BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/GR/BM/2022-23/20497]

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:

Tower Research Capital Markets India Pvt. Ltd.

(erstwhile Shaastra Securities Trading Pvt. Ltd.)

SEBI Registration No.: INZ000183334

having address at Unit No. 4, 4th Floor, Gift One Tower Block No. 56, Road - 5C, Zone -5, Gujarat International Finance Tec- City (GIFT).

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. Tower Research Capital Markets India Pvt. Ltd. (erstwhile Shaastra Securities Trading Pvt. Ltd.) (hereinafter referred to as "**the Noticee/ Tower Research**") 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 during September 2019.

2. SEBI initiated adjudication proceedings under Sections 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 clauses A(2) and A(5) 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**") and Sections 12A(a), 12A(b) & 12A(c) of the SEBI Act.

APPOINTMENT OF ADJUDICATING OFFICER

3. SEBI appointed Shri Amit Pradhan as Adjudicating Officer (hereinafter referred to as "**AO**") under Section 15I (1) 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**') vide order dated July 14, 2020 to inquire into and adjudge under section 15HA and 15HB of the **SEBI Act** for the aforesaid alleged violations against the Noticee. Subsequently, on transfer, the undersigned was appointed as AO in the matter vide order dated June 18, 2021.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. Show Cause Notice No. EAD-2/AP-SKS/OW/18614/1/2020 dated October 29, 2020 (hereinafter be referred to as, the "**SCN**") was served upon the Noticee by the erstwhile AO under Rule 4 of the Adjudication Rules to show cause as to why an inquiry should not be held and penalty be not imposed against it under the provisions of Section 15HA and 15HB of SEBI Act, 1992, 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.

5. The findings and allegations levelled against the Noticee in the SCN are summarized as below:

a) NSE had issued colocation guidelines (Colo guidelines) to all its members. In terms of Clause 2 of the Colo guidelines issued by NSE (Document no SEIL/ITSM/INT/072, revised on April 16, 2012) *“Member's should always check the secondary IBT Parameters are working fine with their application in case of non-availability of data from TBT primary source they can move to secondary source."*

b) Based on the discussions with representatives of the Noticee, namely, Sharath Kumar Rekhapalli Naga (MD & CEO), Saurav Jindal [Trader (Former Director & CEO)] and Jatin Phutela (Director) on May 22, 2019 and review of e-mails provided by the Noticee, it was observed that the aforesaid colo guidelines was served to the Noticee by NSE Colo Support vide a welcome email dated September 12, 2012 and was also re-sent on May 02, 2013. The Noticee had also received a revised version of the guidelines on February 22, 2013. However, the Noticee could not recall going through the guideline.

c) In an email dated July 08, 2013, the Noticee raised a query to NSE that whether the following servers and ports to which they were connected through the TBT TCP IP "10.230.53.12" were separate physical servers or not:

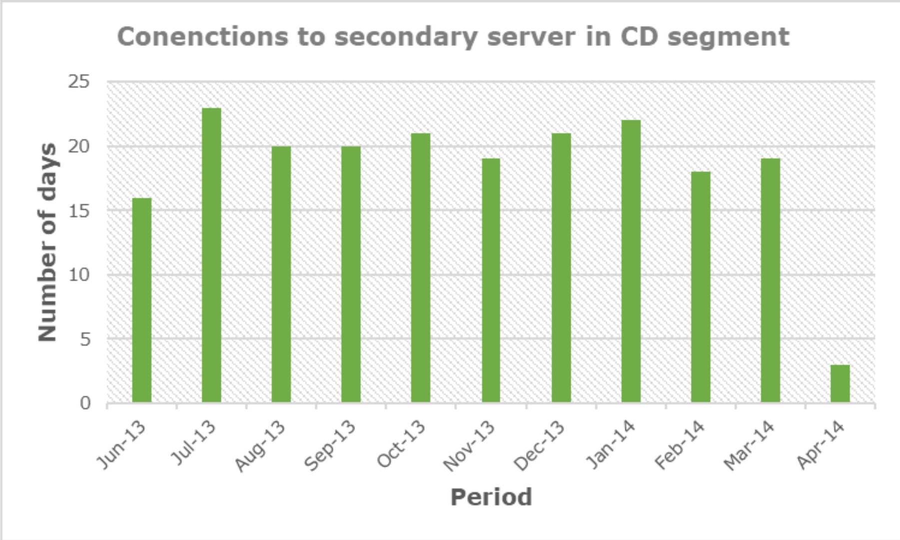
Server Type	**Server IP**	**Port**
Primary	172.28.124.26	10990
	172.28.124.13	10981
	172.28.124.11	10971
Secondary	172.28.124.27	10990
	172.28.124.17	10981
	172.28.124.17	10971

