server in CM / F&O segment in 2013 and 2014. Thus, it is clear that the Noticee blatantly ignored NSE reprimands including the email of June 07, 2012, and continued to connect to the secondary server.

29. Noticee has in its submissions, contended that the COLO facility had no restrictions on the usage of the secondary server access and there were no norms/law whatsoever, restricting or regulating the usage of the facility including access to Secondary Server. However, as noted above, NSE colo guidelines specifically state that the trading member can move to the secondary server, only in the event of non-availability of data from primary server. Further, NSE, in its e-mail dated May 18, 2012, had advised the Noticee to connect to primary server and not to connect to the secondary server without intimation to exchange. It is evident from the e-mail correspondences between the Noticee and the NSE, as discussed above, that the Noticee continued to connect to the secondary server. The said correspondences indicate the concerns of NSE and the requirements that the Noticee needed to follow i.e. connecting to secondary server only if it is unable to connect to the primary

server. From the said emails, I note 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 would 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 has not been disputed by the Noticee. Therefore, I find this contention of Noticee to be unacceptable.

30. The Noticee has submitted that comparison of number of days connected to secondary server has not been properly done. Noticee has stated that if they calculate the no. of TBT counts days (No of TBT IP's * Trading days pertaining to particular year) and see the percentage of their connection to secondary server based on TBT days count, then the percentage of their connection to secondary server would be low. In this regard, I note that each day the trading member connects to the secondary server without a valid reason is a violation of NSE's guidelines. In the present case, I note that the Noticee repeatedly connecting to the secondary servers, without valid reason / intimation to NSE, on a significant number of days, and also continued to do so even after repeated reprimands from the exchange. Further, I note from Table – 1, that on 489 trading days, Noticee connected only to secondary server in either segment (i.e. CM / F&O / CD). Thus, I find no merit in this contention of the Noticee.

31. I note that the Noticee has been alleged to have connected to the secondary server in F&O segment on 11.56% of the days (i.e. on 63 days out of 545 trading days during the period from February 02, 2012 to April 06, 2014). Similar allegation is also made with regard its connection to the secondary server in the CM segment. In this regard, Noticee, in its reply dated May 31, 2022 (para 5 (iv)), has provided its own calculation regarding the percentage of connection to secondary server by comparing the no. of days of secondary server connection with no. of TBT count Days (i.e. No of TBT IP's * Trading days pertaining to particular period). In this regard, I note that while Noticee

has considered TBT count days as the denominator in its calculation, it has not considered the corresponding updated numerator (i.e. it has not factored the no. of TBT IPs connections in the numerator). Thus, the entire calculation made by the Noticee is on an erroneous and unfair basis and is therefore rejected.

32. In his submissions, Noticee has quoted para 8.2.16.3 of order dated April 30, 2019 of Whole Time Member (WTM) of SEBI in the matter of NSE Colocation which is as follows - "*To ensure that members could easily and quickly switch to the Secondary Server if the primary server failed, the backup server was always in active-active mode — i.e., the members would be able to connect to the Secondary Server at all times and receive data*", and has contended that there was no stringent requirement adopted by NSE at the relevant time as far as connection to Secondary, TBT server was concerned. In this regard, I note that Noticee has selectively cited a part of the para of the aforesaid order of WTM. On perusal of the entire para 8.2.16.3 of aforesaid WTM order, it is clear that the said order itself provided that it is the legate expectation on part of TMs to ensure that they act in good faith. For the purpose of reference, extract of the para 8.2.16.3 has been reproduced herein below:

> *"To ensure that members could easily and quickly switch to the Secondary Server if the primary server failed, the backup server was always in active active mode —i.e., the members would be able to connect to the Secondary Server at all times and receive data. However, it was expected that members would act in good faith and only connect to the Secondary Server when the primary server was down, and not otherwise —this was set out in the Colocation Guidelines issued by the Noticee. There was no form of access control employed in this regard, and members did not need to be 'enabled' by the Noticee to be able to connect to the Secondary Server."*

33. Noticee has also submitted that vide circular dated September 19, 2016, NSE announced its intention to discontinue TCP-based TBT data broadcast with effect from November 30, 2016 and hence, the subject matter of connecting to

secondary server had become redundant. In this regard, I note that the present proceeding initiated against the Noticee is with reference to alleged violation commited by Noticee during the reference period, when the relevant NSE colo guidelines were in force. Therefore, I find such contention of Noticee is bereft of merits.

34. Noticee has further contended that Disciplinary Action Committee (DAC) of NSE comprising high profile people had concluded that there are no adverse findings. However, as per material available on record, I note that the Noticee had accessed the secondary server in CM, CD and F&O segments without any valid reasons, despite repeated NSE reprimands. In view of the same, I am not inclined to accept said submission of the Noticee. Further, I note that DAC proceedings cannot curtail SEBI's powers including initiation of adjudication proceedings for alleged violations of securities laws.

