BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

(ADJUDICATION ORDER NO: Order/PM/GD/2021-22/14997)

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

Silver Stream Equities Private Limited

In the matter of NSE Co-Location

BACKGROUND OF THE CASE

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

2. SEBI initiated adjudication proceedings under sections 15HA and 15HB of The Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **the SEBI Act, 1992**) and regulations 26(xvi) and 26(xx) of SEBI (Stock Brokers) Regulations, 1992 (hereinafter referred to as **Stock Broker Regulations, 1992**) against the Noticee. Adjudication proceedings have been initiated against the Noticee for the alleged violation of provisions of clause 2(a) of Chapter V of NSE

bye-laws including NSE Co-location Guidelines, clauses A(2) and A(5) of the Code of Conduct specified under Schedule II of regulation 9(f) of the Stock Broker Regulations, 1992 and regulations 3(b), 3(c), 3(d) and 4(1) of Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as **PFUTP Regulations, 2003**) read with (r/w) sections 12A(a), 12A(b) & 12A(c) of the SEBI Act, 1992.

APPOINTMENT OF ADJUDICATING OFFICER

3. SEBI appointed the undersigned as an Adjudicating Officer, under section 15-I of the SEBI Act, 1992 r/w rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (herein after referred to as Adjudication Rules, 1995) to inquire into and adjudge under sections 15HA and 15HB of the SEBI Act, 1992, the alleged violations of clause 2(a) of Chapter V of NSE bye-laws, clauses A(2) and A(5) of the Code of Conduct specified under Schedule II r/w regulation 9(f) of the Stock Broker Regulations, 1992 and regulations 3(b), 3(c), 3(d) and 4(1) of PFUTP Regulations, 2003 r/w sections 12A(a), 12A(b) & 12A(c) of the SEBI Act, 1992. The same was conveyed to the undersigned vide communique dated February 26, 2021.

SHOW CAUSE NOTICE, HEARING AND REPLY

4. Show Cause Notice having reference no. SEBI/EAD-8/PM/SM/OW/10757/2021/1 dated May 24, 2021 (hereinafter referred to as **SCN**) was issued to the Noticee in terms of the provisions of rule 4 of the Adjudication Rules, 1995 requiring the Noticee to show cause as to why an inquiry should not be held against it and why penalties, if any, should not be imposed on them under the provision of sections 15HA and 15HB of the SEBI Act, 1992. The allegations in the SCN are as follows:

I. *The period for the investigation with respect to the various segments are given below:*

Sl. No.	***Segment***	***Period***
1	*Futures and Options (F&O) Segment*	*June 12, 2010 to April 06, 2014*
2	*Cash Market (CM) Segment*	*October 15, 2010 to November 09, 2014*

3	*Currency Derivatives (CD) Segment*	*January 02, 2012 to April 06, 2014*

II. *Details of SEBI Registration of the Noticee are given below:*

Exchange- NSE			
Segment	***CM***	***FO***	***CD***
Reg. No.	*INZ000198335*	*INZ000198335*	*INZ000198335*
Date of Reg.	*07-Sep-18*	*07-Sep-18*	*07-Sep-18*
Exchange- BSE			
Segment	***CM***	***FO***	***CD***
Reg. No.	*INZ000198335*	*INZ000198335*	*INZ000198335*
Date of Reg.	*07/09/2018*	*07/09/2018*	*07/09/2018*

III. *Details pertaining to Colocation facility availed by the Noticee are given below:*

NSE, vide its email dated January 28, 2020 and March 09, 2020 provided the following information regarding allotment of colocation racks to the Noticee:

Type Of Rack	***Rack No***	***Date Of Allotment***	***Date Of Surrender***	***Current Rack Status***
Half Rack	*K20*	*31-Mar-2011*	*-*	*Active*

As seen from table above, Noticee availed colocation services of NSE throughout the review period.

IV. *EY has made the following findings/ observations with respect to the Noticee:*

A. *Issues pertaining to connection to the secondary server:*

i. *Based on review of logs, it was observed that Silver Stream connected on to the secondary server for 201 trading days in FO segment, 14 trading days in CM segment and 37 trading days in CD / IRF segment during the review period.*

Number of days Silver Stream connected to the secondary server across the review period:

Segment	***No. of Trading Days during the Year***					***Total No. of Trading Days during review period***
	2010	***2011***	***2012***	***2013***	***2014***	
CD / IRF segment	*-*	*-*	*22*	*15*	*-*	***37***

CM segment	*-*	*-*	*12*	*-*	*2*	***14***
FO segment	*27*	*-*	*9*	*99*	*66*	***201***
Total	***27***	***-***	***43***	***114***	***68***	***252***

ii. *Silver Stream connected only to secondary server (i.e. no connections made to primary server) on 22 trading days in CD/IRF segment and 10 trading days in CM segment in 2012.*

iii. *Silver Stream was reprimanded by NSE Colo Support for connections made to secondary server on 04 May 2012 and 18 May 2012, however, member made connections to secondary server post reprimand for 188 trading days in either of segment during the review period. Below mentioned is the year wise details of the same:*

Number of days Silver Stream connected to the secondary server post reprimand in either of the segments:

Year	***2010***	***2011***	***2012***	***2013***	***2014***
Number of trading days connected to the secondary server in either of the segment	*-*	*-*	*7*	*114*	*67*

iv. *NSE colocation guidelines dated 16 April 2012 states that "In case of non-availability of data from TBT primary source they can move to secondary source" (Refer Annexure 7.21 of EY Forensic Audit Report for relevant excerpt of NSE colocation guidelines dated 16 April 2012).*

v. *Connections made to secondary server before NSE Colocation Guidelines dated April 16, 2012:*

Silver Stream connected to secondary server on 28 trading days in FO segment, 19 trading days in CD / IRF segment before NSE Colocation Guidelines dated April 16, 2012. Silver Stream did not connect to secondary server before 16 April 2012 in CM segment. The year-wise breakup of the connections made to secondary server before NSE Colocation Guidelines dated April 16, 2012 is as follows:

Year wise break up of connections made to secondary server before 16 April 2012

Year	***2010***	***2011***	***2012***
Number of trading days connected to the secondary server in CD / IRF segment	*-*	*-*	*19*
Number of trading days connected to the secondary server in FO segment	*27*	*-*	*1*

vi. Information on NSE architecture's start up time:

Silver Stream in its statement recording to SEBI mentioned that one of NSE's team member had informed it of the start-up time of NSE's TBT servers in around 2011 and that the members could start logging in to NSE servers from 7:00 AM to 7:15 AM. However, it was unable to recollect the name of this team member and no documentary evidence supporting this contention was submitted.

Further, Silver Stream mentioned that it had no knowledge of the processes implemented by NSE at the backend i.e. load balancer, round robin, etc. They were not aware of NSE TCP / IP TBT architecture, however, they had knowledge that NSE's TCP / IP TBT server was sequential dissemination based on their knowledge that TCP/IP is generally sequential.

A.1 Knowledge of potential secondary server advantage and reasons for connections made to secondary server:

(a) Silver Stream in its statement recording to SEBI mentioned that Pravin Tepan (IT personnel, Silver Stream) was responsible for changing parameters to connect to secondary server if there were connectivity issues (i.e. drop in connections).

(b) Silver Stream mentioned that it was not aware of any potential advantage of connections made to secondary server. However, for the days, the member connected to secondary server continuously, it mentioned that the connections may have been continued because it did not face any connectivity issues on secondary server.