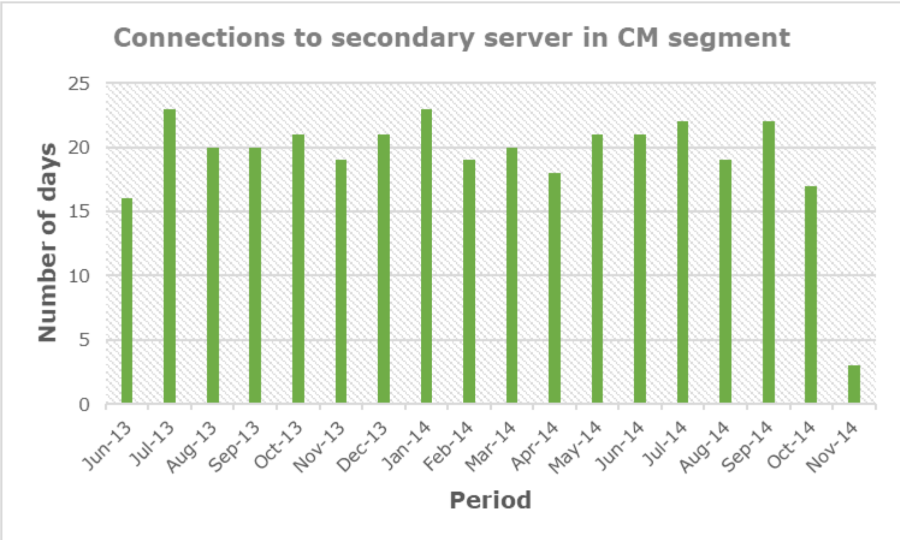
d) NSE Colo Support replied to this query with a "Yes" in email on the same day. However, Deloitte did not find any communication from NSE Colo Support asking the Noticee to refrain from connecting to two distinct IPS for a particular segment at the same time.

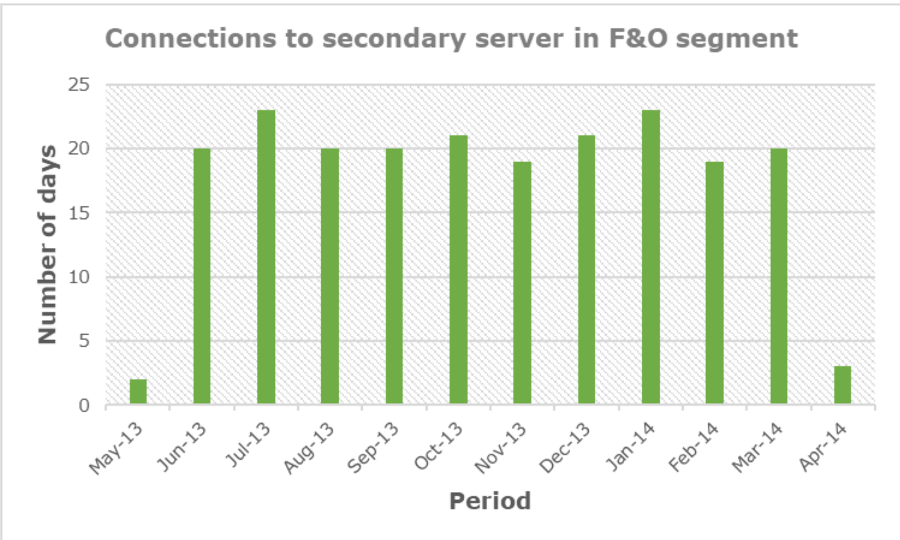
e) In an email dated July 17, 2013, the Noticee inter-alia raised the query to NSE *"We have one IBT market data connection at the moment, and for each segment we connect to two distinct IPs. As I understand these two IPs are two different gateways. How many different market data gateways are there per segment?".* In this regard, NSE Colo Support in an email dated August 01, 2013, replied by stating *"Not sure why this information is required and how is it relevant?".* However, Deloitte did not find any communication from NSE Colo Support asking the Noticee to refrain from connecting to two distinct IPs for a particular segment at the same time.

