

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER IN COMPLIANCE TO THE ORDER DATED MARCH 19, 2024

PASSED BY HON'BLE BOMBAY HIGH COURT

IN THE MATTER OF AMAN KOKRADY

In respect of:

Name of Noticee	PAN
AMAN KOKRADY	AKQPK3220N

Background:

1. The present order is being passed in compliance with the direction of Hon'ble Bombay High Court, passed vide order dated March 19, 2024, in the *Writ Petition no. 2461 of 2024* titled as *Aman Kokrady Vs. Securities and Exchange Board of India*. In the said order, Hon'ble High Court while disposing of the Writ Petition has *inter alia* directed as under:

"1. We have heard Mr. Dwarkadas, learned senior counsel for the Petitioner and Mr. Doctor, learned senior advocate for the Respondent/SEBI. This Petition is filed praying for the following reliefs:-

- “i. Pass a writ, order or direction setting aside and quashing Show Cause Notice dated 17.05.2023 under the provisions of Sections 11(1), 11(2)(b), 11(4) and 11(B) of the Securities Exchange Board of India Act, 1992 bearing SEBI/MRD/19860/2023 issued by the Deputy General Manager, Securities and Exchange Board of India [“SEBI”] against the Petitioner; and*
- ii. Pass an order staying the proceedings emanating out of Show Cause Notice dated 17.05.2023 under the provisions of Sections 11(1), 11(2)(b), 11(4) and 11(B) of the Securities and Exchange Board of India Act, 1992 bearing SEBI/MRB/19860/6/2023 issued by the General Manager, Securities and Exchange Board of India [“SEBI”] against the Petitioner till the disposal of the present writ;*
- iii. Ad-interim relief in terms of prayer clause(ii);”*

2. Case of the Petitioner is that previously the petitioner was issued a show-cause notice by the Respondent dated 03.07.2018, which came to be adjudicated and the Petitioner was held to be discharged and exonerated of the charges under the show-cause notice by an order dated 29.08.2019 passed by the learned Adjudicating Officer of the SEBI. It is contended by the Petitioner that despite the Petitioner being fully discharged and exonerated, the Petitioner has now been issued a fresh show-cause notice as impugned in the present proceedings being show-cause dated 17th May, 2023 inter-alia issued under the provisions of Section 11(1), 11(2)(b) and other provisions of the SEBI Act by the Deputy General Manager of the SEBI. The contention of

the Petitioner is that the impugned show-cause notice is identical to what was issued to the Petitioner on the earlier occasion which came to be adjudicated and on which Petitioner was discharged and exonerated.

...

6. *The contention as urged on behalf of the Petitioner is that the impugned show-cause notice is without jurisdiction and the issue of jurisdiction is required to be decided as a preliminary issue before the show-cause notice itself is taken up for adjudication. It is submitted that now the Petitioner after passing of the order dated 8th February, 2024 has already withdrawn the proceedings before the Tribunal and hence the Petitioner intends to canvass his contention on the reliefs prayed for in this Petition that the show-cause notice itself is without jurisdiction and not maintainable and hence the same cannot be adjudicated on merits.*

...

8. *Having heard learned counsel for the parties and having perused the record, in our opinion, it appears to be not the case that the Petitioner at any point of time including in the proceedings filed before the tribunal had given up his case that the impugned show-cause notice was without jurisdiction. In fact, the Tribunal itself has observed that the Petitioner would be permitted to raise the issue of jurisdiction in the proceeding of the show-cause notice to be held on 16th February, 2024.*
9. *In this view of the matter, considering the contentions of the Petitioner, we are of the opinion that the present Petition can be disposed of by directing the*

concerned Officer of the Respondent to decide the issue of jurisdiction being raised by the Petitioner as a preliminary issue and only after such issue is decided, take an appropriate call on the adjudication of the show-cause notice. All contentions of the parties in that regard are expressly kept open.