(c) Silver Stream also mentioned in its statement that connections to secondary server were made when NSE suggested to them to connect to secondary server in case of any connectivity issues. However, after connecting to the secondary server, it might have not changed the connection parameters to switch back to primary due to which it stayed connected to secondary server. It was noted that there were no connection logs to evidence the same. Member also mentioned that NSE did not reprimand them after 18 May 2012 for the connections that it made to the secondary server.

(d) *Silver Stream also mentioned that during the period when member connected to secondary server in FO segment (i.e. August 2013 to April 2014), FO turnover of member was below normal as compared to previous years.*

Silver Stream mentioned that NSE colocation guidelines dated 16 April 2012 mentioned that "In case of non-availability of data from TBT primary source they can move to secondary source"

(e) *Silver Stream was reprimanded by NSE for connections made to secondary server on 04 May 2012 and 18 May 2012.*

For connections to secondary server made post reprimand on 18 May 2012, Silver Stream mentioned that since member faced login issues, it connected to secondary server on the basis of suggestion of NSE provided to them verbally, however, there is no documented evidence for the same.

(f) *On 16 April 2012, NSE Colo Support Team (Jagdish Joshi) requested members to connect to secondary server on 18 April 2012 as a precautionary measure for CM and CD/IRF segment. (Refer Annexure 7.34 of EY report for email dated 16 April 2012 from Jagdish Joshi to Silver Stream)*

(g) *On 17 May 2012, Pravin Tepan (employee of Silver Stream) in his email to NSE Colo Support marking a copy to an employee of Silver Stream (Dharmesh Gandhi) and other three NSE employees (Mahesh Soparkar, Jagdish Joshi and Avadhut Gharat) stated that they are facing login issue and provided NSE the primary and secondary IP along with port details for the respective TBT IP in CM segment. NSE Colo Support replied to the email stating that member was trying to login on the wrong port on the primary server post which member logged on to secondary server. Member then confirmed its login parameters with NSE (Refer Annexure 7.35 for email trail between Pravin Tepan and NSE Colo Support). Colo ticket for the same issue have been raised by NSE.*

(h) On 15 October 2013, Hastimal Suthar (Employee, Silver Stream) wrote an email wherein it requested Jagdish Joshi (Project Manager – Colo Support, NSE) and marking a copy to NSE Colo Support that on the basis of discussion with Hitesh Hakani (Director, Silver Stream), CD/ IRF TBT server IP 10.230.8.219 and TBT IP 10.230.8.216 may be mapped to secondary server. Avadhut Gharat (Head, Colo Support, NSE) forwarded the email to PSM team (NSE) marking a copy to Jagdish Joshi (Project Manager – Colo Support, NSE) and Colo Support stating that member would connect to secondary server on 17 October 2013 as there are issues with primary server(Refer Annexure 7.36 for email trail between Hastimal Suthar and NSE Colo Support). However, member did not connect to secondary server using the above-mentioned TBT IPs post this date.

(i) On 22 October 2013, Hastimal Suthar (Employee, Silver Stream) wrote to NSE Colo Support stating that they faced disconnection issue on TBT IP 10.230.8.219 in CD / IRF segment and provided the port details to NSE. Hastimal Suthar also mentioned that they had connected to secondary server 172.28.124.27 port 10995. On the same date, NSE Colo Support replied to Hastimal Suthar that the reason for disconnection was slow processing at the member's end, marking a copy to Directors of Silver Stream (Ajit Hakani and Hitesh Hakani), employees of Silver Stream (Dharmesh Gandhi and Pravin Tepan), NSE Colo Support Team (Jagdish Joshi and Avadhut Gharat) (Refer Annexure 7.37 for email trail between Hastimal Suthar and Colo Support). EY in its report has made an observation that Silver Stream had not connected to secondary server from the above-mentioned TBT IP during 2013.

B.Issues pertaining to Early login

Based on submissions made by Silver Stream, it was seen that Silver Stream used software provided by Greeksoft (group entity) during the review period.

Log-in process followed:

Silver Stream in its statement recording mentioned that prior to 2012, member had a manual login process. Member used to perform its BOD process through *cron job (scheduler) around 07:00 am to 07:15 am. In mid-2012, Greeksoft introduced automated login procedure, thereby member followed an automated login procedure with connection attempt to be initiated around 07:00 am to 07:15 am.*

Greeksoft introduced the automated auto login functionality on the request of trading members. The automated login functionality enabled users to pre-define the login time, interval at which the login would re-attempt connection, TBT IP and IP address of NSE TCP /IP TBT server to which connection is to be made. This was configured in intervals of minutes (not in seconds, milliseconds or microseconds). Through this functionality, the default login parameters would be attempted every trading day.

Log analysis:

Silver Stream logged in first on either of the ports on 26 trading days in CM segment and 9 trading days in CD / IRF segment. Silver Stream did not log in first in FO segment.

Details of first connects of Silver Stream across segments

Segment	***Number of trading days ranked first***					
	2010	***2011***	***2012***	***2013***	***2014***	***Total***
CM segment	*-*	*6*	*20*	*-*	*-*	*26*
CD/IRF segment	*-*	*-*	*6*	*3*	*-*	*9*

Based on our log analysis, it was noted that median login time of Silver Stream during the review period for CM segment was 08:17 am and CD / IRF segment was 08:30 am.

Knowledge of potential early login advantage:

Silver Stream in its statement recording to SEBI mentioned that they had no knowledge of potential advantage of early login.

In response to the query on number of days when member connected first, Silver Stream mentioned in its statement recording that due to automated login procedure they would have ranked first, however, there was no conscious effort to rank first.

However, Silver Stream further mentioned that one of NSE's team member had informed them about the start-up time of NSE's TBT servers in around 2011 and member could start logging in to NSE servers from 7:00 AM to 7:15 AM. Basis this information, member configured login time around 07:00 am to 07:15 am under the automated login procedure.

Silver Stream also mentioned that it had knowledge that NSE TCP / IP architecture was sequential dissemination however, it had no knowledge of the backend processes implemented by NSE e.g. load balancer, round robin, etc.

V. *Submissions by Silver Stream*

a) *SEBI issued letter no. SEBI/HO/MRD/DMS-II/2019/13183/1 dated May 24, 2019 to Silver Stream, informing about the initiation of comprehensive forensic audit of Silver Stream and directing it to co-operate with the auditors.*

b) *Summons dated May 24, 2019 were served on Shri Hitesh Hakani, Managing Director of Silver Stream, to appear before the Investigating Authority on May 31, 2019 and to compel the production of documents before the Investigating Authority. Vide the said summon, Silver Stream was directed to furnish documents / records / information etc. as per prescribed format, so as to reach the Investigating Authority by June 06, 2019.*

c) *Vide letter dated June 12, 2019, Silver Stream provided their response to the information sought vide the aforesaid summons.*

d) *On May 31, 2019, Shri Ajit Hakani (Director, Silver Stream) and Shri Vivek Sheth (Compliance Officer, Silver Stream) appeared before the Investigating Authority.*

They were examined on oath and their statement was recorded. During the examination, they inter alia submitted the following:

i) In respone to the reasons for non- availability for personal appearance of Hitesh Hakani who was summoned by SEBI today for the meeting, Shri Ajit Hakani stated that Mr Hitesh Hakani had left for tour before the summon was delivered. They tried to convey the same to SEBI but due to some miscommunication, the information could not be conveyed to SEBI. Hence he was not available for recording of the statement. However, they are aware of the operations of the company and would record the statement.

ii) They submitted the following in their statement regarding background of Silver Stream Equities Private Limited and any change in organizational structure during the review period i.e. from January 2010 to November 2014:

Ajit Hakani and Hitesh Hakani had started with a proprietorship concern named Cybersoft consultant in 1999, which was involved in the business of software development. Around 2004 – 2005 to 2008, they were sub brokers to Arcadia under the proprietory name of Mamta Ajit Hakani. In 2006, they incorporated a company named Greeksoft Technologies Private Limited (Greeksoft) which provided trading software to the members (arbitrage software). The software is not developed for high frequency trading or low latency trading. It is involved in execution based trading. Greeksoft had a team of 30 employees bifurcated as developer team (around 15 employees), tester team and support team (4 – 5 employees). Greeksoft software was conceptualized by Ajit Hakani and the development team of Greeksoft was led by him. In 2007, they had taken membership under the name of Krisha Share and Stock Brokers Private Limited and subsequently the name was changed to Silver Stream Equities Private Limited around 2009-10. They operated their trading activities in all the three segments. Silver stream was involved solely in proprietary trading. They had a team of approximately 15-20 traders and approximately 5 employees at the back-office end which were managed by Vivek Sheth (now, Compliance Officer, Silver Stream). Key decision makers for colocation operations at Silver Stream were Ajit Hakani and Vivek Sheth.

iii) *In response to the services / products that were offered by Greeksoft as a part of colocation services to various trading members, they stated that Greeksoft got empaneled with NSE around 2007-08 for CTCL. For empanelment at NSE, they had interacted with Kapil and Suprabhat Lala. Post SEBI approval for algo trading to exchange, they entered execution of algo trading software and members who used their software took approval from NSE for using Greeksoft as in-house software. They used to demonstrate their software at NSE along with the member and used to get their software approved for the respective member. They did not customize software for any members.*

iv) *In a query as to which data Greeksoft used for testing of software developed, they stated that their software is not an analysis software but an execution based software. They did not request for any past data from NSE as they had dedicated leased line connectivity with NSE. Through this connectivity they used to get TBT data (of test environment / simulation environment), broadcast data. They were not provided any client data by NSE. They were charged approximately INR 50,000 for two user id of each segment. Further, they stated that according to them, the key success parameters for their software were execution strategies and support. They had obtained these user ids around 2007-08. They did not perform latency tests.*

v) *In response to the organization structure of Silver Stream for the period 2010 to 2014 and any major organizational changes for the period 2010 to 2014, they stated that Ajit Hakani and Vivek Sheth were the key decision makers of colocation operations. Mr Pravin Tepan used to lead the IT processes and Dharmesh Gandhi used to manage communications with NSE for application of TBT IPs. Interactions with RMs was undertaken by Vivek Sheth. Interactions with Colo support team was undertaken by Pravin Tepan. Hitesh Hakani is a director of the company.*

vi) *In reply to their organizational email systems/ process, they stated that they used third party software for email named MDeamen and they have an in-house server for backup which has storage from early 2016. For data pertaining to* *period 2010 to 2015, pst files are available on the systems / desktops of the respective employees. They did not have any server for back up, however, they used to store it on external media. They have also provided an external hard disk where such backup storage was available. They have tried to retrieve emails for the review period to the extent possible.*

vii) In response to the Greeksoft's revenue model, they stated that Greeksoft had a monthly fixed charge from each client basis per user per month per strategy. They did not provide any managed services to the clients.

viii) They stated that they did not have any profit sharing agreements with any of their clients.

ix) In reply to a query on TBT login process followed by Greeksoft users and whether it was automated or manual, they stated that they had initially provided manual login option to all of their clients for TCP/IP TBT. 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. Subsequently, around mid of 2012, they introduced auto login functionality also in Greeksoft software which enabled users to pre-define the login time. Further, there was also a functionality for user to pre-define the interval at which the login would attempt connection. This was configured in intervals of minutes (not in seconds, milliseconds or microseconds). Through this functionality the default login parameters would be attempted every trading day. They do not have logs of any client.

x) In reply to the query as to who used to change the login parameters for users of Greeksoft algo software, they stated that it was done by members themselves. Their clients (TM) approached Greeksoft in case they faced difficulties and Greeksoft would guide them to where the parameters are to be entered. The members would input the parameters themselves (primary / secondary). Greeksoft would guide members over telephonic conversation or *by taking remote access of their system. Greeksoft have never input the parameters for any member.*

xi) *They have stated none of their Greeksoft's client (Trading Member) has asked them to connect their TBT IP to TCP/IP TBT secondary server.*

xii) *They stated that they opted for NSE colocation services in 2011 because it was a new product introduced by NSE and on the basis of the recommendation of dealers.*

xiii) *They stated that Silver Stream had 4 TBT IPs and 4 Tap IPs in colocation setup.*

xiv) *They stated that they used Greeksoft software for algo trading.*

xv) *They stated that they do not have any profit sharing agreement with the algo vendor.*

xvi) *They stated that they have not used the services of Infotech financials and Chanakya.*

xvii) *They stated that the common challenges they faced were disconnection and login issues (including delay in logging in to NSE servers)*

xviii) *In reply to a query as to how were disconnection and login issue challenges resolved, thay stated that Pravin Tepan (IT team of Silver Stream) would coordinate with the colo Support team at NSE and on the basis of the suggestions provided by NSE, they resolved the same.*

xix) *They stated that they used to interact with support team. RMs were Pandurang Galande, Gaurishankar, Gaurav Kapoor, Pankaj Shukla. The usual interactions were to obtain knowledge of any new product development, compliance related issues. They denied having any interaction with Chitra Ramakrishna, R Muralidharan, Ravi Narain and G M Shenoy, Mahesh Soparkar, Deviprasad*

Singh. They further stated that Hitesh Hakani (Director of Silver Stream) might have interacted with Ravi Varanasi recently for Greeksoft for SAS model. However, during the review period there were no interactions with Ravi Varanasi. They also stated that they have interacted with Suprabhat Lala for CTCL empanelment and during vendor meetings.

xx) *They stated that Silver Stream were not performed any latency tests or its Service Providers with respect to TCP/IP TBT. They had raised issues with NSE with respect to their order processing time.*

xxi) *They stated that Pravin Tepan (IT Team of Silver Stream) was handled colocation login processes and interactions with colosupport team. Dharmesh Gandhi was handling the communication with NSE for application of TBT and TAP IPs.*

xxii) *They stated that they did not have any knowledge about NSE TBT architecture E.g. Primary/Secondary server/Ports*

xxiii) *They stated that they have never applied to NSE for reassignment to a different server or a different port during the review period.*

xxiv) *They stated that with respect to secondary server connections it was mentioned in NSE Colo Guidelines that connections to secondary server could be made if there were issues with primary server.*

xxv) *They were aware that TCP/IP TBT was sequential dissemination. However, they were not aware of the processes which were implemented by NSE in the backend, e.g. load balancer or round-robin, etc.*

xxvi) *In reply to a query as to whether anyone (including NSE employees, algo vendors, other trading members, etc.) informed about TCP/IP TBT architecture, they stated that nothing was informed to them.*

xxvii) They stated they were informed by NSE team (do not recollect name) around 2011 that they could login to NSE exchange servers around 7 am to 7:15 am based on which they initiated automated login procedure at this time. However, they do not remember the mode of communication with NSE team.

xxviii) In response to the TBT login process followed by Silver Stream, they stated that they used to perform BOD process through cron job (scheduler) at around 7:00 am around 7:15 am. They had automated login process from mid-2012 with connection attempt to be initiated around 7:00 am to 7:15 am. Prior to 2012, they used to have a manual process of login.

xxix) They stated that they have never known their login rank to the NSE servers.

xxx) They stated that they neither heard nor anyone ever communicated to them (algo vendor, NSE employees, other brokers, traders, etc.) that there was an advantage by connecting early to NSE TBT systems.