f) During the discussions with the officials of the Noticee, Deloitte observed that the Noticee had frequently connected to the secondary server in all the segments especially during calendar years 2013 and 2014 in order to be more resilient in case of any disconnections. On review of the data for connections made to the secondary server, Deloitte noted the following:

Segment	**TBT Server**	**Period**	**No. of Trading Days connections made to the secondary server**
CD	TBTCOL017	June 07, 2013 to April 04, 2014	202
CM	TBTCOL017	June 07, 2013 to November 07, 2014	345
FO	TBTCOL027	May 28, 2013 to April 04, 2014	211


Conenctions to secondary server in CD segment
Number of days
25
20
15
10
5
0
Jun-13
Jul-13
Aug-13
Sep-13
Oct-13
Nov-13
Dec-13
Jan-14
Feb-14
Mar-14
Apr-14
Period


Connections to secondary server in CM segment
Number of days
25
20
15
10
5
0
Jun-13
Jul-13
Aug-13
Sep-13
Oct-13
Nov-13
Dec-13
Jan-14
Feb-14
Mar-14
Apr-14
May-14
Jun-14
Jul-14
Aug-14
Sep-14
Oct-14
Nov-14
Period


Connections to secondary server in F&O segment
Number of days
25
20
15
10
5
0
May-13
Jun-13
Jul-13
Aug-13
Sep-13
Oct-13
Nov-13
Dec-13
Jan-14
Feb-14
Mar-14
Apr-14
Period

g) From the details provided by the Noticee, it was observed that it commenced trade at NSE Colo from June 17, 2013 in the CM and FO segments and from June 19, 2013 in the CD segment. The summary of observations made regarding secondary server connections made by the Noticee during the review period are as under:

Particulars	**Noticee**
No. of trading days connected to secondary server on CM	345 days
No. of trading days connected to secondary server on CD	202 days
No. of trading days connected to secondary server on FO	211 days
Whether reprimand emails were sent by NSE for connecting to secondary server on either of the segment	No
No. of trading days when member connected only to secondary server in either segment	
Had heard hearsay information about secondary server advantage	No
Particulars	Noticee
Algo vendors used	None
Whether there was a profit-sharing agreement with Algo vendors?	None

h) The summary of connection to secondary server by the Noticee in FO 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	224	0	0.0%

	Jan. 01, 2013 - Dec. 2013	250	146	58.4%
	Jan. 01, 2014 - Apr. 06, 2014	67	65	97.0%
	Sub-total	**541**	**211**	**39.00%**
CM	Feb. 02, 2012 - Dec. 31, 2012	228		0.0%
	Jan. 01, 2013 - Dec. 2013	250	140	56.0%
	Jan. 01, 2014 - Nov. 09, 2014	207	206	99.9%
	Sub-total	**685**	**346**	**50.51%**
CD	Feb. 02, 2012 - Dec. 31, 2012	220		0.0%
	Jan. 01, 2013 - Dec. 2013	245	140	57.1%
	Jan. 01, 2014 - Apr. 06, 2014	62	62	100.0%
	Sub-total	**527**	**202**	**38.33%**

i) The above table demonstrates that the Noticee had connected frequently to secondary servers in all three segments i.e. CM, FO and CD segments in 2013 and 2014.

j) Deloitte also observed that while the Noticee connected to the secondary server, they were never reprimanded by the NSE Colo Support. Further, on review of the complaints log data provided by NSE, it was observed that the Noticee did not raise any complaint during the review period regarding performance issues of disconnections related issue for TBT TCP IP.

6. In view of the above findings, it was observed that when NSE guidelines dated April 16, 2012, advised TMs to connect to the secondary server, only in the event of non-availability of data from primary server, the Noticee repeatedly connected to the secondary server for 345 days, 202 days and 211 days in cash market segment, Currency Derivatives segment and F&O segment, respectively, which is a violation of the Exchange Bye Laws. It was, therefore, alleged that the Noticee

violated 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 SEBI (Stock Brokers and Sub-Broker) Regulations, 1992 (hereinafter referred to as 'SBSB Regulations').

7. It was further alleged that the Noticee had repeatedly connected to the secondary server without any valid reason which was meant to be used in case of non-availability of data from TBT primary sources and the Noticee did so deliberately to gain an unfair advantage which amounts to indulging in unfair trade practices. Thus, it was alleged that the Noticee violated the provisions of Regulations 3(b), 3(c), 3(d) and 4(1) of SEB] (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) and 12 A(c) of SEBI Act, 1992 (hereinafter referred to as '**SEBI Act**').

