BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER Ref. No. ORDER/SBM/ASR/2022-23/17535]

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

Mr. Jayant Bhusare
(PAN: BHXPB5622E)

In the matter of
Investigation in matter of NSE Co-location - Dark fibre

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as **'SEBI')** on receipt of various complaints alleging irregularities in the matter of co-location and corporate governance at National Stock Exchange of India Ltd (hereinafter referred to as '**NSE**'), initiated investigation w.r.t. the dealings of the several entities, for the period 2009 to 2016 (hereinafter referred to as '**Investigation period'**), to, *inter alia*, investigate into the matter of providing connectivity to certain stock brokers by NSE in a manner which may be detrimental to the investors and/or the securities market and / or an intermediary or a person associated with the securities market and in the process alleged to have violated the various provisions of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act'**) and the Regulations made thereunder.

2. The focus of the aforesaid investigation was, *inter alia*, the following:

   i. Investigation into the alleged connivance / collusion of the employees of NSE (past and current) with stock brokers (including their past and current employees) during the Investigation period.

ii. Investigation into the role of the stock brokers alleged to have benefited from preferential access to the exchange's system, including quantification of gains of the stock brokers, to the extent possible, from such mechanism during the Investigation Period.

iii. Any other area / aspect that may be required or identified during the investigation.

3. On the basis of investigation conducted in the matter, it was alleged that Sampark Infotainment Pvt. Ltd (hereinafter referred to as '**Sampark'**) arranged the cabling in the co-location rack of NSE in such a manner that some stock brokers, including Way2Wealth Brokers Private Limited (hereinafter referred to as '**W2W**') had lower latency compared to other trading members connected to the Sampark Multiplexer (hereinafter referred to as '**MUX'**) placed in NSE Meet Me Room (hereinafter referred to as '**MMR'**). Further, during the course of investigation, the emails on the server of Sampark were examined by SEBI and it was observed that emails pertaining to the investigation period were allegedly deleted by one Mr. Jayant Bhusare (hereinafter referred to as '**Jayant'** / '**Noticee'**), who was one of the executives of Sampark during the Investigation period. It is alleged that the aforesaid act of deleting the emails was also affirmed by the Noticee in his submission /statement made before the Investigating Authority of SEBI ('**IA'**) under oath, on March 30, 2018.

4. Therefore, it is alleged that the aforesaid conduct of the Noticee has hampered the investigation conducted by SEBI in the matter. It is therefore alleged that Noticee has violated the provisions of Section 11C(2) of the SEBI Act and Adjudication proceedings have been initiated against the Noticee under the provisions of Section 15HB of the SEBI Act.

APPOINTMENT OF ADJUDICATING OFFICER

5. The undersigned was appointed as the Adjudicating Officer ('**AO**') in the matter vide communique dated August 30, 2018 under Section 19 of the SEBI Act read with Section 15-I of the SEBI Act and Rule 3 of SEBI (Procedure for Holding Inquiry and

Imposing Penalties) Rules, 1995 (hereinafter referred to as '**Adjudication Rules'**), to inquire into and adjudge under the provisions of Section 15HB of the SEBI Act, the aforementioned alleged violation of the provisions of law by the Noticee. On transfer of the undersigned to another department, Dr. Anitha Anoop was appointed as the AO in the matter vide communique dated March 25, 2019. Subsequently, vide communique dated November 03, 2020, the undersigned was once again appointed as the AO in the matter.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

6. A Show Cause Notice (hereinafter referred to as '**SCN'**), ref no. SEBI/HO/EAD/6959/4/2019 was issued to the Noticee on March 15, 2019 in terms of Rule 4 (1) of the Adjudication Rules read with Section 15-I of the SEBI Act to show cause as to why an inquiry should not be held against the Noticee and why penalty be not imposed on him in terms of the provisions of Section 15HB of the SEBI Act for the violations alleged to have been committed by the Noticee in the said matter.
7. The SCN issued to the Noticee, inter-alia, mentioned/levelled the following allegations: -
    a. *Allegation pertaining to Noticee 2 / Prashanth, Noticee 2 and Noticee 3 destroying relevant information and furnishing false statements to SEBI under oath.*
    b. *The detailed allegations in this regard are mentioned on Para 22 (page 52 to page 57), Para 36 (page 91) to Para 37 (Page 92) of the IR, and shall be referred to by the Noticees while making their detailed reply/ submissions to the present notice.*
    c. *It is further alleged that during the review of emails of Noticee 4 / Jayant, it was observed that emails pertaining to the investigation period were allegedly deleted by him. It is alleged that the aforesaid act of deleting emails was further affirmed by Jayant in his submission dated March 30, 2018*