xxxi) They stated that they were not aware about any early login advantage in TCP/IP TBT.

xxxii) In response to the reason for their logging in first for more than around 25 days in CM, around 9 days in CD/IRF during the review period, they stated that they had an automated login procedure due to which they might have ranked first. However, there was no conscious effort to login first.

xxxiii) They stated that none of their clents (Members) have approached themselves to Greeksoft for automated preferential login/early login ahead of other trading members. However, Greeksoft introduced automated login in mid 2012 on request of members and this functionality was available to all the members.

xxxiv) They stated that Pravin Tepan (IT Team of Silver Stream) used to change login parameters and connect to secondary server if there were connectivity issues i.e. drop in connections.

xxxv) In reply to a query as to whether there was any advantage for Silver Stream by connecting to secondary server, they stated that they did not know of any advantage of connecting to secondary server. For days they have connected to secondary server continuously it might be because they did not face any connectivity issues on secondary server. Further, they were not reprimanded / communicated by NSE stating that they were connected to secondary server post the reprimand dated 18 May 2012.

xxxvi) They confirmed that they had received warning/ reprimand from NSE for connecting to secondary server.

xxxvii) As per the TBT login logs, Silver Stream had connected to secondary server for approximately 14 trading days in CM segment (from October 15, 2010 to November 9, 2014), approximately 35 trading days in CD/IRF segment (from January 2, 2012 to April 6, 2014) and approximately 200 trading days in F&O (from June 12, 2010 to April 6, 2014). The query was raised to Silver Stream as to why did they connect to secondary server on above days.

In reply to the above query, they stated that whenever they faced connectivity issues, they would have connected to secondary server on the basis of the suggestion provided by NSE. Post this secondary connection, they might have not changed the parameters due to which they continued to connect to secondary server. Also, in certain cases where they faced disconnection issues, they would connect to secondary server. Further, they were not reprimanded / communicated by NSE stating that they were connected to secondary server post the reprimand dated 18 May 2012. For connections made to secondary server for FO segment from August 2013 to April 2014, the FO turnover during this period was below normal as compared to previous years. The turnover for CD segment has also reduced during the period January 2014 to April 2014 *xxxviii) They stated they have not heard or anyone ever communicated to them (algo vendor, NSE employees, other brokers, traders, etc.) that there was an advantage by connecting to secondary server.*

xxxix) As per secondary connection login review, Silver Stream had connected for 15 days in CD segment and around 172 days in F&O segment even after reprimand mail of NSE Colo Support and it was asked to explain the reason for connecting to secondary server.

They stated that post reprimand since they faced login issues, they connected to secondary server on basis of the suggestions provided to them verbally by NSE. However, no documented support for the same is available. Further, they stated that they were not reprimanded / communicated by NSE regarding being connected to secondary server.

xl) They stated that they have not done any irregular transaction (like gifts, cash, etc.) with any NSE employee (current or former).

xli) They stated that they have not been provided any preferential access in NSE colocation system.

xlii) They stated that they have not heard about any other broker/ member doing any irregular transaction (like gifts, cash, etc.) with any NSE employee (current or former).

xliii) In reply to a query on the USP / special features / advantages of Greeksoft software they stated that they obtained an understanding from NSE about their architecture which earlier included EICON cards (X25 protocol) which was used for placing orders initially in 2006-2007 and was later replaced by TAP. Subsequently, they took the understanding of algorithms which were also automated on their software for the users. They did not customize the software for any particular member.

xliv) In a reply to the query as to how the challenges which were brought to notice by members, were resolved by Greeksoft, they stated that in case of any connectivity issues raised by users, they would recommend their clients to change hardware configuration, by prioritizing software thread.

xlv) They stated that Greeksoft has not performed any latency tests with respect to TCP/IP TBT.

xlvi) They stated that Greeksoft had not provided any services for managing colocation processes / logins to their clients (Members) nor they have made any other communication with NSE on behalf of clients (Members).

xlvii) They stated that Greeksoft had not suggested to any member to apply to NSE for reassignment to a different server or a port during the review period.

xlviii) They stated that Greeksoft had not ever recommended to any member to login early nor provided information of early login advantage.

xlix) They stated that Greeksoft had not recommended to any member to connect to secondary server nor provided information of secondary server advantage.

l) In reply to the query regarding the claim by Millenium Stock Broking Private Limited in its statement that Greeksoft as an algo vendor had informed them about early login advantage, they replied that they did not inform anyone of such an advantage. They do not have any record or login trouble ticket raised by clients.

li) They stated that they had never known about their clients (trading members) login rank to the NSE servers.

lii) They stated that they had not provided managed services as part of their services which were provided as algo software vendor to their client (Trading Members) *liii) In reply to the query regarding the claim by Master Capital Services Limited and Share India Securities Limited that Greeksoft used to assist them with their early morning login procedures as well as in changing their parameters in case of connectivity issues, they stated that they have not provided any managed services to any clients. Greeksoft may have assisted them in setting up their cron jobs (scheduler). Also, in case of changing parameters, Greeksoft itself has not changed the parameters. Greeksoft may have just guided them as to where to change the parameters in the software. Greeksoft do not have any record or login trouble ticket raised by their clients.*

liv) They stated that they have neither heard nor anyone ever communicated to them (algo vendor, NSE employees, other brokers, traders, etc.) that there was an advantage by connecting early to NSE TBT systems.

lv) In a reply to the quey as to whether there is any advantage to your clients by connecting to secondary server, they stated no.

lvi) In reply to the quey as to whether Greeksoft had known that less load on NSE TBT server will lead to faster data, they stated that they were not aware of this. They were not aware of the processes which were implemented by NSE in the backend, e.g. load balancer or round-robin, etc.

lvii) They stated that they had a team of 6-7 people in IT support team of Greeksoft during the review period. They used to give a regular training for troubleshooting client queries.

lviii) They stated that they do not have any knowledge whether any employee/s who has left (Greeksoft / Silver Stream), has joined NSE.

VI. ***Observations:***

Introduction TBT Data feed services by NSE

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 the exchange changed over 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 are as under:

Segment	***TCP TBT Introduction Dates***	***Multicast TBT Introduction Dates***
FO	*June 01, 2010*	*April 07, 2014*
CM	*July, 2010*	*November 10, 2014*
CD	*March 16, 2011*	*April 07, 2014*

(Source: NSE E-mail dated September 29, 2015)

Connection to secondary server:

i) NSE vide email dated May 24, 2018 provided following details regarding secondary servers.

Server	***Segment***	***Time for which Server was Secondary***	***Remarks***
TBTLV9	*FO*	*Jun 2010-Dec 2010*	*No Designated Secondary Server Between Jan 2011 to Oct 2011 in FO segment*
TBTLV17	*FO*	*Oct 2011-Jan 2012*	
TBTCOLO27	*FO*	*Feb 2012-02 Dec 2016*	
TBTLV6	*CM*	*Jun 2010-Sept 2011*	*-*
TBTLV18	*CM*	*Oct 2011-Jan 2012*	*-*
TBTCOLO17	*CM*	*Feb 2012-Dec 2016*	*-*
TBTLV6	*CD*	*May 2011-Sept 2011*	*-*
TBTLV18	*CD*	*29 Sept 2011-Jan 2012*	
TBTCOLO17	*CD*	*Feb 2012-Dec 2016*	

ii) NSE had issued colocation guidelines. In terms of Clause 2 of the same guidelines. (Document no SEIL/ITSM/INT/072, last revised on April 16, 2012). "Members should always check that the secondary TBT parameters are working fine with their application and in case of non-availability of data from TBT primary source they can move to secondary source". It was also observed that NSE Colocation Guidelines were issued initially on August 8, 2011(and *were revised from time to time. However, the aforesaid restriction on secondary server came into effect only in April 16, 2012.*

iii) *NSE vide, email dated June 20, 2018, has inter alia clarified that the Colocation Guidelines was sent as a welcome email to all new Members in Colocation. The said guidelines were never issued as a circular.*

iv) *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. Thus, suspicion arises only when brokers repeatedly connect to secondary server without justifiable cause.*

v) *Ajit Hikani (Director, Silver Stream) and Vivek Sheth (Compliance Officer, Silver Stream) in their statement recording to SEBI mentioned that they had no knowledge of potential advantage of early login. They further stated that due to automated login procedure, Silver Stream would have ranked first in connecting to NSE server, however, there was no conscious effort to rank first.*

They have stated during the statement recording that one of NSE's team member had informed them about the start-up time of NSE's TBT servers in around 2011 and member could start logging in to NSE servers from 7:00 AM to 7:15 AM. Basis this information, member configured login time around 07:00 am to 07:15 am under the automated login procedure.