35. Noticee has also contended that NSE has admitted that there was no bar on accessing secondary servers and in fact, on several occasions NSE encouraged its members to avail of secondary TBT server facility. As discussed above, I note that Noticee was supposed to connect to the secondary server / fall back server in the event of non-availability of TBT primary source which had been communicated to the Noticee by NSE. I find that the connnections by the Noticee to the secondary server is not supported by the requisite complaints made by the Noticee. Further, as noted earlier in the order, there were also instances of Noticee being reprimanded by NSE for connecting to the secondary server. I note that the Noticee continued to connect to the secondary server without having sufficient reasons to do so and consistently failed and neglected to comply with the instructions/NSE colo guidelines of the exchange. Thus, I find the said contention of the Noticee to be devoid of merits.

36. As recorded in the preceding paragraphs, it is noted that the Noticee had connected to the secondary server of NSE continuously and repeatedly without any valid reasons on several occasions during the reference period which was

in contravention of NSE Colo guidelines issued by NSE from time to time. As brought out earlier, Noticee connected to the secondary server on 63 days in F&O segment, on 466 trading days in CM segment and on 1 trading day in CD segment, without making any complaint / reference or without intimating to NSE. Point 2 (a) of Chapter V of the Exchange's Byelaws states 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.*". I find that by indulging in an activity in a manner as found in this case, the Noticee has not complied with the statutory requirements of the Stock Exchange i.e. NSE and has thus, violated the provisions of Point 2(a) of Chapter V of NSE bye-laws read with Clause A(5) of the Code of Conduct specified under Schedule II read with Regulation 9(f) of the Stock Broker Regulations. The aforesaid acts of the Noticee as found in this case shows non-serious and casual approach on the part of the Noticee and establishes the fact that Noticee has not acted with due skill, care and diligence in the conduct of its business. In the facts and circumstances of this case, I find that the Noticee, a SEBI registered intermediary, was obligated to exercise due skill, care and diligence in the conduct of its business and to comply with the statutory requirements, which it failed to do. In view of the foregoing, I find that Noticee has violated the provisions of Clause A(2) of the Code of Conduct specified under Schedule II read with regulation 9(f) of the Stock Broker Regulations

37. In view of the aforesaid facts, I find that the Noticee has violated the provisions of Point 2(a) of Chapter V of NSE bye-laws read with Clause A(2) and Clause A(5) of the Code of Conduct specified under Schedule II read with regulation 9(f) of the Broker Regulations and is thus liable for monetary penalty as provided in Regulations 26(xvi) and 26(xx) of Broker Regulations thereof.

38. It has also been alleged that as Noticee connected to the secondary server repeatedly without valid reason, it indulged in unfair trade practices and thus, violated the provisions of Regulations 3(b), 3(c), 3(d) and 4(1) of PFUTP Regulations read with Sections 12A(a), 12A (b) and 12 A(c) of SEBI Act. I note

that provisions of Regulation 3 (b), (c), (d) of the PFUTP Regulations are taken verbatim from the provisions of section 12A (a), (b) and (c) of the SEBI Act. Hence, I limit the scope only to the extent of applicability of the said provisions of PFUTP Regulations in this case. In this regard, Noticee has contended that there is no dimension of unfair advantage or undue gains, without which the alleged violation cannot be considered as a fraud and unfair trade practice. The Noticee has placed reliance on the Adjudication Order dated September 25, 2019, in the matter of SMC Global Securities Ltd(SMC), Adjudication Order dated November 25, 2020, in the matter of Crosseas Capital Services Private Limited, Adjudication Order dated June 15, 2021 in the matter of IKM Investors Pvt Ltd and Adjudication Order dated September 29, 2021 in the matter of Master Capital Services Ltd.

39. In this regard, it must be kept in mind that the charge of fraud has to be established on a higher degree of probability. I note that the definition of 'fraud' under the PFUTP Regulations requires a person to do an act, expression, omission or concealment or omission with a view to 'induce another person to deal in securities', whether or not there is any wrongful gain or avoidance of any loss. Regulations 3 and 4 of PFUTP Regulations deal with the prohibition of fraudulent and unfair trade practices relating to securities in the market. Regulation 3 of PFUTP Regulations speaks of prohibition about certain dealings in securities and Regulation 4 of PFUTP Regulations provides for prohibition of manipulative, fraudulent and unfair trade practices.