10. The Petitioner shall be intimated the date on which the Petitioner would be heard on the issue of jurisdiction and appropriate orders in deciding such issue be passed as expeditiously as possible.

11. We clarify that till the issue of jurisdiction is decided, the concerned officer of the Respondent shall not adjudicate the show-cause notice on merits including recording of any evidence of the same. In the event is any order adverse to the Petitioner is passed, remedy of the Petitioner to assail the same in appropriate proceedings as the law would permit, is expressly kept open.”

2. In compliance with the aforesaid directions of Hon'ble High Court, an opportunity of personal hearing was granted to Mr. Aman Kokrady (hereinafter referred to as "**Noticee/Aman**") on April 16, 2024, and on the said date, the Counsel representing the *Noticee* appeared before me and made oral submissions. The Counsel was granted a time of one week to file written submissions, and vide email dated April 22, 2024, written submissions have been filed in the present proceedings.

3. The submissions made on behalf of the *Noticee* (Mr. Aman) are summarised herein below:

I. The *Noticee* was charged earlier vide show cause notice dated July 03, 2018 and supplementary show cause notice dated July 31, 2018. In the proceedings

emanating from the said show cause notices, the *Noticee* was exonerated vide order dated April 30, 2019 passed by the Securities and Exchange Board of India (hereinafter referred to as "**2019 SEBI OPG Order**") by observing as:

"10.2 I hereby also dispose of the SCN dated July 3, 2018 read with the Supplementary SCN dated July 31, 2018, against Aman Kokrady, without any further directions."

- II. Subsequently, the Adjudicating Officer in another proceeding involving similar and identical violations also resulted in exonerating the *Noticee* vide its order dated August 29, 2019. The said order was also accepted by SEBI as no proceedings under Section 15-I (3) were initiated in respect of the said order of the said Adjudicating Officer, exonerating the *Noticee* from the charges made against him in the show cause notice.
- III. The *Noticee* was exonerated on merit and no adverse direction was issued against the *Noticee*, in any of the orders dated April, 30, 2019 and August 29, 2019 passed qua the *Noticee* (Mr. Aman) and further no appeal was preferred challenging the order of exoneration before Hon'ble Securities Appellate Tribunal (hereinafter referred to as the "**SAT**") by anybody as being aggrieved of the exoneration. Hence, there was no legality in initiating the present proceedings by issuance of the Show Cause Notice dated May 17, 2023 (hereinafter referred to as the "**SCN**") that contained the identical and verbatim same charges, as were levelled in the earlier show cause notices which ended in exonerating the *Noticee*.

- IV. The SCN had admittedly been issued pursuant to the order dated January 23, 2023 (hereinafter referred to as “**2023 SAT Order**”) passed by Hon’ble SAT in Appeal no. 184 of 2019. The said appeal was filed by other *Noticees* against whom the charges levelled in the previous show cause notices were established and adverse directions were issued by SEBI.
- V. The order of Hon’ble SAT directed the WTM, SEBI to reconsider *inter-alia* two aspects of the order of SEBI dated April 30, 2019, namely, (i) Amount to be disgorged from OPG Securities Private Limited (hereinafter referred to as “**OPG**”) and its directors; and (2) Charge of collusion/connivance between “OPG and its directors with any employees/officials of NSE”.
- VI. There was no order of remand by Hon’ble SAT, either remanding the matter to the WTM, SEBI for reconsidering the order of exoneration passed in favour of the *Noticee*, nor was there an order directing SEBI to re-open the case against the *Noticee*.
- VII. The SCN was lacking in jurisdiction and was in clear violation of fundamental rights of the *Noticee*.
- VIII. During the course of earlier proceedings, the statement of the *Noticee* was also recorded, wherein, it was *inter alia* stated that he was merely one of the several software engineering employees of OPG, and his primary role was to understand the strategies decided by the said company and to develop/write software to run such strategies, which had not been questioned by the SEBI at any stage of the previous proceedings.