Submissions by the Noticee:

8. I note from available records that the SCN was duly delivered to the Noticee. Thereafter, the Noticee, vide letter dated January 25, 2021, submitted its reply and also vide letter dated July 11, 2022 requested for inspection of documents and cross examination. The said request of the Noticee was not acceded to as all the relied upon information and documents to substantiate the allegations in respect of the Noticee was already provided in the SCN, the relevant portion of the Investigation Report (IR) was provided to the Noticee vide mail dated July 15, 2022. Vide mail dated June 23, 2022, the Noticee was granted an opportunity of hearing on July 06, 2022. However, the Noticee, vide mail dated June 27, 2022 sought additional time to file reply along with postponement of hearing date which was accepted by the competent authority. Accordingly, vide mail dated June 28, 2022, the hearing was rescheduled on July 06, 2022. The Authorized Representative **(‘AR’**) of the Noticee attended the hearing and sought copy of the IR and subsequent adjournment of the hearing which was agreed to by the competent authority. Thereafter, the IR was provided and the hearing was rescheduled on July 21, 2022 and again on July 29, 2022. The AR of the Noticee attended the hearing on July 29, 2022 through WebEx video conference and

reiterated the earlier submissions made by the Noticee. The Noticee inter alia made the following submissions vide the aforesaid letter dated January 25, 2021:

i. *the requirement was for members to always check the TBT parameters from the TBT secondary server, which could not have been done without establishing a connection to the TBT secondary server and/or staying connected to it.*
ii. *The allegation in the SCN travel beyond the scope of NSE Colo Guidelines and the allegations now add conditions which are not otherwise prescribed or explicitly set out in the NSE Colo Guidelines.*
iii. *upon a specific query from TRCMIPL to the NSE Colo-support team in July 2013 on whether one member always connected to one physical server... - the NSE Colo-support team indicated that was not the case suggesting that one member could connect to more than one physical TBT server.*
iv. *NSE had not issued any direction or guidance to TRCMIPL asking it to exclusively connect to the TBT primary server and/or to refrain from connecting to the TBT secondary server or that its conduct was not in line with NSE Colo Guidelines.*
v. *TRCMIPL connected to the TBT secondary server at the same time as the TBT primary server as neither the NSE Colo Guidelines nor the responses received from NSE prohibited TRCMIPL from connecting to both servers at the same time.*
vi. *connection to TBT secondary server was done with a view to ensure that there was no disruption in receipt of TBT data from NSE and to ensure technical resilience.*
vii. *TRCMIPL had not colluded with or engaged any algo vendors and/or had any profit sharing arrangement with third parties to carry out the trading and not gained any preferential access to the TBT data by connecting to the TBT secondary server.*

9. As the inquiry in the matter has been completed, I now proceed to decide the case on the basis of SCN issued, replies made by the Noticee and material available on record.

CONSIDERATION OF ISSUES AND FINDINGS

10. The issues that arise for consideration in the instant matter are:

Issue No. I *Whether 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 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 Section 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?*

11. Before proceeding further, I would like to refer to the relevant provisions of NSE bye-laws, SEBI Act, PFUTP Regulations and Stock Broker Regulations as 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.*

SEBI (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.

Issue No. I ***Whether 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 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?

12. I note that the Noticee made a contention that the copy of all the documents and cross examination were not been provided to them. In this respect, I note that documents which have been relied upon in the SCN to make allegations against the Noticee, have been provided as annexures to the SCN and subsequently the relevant portion of the investigation report vide mail dated July 15, 2022. In this regard, I note that Hon'ble SAT in the matter of **Mayrose Capfin Private Limited Vs. SEBI** (decided on 30.03.2012) held 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...."*

13. I also note that Hon'ble SAT, in its order dated February 12, 2020, in the matter of **Shruti Vora vs. SEBI** had held that:

    "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."

14. 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".*

15. In view of the above, since all the documents which were relevant and relied upon in the instant proceedings have been provided, 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. Therefore, I am now proceeding further and examining the matter on merits.

16. The charge against the Noticee is based on the fact that it frequently logged in to secondary server in all the three segment i.e. F&O (FO), Cash Market (CM) and Currency Derivative (CD) segment during the investigation period without any sufficient reason as detailed below:

Segment	TBT Server	Period	No. of Trading Days connections made to the secondary server	No. of trading days	%age of connection to secondary server to the total no. of trading days
CD	TBTCOL017	June 07, 2013 to April 04, 2014	202	527	38.33 %
CM	TBTCOL017	June 07, 2013 to November 07, 2014	345	685	50.51 %
FO	TBTCOL027	May 28, 2013 to April 04, 2014	211	542	39.00 %

I note that the Noticee has not disputed the above facts.

17. I also note from the Deloitte report that there were 38 instances of first connects made by the Noticee in CD, 178 in CM segment and 01 in FO segment.

18. I note that, 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. However, the Noticee continued to login to the secondary server without valid reasons during 2013 and 2014 in CD, CM as well as FO segments. This can be seen from the exceptionally high percentage of such connections (ranging from 38.33% to 50.51%).

19. I further note from the analysis of complaints log data in the Deloitte report that the Noticee did not raise any complaint during the review period regarding performance issues of disconnections related issue for TBT TCP IP.

20. Further Noticee has also contended that the allegation in the SCN travel beyond the scope of NSE Colo Guidelines and the allegations now add conditions which are not otherwise prescribed or explicitly set out in the NSE Colo Guidelines and that NSE had not issued any direction or guidance to TRCMIPL asking it to exclusively connect to the TBT primary server and/or to refrain from connecting to the TBT secondary server or that its conduct was not in line with NSE Colo Guidelines. Further, Noticee has contended that upon a specific query from TRCMIPL to the NSE Colo-support team in July 2013 on whether one member always connected to one physical server, the NSE Colo-support team indicated that was not the case suggesting that one member could connect to more than one physical TBT server and also that NSE had not issued any direction or guidance to TRCMIPL asking it to exclusively connect to the TBT primary server and/or to refrain from connecting to the TBT secondary server or that its conduct was not in line with NSE Colo Guidelines.

In this regard, I note that the NSE Colo guidelines clearly instructs that the connection to the secondary server could be made only in case of non-availability of data from the primary server. This implies that at the beginning of the day the broker has to first try to connect to the primary server and in case of any issues they could move to the secondary server. However, from the Deloitte report I note that the Noticee continuously connected to the secondary server for long consecutive period indicating that they never tried switching back to the primary server. For instance, the Noticee connected to the secondary server on 206 days out of 207 days in CM segment between January 01, 2014 to November 09, 2014 i.e. 99.9%. Similarly, the Noticee connected to the secondary server on 62 days out of 62 days in CD segment between January 01, 2014 to April 06, 2014 i.e. 100%. This clearly indicates that the Noticee regularly connected to the secondary server without having any valid reason as indicated in the NSE colo guidelines.

In view of the above, I note that the contention of the Noticee that the allegations are beyond the scope of NSE Colo Guidelines is devoid of any merit. Further, with regards to the contention of NSE not issuing any direction or guidance to

TRCMIPL asking it to exclusively connect to the TBT primary server and/or to refrain from connecting to the TBT secondary server, I note that the aforesaid Colo guidelines issued by NSE was served to the Noticee by NSE Colo Support vide email dated September 12, 2012 and again on May 02, 2013 which includes the instruction of connecting to the secondary server only in case of non-availability of data from the primary server. The reasonable and legitimate expectation from the Noticee would be that it will adhere to all such rules and procedures as required by NSE from time to time in writing or otherwise and I don’t find any other specific instruction was required from NSE. In this case, it is established that the Noticee had connected to the secondary server on several occasions in violation of the said NSE guidelines and the same was not disputed by the Noticee. In view of the above, I find no merit in the above contention of the Noticee.

21. The Noticee has further contended that the requirement was for members to always check the TBT parameters from the TBT secondary server, which could not have been done without establishing a connection to the TBT secondary server and/or staying connected to it and that connection to TBT secondary server was done with a view to ensure that there was no disruption in receipt of TBT data from NSE and to ensure technical resilience.