Silver Stream also mentioned that it had a knowledge that NSE TCP / IP architecture was sequential dissemination however, it had no knowledge of the backend processes implemented by NSE e.g. load balancer, round robin, etc.

vi) *The details of connections of Silver Stream to the secondary server at NSE during the review period is as follows:*

Year	***Total number of trading days***	***Number of trading days connected to the secondary server during the review period***					
		FO	***%age***	***CM***	***%age***	***CD/IRF***	***%age***
2010	*142*	*27*	*19.01%*	-	-	-	-
2011	*247*	-	-	-	-	-	-

2012	*252*	*9*	*3.57%*	*12*	*4.76%*	*22*	*8.73%*
2013	*250*	*99*	*39.60%*	*-*	*-*	*15*	*6.00%*
*2014**	*FO: 67* *CD/IRF: 67* *CM: 207*	*66*	*98.51%*	*2*	*0.97%*	*-*	*-*
Total		***201***		***14***		***37***	

vii) *It is observed that Silver Stream had connected to the secondary server in significant number of days in the FO segment, especially during calendar years 2013 and 2014.*

viii) *From the log analysis of review period, EY in its report submitted that Silver Stream logged in first on 26 trading days in CM segment and 9 trading days in CD / IRF segment. No first log in observed in FO segment. EY has not drawn any adverse inference regarding first connects.*

ix) *As seen from the table above, in the FO segment, Silver Stream was seen to have connected to the secondary server on 201 trading days during calendar years 2010, 2012, 2013 and 2014 together.*

In CD/IRF segment, Silver Stream connected to secondary server on 37 trading days during the calendar year 2012 and 2013 together.

In CM segment, Silver Stream connected to secondary server on 14 trading during the calendar year 2012 and 2014 together.

x) *Silver Stream was reprimanded by NSE for connections made to secondary server for two times on May 04, 2012 and May 18, 2012. However, Silver Stream made connections to secondary server post reprimand for 188 trading days in either of segments.*

During the period under review, Silver Stream had raised the colocation related issues /login issue with NSE only on two occasions on May 18, 2012 and October 15, 2013.

Thus, Silver Stream seems to have ignored NSE Colocation Guidelines dated April 16, 2012 and two reprimands issued by NSE Colo to Silver Stream dated May 04, 2012 and May 18, 2012 and continued to connect to the secondary server. Thus, it appears that Silver Stream did not have sufficient reasons to connect to secondary server and has thereby violated the NSE Colocation Guidelines read with Point 2(a) of Chapter V of NSE bye-laws. Thereby, Silver Stream is in violation of Clause 2(a) of Chapter V of NSE byelaws as well as Clause A(2) and A(5) of Code of Conduct specified in Regulation 9 of the Stock Broker Regulations.

Connection to secondary server post NSE reprimand:

i) EY in its report has stated that NSE had reprimanded Silver Stream for connecting to the secondary server on two occasion i.e. on May 04, 2012 and May 18, 2012. NSE vide its email dated May 04, 2012 had reprimanded for connecting to the secondary server as:

"One of the TBT IP which is connecting to CM fallback server. 10.230.8.218 – Silver Stream Equities Private Limited. Kindly connect to Primary server & revert accordingly"

NSE vide its email dated May 18, 2012 had reprimanded for connecting to the secondary server which had clearly instructed:

"request you to connect to primary Server with the given TBT parameters. Also requesting you, not to connect Fallback server without exchange intimation. Below are the TBT IPs which are getting connected to Fallback server. Take a immediate action & confirm.

Member Name	***TBT IP***		
	FO	***CM***	***CD***
Silver Stream Equities Pvt Ltd.	*10.230.8.218*	*10.230.8.218*	*-*

i) *EY stated in its report that post reprimands, Silver Stream connected to secondary server for 188 trading days in either of the segments i.e. 7 trading days in the year 2012, 114 trading days in 2013 and 67 trading days in 2014. Thus, Silver Stream did not pay heed to the NSE reprimands dated on 04 May 2012 and 18 May 2012 and continued to connect to the secondary server. The details of secondary connection in each segment post reprimand during the review period is as follows:*

Number of trading days connected to the secondary server post reprimand

Year	*FO*	*CM*	*CD/IRF*	*Total*
2010	-	-	-	**-**
2011	-	-	-	**-**
2012	*6*	*1*	-	***7***
2013	*99*	-	*15*	***114***
2014	*65*	*2*	-	***67***
Total	***170***	***3***	***15***	***188***

ii) *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."*

iii) *Silver Stream continued to login to the secondary server despite NSE reprimands. Thus, Silver Stream did not comply with multiple instructions/ notices /warnings issued by NSE with regard to its unauthorized connection to the fall back servers of the exchange, which is a violation of the Exchange Bye Laws.*

VII. *In view of the above it is alleged the following:*

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

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

Therefore, it is alleged that the 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.

b) *Moreover, Clause A (5) of the Code of Conduct specified under Schedule II read with Regulation 9(f) of the Stock Broker Regulations, 1992 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."*

Being a registered intermediary, the Noticee has by its aforesaid conduct of connecting to secondary server repeatedly without valid reason, it is alleged that Noticee has violated Clauses A (2) and A (5) of Code of Conduct as specified in Schedule II of Regulation 9 of Stock Brokers Regulations, 1992.

c) *Further, as the Noticee has repeatedly connected to the secondary server, which was meant to be used in case of non-availability of data from TBT primary source, without valid reason as well as connected to secondary server despite guidelines and advisory by NSE, it has indulged in unfair trade practices. Thus, it is alleged that the violation of Regulations 3(b), 3(c), 3(d) and 4(1) of PFUTP regulations, 2003 r/w Sections 12A(a), 12A (b) & 12 A(c) of SEBI Act, 1992.*

5. The aforesaid SCN was sent through speed post acknowledgement due and the same was delivered to the Noticee. Noticee vide its letter dated June 04, 2021 requested for inspection of various documents/information such as copy of investigation report, details of analysis done by investigations department. Vide e-mail dated July 08, 2021, it was informed to the Noticee that all the relevant documents that have been relied upon in the instant adjudication proceedings have been provided to the Noticee during the issuance of the SCN. Noticee was advised to reply to the SCN by July 26, 2021. In the interest of natural justice, an opportunity of hearing was granted to the Noticee on August 05, 2021. Noticee vide its letter dated July 29, 2021 reiterated its request for inspection of documents and to adjourn the hearing. Acceding to the request of the Noticee, vide e-mail dated September 22, 2021, Noticee was provided inspection of documents which have been relied upon and again an opportunity of Hearing was granted on October 27, 2021. Noticee vide email dated October 26, 2021 and letter dated October 23, 2021, submitted its reply to SCN. On behalf of the Noticee, the Authorized Representatives (ARs) attended the hearing on the scheduled date i.e. October 27, 2021 and reiterated the submissions made by the Noticee vide its letter dated October 23, 2021.

6. The Noticee vide its letters and e-mails dated June 04, 2021 and October 23, 2021 submitted reply to the SCN.

The submissions of the Noticee are as under:

a. *………Delay in initiation of proceedings against us, at the outset, we state that the present SCN has been issued after a gap of almost 7 years from the date of alleged violations as mentioned in the SCN. Hence, there is an inordinate delay in initiation of proceedings by SEBI. In this regard, we had referred to and relied upon the Orders which mentioned under Para 3 (Internal page nos. 2 to 5) of our Preliminary Submissions dated 04.06.2021 hence not repeated herein for the sake of brevity and to avoid repetition. Importantly, due to in-ordinate delay, even after putting our best efforts, we could not collate all the necessary documents and information which are critically required by us to defend ourselves. 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 us by NSE in relation to co-location facility during the review period is not available in our records. Therefore, in the past we had sought relevant data from the Stock*

Exchange i.e. NSE. For instance, we had by our email dated 29.05.2019 requested NSE to provide us the communication and connection Logs of TBT IPs allotted to us during the period for Financial Years 2010-11 to 2014-15. However, no response was received for the same. Hence, great prejudice is caused to us owing to inordinate delay in belatedly initiating of proceedings against us.

b. *Compliance to the Evidence Act, 1872, as stipulated u/s 65B (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, we respectfully submit that in case any documents relied upon or referred to by SEBI which have been obtained on email/ extracted from the database or electronic system, please ensure that the above requirement of law has been complied with.*

c. *Cherry picking lopsided facts while recording the allegations, Failure to conduct independent investigation and Reliance entirely upon the third-party Expert Reports. SCN selectively relies upon the opinions given in the Expert Reports and cherry picks lopsided facts while recording the allegations. Further the said reports have not been furnished in entirety but only in parts; hence we are deprived of full opportunity to go through the same and understand the minds of the Experts. Besides, we have not been given an opportunity to cross examine the Experts to enable us to defend our case effectively. Thus, SCN is based on convenient findings and in conduct of the quasi-judicial proceedings we have not been afforded required opportunity to defend our case effectively. In view of the aforesaid, we respectfully submit that if the material on the basis of which we are alleged to have violated certain provisions of law is not full proof and have deficiencies as per own admission of the author himself, such material cannot ever be the basis for prosecuting us unless it is backed by some other solid evidence, which is completely absent in this case. Thus, we respectfully submit that in absence of independent verification of facts and figures, no action ought to have been initiated against us.*

d. *Under Para 10 (vi) (Page No. 25) of the SCN, the details about connection to secondary server is furnished. On perusal of the same, we find that proper calculation of No. of times we got connected to Secondary Server is not taken into cognizance.*

e. *It is pertinent to mention that whenever we face connectivity issues on the primary server, we connect to secondary server on the basis of the suggestions provided by NSE. Post the aforesaid connection to secondary connection, we might have not changed the parameters due to which it continues to remain connected to secondary server. Further, in certain cases where we faced* *disconnection issues, we ought to have connected to secondary server. For connections made to secondary server for FO segment from August 2013 to April 2014, the FO turnover during this period was below normal as compared to previous years. The turnover for CD segment has also reduced during the period January 2014 to April 2014.*

f. *On perusal of the SCN, we understand that reliance has been placed on several documents/ statements in order to allege the charges against us. In this regard, we respectfully submit that Inspection of Documents is an essential part of all legal proceedings and a fundamental principle of Natural Justice. In this regard, we humbly reiterate our request to your kind selves to kindly grant us an opportunity of inspection of documents as mentioned in our letters dated 04.06.2021 and 29.07.2021 since in our view they are vital and relevant and hence their perusal is absolutely essential for us in preparation of our defense in response to various findings and allegations made against us in the SCN. Further, we reiterate to provide us with a copy of the following documents which were referred to and relied upon while issuing the present SCN:*

Sr.No.	*Particulars*
1.	*Details of analysis done by Investigations Department, SEBI on our day wise turnover using TBT secondary servers.*
2.	*Copy of detailed Investigation report along with annexures enclosed therewith.*
3.	*Copy of Annexures /attachments as mentioned in NSE's email dated 29.09.2015 and 16.06.2017 (Annexure - 9 of the SCN)*
4.	*Copy of Annexures/ attachments as mentioned in NSE's email dated 24.05.2018 (Annexure - 10 of the SCN)*
5.	*Copies of complaints received by SEBI pertaining to Allegations of malpractices with respect to the co- location facility being provided by the NSE.*
6.	*Details of telephonic calls and email communications exchanged between Silver Stream Equities Pvt. Ltd and NSE as submitted by NSE to SEBI.*
7.	*Copies of communications exchanged between SEBI and NSE as it relates to us.*
8.	*Copies of communications exchanged with other Brokers/ Trading Members and other service providers to NSE on the subject matter of present proceedings.*
9.	*Copies of statements recorded in the course of Investigation proceedings conducted by SEBI other than what is provided along with the SCN dated 24.05.2021.*

10.	*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.*

g. It is pertinent to mention that 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 Co-location, 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, to the best of our knowledge and belief, we submit with humility that there was no stringent requirement adopted by NSE at the relevant time as far as connection to Secondary TBT server is concerned.

h. In our humble submission, it is the prime responsibility of NSE to ensure that a broker logs on the primary server and that no one should face any difficulty to log in primary server. In that event, no need or necessity would have arisen at our end to have logged in to secondary server as alleged or otherwise.

i. It is alleged that we have been reprimanded by NSE by Emails dated 04.05.2012 and 18.05.2012. (Ref: Para 10 (x) (i) on internal Page no. 27 of SCN). It is pertinent to mention that in Email dated 04.05.2012 it is interalia mentioned that "Kindly connect to primary server & revert accordingly" Further, in Email dated 18.05.2012 it is mentioned that "Request you to connect to primary server with the given TBT parameters". In view thereof, we humbly submit that these statements are merely intimations from NSE Team and not in the nature of Reprimands as alleged or otherwise. The aforesaid communications (Emails) were in the normal and routine correspondences as done with the Exchange. Post alleged reprimand Emails by NSE, we state that since we were facing login issues, we connected to secondary server on basis of the suggestions provided to them verbally by NSE. However, no documented support for the same is available.

j. Submissions on Login Issue Raised with NSE. It is pertinent to mention that under Para 10 (x) (Unnumbered Sub Para 2) Page No. 26 of the SCN, SEBI has observed that we have raised the colocation related login issue with NSE only on two occasion i.e. 18.05.2012 and 15.10.2013 during the relevant period. In fact, SEBI has not taken cognizance of the fact that we had raised issues w.r.t. connection to primary server on several occasions even through verbal communication. Notably, apart from the aforesaid two Emails *we are submitting herewith Email dated 12.06.2013 to NSE Colo Support wherein inter alia we had intimated that the issue has resolved but it took a longer time. Hence, it can be observed that there was an issue pertaining to the connection to the Primary Server. Further, it is submitted that the aforesaid Email was on 12.06.2012 stating the issue was resolved and the alleged reprimands were issued to us on 04.05.2012 and18.05.2012 i.e. prior to our Email dated 12.06.2012. In view thereof, we submit that we have complained to NSE even after the alleged reprimand and cognizance of the same has not been done by SEBI. Importantly even in the SCN, it is observed that by Email dated 17.05.2012, we had inter alia stated that we are facing login issue. (Ref. Para 8 Al. (g)) of the SCN. Hence, it is submitted that there was regular communication and correspondence with NSE in this regards. Further, NSE have vide email dated 17.04.2012, inter alia directed us to connect to fall back server on CM and CD Segment. Hence, we submit that were connecting to secondary on instruction of NSE. Pertinently, till mid - 2012, we used to have a manual login process. Thereafter we started the automated login procedure which was customized by our software provider. We further humbly submit that we have not been provided any preferential access in NSE colocation system. Further, we had no knowledge of any potential server advantage as alleged or otherwise.*

k. Clarification on connection to secondary server. At the outset we state that, we had connected to the secondary server only in case of disconnections in primary server. It was not done intentionally and we were not aware of any advantages of connecting to the secondary server. We had not made any gains out of these connections otherwise it would have reflected in our turnover. It can be seen from our turnover records that there was no substantial rise in our turnover during the period of TCP IP. 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. We 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. Pertinently post reprimand s1nce we faced login issues, we connected to secondary server on the basis of the suggestion of NSE Colo team which was provided to us verbally. However, no documented support for the same is available; further, we were never reprimanded/ communicated by NSE in relation to our connections to the secondary server. We were aware that TCP/IP TBT was sequential dissemination. However, we were not aware of the processes which were implemented by

NSE in the backend, e.g. load balancer or round-robin, etc. Pertinently, we have never known their login rank to the NSE servers nor we were aware of any early login advantage in TCP/IP TBT. We used to change login parameters and connect to secondary server if there were connectivity issues i.e. drop in connections. We further submit that vide our Email dated 10.06.2013 we had inter alia requested NSE Colo Support to confirm our TBT Parameters of all the segments and that we had not been getting login in the CM segment. There was nothing irregular observed, hence we were functioning in the normal course of our activities and queries, if any, were raised to NSE Colo Support team. On perusal of Email dated 29.09.2011 and 21.05.2012 from NSE to us, it is submitted that the User Id, Password and TBT Parameters is provided but there is no mention about the primary and secondary connection w.r.t. the connectivity. Hence, nothing in this regard can be alleged against us

l. COLO guidelines dated 08.08.2011 as revised on 16.04.2012 has been relied upon by SEBI in which no parameters were laid down. In any case we are not in violation of any rule, regulation, guideline or circular as we connected to secondary server only when we were facing non-availability and/or inefficient/inadequate data. Further no mechanism was available to verify whether primary connections are now available, hence on receipt of communication from NSE. we used to shift to primary server again as soon as possible.

m. The Noticee has placed reliance on Adjudication Orders of SMC Global Securities Ltd (SMC), Crosseas Capital Services Pvt. Ltd., IKM Investors Private Limited, Excel stock broking private limited and Master Capital Services Limited in the matter of NSE Colocation.

CONSIDERATION OF ISSUES AND FINDINGS:

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

Issue (a): Whether Noticee is in violation of provisions of clause 2(a) of Chapter V of NSE bye-laws including NSE Co-location Guidelines, clauses A(2) and A(5) of the Code of Conduct specified under Schedule II of regulation 9(f) of the Stock Broker Regulations, 1992 and regulations 3(b), 3(c), 3(d) and 4(1) of Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market)

Regulations, 2003 (hereinafter referred to as PFUTP Regulations, 2003) read with (r/w) sections 12A(a), 12A(b) & 12A(c) of the SEBI Act, 1992, as alleged in the SCN?

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

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

8. Before going to the merits of the case, I note that Noticee has raised the preliminary issue with regard to inordinate delay in issue of SCN after a gap of almost 7 years from the date of alleged violations. I note that the 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, generally, consumes considerable time and efforts depending on the number of entities involved, the complexity of the transactions, correspondences with the entities involved etc. In this context, it is relevant to refer to the order passed by Hon'ble SAT in the case of Hemant Sheth & Ors vs. SEBI (Appeal No. 521 of 2021, DoD: 07.01.2022) 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."

9. Further in the matter of *Metex Marketing Pvt. Ltd. vs. SEBI* (order dated June 4, 2019) wherein Hon'ble SAT held that: "*This Tribunal has consistently held that in the absence of any specific provision in the SEBI Act or in the Takeover*

Regulations, the fact that there was a delay on the part of SEBI in initiating proceedings for violation of any provision of the Act cannot be a ground to quash the penalty imposed for such violation." I would also 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..................". In this context, I would also like to refer the observations of Hon'ble Supreme Court of India in the matter of ***State vs. R. Vasanthi Stanley*** reported in AIR 2015 SC 3691 wherein the Apex Court has held that "…*serious economic offence or for that matter the offence that has the potentiality to create a dent in the financial health of the institutions, is not to be quashed on the ground that there is delay in trial…*".

I further observe that, the Hon'ble SAT in the matter of Ashlesh Shah (Appeal No. 169 of 2019, DoD: 31.01.2020) made the following pertinent remarks:

"It is no doubt true that no period of limitation is prescribed in the Act or the Regulations for issuance of a show cause notice or for completion of the adjudication proceedings. The Supreme Court in Government of India vs, Citedal Fine Pharmaceuticals, Madras and Others, [AIR (1989) SC 1771] held that in the absence of any period of limitation, the authority is required to exercise its powers within a reasonable period. What would be the reasonable period would depend on the facts of each case and that no hard and fast rule can be laid down in this

regard as the determination of this question would depend on the facts of each case. This proposition of law has been consistently reiterated by the Supreme Court [..].

10. I note that Noticee has contended noncompliance with respect to section 65 and section 65B of Evidence act, 1872. In this regard, it is noted that section 1 of the Indian Evidence Act, 1872 categorically mentions that the Indian Evidence Act, 1872 applies to "all judicial proceedings in or before any Court". As regards the present proceedings before SEBI, it is noted that the same are quasi-judicial in nature and hence the Indian Evidence Act does not apply thereto. Accordingly, section 65B which relates to admissibility of electronic records before a Court of Law, is not applicable to proceedings before SEBI. In view of the above, I do not find any merit in the aforesaid contention of the Noticee.

11. I note that notice has contended the independence of investigation done by third party expert and selectively relies upon the opinions given in the Expert Report i.e. EY report. Noticee also quoted the limitation provided under EY report. In this regard, I note that, SEBI has requested EY 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 all these circumstances it clearly established that EY's forensic audit is part of SEBI's independent investigation who is the one of the expert of the area of forensic audit and therefore, I am unable to accept this contention of noticee.

12. The Noticee made a contention regarding non furnishing of documents /informations such as copy of investigation report, copy of Annexures/ attachments as mentioned NSE's email dated 29.09.2015 and 16.06.2017 copy/ies of complaints received by SEBI pertaining to allegations of malpractices with respect to the colocation facility being provided by the NSE, details of telephonic calls and email communications exchanged between Noticee and NSE as submitted by NSE to SEBI etc. In this respect, it is noted that documents

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

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

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

"The learned counsel has also placed reliance upon a minority view of this Tribunal in Price Waterhouse vs Securities and Exchange Board of India decided by this Tribunal in Appeal No. 8 of 2011 on June 1, 2011 wherein it was observed that fairness demands that the entire material collected during the course of investigation should be made available for inspection to the person whose conduct was in question and that said material should also be supplied. In our opinion, the said minority view is directly against the decision of the Supreme Court in Natwar Singh case (supra)".