- IX. The *Noticee* was neither a shareholder nor a director in OPG, and being a mere employee, he could not be held vicariously liable for any acts of the said company.
- X. Vide the 2019 SEBI OPG Order, the *Noticee* was exonerated, however, OPG and its directors were held guilty of violating provisions of securities laws and certain directions were passed against them.
- XI. Aggrieved by the 2019 SEBI OPG Order, OPG and its directors had preferred an Appeal before Hon'ble SAT (Appeal no. 184/2019). Hon'ble SAT, vide its order dated January 23, 2023, while partly allowing the appeal had remanded the matter back to SEBI for re-adjudication on certain issues by making following observations against OPG and its directors:

“266.g... The violations committed by OPG as found by WTM is affirmed. However, the direction of the WTM directing OPG and its directors to disgorge Rs.15.57 Crores along with an interest at the rate of 12% p.a. from 7th April 2014 onwards is set aside. The matter is remitted to the WTM to decide the quantum of disgorgement afresh in the light of the observation made above within the four months from today.

266.h. In addition to the above, we direct the WTM to consider the charge of connivance and collusion of OPG and its directors with any employee/officials of NSE. Further, the WTM will decide the issuance of direction/penalty concealment/destruction of vital information and will

further reconsider Issue No.2 relating to crowding out other market participants....”

- XII. It has been an undisputed position that the *Noticee* was never a director of OPG Securities Pvt. Ltd. Further, the *Noticee* was not a party in the aforesaid Appeal, nor was impleaded by SEBI or Hon’ble SAT or by any intervener, and thus the *Noticee* was not heard in the aforesaid Appeal. Therefore, directions passed by Hon’ble SAT did not apply to the *Noticee* as no adverse order could be passed by Hon’ble SAT without hearing the *Noticee*.
- XIII. After passing of the 2019 SEBI OPG Order, SEBI had filed two Miscellaneous applications (MA no. 678/2023 and MA no. 1552/2023), before Hon’ble SAT seeking extension of time for completing the proceedings as directed by the aforesaid order. However, SEBI chose not to make the *Noticee* as a party, and the said fact shows that the order of remand passed by Hon’ble SAT was not applicable to the *Noticee*.
- XIV. In view of the aforesaid, the SCN has erroneously been issued without proper appreciation of issues remanded in the 2023 SAT Order. The SCN suffers from a vice of error of law, as no jurisdiction was vested in SEBI qua the *Noticee* by the 2023 SAT Order.
- XV. Paragraph no. 1 of the SCN would indicated that the said SCN had been issued solely on the basis of the Remand Order of Hon’ble SAT, and not on the basis of any new fact unearthed in the course of fresh examination/investigation and therefore, no fresh jurisdiction was being exercised by SEBI.

- XVI. All the allegations made in the SCN were identical to the ones made in the show cause notices issued in the earlier proceedings. In the present SCN, the only new/revised aspect as compared to the show cause notices issued in the earlier proceedings was the portion pertaining to “Gains by Noticees”. For the said portion, SEBI had relied upon a report of ISB dealing with disgorgement of profits. There was no allegation of any ill-gotten gains having been made by the *Noticee*.
- XVII. As the *Noticee* was already exonerated by SEBI in the earlier proceedings, he could not be vexed twice on the basis of same set of facts/allegations. Thus, the SCN was without jurisdiction *qua* the *Noticee*.
- XVIII. After receipt of the SCN, the *Noticee* vide its representations dated June 08, 2023, September 04, 2023, September 21, 2023, November 06, 2023, December 05, 2023, January 05, 2024 and January 17, 2024 wrote to SEBI stating that the issue pertaining to jurisdiction ought to be decided at the first instance before proceeding further in the matter. However, vide order/communication dated January 18, 2024, the request of the *Noticee* was declined and the right of cross-examination was closed.
- XIX. The *Noticee* filed an Appeal (Appeal no. 89/2024) before Hon’ble SAT challenging issuance of the SCN. Vide its order dated January 29, 2024, Hon’ble SAT declined to grant interim stay on the ongoing proceedings. The said Appeal was eventually withdrawn by the *Noticee* on February 27, 2024.
- XX. Thereafter, the *Noticee* filed a Writ Petition [WP (Civil) no. 2461/2024] before Hon’ble Bombay High Court, *inter alia* seeking quashing of the SCN. Vide its