40. In this regard, in its submissions, Noticee has contented that neither was it aware of any potential advantage of connecting to secondary server nor did it actually observe any advantage when connecting to the secondary server. In this regard, I note that the Investigation Report itself states that the Noticee had not got any hearsay information about secondary server advantage. Futher, there is no evidence placed on record to demonstrate any advantage or benefit that the Noticee may have received in connecting to the secondary server. Therefore, in view of the foregoing, I am of the view that the act of connecting to secondary server without making any complaint / reference to

NSE alone cannot be deemed to be a fraudulent act. In the absence of any evidence in this regard, I am unable to conclude that there is an existence of "fraud" in this case. I further note that the Investigation Report neither found anything to show any collusion between Noticee and NSE nor did it record a finding that Noticee had gained any unfair advantage / gain on fallback servers. Therefore, I find that Regulations 3 and 4 of PFUTP Regulations are not applicable to the present facts of the case and as such, the charge under PFUTP Regulations is not made out. Thus, it cannot be held that the Noticee violated provisions of Regulations 3(b), 3(c), and 3(d) of PFUTP Regulations read with Sections 12A(a), 12A (b) and 12 A(c) of SEBI Act.

Issue No. II ***If yes, whether the failure, on the part of the Noticee would attract monetary penalty under Section 15HA and 15HB of the SEBI Act?***

&

Issue No. III ***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 read with Rule 5 (2) of the Adjudication Rules?***

41. As it is established that Noticee has violated the provisions of Point 2(a) of Chapter V of NSE bye-laws read with Clause A(5) of the Code of Conduct specified under Schedule II read with regulation 9(f) of the Stock Broker Regulations, Clause A(2) of the Code of Conduct specified under Schedule II read with regulation 9(f) of the Stock Broker Regulations, I am of the view that imposition of monetary penalty is warranted under Section 15HB of the SEBI Act on the Noticee, text of which is reproduced as under:

SEBI Act:

Penalty for contravention where no separate penalty has been provided.

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

42. While determining the quantum of penalty under Section 15HB the SEBI Act, the following factors stipulated in Section 15J of the SEBI Act, 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.

43. 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 violations. It has been noted earlier in the order that the Noticee has connected to the secondary server connection roughly on 67.83% or 466 days out of total around 687 trading days in the CM segment during the period from February 02, 2012 to November 09, 2014. Similarly, it has been noted that Noticee has connected to the secondary server connection roughly on 11.56% or 63 days out of total around 545 trading days in the F&O segment during the period from February 02, 2012 to April 06, 2014. I also note that the Noticee has beeen reprimanded or warned by NSE for connecting to secondary server. Inspite of the reprimands, Noticee has continued connecting to the secondary server on 416 days in the CM segment and 63 days in the FO segment. To that extent, the defaults of the Noticee were repetitive. Therefore, it is established that the Noticee has failed to comply with aforesaid guidelines and hence, violated the aforesaid provisions of the NSE bye-law and Code of Conduct specified under Stock Broker Regulations. Being a registered intermediary, Noticee was under a statutory obligation to abide by the relevant securities laws, which it failed to do. Such disregard for the provisions of law governing the functioning of such intermediaries, calls for an appropriate penalty to be imposed on the Noticee.

ORDER

44. After taking into consideration all the facts and circumstances of the case, gravity of violations and material available on record, I, in exercise of powers

conferred upon me under Section 15I of the SEBI Act read with Rule 5 of the Adjudication Rules, hereby impose a penalty of Rs. 3,00,000 /- (Rupees Three Lakh Only) under section 15HB of the SEBI Act upon the Noticee i.e. Share India Services Ltd for violation of Point 2(a) of Chapter V of NSE bye-laws read with Clause A(5) of the Code of Conduct specified under Schedule II read with regulation 9(f) of the Stock Broker Regulations and Clause A(2) of the Code of Conduct specified under Schedule II read with regulation 9(f) of the Stock Broker Regulations. I am of the view that the said penalty is commensurate with the violation committed by the Noticee.

45. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, OR through online payment facility available on the SEBI website www.sebi.gov.in on the following path, by clicking on the payment link:

ENFORCEMENT → Orders → Orders of AO → PAY NOW

46. The said demand draft or forwarding details and confirmations of e-payments made (in the format as given in table below) should be forwarded to "The Division Chief, Enforcement Department (EFD1 – DRA II), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C –4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai –400 051.

1. Case Name:	
2. Name of payee:	
3. Date of payment:	
4. Amount paid:	
5. Transaction no.:	
6. Bank details in which payment is	
7. Payment is made for: (like penalties/ disgorgement/ recovery/ settlement amount etc.)	

47. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, consequential proceedings including, but not limited to, recovery proceedings may be initiated under Section 28A of the SEBI Act, for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

48. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticee and also to the Securities and Exchange Board of India.

Date: May 30, 2022 **SOMA MAJUMDER**
Place: Mumbai **ADJUDICATING OFFICER**