d. In view of the above, it is alleged that by destroying information in the manner explained above and in the IR, Noticee 2 / Prashanth, Noticee 3 / Netaji and Noticee 4 / Jayant have, prima facie, violated provisions of section 11C(2) of the SEBI Act.

8. It is noted that the relevant portion of the Investigation report (hereinafter referred to as '**IR')** and the annexures were also provided to the Noticee along with the SCN. The IR contained the details of the allegations and observation levelled against the Noticee and other related entities investigated by SEBI, in this matter.

9. In response to the SCN, Noticee submitted a letter dated April 23, 2019 denying the charges/ allegations made against him and requested for inspection of documents in the matter. However, it is noted that the Noticee had not indicated the specific details of the documents sought by him for inspection. Thereafter, another letter dated May 06, 2019 was issued to the Noticee informing him about the appointment of Dr. Anitha Anoop as the AO in the matter. However, the aforesaid letter returned undelivered. Subsequently, letters dated August 14, 2019 and January 09, 2020 were also issued to the Noticee. However, the same also returned undelivered. Thereafter, a letter dated December 16, 2020 was issued to the Noticee informing him about the appointment of the undersigned as the AO in the matter. However, no reply to the same was received from the Noticee.

10. Finally, email and letter dated February 22, 2022 were sent to the Noticee wherein it was stated that all the relevant documents that have been relied upon by SEBI in the SCN have already been provided to him during the course of proceedings. In light of the same and in the interest of natural justice, Noticee was advised to submit his reply in the matter and to also appear for the personal hearing on March 16, 2022 through online webex platform. Subsequently, vide letter dated March 04, 2022, the Noticee was informed that the personal hearing in the matter has been rescheduled to March 21, 2022. On March 07, 2022, the Noticee submitted his reply to the SCN and made the following submissions:

    a. At the outset, I humbly submit that I have not violated any provision of law, *whether alleged or otherwise, in the Show Cause Notice and I deny the allegations made against me in the Show Cause Notice. Nothing in the Show Cause Notice shall be deemed to be admitted by me due to want of specific traverse.*

b. *I had made adequate representations before the SEBI Investigation Team to show my bona fides in the matter. From the beginning, I have duly cooperated with the SEBI Investigation Team and have from time to time, shared all the necessary information and details sought by them. I have clearly explained how I have never destroyed any information whatsoever pertaining to the investigation. Accordingly, there is no reason for any monetary penalty against me as alleged in the Show Cause Notice, or any regulatory intervention in the matter against me.*

c. *The Show Cause Notice is bad in law due to lack of clarity in the allegations. As ruled by the Apex Court in the case of Oryx Fisheries, a quasi –judicial authority ought to act fair and reasonably spell out the charges being made against a noticee, in the absence of which a show cause notice gets vitiated by unfairness and bias and the subsequent proceeding become an idle ceremony. Without prejudice to the submissions made herein, I humbly submit that SEBl's allegations lack merit while placing the same before the learned Adjudicating Officer, and accordingly, the allegations drawn in the Show Cause Notice basis such incompleteness and infirmities cannot be used to hold any charge against me.*

d. *I was invited for a meeting and also summoned by SEBI Investigation Team on multiple occasions during February-March 2018 when my statement was recorded, and I informed them of the reason for deleting emails on the Webmail server being the mandatory office policy. Further, that all emails were easily accessible from the local Outlook folder, where no email was deleted, and pertinently, SEBI has even accessed and reviewed by SEBI. Accordingly, I state that the Show Cause Notice is passed in utter disregard of my submissions, and the fact that SEBI had in fact accessed and reviewed all* *emails during the investigation period. It is on this ground alone; the learned Officer be pleased to dismiss the allegation of SEBI against me.*

e. *SEBI has all the powers to access the server systems and/or summon the IT team of Sampark to verify my submissions regarding the office policy, however, for reasons best known to it, SEBI ignored and disregarded this course and proceeded to level allegations on the basis of prima facie assumptions.*

f. *Due to lack of complete investigation into the allegation against me, or consideration of my submissions made to the Investigation officers, the learned Adjudicating Officer does not have complete facts on record nor has the entire background information been provided by SEBI either to me or to the learned Adjudicating Officer.*

g. *Further, SEBI has failed to provide the relevant records and documents in the matter including the complete Investigation Report, statements made by other parties, etc., which would have clearly demonstrated the incompleteness in the investigation. I do not understand the reservations of SEBI in providing complete access to all such records and documents especially while conducting a quasi-judicial proceeding. All the essential principles or natural justice and fair play have been given a go-by and I am asked to respond to a serious charge of destruction of evidence made on the basis of a prima facie assumption. I reserve my right to request the learned Officer to direct SEBI to provide me a complete inspection, including the statements recorded by SEBI in the matter, which will provide the qualitative analysis of the entire investigation.*

h. *The allegation against me relies merely on the fact that certain emails were deleted on the Webmail server in compliance with the Company policy / directions, which does not mean that I have 'destroyed' or 'tampered with' anv data relevant to SEBI investigation, or at all; infact, there can be no adverse inference whatsoever drawn on this issue;*

i. *The concerned emails are available on my local Outlook folder and were also* *accessed by SEBI*

11. The authorized representative (hereinafter referred to as '**the AR'**) on behalf of the Noticee vide his email dated March 21, 2022, requested for adjournment of the hearing to another date. In view of the above request, the hearing was rescheduled to March 24, 2022. On the stipulated date of hearing i.e March 24, 2022, the AR appeared on behalf of the Noticee and reiterated the submissions made by the Noticee vide his letter dated March 07, 2022.

<u>CONSIDERATION OF ISSUES AND FINDINGS</u>

12. I have carefully perused the allegations leveled against the Noticee in the SCN, the reply of the Noticee, the documents/evidence available on record an also the statement of the Noticee made before the Investigating Authority of SEBI ('IA') in the matter on March 30, 2018. It is noted that pursuant to summons issued by the IA, a statement of the Noticee was recorded on March 30, 2018 under the provisions of Sections 11C (5) and 11C (7) of the SEBI Act. It is alleged that Noticee has admittedly deleted the emails from the server of Sampark and the same has hampered the investigations in the instant matter. The issues that arise for consideration in the present case are: -

    I. **Whether the Noticee, by deleting the emails pertaining to the Investigation period has violated the provisions of Section 11C(2) of the SEBI Act?**
    II. **If yes, whether the violation would attract monetary penalty on the Noticees under the provisions of Section 15HB of the SEBI Act?**
    III. **If yes, what should be the quantum of monetary penalty?**

13. The provisions of the SEBI Act at the relevant point of time, allegedly violated by the Noticee are mentioned as under:

    SEBI Act
    Investigation.
    11C(2) *Without prejudice to the provisions of sections 235 to 241 of the Companies Act, 1956 (1 of 1956), it shall be the duty of every manager,*

managing director, officer and other employee of the company and every intermediary referred to in section 12 or every person associated with the securities market to preserve and to produce to the Investigating Authority or any person authorised by it in this behalf, all the books, registers, other documents and record of, or relating to, the company or, as the case may be, of or relating to, the intermediary or such person, which are in their custody or power.