order dated March 19, 2024, Hon'ble Bombay High Court directed SEBI to decide the issue of jurisdiction first.

XXI. In the cross-examination proceedings conducted by other Noticees, SEBI while over-ruling certain questions, itself had taken a position that it was a limited remand. A Court/Tribunal to which a proceeding was remanded by the Appellate Court needed to confine itself only to limited scope of proceedings as defined by the order of the remand. Reliance was placed on a few judgments passed by Hon'ble Courts including the judgment of Hon'ble Supreme Court in the matter of *Shivshankara & Anr. Vs. H.P. Vedavyaa Char*, 2023 SCC OnLine SC 358, *inter alia* holding as:

“7. Before proceeding with the matter further, we think it appropriate to consider the impact of such an order of remand as it would certainly deconvolute consideration of this appeal. There can be no doubt with respect to the settled position that the Court to which the case is remanded has to comply with the order of remand and acting contrary to the order of remand is contrary to law.

In other words, an order of remand has to be followed in its true spirit.”

XXII. Reliance was also placed on the order dated August 14, 2020 passed by Hon'ble SAT, in the matter of *Devendra Suresh Gupta Vs. SEBI [Appeal no. 176/2020]*, wherein it was held that remand had to be within the ambit of the order of Hon'ble SAT.

XXIII. It was further submitted that it was a trite law when a show cause notice was inherently lacking in jurisdiction, the *Noticee* was entitled to challenge the

jurisdiction of authority issuing such notice, and was also entitled to have the notice quashed so as to prevent the *Noticee* from a long drawn out proceedings. Reliance was also placed on the judgments passed in the matters of: (i) *Calcutta Discount Co. Ltd. v. Income Tax Officer, Companies District I Calcutta & Anr.* [(1961) 41 ITR 191]; (ii) *Dasa Muny Reddy v. Appa Rao* [(1974) 2 SCC 725]; and (iii) *Godrej Sara Lee v. Excise & Taxation Officer cum-Assessing Authority & Ors.* [2023 SCC OnLine SC 95].

XXIV. There was no provision under the SEBI Act, 1992 or rules wherein WTM had been given power to review his earlier order. Therefore, the proceedings before the WTM *qua* the *Noticee* were a nullity.

XXV. Article 14 of the Constitution of India guarantees to all persons right of equality before law, including procedural laws. Issuance of SCN against the *Noticee* led to violation of principle of equality. Further, it was the duty of the quasi-judicial authorities to consider and deal with all the submissions raised by the *Noticee*.

XXVI. Reliance was also placed on the averments contained in the WP (Civil) no. 2461/2024, Aman Kokrady Vs. SEBI.

XXVII. During the course of personal hearing, a compilation of following judgments were filed:

Shivshankara & anr. Vs. H.P. Vedavyasa (supra); Mohan Lal Vs. Anadibai & Ors. [1971 (1) SCC 813]; *Tirpati Balaji Developers (P) Ltd. Vs. State of Bihar and ors.* [(2004) 5 SCC 1]; *Ayyappalli Mohd Haji & Ors. Vs. M.M. Abdulsalam & Ors.* [(2001) 2 SCC 428]; *K.P. Dwivedi Vs. State of U.P. & ors.* [(2003) 12

SCC 572]; P Dasa Muni Reddy Vs. P Appa Rao [(1974) 2 SCC 725]; Chiranjilal Shrilal Goenka Vs. Jasjit Singh [(1993) 2 SCC 507] etc.