In this regard I note that the said Colo guidelines also mentions that only in case of non-availability of data from TBT primary source, TMs can move to secondary source. However, as already brought out above in this order, I note that the Noticee, out of the examination period, connected to the secondary server almost on a daily basis in certain patches as can be seen from the below table:

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	224	0	0.0%

	Jan. 01, 2013 - Dec. 2013	250	146	58.4%
	Jan. 01, 2014 - Apr. 06, 2014	67	65	97.0%
	Sub-total	**541**	**211**	**39.00%**
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CD	Feb. 02, 2012 - Dec. 31, 2012	220		0.0%
	Jan. 01, 2013 - Dec. 2013	245	140	57.1%
	Jan. 01, 2014 - Apr. 06, 2014	62	62	100.0%
	Sub-total	**527**	**202**	**38.33%**

As can be seen from the table above, Noticee connected to the secondary server on 206 days out of 207 days in CM segment between January 01, 2014 to November 09, 2014 i.e. 99.9%. Similarly, the Noticee connected to the secondary server on 62 days out of 62 days in CD segment between January 01, 2014 to April 06, 2014 i.e. 100%. This clearly contradicts the aforesaid contention of the Noticee that it connected to the secondary server only to check if it was working properly. Hence, I find no merit in the above contention of the Noticee.

22. 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 202 trading days in CD segment (38.33%), 345 trading days in CM segment (50.51%) and 211 trading days in F&O segment (39.00%), without making any complaint/

reference or without intimating to NSE. In this connection, I note that 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"*. In view of the above, 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. The aforesaid acts of the Noticee as found in this case shows non-serious and casual approach on the part of the Noticee which establishes the fact that Noticee has not acted with due skill, care and diligence in the conduct of its business. 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.

23. Noticee is also alleged to have indulged in unfair trade practice by repeatedly connecting to the secondary server. In this regard, Noticee has contended that TRCMIPL did not use or employ any manipulative or deceptive device, scheme or technique in contravention of any rule or regulation to defraud/ deceive any person or to gain any unfair advantage and/or access to the TBT data at the expense of other trading members and/or investors. The Noticee has also contended that there is no material whatsoever available on record to make out a case that TRCMIPL made an unfair gain/ unfair advantage / avoided any losses / caused any losses to investors or other trading members by connecting to the TBT secondary server along with the TBT primary server nor are there any complaints against TRCMIPL in this regard.

24. In this regard, I note that the material on record does not establish any unfair gain or advantage which may have accrued to the Noticee as a result of connecting to the secondary server. I also note that the Noticee was not reprimanded by NSE for the secondary server connections unlike some other Brokers. The material on record establishes that Noticee connected to secondary

server, but does not state whether these were early connections vis-à-vis other brokers and there is also no material to say that the early connection could have benefitted the Noticee in any manner.

25. 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 the 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.

26. With respect to the charge under Regulation 4(1) of the PFUTP Regulations, which prohibits indulgence in a fraudulent and unfair trade practice in securities, the material on record does not bring out any instance where the Noticee has indulged in fraudulent and unfair trade practice in securities. In my view, connecting to secondary server without making any complaint / reference to NSE i.e. valid reason alone cannot be deemed to be per se fraudulent.

27. I note that Regulations 3 and 4 of the PFUTP Regulations are not applicable to the present facts of the case as neither the Investigation Report did not find anything to show any collusion between the Noticee and NSE nor did it record a finding that Noticee gained any unfair advantage / gain on Secondary Servers. In the absence of any evidence in this regard, I am unable to conclude that there is an existence of "fraud" in this case. Therefore, the present case does not fall within any of the abovementioned clauses of the PFUTP Regulations and as such, the charge under PFUTP Regulations is not made out.

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?***

28. As it is established that 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, I am of the view that it warrants imposition of monetary penalty under Section 15HB of the SEBI Act on the Noticee, text of which is reproduced as under:

> ***<u>SEBI Act:</u>***
>
> **<u>Penalty for contravention where no separate penalty has been provided.</u>**
> ***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.*

29. 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.

30. 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. The Noticee has connected to the secondary server connection on 202 trading days in CD segment (38.33%), 345 trading days in CM segment (50.51%) and 211 trading days in F&O segment (39.00%) despite NSE guidelines. 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, 1992.

ORDER

31. 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, Tower Research Capital Markets India Pvt. Ltd. (erstwhile Shaastra Securities Trading Pvt. 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.

32. 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

33. 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 III), 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 the Noticee:	
3. PAN No. of the Noticee	
4. Date of payment:	
5. Amount paid:	
6. Transaction no.:	
7. Bank details in which payment is made:	
8. Payment is made for: (like penalties/ disgorgement/ recovery/ settlement amount etc.)	

34. 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.

35. 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: October 19, 2022 **G RAMAR**

Place: Mumbai **ADJUDICATING OFFICER**