14. The Noticee has contended that the SCN issued to him in the context of the present proceeding is vague and the relevant documents pertaining to the SCN were also not provided to him during the course of the proceedings. In this regard, I find that the SCN issued to the Noticee had enclosed the relevant portion of the IR which contained all the findings related to the Noticee. As discussed in later paragraphs of this order, the findings of the IR qua Noticee were based on the statement of the Noticee wherein he *inter alia* admitted before the IA that he had deleted the emails. The copy of the statement of the Noticee was also provided to him in this regard. It is observed that the Noticee was unable to state what prejudice has been caused to him in the said matter by not having access to the information which is pertaining to other parties and does not have any relevance to the charge of the destruction of evidence by the Noticee. It seen that the Noticee has not disputed the fact that he had deleted the emails pertaining to the subject before the Investigating Authority on March 30, 2018. Therefore, it is clear that the Noticee has accepted each and every statement made by him before the Investigating Authority of SEBI and therefore the facts submitted by the Noticee through the statements are deemed to be correct in the context of the present proceeding. Therefore, the contentions of the Noticee that there are further records in the matter which are relevant to his case and which were not shared with him is baseless. Now, I deal with the issues/allegations levelled against the Noticee, one by one, and record my observations/findings as under:

I. Whether the Noticee, by deleting the emails pertaining to the Investigation period has violated the provisions of Section 11C(2) of the SEBI Act?

15. It is seen from the SCN and the IR that the allegation against the Noticee is that he had

deleted the emails during the investigation period and the said fact of deleting the emails was also affirmed by the Noticee before the IA in his statement that was recorded on March 30, 2018. As regards the aforesaid allegation, I have examined the statement of the Noticee which was made under oath before the Investigating Authority on March 30, 2018, a copy of which was also provided to the Noticee as an annexure to the SCN. I have also examined the relevant observations made in this regard in the IR and I note that Noticee had given his statement before the IA in Hindi , which when interpreted in English conveys the following:

a. Noticee mentioned that he was fearful of the investigation being conducted by SEBI. Therefore, Noticee stated that he had deleted certain emails from the server of Sampark, which he believed were not relevant. However, the Noticee stated that he deleted such emails to avoid being questioned by SEBI in respect of the content of such emails.

b. Noticee admitted that he had accepted the aforesaid fact of deleting the emails due to the fear of being investigated by SEBI in front of the SEBI officers.

c. Noticee also stated that as part of the policy followed by his company i.e Sampark, he was officially instructed to delete the emails from server in regular intervals as the space on server was limited. The Noticee could not provide any supporting evidence to stake his claim in this regard.

16. It is seen from the aforementioned statement of the Noticee that he had admitted before the IA of SEBI under oath that he deleted the emails from the server and the same was done by him due to the fear of being investigated by SEBI. The very fact that such emails were deleted by the Noticee to avoid being investigated only shows that there was a clear cut intention behind the Noticee to hide the facts pertaining to the investigation before the IA. It is noted that the deletion of emails has also constrained the IA in the investigation process. I also find the contention of the Noticee that the emails were deleted by him due to the company's policy of regularly deleting the emails from the server to be in contradiction and inconsistent to the admission of the Noticee before the IA that he had deleted the emails fearing the investigation conducted by SEBI. Further, even if it is assumed that there was an existing company policy of

deleting the emails from the server due to lack of space etc, it cannot be accepted that the Noticee was required to delete such emails during the pendency of the investigation proceedings. As already stated, Noticee could also not show any evidence / records regarding the policy of the company to delete the emails. Even assuming that there was a policy of deleting the mails, it was expected of Sampark and its officials, including the Noticee to preserve the emails exchanged during the investigation period as the fact of the matter was that an investigation was being conducted by SEBI in the matter and under such circumstances, it was the responsibility of Sampark and its officials, including the Noticee to preserve such data pertaining to the emails that is related to the investigation. It is not up to the entity being investigated to decide upon what information could be relevant to the investigation and destroy/delete the remaining data/information. Deleting such emails pertaining to investigation would also tantamount to destruction of records. I find that Noticee has also not disputed the fact about the pending investigation conducted by SEBI in the matter. Infact, he has admitted before the IA that he was fearing being investigated by SEBI in this matter. Thus, the act of deleting the emails with full knowledge of the ongoing investigation cannot be considered as part of the routine exercise and cannot be ignored. It is clear from the admitted statement of the Noticee that he was aware of the fact that the emails contain crucial information pertaining to the investigation being conducted by SEBI and therefore deleted those emails.

17. Thus, I conclude from the facts discussed above and the statement made by the Noticee before Investigating Authority of SEBI that the aforesaid activity of the Noticee, wherein he deleted the emails from the server, admittedly, due to the fear of being investigated by SEBI has hampered the investigation process. Therefore, in view of the above observations, I conclude that the Noticee has violated the provisions of Section 11C (2) of the SEBI Act.

II. If yes, whether the violation would attract monetary penalty on the Noticees under the provisions of section 15HB of the SEBI Act?

18. Therefore, in the facts and circumstances of this case, I am of the view that such default

on the part of the Noticee attract the liability to pay penalty as prescribed under Section 15 HB of the SEBI Act, which provides as follows: -

SEBI Act

PENALTIES AND ADJUDICATION

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.*

III. If yes, what should be the quantum of monetary penalty?

19. For the purpose of adjudication of the penalty, it is relevant to mention that under section 15I of the SEBI Act imposition of penalty is linked to the subjective satisfaction of the Adjudicating Officer. The guidelines in this regard are provided by the legislature in section 15J of the SEBI Act. As per the explanation appended to section 15J, vide Part VIII of Chapter VI of the Finance Act, 2017, which was brought after the Judgment of Hon'ble Supreme Court in the case of Roofit Industries, while adjudging the quantum of penalty, the adjudicating officer has discretion and such discretion should be exercised having due regard to the factors specified in section 15J of the SEBI Act, which reads as under: -

15J. While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely: -

a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as 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.

Explanation. —For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section

15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section."

20. Having regard to the factors listed in Section 15J of the SEBI Act, I note that the IR has not brought out the illicit gains made by the Notice by his act of deleting the emails from the server. However, as discussed above, one cannot lose sight of the fact that such an act of destroying the probable evidence by the employees of a company which is under investigation by SEBI is done to hamper the investigation being conducted. Such act of the Noticee, if unpunished, will send wrong signal to the general investors at large that any offender can escape from the scrutiny of regulator by destroying the evidence available. I have also considered the fact that the impact of the deletion of the emails by the Noticee cannot be quantified on the basis of the material available on record. In this context, I would like to place reliance upon the order of the Hon'ble Supreme Court of India in the matter of Chairman, SEBI Vs Shriram Mutual Fund {[2006]5 SCC 361} –wherein the Hon'ble Supreme Court of India held that *"...In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant...*"

ORDER

21. Considering all the facts and circumstances of the case and exercising the powers conferred upon me under section 15 I of the SEBI Act read with rule 5 of the Adjudication Rules, I hereby impose monetary penalty of Rs. 10,00,000/- (Rupees Ten Lakh only) on the Noticee i.e Mr. Jayant Bhusare under the provisions of section 15HB of the SEBI Act for his violation of the provisions of Section 11C(2) of the SEBI Act. In my view, the said penalty is commensurate with the violation committed by the Noticee in this case.

22. Noticee shall remit / pay the said total amount of penalty within 45 days of the receipt of this order either by way of Demand Draft in favour of "SEBI- *Penalties Remittable to*

Government of India", payable at Mumbai, or by following the path at SEBI website www.sebi.gov.in, ENFORCEMENT > Orders > Orders of AO > PAY NOW; OR by using the web link https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html. In case of any difficulties in payment of penalties, the Noticee may contact the support at portalhelp@sebi.gov.in.

23. The said confirmation of e-payment made in the format as given in table below should be sent to "The Division Chief, EFD1-DRA-IV, Securities and Exchange Board of India, SEBI Bhavan, Plot no. C- 7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051" and also to e-mail id:- tad@sebi.gov.in

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

24. In terms of the provisions of Rule 6 of the Adjudication Rules, copies of this order are sent to the Noticee viz. Mr. Jayant Bhusare and also to the Securities and Exchange Board of India.

Date: June 29, 2022 **Suresh B Menon**

Place: Mumbai **ADJUDICATING OFFICER**