4. Before moving further, I find it relevant to reproduce herein below, the relevant provisions of the SEBI Act, 1992 which are useful for adjudication of issues involved in the matter:

SEBI Act, 1992

Functions of Board.

11. (1) Subject to the provisions of this Act, it shall be the duty of the Board to protect the interests of investors in securities and to promote the development of, and to regulate the securities market, by such measures as it thinks fit.

(2) Without prejudice to the generality of the foregoing provisions, the measures referred to therein may provide for—

...

(b) registering and regulating the working of stock brokers, sub-brokers, share transfer agents, bankers to an issue, trustees of trust deeds, registrars to an issue, merchant bankers, underwriters, portfolio managers, investment advisers and such other intermediaries who may be associated with securities markets in any manner;

(4) Without prejudice to the provisions contained in sub-sections (1), (2), (2A) and (3) and section 11B, the Board may, by an order, for reasons to be recorded in writing, in the interests of investors or securities market, take any of the

following measures, either pending investigation or inquiry or on completion of such investigation or inquiry, namely:—

- (a) suspend the trading of any security in a recognised stock exchange;*
- (b) restrain persons from accessing the securities market and prohibit any person associated with securities market to buy, sell or deal in securities;*
- (c) suspend any office-bearer of any stock exchange or self-regulatory organisation from holding such position;*
- (d) impound and retain the proceeds or securities in respect of any transaction which is under investigation;*
- (e) attach, for a period not exceeding ninety days, bank accounts or other property of any intermediary or any person associated with the securities market in any manner involved in violation of any of the provisions of this Act, or the rules or the regulations made thereunder:*

Provided that the Board shall, within ninety days of the said attachment, obtain confirmation of the said attachment from the Special Court, established under section 26A, having jurisdiction and on such confirmation, such attachment shall continue during the pendency of the aforesaid proceedings and on conclusion of the said proceedings, the provisions of section 28A shall apply:

Provided further that only property, bank account or accounts or any transaction entered therein, so far as it relates to the proceeds actually involved in violation of any of the provisions of this Act, or the rules or the regulations made thereunder shall be allowed to be attached;

(f) direct any intermediary or any person associated with the securities market in any manner not to dispose of or alienate an asset forming part of any transaction which is under investigation:

Provided that the Board may, without prejudice to the provisions contained in sub-section (2) or sub-section (2A), take any of the measures specified in clause (d) or clause (e) or clause (f), in respect of any listed public company or a public company (not being intermediaries referred to in section 12) which intends to get its securities listed on any recognised stock exchange where the Board has reasonable grounds to believe that such company has been indulging in insider trading or fraudulent and unfair trade practices relating to securities market :

Provided further that the Board shall, either before or after passing such orders, give an opportunity of hearing to such intermediaries or persons concerned.

11B (1) Save as otherwise provided in section 11, if after making or causing to be made an enquiry, the Board is satisfied that it is necessary,—

*(i) in the interest of investors, or orderly development of securities market;
or*

(ii) to prevent the affairs of any intermediary or other persons referred to in section 12 being conducted in a manner detrimental to the interest of investors or securities market; or

(iii) to secure the proper management of any such intermediary or person, it may issue such directions,—

(a) to any person or class of persons referred to in section 12, or associated with the securities market; or

(b) to any company in respect of matters specified in section 11A, as may be appropriate in the interests of investors in securities and the securities market.

Explanation. — For the removal of doubts, it is hereby declared that the power to issue directions under this section shall include and always be deemed to have been included the power to direct any person, who made profit or averted loss by indulging in any transaction or activity in contravention of the provisions of this Act or regulations made thereunder, to disgorge an amount equivalent to the wrongful gain made or loss averted by such contravention.

5. It is seen that the SCN dated May 17, 2023 has been issued by SEBI pursuant to and in compliance of the order dated January 23, 2023 passed by Hon'ble SAT.