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

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

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

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

The SEBI Act, 1992

CHAPTER VA

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

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

12A. No person shall directly or indirectly—

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

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

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

PFUTP Regulations

3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

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

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

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

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

4. Prohibition of manipulative, fraudulent and unfair trade practice

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

Stock Brokers Regulations, 1992

SCHEDULE II
Securities and Exchange Board of India (Stock Brokers) Regulations, 1992
CODE OF CONDUCT FOR STOCK BROKERS
[Regulation 9]

A. General.

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

(5) Compliance with statutory requirements: *A stock-broker shall abide by all the provisions of the Act and the rules, regulations issued by the*

Government, the Board and the Stock Exchange from time to time as may be applicable to him.

Stock Brokers Regulations, 1992
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.

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

Issue (a): Whether Noticee is in violation of provisions of clause 2(a) of Chapter V of NSE bye-laws including NSE Co-location Guidelines, clauses A(2) and A(5) of the Code of Conduct specified under Schedule II of regulation 9(f) of the Stock Broker Regulations, 1992 and regulations 3(b), 3(c), 3(d) and 4(1) of Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as PFUTP Regulations, 2003) read with (r/w) sections 12A(a), 12A(b) & 12A(c) of the SEBI Act, 1992, as alleged in the SCN?

a. The charge against the Noticee continuously logged in to secondary server in CD, CM and FO segment during the investigation period without any sufficient reason during the period of investigation. Noticee connected on to the secondary server for 14 trading days in CM, 201 trading days in F&O segment and 37 trading days in CD segment during the relevant period. In the FO segment, Noticee connected to secondary server on 27, 9, 99 and 66 days respectively during the year 2010, 2012, 2013 and 2014 respectively, which works out to 19%, 3.57%, 39.60% and 98.51% of the total trading days during the review period.

b. The Noticee has not disputed that it connected to secondary server on FO segment, CM segment and CD segment during the review period.

c. The relevant colocation guidelines issued by NSE (Document no SEIL/ITSM/INT/072, revised on April 16, 2012) provides that: *"Member's should always check the secondary TBT parameters are working fine with their application in case of non-availability of data from TBT primary source they can move to secondary source."* The guidelines indicate that secondary source for TBT data is to be used in the event of non-availability of TBT primary source and that Trading Members should not routinely connect to the secondary server. The facts show that during the relevant period Noticee connected to the secondary server 201 days in F&O segment, 14 days in CM segment and 37 days in CD segment. Further, it is noted that Noticee frequently connected to the server in the F&O segment and CD segment during the year 2013 and 2014. In F&O segment the Noticee connected to the secondary server on 66 days out of 67 trading days comprising of 98.51% of the total trading days in the year 2014 and 99 days out of 250 trading days comprising of 39.60% of the total trading days in the year 2013. Further in the CD segment, out of 250 trading days, the Noticee connected to the secondary server in 15 days which is 6% of the total trading days in the 2013.

d. The Noticee has submitted that the proper calculation of no. of times connection to Secondary Server is not taken into cognizance and furnished its analysis of connection to the secondary server considering the no. of instances for connection to secondary server. In this regard, it is noted that calculating by the number of instances of connecting to secondary server is the wrong basis, it is the number of trading days on which connection is made to secondary server in CD, CM and FO segment, which is to be considered. Thus the contention is devoid of any merit.

e. Noticee contended that there was no stringent requirement adopted by NSE at the relevant time as far as connection to Secondary TBT server is concerned and also submits that it is the prime responsibility of NSE to ensure that a broker logs on the primary server and that no one should face any difficulty to log in primary server. In this regard, The relevant colocation guidelines issued by NSE (Document no SEIL/ITSM/INT/072, revised on April 16, 2012) provides that: *"Member's should always check the secondary TBT parameters are working fine with their application in case of non-availability of data from TBT primary source they can move to secondary source."* The guidelines indicate that secondary source for TBT data is to be used in the event of non-availability of TBT primary source and that Trading Members should not routinely connect to the secondary server. Further, it is seen from the available record that NSE advised the Noticee not to connect secondary server through Colo guidelines and e-mails to the Noticee. However, Noticee continued to connect the secondary server despite of the Colo guidelines and NSE e-mails to the Noticee. In other words, the Noticee connected frequently to the secondary server is in violation of the NSE colocation guidelines, thereby also failing to exercise due skill care and diligence in conducting its trading operations. Therefore I am not inclined to accept this submission of noticee.

f. It is noted from the EY report that NSE had reprimanded Noticee for connecting to the secondary server on 04.05.2012 and 18.05.2012. NSE vide its email dated May 18, 2012 had clearly instructed Noticee not to connect to secondary server without exchange intimation. EY stated in its report that post reprimand, it connected for 188 trading days in either of segments i.e. 7 trading days in the year 2012, 114 trading days in 2013 and 67 trading days in 2014.Thus, Noticee did not pay heed to the NSE reprimand dated May 18, 2012, and continued to connect to the secondary server and did not comply with multiple instructions/ notices /warnings issued by NSE with regard to its unauthorized connection to the fall back servers of the exchange, which is a violation of the Exchange Bye Laws. In other words, the Noticee connected frequently to the secondary server is in violation of the NSE colocation guidelines, thereby also failing to exercise due skill care and diligence in conducting its trading operations.

g. It is further noted from EY report that silverstream had raised complaints only two times viz. emails dated May 18, 2012 and October 12, 2013 and communicated verbally with NSE which is undocumented, however the total no. of trading days in which secondary server accessed is very significant. In other words Noticee has also not denied the said fact of connecting to the Secondary Server instead of Primary Server as alleged.

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

i. Noticee is also alleged to have indulged in unfair trade practice by repeatedly connecting to the secondary server. In this regard, Noticee has placed reliance to the Adjudication Orders in the matter of SMC Global Securities Ltd (SMC), Crosseas Capital Services Pvt. Ltd., IKM Investors Private Limited and Master Capital Services Limited. I note that the material on record does not establish any unfair gain or advantage which may have accrued to the Noticee as a result of connecting to the secondary server. The material on record establishes that Noticee connected to secondary server. There is also no material to say that the said connection could have benefitted the Noticee in any manner. In view of the above, it cannot be said that the Noticee employed a device, artifice or scheme which would operate as a fraud upon investors. Thus it cannot be held that the Noticee violated provisions of regulations 3(b), 3(c), and 3(d) of PFUTP Regulations, 2003 r/w sections 12A(a), 12A(b) and 12A(c) of SEBI Act, 1992.

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

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

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

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

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

The SEBI Act, 1992

Penalty for fraudulent and unfair trade practices.

15HA*. If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher.*

Penalty for contravention where no separate penalty has been provided.

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

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

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

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

(c) the repetitive nature of the default.

(c) I note that the material on record does not bring out any gains made or unfair advantage availed or loss caused to investors by the Noticee due to the aforesaid violation. The Noticee has connected to the secondary server for 201 days in the FO segment during the relevant period. The secondary server connections in the CM and CD segments are only on 14 days and 37 days respectively in the relevant period and even after several reprimands from NSE, Noticee had continued to login the secondary server. Therefore, it is established that the Noticee has failed to comply with aforesaid guidelines and hence violated the aforesaid provisions of Code of Conduct specified under Stock Broker Regulations, 1992 and PFUTP Regulations, 2003.

ORDER

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

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

17. The Noticee shall forward the said Demand Draft or the details/confirmation of penalty so paid to the payment to the Enforcement Department, SEBI. Noticee shall provide the following details while forwarding DD/payment information:

a) Name and PAN of the entity (Noticee)

b) Name of the case / matter

c) Purpose of Payment –Payment of penalty under AO proceedings

d) Bank Name and Account Number

e) Transaction Number

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

Place: Mumbai **PRASANTA MAHAPATRA**

Date: February 16, 2022 **ADJUDICATING OFFICER**