6. Before proceeding to decide the matter on merit, I find it necessary to have the factual background of the matter in brief for better appreciation of issues under consideration:

i. SEBI had received complaints dated January 08, 2015 and August 10, 2015 regarding irregularities observed in the co-location facility at National Stock Exchange (hereinafter referred to as "**NSE**"). In the said complaints, it was *inter*

alia alleged that preferential access was granted by NSE to OPG for tick-by-tick data feed and further OPG was allowed to have an access to the secondary server on frequent basis without any problems of having connection to the primary server.

ii. Based on the examination of complaints, an investigation was initiated which culminated into the issuance of a show cause notice dated July 03, 2018 and supplementary show cause notice dated July 31, 2018. The said show cause notices were issued to five Noticees, wherein the Mr. Aman Kokrady (*Noticee* herein) was the Noticee no. 5.

iii. The proceedings emanating from the aforesaid show cause notices culminated into passing of the 2019 SEBI OPG Order. Vide the said order, after considering materials on record Mr. Aman Kokrady was exonerated from all allegations, whereas other four Noticees (OPG and its directors) were held guilty of certain violations and accordingly, appropriate directions were issued against those four Noticees.

iv. The said four Noticees preferred a common appeal (Appeal no. 184/2019, OPG Securities Private Limited and others Vs. SEBI) before Hon'ble SAT. After hearing the parties at length, Hon'ble SAT remanded certain issues for re-adjudication vide its order dated January 23, 2023 and the directions, as referred in the earlier paragraph 3 (XI), were *inter alia* passed.

v. It is in pursuance of the said directions of Hon'ble Tribunal, the present SCN has been issued confining allegations to the issues remanded by Hon'ble Tribunal for re-adjudication by SEBI.

7. Under the circumstances, the issue that requires consideration is whether the issues remanded in the 2023 SAT Order for re-adjudication includes the consideration and adjudication of role of the *Noticee* as well for alleged violations that were already considered and adjudicated in the earlier proceeding resulting in his exoneration.
8. I have considered the submissions made by the *Noticee* and have also considered various judgments/orders that have been cited in support of his submissions.
9. In accordance with various court judgments, including those of Hon'ble SC cited by the *Noticee* in the matter of *Shivshankara & Anr. Vs. H.P.Vedavyaa Char (supra)*, the jurisdiction of this Authority is limited to the directions contained in the 2023 SAT Order.
10. The said 2023 SAT Order remanded the matter to SEBI with a direction that the following four issues are required to be re-adjudicated:
 - i.To decide the quantum of disgorgement afresh in the light of the observations made in the order with respect to the finding that OPG and its directors were guilty of unfair access and gained advantage by consistently logging into the secondary POP servers, and on that basis, made unfair gain.
 - ii.To re-consider the charge of connivance and collusion of OPG and its directors with any employee/officials of NSE.
 - iii.To re-consider the issue no. 2 of the 2019 SEBI OPG Order, relating to crowding out other market participants.

iv.To decide the issue of direction/ penalty (for) concealment/destruction of vital information.

11. On examination of issues remanded for re-adjudication as listed above, it is observed that out of the four issues, the SCN makes allegations on the *Noticee* with respect issues mentioned at para 10 (i), (ii) and (iii). The issue mentioned at para 10 (iv) does not pertain to the *Noticee*, as it is specifically confined and limited to the director of OPG Mr. Sanjay Gupta. Therefore, the three issues relevant to the *Noticee* are discussed hereinafter in order to determine whether this Authority has the jurisdiction in terms of the 2023 SAT Order to re-adjudicate these issues qua the *Noticee*.

Issue no. 1

12. On the issue of quantum of disgorgement of amount of unlawful gains, the WTM in the 2019 SEBI OPG Order held the following:

“9.2 In the instant proceedings, for the reasons detailed in the preceding paragraphs 8.18–8.30, I have no hesitation in concluding that OPG Securities has violated the provisions of Regulation 4(1) of the PFUTP Regulations 2003 and Clauses A(1), (2) and (5) of the Code of Conduct as specified in Schedule II of Regulation 9 of Stock Brokers Regulations. In addition, I find that Noticees 2–4 being directors of OPG Securities are responsible for the affairs of the TM and therefore, are vicariously liable for the failure by the said TM in ensuring compliance with the provisions of Regulation 4(1) of the PFUTP Regulations 2003 and the Code of Conduct as specified in Schedule II of Regulation 9 of

Stock Brokers Regulations. In view of the fact that OPG Securities had made unlawful gains of ₹15.57 Crores (refer to paragraph 8.45), which could not have been made but for the illegal connections made to the Secondary POP Server, I am inclined to direct disgorgement against the aforesaid TM and its directors in the instant proceedings.”

13. Further, the following directions were issued by the WTM:

“10.1 iv. OPG Securities Private Limited and its abovementioned directors shall disgorge an amount of ₹15.57 Crores as ascertained in paragraph 8.45 above along with interest calculated at the rate of 12% per annum from April 7, 2014 onwards, till the date of payment. The aforementioned Noticees shall pay the said amounts jointly and severally within 45 days from the date of this Order either by way of demand draft drawn in favour of ‘Securities and Exchange Board of India’, payable at Mumbai or by e-payment to SEBI account as detailed below:..”

14. While disposing off the Appeal against the aforesaid 2019 SEBI OPG Order, Hon’ble SAT remanded the matter to SEBI with directions which are reproduced at para 3 (xi) of this order.

15. Thus, Hon’ble SAT *inter alia* set aside the calculation of disgorgement amount and remitted the matter to the WTM to decide the quantum of disgorgement afresh in the light of observations made by it in that order. In this regard, having perused the directions of Hon’ble SAT, it is observed that so far as the calculation of amount to be disgorged from OPG and its directors for continuous logging on the secondary server is concerned, the plain reading of the aforesaid directions

of Hon'ble SAT makes it clear that Hon'ble SAT had categorically directed only the recalculation of the disgorgement amount. It is also seen that while directing for recalculation of the amount, the 2023 SAT Order did not disturb the findings in the 2019 SEBI OPG Order about the persons from whom the amount is to be disgorged. That means the recalculated amount is required to be disgorged from OPG and its three directors (i.e. Mr. Sanjay Gupta, Mrs. Sangeeta Gupta and Mr. Om Prakash Gupta), in accordance with the findings of 2019 SEBI OPG Order; as upheld in the 2023 SAT Order.

16. Since in the 2019 SEBI OPG Order, there was no direction to disgorge the amount qua the *Noticee* (Mr. Aman Kokrady), and this finding having not been disturbed by Hon'ble SAT in the 2023 SAT Order, I find that there is no authority conferred on me to proceed against the *Noticee* with respect to the issue of recalculation of amount to be disgorged from OPG and its directors.

Issue no. 2

17. On the issue of collusion and connivance, the 2019 SEBI OPG Order held that the allegation of unfair advantage gained by OPG through its secondary POP server connections due to collusion/connivance between NSE and OPG cannot be substantiated in the absence of specific sufficient evidence.
18. Hon'ble Tribunal did not agree with the said findings of SEBI and remitted the issue for re-adjudication by directing that:

“266 (h)In addition to the above, we direct the WTM to consider the charge of connivance and collusion of OPG and its directors with any employee/officials of NSE.”

19. The SCN states that NSE was aware that OPG has been generally connecting to the secondary server and it did not take any steps nor took any action and therefore, alleges that there was connivance/collusion between OPG and its directors/employees with NSE/its employees to give preferential treatment to OPG to remain logged in to the secondary server. In this connection, it is noted that the SCN in para 8 discusses the role of the *Noticee* herein, and the said para is reproduced hereunder for ready reference:

“8. It is further noted from records that Noticee no. 5 is a relative of Noticee no 2. Aman Kokrady, in his statement dated August 10, 2017 (Annexure-8) stated that, “as employee of OPG Securities, Software Architect and Developer — Primary role was to understand strategies (algorithm) and write software to run the strategies. Created the initial software design, UI screens, database and monitoring setup. I was also involved in software development. The software included algorithms, automated login to TBT and interactive, order entry and exchange adapters. Debugging problems like adapter disconnections, disruptions and variability. After mid-2014, I resigned from OPG securities. I am Key Management Person in Acceletrade Technologies. Acceletrade has developed trading software exclusively for OPG”.

20. Similar to the statement of the *Noticee* referred above, it has been submitted in the present proceedings also that the *Noticee* was a mere employee of the OPG,

working in the field of software engineering, and was never appointed as a director of OPG.

21. It is seen that the direction of Hon'ble SAT (quoted in paragraph no. 18 above) confines the re-adjudication of the charge of connivance and collusion of OPG and its "directors" with any employee/official of NSE. Thus, there is no direction from Hon'ble SAT to reconsider the charge of connivance and collusion of an OPG employee (other than its directors) with any employee/official of NSE.
22. Undisputedly, the *Noticee* was never associated with OPG in the capacity of a director at any point of time. Under the circumstances, I hold that even for this issue, the *Noticee* cannot be proceeded against in the present proceedings in term of the scope of the 2023 SAT Order.

Issue no. 3

23. On the issue of crowding out other market participants, the 2019 SEBI OPG Order dropped the charge by observing the following:

"8.15 As mentioned earlier, data disseminated will first be sent to Port 1, Port 2 and then to Port 3 of the POP Server. OPG Securities was allocated Port 1 on only one primary POP Server (TBTColo26) and the Secondary POP Server (TBTColo27), which indicated that it had gained a limited advantage of early login (as has also been made out in the preceding paragraphs). The allegation contained in the SCN that assigning multiple IPs of OPG Securities to single Ports by NSE allowed 'crowding out' by the said TM has been arrived at after considering the analysis of 1st, 2nd, 3rd, 4th connect made by OPG Securities

on any Port of a POP Server. In this regard, it is stated that such 1st, 2nd, 3rd, 4th connect` to the Ports other than Port 1 of the POP Server, while possible as per login time, will nonetheless stand relatively on a lower rank vis-a-vis the array/dissemination sequence formed on that POP Server since data dissemination occurs first to Port 1 of the POP Server. Incidentally, I note that a similar process of allocating multiple IPs of a TM on a single Port was also followed by NSE in respect of other TMs (as noted from Annexure 24(a) of the Deloitte Report). In view of the aforementioned, I do not find merit in the allegation of 'crowding out' as made out in the SCN against OPG Securities."

24. Hon'ble SAT, however, directed SEBI to re-consider the issue relating to crowding out other market participants by OPG. The exact direction was:

*"Further, the WTM will decide the issuance of direction/penalty concealment/destruction of vital information **and will further reconsider Issue No.2 relating to crowding out other market participants.**" (emphasis supplied)*

25. The Issue no. 2 as contained in the 2023 SAT Order is as under:

"Whether OPG tried to crowd out other TMs from the TCP/IP TBT System platform?"

26. From the above, it is clear that this issue is required to be considered *qua* OPG only. Thus, there is no direction from Hon'ble SAT to consider this issue *qua* the Noticee.

27. In view of above discussion, I hold that this authority does not have any jurisdiction to proceed against the *Noticee* on account of directions given by Hon'ble Tribunal in the 2023 SAT Order.

28. The Order shall come into force with the immediate effect.

29. A copy of this Order shall be forwarded to the Mr. Aman Kokrady.

-Sd-

DATE: SEPTEMBER 13, 2024

KAMLESH C. VARSHNEY

PLACE: MUMBAI

**WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA**