BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER Ref. No. ORDER/SBM/ASR/2022-23/17637-17644]

UNDER SECTION 15 I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995 AND UNDER SECTION 23I OF SECURITIES CONTRACTS (REGULATION) ACT, 1956 READ WITH RULE 5 OF SECURITIES CONTRACTS (REGULATION) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 2005.

In respect of

1. **National Stock Exchange Limited**
   PAN (AAACN1797L)

2. **Sh. Ravi Narain**
   PAN (AAYPN8382Q)

3. **Ms. Chitra Ramakrishna**
   PAN (ABVPR7353M)

4. **Mr. Ajay Shah**
   PAN (AAPPS2553M)

5. **Infotech Financial Services Private Limited**
   PAN (AAACI4871L)

6. **Ms. Sunita Thomas**
   PAN (ACHPT8291M)

7. **Mr. Krishna Dagli**
   PAN (AEKPD6775M)

8. **Mr. Suprabhat Lala**
   PAN (ABEPL5061D)

In the matter of
NSE – Corporate Governance

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 '**Noticee 1**' / **'NSE'**), initiated examination w.r.t, *inter-alia*, members of Board of Directors of NSE

and also the senior management of NSE in relation to their dealings with Mr. Ajay Shah (hereinafter referred to as '**Notice 4')**, Infotech Financials Pvt Ltd (hereinafter referred to as **'Noticee 5'** / **'Infotech'**) and Mr. Suprabhat Lala (hereinafter referred to as **'Noticee 8'**) for the period 2009 to 2016 (hereinafter referred to as '**Examination Period**'). However, wherever necessary, the Examination Period was extended for the purpose of the observations made against the above persons/entities. The first part of the examination pertained to the period before 2012 when formal agreements for sharing of data did not exist between NSE and Mr. Ajay Shah and his wife, Ms. Susan Thomas and the second part of the examination pertained to the period after 2012 when there existed formal agreements for sharing of data between NSE, Mr. Ajay Shah and Susan Thomas.

2. In this regard, it is noted that one of abovementioned complaints to SEBI was filed vide letter dated June 01, 2017. Subsequently, the same complaint was once again received by SEBI on September 07, 2017 wherein, *inter alia*, allegations of impropriety were levelled against the members of the Board of Directors of NSE and also the senior management of NSE regarding their dealings w.r.t. Mr. Ajay Shah and Infotech. It is observed from the Examination Report that the main scope of the SEBI examination into the abovementioned matter, *inter alia,* was to ascertain whether there was a misuse of market related data of NSE by Mr. Ajay Shah, Ms. Sunita Thomas (hereinafter referred to as **'Noticee 6'**), Infotech, Krishna Dagli (hereinafter referred to as **'Noticee 7'**) in connivance with NSE and its senior management viz. Mr. Ravi Narain (hereinafter referred to as **'Noticee 2'**) , Ms. Chitra Ramakrishna (hereinafter referred to as '**Chitra'** / **'Noticee 3'**) and Mr. Suprabhat Lala which may be detrimental to the investors 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'**), Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as '**SCRA**') and/ or the Rules and the Regulations made there-under such as SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as '**PFUTP Regulations'**).

3. The examination in this matter has been done in two parts. The first part pertains to the period before 2012 when formal agreements were not in existence between NSE and researchers viz, Mr. Ajay Shah and Susan Thomas etc and the second part pertains to the period after 2012 when there existed formal agreements between NSE and the

researchers viz., Ajay Shah and Susan Thomas etc. The details of alleged violations are mentioned in the table below:

Sr. No.	Entity name/Notice no.	Provision of law/regulation violated	Charging Provisions
1.	NSE / **Noticee 1**	• Sections 12A (b) and 12A (c) of SEBI Act read with regulations 3 (c), 3 (d) and 4(1) of the PFUTP Regulations. • Master Circular no. CIR/MRD/DSA/SE/43/2010 of December 31, 2010 • Section 4(1) (a) of the SCRA	Section 15HA of the SEBI Act and Section 23 H of the SCRA
2.	Mr. Ravi Narain, **('Noticee 2')**	• Sections 12A (b) and 12A (c) of SEBI Act read with regulations 3 (c), 3 (d) and 4(1) of the PFUTP Regulations. • Master Circular no. CIR/MRD/DSA/SE/43/2010 of December 31, 2010 • Section 3(2)(b) of the SCRA	Sections 15HA & 15HB of the SEBI Act and Section 23 H of the SCRA
3.	Ms. Chitra Ramakrishna ('**Chitra'** / **'Noticee 3')**	• Sections 12A (b) and 12A (c) of SEBI Act read with regulations 3 (c), 3 (d) and 4(1) of the PFUTP Regulations. • Master Circular no. CIR/MRD/DSA/SE/43/2010 of December 31, 2010 • Section 3(2)(b) of the SCRA	Sections 15HA & 15HB of the SEBI Act and Section 23 H of the SCRA
4.	Mr. Ajay Shah **('Noticee 4')**	• Sections 12A (b) and 12A (c) of SEBI Act read with regulations 3 (c), 3 (d) and 4(1) of the PFUTP Regulations. • Master Circular no. CIR/MRD/DSA/SE/43/2010 of December 31, 2010 • Section 3(2)(b) of the SCRA	Sections 15HA & 15HB of the SEBI Act and Section 23 H of the SCRA
5.	Infotech **('Noticee 5')**	• Sections 12A (b) and 12A (c) of SEBI Act read with regulations 3 (c), 3 (d) and 4(1) of the PFUTP Regulations.	Section 15HA of the SEBI Act

6.	Ms. Sunita Thomas **('Noticee 6')**	• Sections 12A (b) and 12A (c) of SEBI Act read with regulations 3 (c), 3 (d) and 4(1) of the PFUTP Regulations.	Section 15HA of the SEBI Act
7.	Mr. Krishna Dagli ('**Noticee 7')**	• Sections 12A (b) and 12A (c) of SEBI Act read with regulations 3 (c), 3 (d) and 4(1) of the PFUTP Regulations.	Section 15HA of the SEBI Act
8.	Mr. Suprabhat Lala **('Noticee 8')**	• Sections 12A (b) and 12A (c) of SEBI Act read with regulations 3 (c), 3 (d) and 4(1) of the PFUTP Regulations.	Section 15HA of the SEBI Act

The Noticee 1 to Noticee 8, mentioned in the table above are hereinafter collectively referred to as '**the Noticees'**, in the context of the present adjudication proceedings.

4. I note that based on the findings of Investigation conducted in the matter, parallel proceedings under Section 11 of the SEBI Act were also initiated against the Noticees. The aforesaid proceedings against the specified Noticees were concluded vide WTM-SEBI Orders dated April 30, 2019. I note from the perusal of the said WTM orders that the allegations against the aforesaid Noticees are same as in the instant adjudication proceedings and the Section 11 proceedings. Therefore, while arriving at conclusion in the instant proceedings, I have also considered the findings of Whole Time Member-SEBI mentioned in the orders dated April 30, 2019.

APPOINTMENT OF ADJUDICATING OFFICER

5. The undersigned was appointed as the Adjudicating Officer ('**AO**') in the matter vide communique dated August 10, 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'**) and Section 23-I of the SCRA and Rule 3 of the Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 2005 (hereinafter referred to as '**SCRA Adjudication Rules'**), to inquire into and adjudge under the provisions of Sections 15HA and 15HB of the SEBI Act and Section 23H of the SCRA, the aforementioned alleged violation of the provisions of law by the Noticees. On transfer of the undersigned from the 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 AO in the matter.

SHOW CAUSE NOTICE, REPLY AND HEARING

6. Two different Show Cause Notices (**'SCNs'**) were issued to the group of Noticees (details given in the table below) in terms of Rule 4 of the Adjudication Rules read with Section 15-I of the SEBI Act and Rule 4 of SCRA Adjudication Rules read with 23I of SCRA (wherever applicable) to show cause as to why an inquiry should not be held against the Noticees and why penalty be not imposed on them in terms of the provisions of Sections 15HA and 15HB of the SEBI Act and Section 23H of the SCRA (wherever applicable) for the violations alleged to have been committed by them in the said matter. The details of the SCNs issued to the Noticees are given below:

Sl no.	Show Cause Notice	Name of the Noticees
1	SCN ref no. SEBI/HO/EAD1/25792/2018 dated September 12, 2018 (hereinafter referred to as **'SCN-1'**)	1. NSE. 2. Mr. Ravi Narain 3. Ms. Chitra Ramakrishna
2	SCN ref no. SEBI/HO/EAD1/25970/2018 dated September 14, 2018 (hereinafter referred to as **'SCN-2'**)	1. Mr. Ajay Shah 2. Infotech Financial Pvt. Ltd. 3. Ms. Sunita Thomas 4. Mr. Krishna Dagli 5. Mr. Suprabhat Lala

7. The SCNs issued to the Noticees, inter-alia, alleged the following: -

A. SCN-1

Part 1: Prior to 2012

a. *On the basis of the complaints received by SEBI, information was sought from NSE, inter alia, with respect to engagement of Mr. Ajay Shah and Ms. Susan Thomas by NSE prior to 2012. From the above, it is observed that Mr. Ajay Shah and Ms. Susan Thomas were actively associated with NSE and its subsidiaries. It is further observed that they were not only part of various committees of NSE and its subsidiaries but were also engaged in providing various other services to NSE. However, it is alleged that NSE has not been able to provide any details regarding the nature of data shared with Mr. Ajay Shah and Ms. Susan Thomas and the data use contracts related to the assignments handled by them*

b. *It is alleged in the Examination Report that there were several instances of conflict of interest w.r.t. the connections among Mr. Ajay Shah, Mr. Suprabhat Lala, who was the Assistant Vice President of Trading Operations of NSE during Examination Period, Ms. Sunita Thomas, who was wife of Mr. Suprabhat Lala, Ms. Susan Thomas and IFPL. It is alleged that Ms. Sunita Thomas, who is one of the Directors of IFPL* *is the wife of Mr. Suprabhat Lala and sister of Ms. Susan Thomas, who is wife of Mr. Ajay Shah. Further, from the statement of Ms. Sunita Thomas recorded on July 26, 2017 it is noted that IFPL was started by her in 1999 wherein she has been a director since inception. It is further observed that Chanakya Tradevistas LLP was incorporated by her and Mr. Krishna Dagli as partners in February 2012. Ms. Sunita Thomas has further stated that IFPL has done software projects viz Parallel Risk Information System Management and Bond Index for IGIDR, who were contracted by NSE. She has further stated that it had profit sharing arrangement with its clients at different point of time. Further, during examination, it is observed that IFPL was also engaged in selling algo trading software to stock brokers and Mr. Krishna Dagli (since September 03, 2006 onwards) and Ms. Sunita Thomas (August 16, 1999 onwards) are the two directors of IFPL.*

c. *It is observed from the statement of Mr. Ajay Shah recorded on April 03, 2018 that on being questioned about his participation in IFPL's business development, he submitted the following:*

" ...The third connection was the LIX project, where Susan Thomas and I worked pro bono...

d. *It is further observed that Mr. Ajay Shah, in an email dated February 22, 2009, sent to Ms. Sunita Thomas with a copy marked to Mr. Krishna Dagli has stated as follows:*

" ...you have to swear everyone to silence on the fact that the data that we are getting out of NSE for VIX and LIX is being used for algorithmic trading work - it would be a severe problem if this fact comes to light since NSE has not given _anyone_ else this data... " .

e. *It is alleged on the basis of abovementioned email of Mr. Ajay Shah that the data received from NSE was misused for some algorithmic trading work which was otherwise to be used for research for LIX (Liquidity Index). The said correspondence and the fact that IFPL was involved in developing algo trading software and selling it to brokers for trading, prima facie, indicates that the data which was confidential and sensitive in nature had been misused for algorithmic trading purpose.*

f. *NSE, vide its email dated May 17, 2018 has submitted copy of an agreement dated January 19, 2009 between NSE and IFPL with regard to the development of project/software namely 'LIX'. It is observed from the perusal of the said agreement that in terms of the clause 4(b) of the said agreement, IFPL agreed that it shall not use the proprietary information of NSE except to evaluate such information for the sole limited business purposes of NSE.*

g. *It is observed from the email dated May 14, 2018 from NSE that IFPL was engaged by NSE for computing of LIX around 2009-10 and was also engaged earlier for the ZCYC application software. It is alleged that there were following inherent conflict of interest w.r.t. engaging of IFPL by NSE for carrying out various projects.*

   a) *Mr. Suprabhat Lala was then Assistant Vice President, Trading Operations of NSE and his wife Ms. Sunita Thomas is the director of IFPL.*

b) *Mr. Ajay Shah was on the Board of NSCCL and his sister-in-law Ms. Sunita Thomas is the director of IFPL. Mr. Ajay Shah being aware of the nature of business of IFPL has never disclosed the same to NSE.*

c) *IFPL was engaged by NSE for computing LIX and it was also as part of its business operations was developing and selling algorithmic trading software to stock brokers.*

h. *It is further alleged that NSE did not award the contract for computing LIX to its own specialized subsidiary, i.e., IISL and awarded the contract to IFPL which, prima facie, indicates the undue support provided by NSE to IFPL and Ajay Shah. In view of the above, it is alleged that Noticee 1 / NSE and its officials viz., Noticee 2 / Mr. Ravi Narain and Noticee 3 / Ms. Chitra Ramakrishna, who were in-charge of the affairs of NSE during the examination period, failed to take cognizance of the issues of conflicts of interest w.r.t Mr. Ajay Shah, Ms. Sunita Thomas, Mr. Suprabhat Lala and IFPL, as mentioned above while giving contracts to IFPL, allegedly, ignoring its own specialized subsidiary viz, IISL. Therefore, it is alleged that Noticee 1, Noticee 2 and Noticee 3 were a part of the overall scheme/device/artifice in which Mr. Ajay Shah, Infotech Financials Pvt. Ltd and its directors viz., Ms. Sunita Thomas & Mr. Krishna Dagli had used confidential and sensitive data of NSE for the purpose of developing algorithmic trading software and sale of the same to market participants to deal in securities market.*

i. *The aforesaid conduct of NSE, Mr. Ravi Narain and Ms. Chitra Ramakrishna, wherein, they shared the confidential data with Mr. Ajay Shah and Ms Susan Thomas without any formal agreement and data use contract, prima facie, shows that favourable treatment was meted out to the aforesaid individuals and therefore, it is alleged that NSE, Mr. Ravi Narain and Ms. Chitra Ramakrishna were part of the scheme/device/artifice in which Mr. Ajay Shah and IFPL and its directors viz., Ms. Sunita Thomas & Mr.Krishna Dagli had used confidential and sensitive data of NSE for the purpose of developing algorithmic trading software and sale of the same to market participants to deal in securities market which has resulted in compromising the integrity of the securities market. Therefore, it is alleged that Noticee 1 , Noticee 2 and Noticee 3 have allegedly violated the provisions of sections 12A (b) and 12A (c) of SEBI Act read with regulations 3 (c), 3 (d) and 4(1) of the PFUTP Regulations.*

j. *It is also alleged that Noticee 2 as the Managing Director and Noticee 3 as the Joint Managing Director of NSE, during the relevant Examination Period, by sharing confidential data of the exchange without any agreement had, prima facie, put confidential data of the exchange vulnerable to misuse and thereby, allegedly, compromised on the exchange governance and thus, failed to do proper due diligence, ensure fairness and transparency and also failed to avoid conflict of interest situations, as specified in Master Circular no. CIR/MRD/DSA/SE/43/2010 of December 31, 2010 read with Section 3(2)(b) of the Securities Contracts (Regulation) Act, 1956.*

<u>Part 2: Period after 2012</u>

k. *During the course of investigation, information was sought from NSE, inter-alia, with respect to details of all consultants (firms/individual/organizations etc.) engaged by them since 2007. Based on the information furnished by NSE vide email dated February 2, 2018**,** following general observations have* *been made in the Examination report w.r.t. the agreements signed between NSE and Mr. Ajay Shah/Susan Thomas:*

l. *NSE had granted two data research project to Ms. Susan Thomas of IGIDR. First in the year 2013 (terms of payment INR 25 lakhs) and second in 2017 (terms of payment INR 70 lakhs and additional INR 15 lakhs for sponsorship of Annual Emerging Markets Finance Conference). Copy of the agreement for two research projects as well as approvals for terms and conditions of engagement including payment and details/nature of data provided to IGIDR/Ms. Susan Thomas are enclosed.*

m. *The abovementioned two projects were not approved by NSE Governing Board and were approved internally by the management of NSE.*

n. *IGIDR represented by Ms. Susan Thomas had approached NSE to conduct research work in the area of capital market and based on the reputation of IGIDR and past research work by the researchers in the area of capital market, NSE decided to accept the proposal and provided the support to the research work.*

o. *The observations/allegations w.r.t. Agreement relating to 2013 titled 'Research Contract for Intra-day Trading Research' are given below:*

    a. *The agreement is undated and signature/initials are not there on each of the pages of the agreement. It is also observed that the agreement is executed on stamp paper and the signatures on the last page do not bear date and place.*

    b. *There is no mention of date anywhere in the agreement whereas the agreement just carries a blank field for date with year as 2013.*

    c. *The approval note for payment schedule of NSE is dated November 12, 2012 which states that the agreement and undertaking have already been executed.*

    d. *It is observed that the NSE internal note indicates that NSE and IGIDR have signed an agreement and states that the institute is a leading research and education organization in the field of economics and finance in India. The note specifies the name of researcher as Ajay Shah, Professor, National Institute of Public Finance and Policy, Delhi (NIPFP) and Ms. Susan Thomas, Assistant Professor, IGIDR, Mumbai.*

    e. *The agreement signed in this regard is between NSE and IGIDR, Mumbai, but one of the researchers i.e. Ajay Shah was attached with NIPFP, Delhi and not with IGIDR, Mumbai.*

    f. *An undertaking dated December 03, 2012 was provided by the researchers in favor of NSE which does not have any cross referencing to the original agreement.*

p. *The observations/allegations w.r.t. Agreement relating to 2017 titled 'NSE-IGIDR Research Contract ' are given below:*

q. Signature/initials are not there on each of the pages of the agreement relating to 2017.

r. The agreement does not provide any clause for sharing of data by NSE to IGIDR.

s. The date of agreement for the second research work assigned to IGIDR / Ms. Susan Thomas is February 22, 2017, whereas internal approval note for the same is dated September 19, 2016

t. As submitted by NSE, an affidavit dated July 27, 2017 forms part of the agreement dated February 22, 2017, executed by IGIDR. This affidavit does not have any cross referencing to the original document. It is observed that the stamp paper for the affidavit for the same was purchased by Ms. Susan Thomas.

u. On perusal of the said documents, it is observed that the "affidavit' by NSE is actually agreement between NSE and IGIDR captured in the document itself.

v. In 'Consideration' section of the agreement dated July 27, 2017, it is mentioned that NSE is expected to derive with enhanced NSE's brand name and image in security market, which would be a just and sufficient consideration to NSE, and hence NSE agrees not to charge any monetary consideration to the Institute.

w. NSE approval note records the matter which has been captured in the agreement dated February 22, 2017 only, hence the agreement dated July 27, 2017 between NSE and IGIDR is without any approval and it has been clubbed with the agreement dated February 22, 2017.

x. Further, it may be noted that NSE's internal approval note dated September 19, 2016 for the agreement dated February 22, 2017 indicates the terms of payment as INR 70 lakhs and additional Rs 15 lakhs for sponsorship of Annual Emerging Markets Finance Conference. However, the agreement dated February 22, 2017 records the consideration of the project as INR 70 lakhs only.

y. In view of the above, it is alleged that the agreement between NSE and IGIDR relating to year 2013 and the undertaking by researchers, prima facie, indicate that agreement with the IGIDR is a facade and in reality, the aforesaid arrangement appears to be between NSE and the researchers viz, Mr. Ajay Shah and Ms. Susan Thomas. Further, Mr. Ajay Shah and Ms. Susan Thomas appear to be actively associated with NSE and its subsidiaries in the past. Therefore, it is also alleged that in both the agreements of 2013 and 2017 between NSE and IGIDR/Susan Thomas/Ajay Shah, the basic formalities in the execution of Agreement, prima facie, remained incomplete and there are several inconsistencies w.r.t chronology, details of which have been mentioned above.

z. Therefore, it is alleged that NSE failed to ensure proper due-diligence with respect to execution of agreements with the researchers viz., IGIDR/Susan Thomas/Ajay Shah and also, allegedly, failed to ensure fair dealing and has therefore, prima facie, compromised on the integrity in the functioning of *exchange resulting in the non-compliance of the conditions of grant of recognition of Stock Exchange. Therefore, NSE has allegedly violated the provisions of Section 4(1) (a) of the Securities Contracts (Regulation) Act, 1956.*

A. SCN-2

aa. *SEBI, on receipt of various complaints alleging irregularities in the matter of co-location and corporate governance at NSE, initiated examination w.r.t, the members of Board of Directors of NSE and also the senior management of NSE in relation to their dealings with the Noticees for the period 2009 to 2016 (hereinafter referred to as '**Examination Period**'). However, wherever necessary, the Examination Period was extended for the purpose of the observations made against the Noticees. It is observed from the Examination Report that the main scope of the SEBI examination into the abovementioned matter, inter alia, was to ascertain whether there was a misuse of market related data of NSE by the Noticees and Ms. Susan Thomas.*

bb. *In this regard, it is noted that one of abovementioned complaints to SEBI was filed by one Mr. Jamie Jones vide his letter dated June 01, 2017 . Subsequently, the same complaint was once again received by SEBI on September 07, 2017 under the name of Daniel Mark wherein, inter alia, allegations of impropriety were levelled against the members of the Board of Directors of NSE and also the senior management of NSE regarding their dealings w.r.t. Mr. Ajay Shah and Infotech Financials Pvt Ltd (hereinafter referred to as '**IFPL**'). Few of the major allegations made in the aforesaid complaints are given below:*

"Mr Ajay Shah is instrumental in fashioning and developing the algorithm for the company OPG Securities. From the data centre side, Omnesys was given a preferential treatment by Chitra Ramakrishna. In short, from algo to software on OPG Securities side was done by company promoted by wife of Suprabhat Lala, who is the Administration Head at NSE and Ravi Apte who is head of Trading. Incidentally, wife of Suprabhat Lala is sister of Susan Thomas who is wife of Mr Ajay Shah. .

cc. What is even more unprecedented is that a percentage of trading done on NSE and its earning is given as royalty to Susan Thomas and Ajay Shah. It may be pointed out that both Susan Thomas and Ajay Shah were working as professors in Indira Gandhi Institute of Development Research (IGIDR). Other than *this*, Mr Ajay Shah and his coterie used to benefit by influencing FIIs and PNote activities on NSE. He also has profit sharing contracts with OPG Securities and Omnesys. On the basis of the complaints received by SEBI, information was sought from NSE, inter alia, with respect to engagement of Mr. Ajay Shah and Ms. Susan Thomas by NSE prior to 2012.

dd. *From the above, it is observed that Mr. Ajay Shah and Ms. Susan Thomas were actively associated with NSE and its subsidiaries. It is further observed that they were not only part of various committees of NSE and its subsidiaries but were also engaged in providing various other services to NSE. However, it is observed that NSE has not been able to provide any details regarding the nature of data shared with*

Mr. Ajay Shah and Ms. Susan Thomas and the data use contracts related to the assignments handled by them

ee. *During the course of examination, it was observed that Mr. Ajay Shah, Mr. Suprabhat Lala, who was the Assistant Vice President of Trading Operations of NSE during Examination Period, Ms. Sunita Thomas, who was wife of Mr. Suprabhat Lala, Ms. Susan Thomas who was wife of Mr. Ajay Shah and IFPL were connected with one another in following manner:*

a. *It is alleged that Ms. Sunita Thomas, who is one of the Directors of IFPL is the wife of Mr. Suprabhat Lala and sister of Ms. Susan Thoma*

b. *Ms. Susan Thomas is wife of Mr. Ajay Shah.*

c. *From the statement of Ms. Sunita Thomas recorded on July 26, 2017 it is noted that IFPL was started by her in 1999 wherein she has been a director since inception.*

d. *It is further observed that Chanakya Tradevistas LLP was incorporated by Ms. Sunita Thomas and Mr. Krishna Dagli as partners in February 2012.*

e. *Ms. Sunita Thomas further stated that IFPL has done software projects viz Parallel Risk Information System Management and Bond Index for IGIDR, for the contracts given by NSE.*

f. *Ms. Sunita Thomas has also stated that IFPL had profit sharing arrangement with its clients at different point of time.*

g. *It is observed that IFPL was also engaged in selling algo trading software to stock brokers and Mr. Krishna Dagli (since September 03, 2006 onwards) and Ms. Sunita Thomas (August 16, 1999 onwards) are the two directors of IFPL.*

ff. *It is observed from the email dated May 14, 2018 from NSE that IFPL was engaged by NSE for computing of LIX around 2009-10 and was also engaged earlier for the ZCYC application software. It is alleged that there were following inherent conflict of interest w.r.t. engaging of IFPL by NSE for carrying out various projects.*

a) *Mr. Suprabhat Lala was then Assistant Vice President, Trading Operations of NSE and his wife Ms. Sunita Thomas is the director of IFPL.*
b) *Mr. Ajay Shah was on the Board of NSCCL and his sister-in-law Ms. Sunita Thomas is the director of IFPL. Mr. Ajay Shah being aware of the nature of business of IFPL has never disclosed the same to NSE.*
c) *IFPL was engaged by NSE for computing LIX and it was also as part of its business operations was developing and selling algorithmic trading software to stock brokers.*

gg. *The inherent conflict and motive to provide undue support to IFPL and Ajay Shah is also evident form the fact that NSE did not award the contract for computing LIX to its own specialized subsidiary, i.e.,* *IISL and awarded the contract to IFPL which, prima facie, indicates the undue support provided by NSE to IFPL and Ajay Shah.*

It is observed from the statement of Mr. Ajay Shah recorded on April 03, 2018 that on being questioned about his participation in IFPL's business development, he submitted the following:

" ...The third connection was the LIX project, where Susan Thomas and I worked pro bono... "

It is further observed that Mr. Ajay Shah, in an email dated February 22, 2009, sent to Ms. Sunita Thomas with a copy marked to Mr. Krishna Dagli has stated as follows:

" ...you have to swear everyone to silence on the fact that the data that we are getting out of NSE for VIX and LIX is being used for algorithmic trading work - it would be a severe problem if this fact comes to light since NSE has not given _anyone_ else this data... " .

NSE, vide its email dated May 17, 2018 has submitted copy of an agreement dated January 19, 2009 between NSE and IFPL with regard to the development of project/software namely 'LIX'. It is observed from the perusal of the said agreement that in terms of the clause 4(b) of the said agreement, IFPL agreed that it shall not use the proprietary information of NSE except to evaluate such information for the sole limited business purposes of NSE. It is alleged on the basis of abovementioned discussions that the data received from NSE, without any written agreement, was prima facie, misused by Mr. Ajay Shah in connivance with IFPL, for some algorithmic trading work which was otherwise to be used for research for LIX (Liquidity Index). The aforesaid email of Mr. Ajay Shah dated February 22, 2009 and the fact that IFPL was involved in developing algo trading software and selling it to brokers for trading, prima facie, indicates that the data which was confidential and sensitive in nature had been misused for algorithmic trading purpose.

hh. In view of the above, it is alleged that Noticee 1/Mr. Ajay Shah, Infotech/IFPL and its directors viz, Noticee 3/ Ms. Sunita Thomas and Noticee 4/Mr. Krishna Dagli, in connivance with NSE and its officials employed a scheme/device/artifice in which Noticee 1, Noticee 2, Noticee 3 and Noticee 4 had fraudulently utilized the confidential and sensitive data of NSE for the purpose of developing algorithmic trading software and sale of the same to market participants to deal in securities market. This fraudulent act of Noticee 1, Noticee 2, Noticee 3 and Noticee 4, allegedly, resulted in compromising the integrity of the securities market. Therefore, it is alleged that Noticee 1, Noticee 2, Noticee 3 and Noticee 4 have allegedly violated the provisions of sections 12A (b) and 12A (c) of SEBI Act read with regulations 3 (c), 3 (d) and 4(1) of the PFUTP Regulations.

ii. Further, as mentioned in previous paragraphs, Mr. Ajay Shah/Noticee 1 was actively associated with NSE and its subsidiaries and was also part of the Board of NSCCL during 1996 to 2012. It is alleged that Mr. Ajay Shah, despite being aware of the nature of business of IFPL (as the director of IFPL viz, Ms. Sunita Thomas was his sister-in-law), never disclosed it to NSE at any stage about the inherent conflict. It is alleged that Noticee no. 1 has misused his position by virtue of being on the Board of NSSCL to place himself and his wife in various committees, research projects etc. at NSE and its *subsidiaries and has procured projects for IFPL/Noticee 2 which is a connected entity. Based on the above it is alleged that Noticee no. 1 has not conducted himself in a manner which is commensurate with the position occupied by him at NSCCL and has therefore violated the Code of Conduct for office bearers of the Stock Exchanges. As clearing functions were part of the function of stock exchanges as clearing corporations were not recognized by SEBI prior to 2012 and there was no distinction between stock exchange functions and clearing functions, therefore the Code of Conduct for directors on the governing board of the stock exchanges were mutatis mutandis applicable for the directors on the governing board of NSCCL. Therefore, it is alleged that Noticee 1 has, prima facie, misused the confidential data of the exchange and thereby, prima facie, violated Code of Conduct for office bearers of the Stock Exchange and provisions related to fairness & transparency, due diligence and conflict of interest as specified in, as specified in Master Circular no. CIR/MRD/DSA/SE/43/2010 of December 31, 2010 read with Section 3(2)(b) of the SCRA.*

jj. During the course of examination it was prima facie observed that potential confidential information originating from NSE was shared between Noticee 5/Suprabhat Lala and Noticee 3/Sunita Thomas through various emails mentioned below.

kk. It is further alleged on the basis of the email dated April 27, 2014 sent by Mr. Ajay Shah to Ms. Sunita Thomas, Krishna Dagli (noticee no. 3) and Suprabhat Lala (noticee no. 4) inviting them for a discussion on "NSE-HFT" that Mr. Suprabhat Lala is also in collusion with other Noticees for the aforementioned fraudulent activities.

ll. In view of the correspondences between Mr. Suprabhat Lala and Ms. Sunita Thomas (Director of Infotech Financial Pvt. Ltd and also wife of Mr. Suprabhat Lala) during 2009 to 2014, it is alleged that confidential internal data/information of NSE was being shared by Mr. Suprabhat Lalal resulting into serious lapses of confidentiality and compromise of the integrity of securities market.

mm. In view of the above, it is alleged that Mr. Suprabhat Lala, in collusion with other Noticees, employed a device/scheme/artifice and defrauded NSE by sharing confidential data of the exchange in a fraudulent manner to Ms. Sunita Thomas, IFPL and Mr. Krishna Dagli wherein IFPL was in the business of developing algorithmic software and selling it to market participants for dealing in securities market, compromising the integrity of the securities market. This alleged act of Noticee no. 5 is , prima facie, in violation of Sections 12A(b) and 12A(c) of SEBI Act read with regulations 3(c), 3(d) and 4 (1) of the PFUTP Regulations.

8. The Noticees made their submissions to the SCNs in the context of the allegations levelled against them in the respective SCNs. Therefore, in the interest of natural justice, opportunities of hearings were provided to the Noticees before the earlier AO and also before the undersigned. Pursuant to the hearings, some of the Noticees also made additional submissions during the course of the adjudication proceedings. It is relevant to mention that the Noticee no.3 viz. Ms. Chitra was arrested by the Central Bureau of Investigation (**'CBI'**)

on March 06, 2022 and was subsequently lodged in the Tihar Jail, New Delhi. In this context, in the interest of natural justice a hearing notice dated April 22, 2022, during the course of the instant adjudication proceedings, was served on the aforementioned Noticee viz. Ms. Chitra through the office of Superintendent of Prisons, Tihar Jail. The relevant acknowledgement copies duly signed by her, in respect of receiving the hearing notice, was also obtained. Thereafter, the authorized representatives of the aforesaid Noticees (mentioned in the table below) attended the hearing on the scheduled dates and availed the opportunity of hearing provided to the Noticees. The details pertaining to replies of the Noticees, dates of hearing, final submissions made by few Noticees post hearing are given in the table below:

Table-2

Noticee no.	Noticee name	Details of Replies submitted on merits	Dates and Mode of Hearing	Details of Authorized Representatives who attended the hearing on behalf of the Noticee	Date of Final submissions
1	National Stock Exchange Limited	i. February 12, 2019 ii. May 23, 2019 iii. January 21, 2020 iv. February 18, 2020	i. February 18, 2020 (Physical mode) ii. May 19, 2022 (virtual mode)	Mr. Somasekhar Sundaresan, Mr. Rajendra Barot, Mr. Harshit Jaiswal, Mr. M Vasudev Rao and Mr. Saksham Kaushik	May 31, 2022
2	Sh. Ravi Narain	i. January 14, 2020 ii. March 06, 2020	i. February 18, 2020 (Physical mode) ii. June 13, 2022 (virtual mode)	Mr. P N Modi, Senior Counsel and Mr. Robin Shah, Advocate	NA
3	Ms. Chitra Ramakrishna	i. February 24, 2020 ii. March 13, 2020 iii. September 27, 2021	i. May 12, 2022 (virtual mode)	Mr. Piyush Raheja, Advocate and Ms. S Priya	i. June 20, 2022
4	Mr. Ajay Shah	i. September 13, 2019 and March 06, 2020	i. February 18, 2020 (Physical mode) ii. June 15, 2022 (virtual mode)	Mr. Shyam Mehta, Sr. counsel, Ms. Sneha Sheth, Advocate and Ms. Palak Agrwal, Advocate	i. June 21, 2022
5	Infotech Financial Services Private Limited.	i. September 13, 2019 ii. March 06, 2020 and	i. February 18, 2020 (Physical mode)	Mr. Zerick Dastur, Advocate, Ms. Sneha Sheth, Advocate and Ms. Palak Agrawal, Advocate	i. June 21, 2022
6	Mr. Krishna Dagli				

7	Ms. Sunita Thomas	iii. November 30, 2020	ii. June 15, 2022 (virtual mode)		
8	Mr. Suprabhat Lala	i. October 24, 2018, ii. September 11, 2019, iii. February 18, 2020, iv. March 16, 2020 v. June 07, 2022.	i. February 18, 2020 (Physical mode) ii. June 20, 2022 (virtual mode)	Mr. Joby Mathew, Advocate, Ms. Nitiksha Parmar, Advocate and Mr. Anshuman Sugla, Advocate	i. June 22, 2022

9. Briefly the Noticees, inter-alia, made the following submissions vide the aforementioned replies as stated in the Table- 2:

<u>*Submissions of NSE/Noticee no.1*</u>

i. *In a nutshell. the proceedings against the Noticee are liable to be dropped for the following reasons:*
a. These Proceedings are barred bY cause of action estoPel inasmuch as the Learned Whole Time Member of SEBI by an order dated April 30, 2019 ("11B Order") in connection with identical allegations as the present SCN, consciously did not choose to impose a monetary penalty of despite being specifically empowered to do so under Sections 11 (4A) and 11B(2) of the SEBI Act:
b. There is all inordinate delay in the initiation of these proceedings as the cause of action pertains to agreements executed as far back as in 2009 and 2013 i.e. between 9 to 5 years, prior to the SCN;
c. The 11B Order has exonerated the Noticee of the charge of breach of the PFUTP Regulations and has not held the Noticee guilty of breach of Section 4(1) of the SCRA. The 11B Order is binding on the Learned Adjudicating Officer and ought to be followed' and
d. Besides, Section 11(aa) of the SCRA has no application or nexus with the charge against the Noticee in the SCN;
Submissions
A. Proceedings barred by cause of action estoppel

i. *At the threshold, the Noticee submits that these proceedings under Chapter VI-A of the SEBI Act, are barred by the principle of cause of action estoppel and hence not to be continued.*
ii. *From the above, it evident that by virtue of amendments to the SEBI Act where Sections 11 (4A) and 11B(2) were inserted, SEBI was expressly empowered to impose a penalty under Chapter VI-A of the SEBI Act, in the course of and as an outcome of the proceedings initiated under Sections Il and 11B. The amendment took effect from March 8, 2019.*
iii. *Thereafter, on April 30, 2019, the Impugned Order under Section 11B came to be passed. The SCN issued earlier on September 12, 2018 on which no decision had been taken by March 8, 2019, when Section 1 1B of the SEBI Act was amended to subsume in it the power to impose penalty under Chapter VI-A of the SEBI, therefore effectively stood overtaken in the eyes of law by an act of parliament subsuming such SCN into the then pending proceedings, per the 11B Order.*
iv. *Therefore, on April 30, 2019 i.e. when the 11B Order was passed by SEBI, SEBI consciously did not use such power to impose any penalty under Chapter VI-A although such provision was in force and although the notices had been issued under Sections 11 and 11B of the SEBI Act.*

Inordinate delay and laches vitiates these proceedings

v. *The SCN pertains primarily to agreements executed in 2009 and 2013 whereas the SCN was issued in 201 8, There is a delay of over 9-5 years in issuing the SCN. It is well settled that while the SEBI Act prescribes no limitation period for initiation of quasi-judicial proceedings these proceedings must be initiated within a reasonable time.*

vi. *The Ld. WTM went on to exercise his powers to issue remedial directions, which directions have been stayed by the Hon'ble SAT vide order dated July 9, 2019. However, the instant proceedings are explicitly penalty proceedings for which a specific violation of a specific provision is a mandatory and necessary ingredient. If such ingredient is not found, no penalty can follow. Two charges are relevant, viz:-*

(i) alleged fraud under S, 12A(b) and (c) of the SEBI Act read with Regulation 3(c), (d) and 4(1) of the PFUTP Regulations;

(ii) alleged violation of Section 4(l)(a) of the SCRA. 011 the former i.e. allegation of fraud, the Lad. WTM has expressly exonerated the Noticee.

vii. *The 11B Order, which is rendered on the same set of facts, is binding for the purposes of these proceedings. Once the 11B Order has exonerated the Noticee of a certain charge, the Adjudicating Officer cannot render a contrary finding and penalize the Noticee for the same. Reliance is placed on the judgement of the -Hon'ble SAT in Runicha Merchants Pvt. Ltd. v. SEBI, (Appeal No. 772 of 2021 ,Order dated January 6, 2022 @ paragraphs 4 to 7 See Sr No. 8 of the Compilation of Judgments).*

viii. *Therefore, the question of imposing a penalty under Section 15HA of the SEBI Act or under Section 23H of the SCRA, on the Noticee does not arise*

ix. *The SCN has erroneously charged the Noticee under Section 4(1)(a) of the SCRA for alleged lack of due-diligence with respect to the execution of agreements in 2013 and 2017 with IGIDR/ Dr. Ajay Shah/ Dr. Susan Thomas.*

x. *Section 4 (1)(a) of the SCRA empowers the Central Government to require the byelaws of a stock exchange seeking registration to be in conformity with conditions that may be prescribed, with a view to ensure fair dealing and to protect investors. Section 4(1)(a) is not an obligation on the stock exchange. It is a provision that enables to the Central Government to "prescribe" conditions. The word "prescribed" is defined under Section 2(e) as "prescribed by way of rules made under the Act". The rules made by the Central Government under the SCRA are the Securities (Contracts) Regulation Rules, 1957 ("SCRR").*

xi. *The Noticee followed all regular internal processes to enter into the Infotech Agreement. At the outset, the Noticee states that neither Dr. Ajay Shah nor Dr. Susan Thomas, nor -for that matter, Mr. Suprabhat Lala were involved in the process or entering into the Infotech Agreement. Therefore, the allegation in the SCN that the Noticee and its officials "ignored all issues /conflict of interest is erroneous and is in fact contrary to the material on record.*

xii. *As is evident from the material on record, neither Dr. Ajay Shah nor Dr. Susan Thomas were members of the Standing Committee I of the Noticee. Similarly, Mr. Suprabhat Lala, who was the Vice President, Trading Operations of NSEIL at the time of award of contract to Infotech, was not a member of the Standing Committee I. Therefore, the above persons did not have any connection with the decision of the Standing Committee to award the contract to Infotech. Further, no evidence whatsoever has been adduced to demonstrate how Dr. Ajay Shah, Dr. Susan Thomas or Mr. Suprabhat Lala could have possibly influenced the award of the Infotech Agreement in any manner.*

xiii. *The SCN also refers to SEB1's Master Circular No. CIR/MRD/DSA/SE/43/2010 dated December 31, 2010 ("Master Circular") in the context of allegations regarding the award of contracts and provision of data to Infotech. It does not, however, specify which provisions of the Master Circular have been alleged to have been violated by the Noticee.*

xiv. *It is clear that under the Companies Act, 2013 as well as SEBI's own Master Circular, there is no prohibition against entering into a transaction with a person in whom a director or functionary is interested. The only precaution required to be taken in order to avoid a conflict of interest, is that a director or a functionary or shareholder (as the case may be) must not participate in any discussion or decision in respect of any matter in which he or she is in any way, directly or indirectly, concerned or interested.*

xv. *It is submitted that the above principles have been fòllowed by the Noticee in awarding contracts to Infotech, and neither Dr. Ajay Shah, Dr. Susan Thomas nor Mr. Suprabhat Lala were in involved any way in making the decision to award the contract for LIX to Infòtech. In light of the same, there is no merit in the allegation made in the SCN, that the Noticee or its management ignored conflicts of interest in awarding the Infotech Agreement to Infòtech. The Noticee submits that a conflict of' interest would only have arisen if Dr. Ajay Shah, Dr. Susan Thomas or Mr. Suprabhat Lala would have been part of the committee that made a decision in this regard. Since this was not the case, the Noticee submits that it has complied with the applicable legal and regulatory requirements. Therefore, it is submitted that the SCN cannot now seek to hold the Noticee to any higher standard, and allege that it failed to avoid a conflict of interest. It is submitted that the Noticee complied with applicable law and SEBI's circulars in this regard.*

xvi. *Therefore, the Noticee followed the standard internal process in the award of its contracts to external entities. There were no internal conflicts of interest in the award of the contract to Infotech. The SCN thus erroneously calls into question the strategic and business decision taken by the Noticee, in awarding the contract to Infotech, which was bona/ìcle and purely intended towards market innovation and the development of sophisticated financial markets.*

xvii. *In any event and without prejudice to the above, the LIX project did not go live and out of the total contractual commitment of INR 10 Lakh (as stated in the Infotech Approval Note), only INR 2 Lakh was paid by the Noticee. The LIX software was ultimately developed at a much later stage (during the time period 2012 to 2013), by the Noticee's in-house resources, which had by then developed the requisite capacity and expertise to do so. This was done without any contractual relation with Infòtech, and 'NIFTY 100 Liquid 15' was launched by the Noticee on July 8, 2013. As such, the allegations relating to absence of governance and conflict of interest in relation to Infotech Agreement are moot.*

xviii. *In the light of the foregoing, it is denied that the Noticee has compromised on the Exchange's governance or has failed to do proper due diligence, ensure fairness and transparency and avoid conflict of interest, as alleged or at all. It is further denied that the Noticee has violated the Master Circular read with Section 3(2)(b) of the SCRA, as alleged or at all.*

xix. *It is submitted that, as regards the nature of data shared for development of LIX software, no real time data was given to Dr. Ajay Shah and Dr. Susan Thomas from the Noticee's colocation facility. Rather, data compiled at the end of the day was being provided to them for research purposes only.*

xx. *It is submitted that while there was no separate data use contracts prior to 2012, the data was being shared with a small number of researchers known to have interest in capital markets only for research purposes. This data was also available to all other persons in the market. In any event, post 2012, with* *research on Indian market data building up, policies were evolved around data sharing for research sharing purposes*

xxi. *Therefore, there was no default committed by the Noticee merely because it shared such data with Infotech and / or Dr. Ajay Shah and/or Dr. Susan Thomas. As this historical data was being made available to all persons, anyone including Infotech could have obtained and used this data. Since the data was available to all those who wanted access to such data, it is well recognized that such data would be regarded as being publicly available, and would not be considered 'confidential' or 'exclusive' in nature.*

xxii. *To the understanding of the Noticee, algo trading requires real-time data, and not historical data. The SCN does not show how historic trade data (which was available to all persons) could provide any advantage or benefit to a recipient, or give the recipient an edge in developing algorithmic trading software. We also note (without confirming or denying the same) that Infotech has, in its reply to the show cause notice received by it, stated that the historical data provided to them for the LIX project could not be used to develop Infotech's algorithmic trading software / platform. Therefore, the burden of proof in this regard has not been discharged.*

xxiii. *Even otherwise, as submitted above, the Noticee cannot be held liable for any alleged misuse of such data, as it had fulfilled its duty by imposing contractual obligations on Infotech to maintain confidentiality of the data and use the data for the sole purpose as envisaged in the contract. There is no material in record to even suggest that the Noticee was aware of any alleged misuse, or that it 'colluded' with Infotech and others to provide data to Infotech only so that such data could be misused.*

xxiv. *In light of all of the above, it is submitted that the Charges under the SCN are entirely unsustainable*

xxv. *It is submitted that Section 4(1)(a) of the SCRA does not apply to the present case, as the same lays down conditions for recognition of stock exchanges. As such, this section does not have any bearing on the facts and circumstances of the instant case. The SCN does not show that non-compliance of which conditions of the grant of recognition to the Noticee, has resulted in the violation of Section 4(l)(a) of the SCRA. As such, the SCN lacks in material particulars. Further, it is submitted that procedural lacunae, in the making and execution of agreements for engagement with IGIDR, relate to unsustainable allegations. Such allegations do not warrant measures envisaged under Sections 11 and 11B of the SEBI Act, which are intended to protect the market.*

xxvi. *The SCN alleges that by sharing confidential information without any agreement in place, the Noticee has exposed such data to misuse and thereby compromised on the exchange governance. It is has been further alleged that this has resulted in the Notice violating Sections 12A(b) and 12A(c) of the SEBI Act read with Regulations 3(c), 3(d) and 4(1) of the PFUTP Regulations*

xxvii. *No attempt has been made to show how the ingredients of the offences under Regulations 3 and 4 have been fulfilled. This flies in the face of the ruling of the Hon'ble SAT in several cases.*

xxviii. *It is submitted that the test of preponderance of probabilities cannot be so dilutive that it allows levelling of charges on mere guess-work and conjectures. Such an evidentiary standard, if adopted, would shake the very foundation of the business of the entity in question and may adversely affect the same. Even though the test for fraud under the PFUTP Regulations is that of preponderance of probabilities, the Hon'ble SAT has held that in the absence of "reasonably strong evidence", even in a civil proceeding, a person cannot be held guilty and awarded punishment. While there is no mathematical test to determine the preponderance the probabilities, the test certainly excludes "a trivial or a merely possible doubt". The preponderance must be borne out of a doubt based upon reason and common sense" and "evidence in the case".*

xxix. *It is submitted that none of these ingredients are fulfilled in the instant case. The mere sharing of data with researchers such as Dr. Ajay Shah / Dr. Susan Thomas / IGIDR without any data use contract, or entering into a bona fide contract with Infotech on the basis of past experience and expertise, cannot alone be construed as fraudulent conduct on the part of the Noticee. The decision to share such data and execute such contracts was in the interest of market development and innovation. In any event, adequate undertakings were executed after 2012 for sharing data with market researchers.*

xxx. *The SCN has failed to demonstrate how the above test has been fulfilled to hold the Noticee liable under the PFUTP Regulations. There is no material or evidence on record whatsoever to suggest that the Noticee has in any way "compromised the integrity of the securities market„76 or that it was "a part of the overall scheme/device/arti/îce„77 for sharing confidential data. On the contrary, the record suggests: (i) that the Noticee imposed adequate safeguards in respect of data sharing on counterparties, in the form of contractual confidentiality, end-use and disclosure obligations; (ii) that the data shared by the Noticee was historic in nature; and (iii) that the data shared by the Noticee was not unique or special data, but that the same data was also made available to other researchers and commercial users on a fair and equitable basis.*

xxxi. *It is further submitted that, while the Noticee has been charged with contravention of provisions of the PFUTP Regulations in this regard, there is no allegation of any market wide impact nor has there been substantial losses caused to investors, including small shareholders or retail shareholders attributable to the Noticee's conduct. Indeed, there is no allegation that the Noticee benefitted or derived any ill gotten gains to the prejudice of the interest of the investors in the market. On this ground alone, the allegations in the SCN deserve to be rejected. It is further submitted that the Noticee has at all times sought to comply with, and has diligently complied with, all directions issued by SEBI, from time to time, in the matter. The Noticee has at all times exercised high standards of integrity and fairness in all of its dealings, and has conducted its business in compliance with applicable laws and regulations.*

Submissions of Mr. Ravi Narain/Noticee no.2

i. *The SCN in question does not contain any specific allegation against me and the contents thereof are vague and general in nature. It is not identified as to what specific acts by me amounted to any violation of any particular law, rule, regulation or circular.*

ii. *The SCN apparently assumes that I had on my own unilaterally awarded certain contracts, and assumes that while awarding the same, I was aware that there was some alleged conflict of interest. There is no basis or material to support any such allegations and both the said assumptions and presumptions are factually incorrect.*

iii. *The SCN appears to proceed on the incorrect assumption that the data shared by the NSEL with the 3 rd parties under the contracts / arrangements referred to in the said SCN, was real time, sensitive and confidential trading data. As far as I am aware, this is factually false. As far as I am aware, the said data historical data and no confidential or sensitive data or information was ever shared as incorrectly assumed or otherwise.*

iv. *Most pertinently, the SCN relies on the "statements" of third parties. In fact, it appears that the entire foundation of the allegations in the Impugned Order are the purported statements and emails of Mr. Ajay Shah and other third parties. For some reason, SEBI appears to have assumed that the same are totally true and accurate, and the same is totally incorrect. I deny the correctness, veracity and interpretation of the said statements and the alleged email. It is submitted that I must be given an opportunity to cross* *examine all such person/s. It is settled law that as a matter of the most basic principles of natural justice, if any allegedly recorded statements or any letter or email of any other party is sought to be in any manner used against me in the present proceedings, then I must be given an opportunity to cross examine such person/s. Apart from the fact that failure to grant such opportunity will amount to a gross breach of natural justice and result in a gross miscarriage of justice, if cross examination is not permitted, no statement or correspondence of any of the other parties can in any manner be used against me, and the same have to be deemed to be struck off from the record. In that case, the entire foundation and basis Of the disappears, the same becomes meaningless, and I am bound to be discharged from the same.*

v. *The SCN does not even attempt to quantify any gain made or loss suffered by any party as a result of the baseless allegations made against me and indeed there can never be any such gain to me or loss to anyone. I say that the SCN fails to consider that the organizational structure of NSEIL included various departments and committees which had well qualified personnel, All matters would obviously be assigned to and looked into by the persons or committed which had the core expertise, knowledge and ability to deal with the same.*

vi. *It is most pertinent to note that admittedly, personally had no conflict of interest. It is not even alleged that I in any manner received any personal interest or benefit from any of the said contracts. It is most pertinent to note that admittedly, personally had no conflict of interest. It is not even alleged that I in any manner received any personal interest or benefit from any of the said contracts.*

vii. *The SCN does not even allege that any member of the Board of Directors / Governing Board had any conflict of interest qua the said contracts. As aforesaid, the SCN appears to proceed on the incorrect assumption that the data shared by the NSEIL with the 3rd parties under the contracts I arrangements referred to in the said Adjudication Notice, was real time and confidential trading data. As far as I am aware, this is factually false. As far as I am aware, the said data was historical data and no confidential or sensitive data or information was ever shared under the said contracts as incorrectly assumed or otherwise.*

viii. *I am not aware of and do not admit that Infotech used any such data provided to it to make any algo trading software as alleged and I put SEBI to the strict proof of the said allegation. No material or evidence has been produced to substantiate any such allegation. Given the generic nature of the said data, it is most unlikely that the same could have been used to make any algo trading software as alleged or otherwise.*

ix. *As aforesaid, since 2009, as a matter of fact, the day to day management of the NSEIL was with the said Joint Managing Director. retired from the post of MD and CEO in March 2013, and therefore had nothing to do with the alleged contracts of 2017. It is pertinent to note that the SCN does not even allege that there was any conflict of interest in awarding contracts to IGIDR. In any event, there could be no allegation of conflict of interest for the reasons as aforesaid.*

x. *Section 4 (1) (a) of the SCRA only relates to the contents of thc Rules and Bye Laws or the Stock Exchanges and that the same have to be vetted and approved by SEBI at the time of granting recognition by a Stock Exchange. It is therefore submitted that the same is completely irrelevant to the facts of the present case.*

xi. *At the outset, it is submitted that sections 12A(b) and 12A(c) of the SEBI Act and Regulations 3(c), 3(d) and 4(1) of the PFUTP Regulations all relate to fraud or unfair trade practices in dealing in securities or issue of securities. Therefore, none of the said provisions can at all apply to the allegations in the SCN.*

xii. *I submit that the allegations in the SCN of any violation of Regulation 3(c), 3(d) along with Regulation 4 (1) of the PFUTP Regulations by me, are untenable and the ingredients of the provisions cannot be applied to the facts of the present case at all. In fact, no violation of the PFUTP Regulations can at all be alleged against me at all. None of my conduct was at all fraudulent, whether as defined in the PFUTP Regulations or otherwise.*

xiii. *I further submit that the definition of fraud' under the PFUTP Regulations requires a person to do an act or omission with a view to 'induce another person to deal in securities'. r submit that the SCN has failed to attribute any such conduct towards me in any manner whatsoever. It is denied that any ofthc data furnished by NSEIL to Infotcch under the said Agreement was used to develop any algorithmic software or thal the same was sold to market participants as alleged in the SCN or othcrwisc and SEBI is put to the strict proof thereof. Not a single iota of material or evidence has been produced to substantiate any such allegations, and the same appears to be pure imagination, conjecture and surmise.*

xiv. *An allegation has also raised in the SCN at para 18 (c) that while the approval note for the contract is dated 12.11.2012 and the same states that the Agreement has been signed, yet the year 2013 is typed on the Agreement. It is submitted that the same is also an insignificant typographical error due to an inadvertent oversight and merits no allegations, much less an SCN. The said inadvertent lapse has taken place about 8 years ago and in any event, it is submitted that the Noticee No. 2 as MD & CEO can hardly be held responsible for such insignificant, trivial and venial lapses, more so when he is not a signatory to the said Agreement and none of the parties to the said Agreement have raised any allegations as to its completeness or validity. In fact, as aforesaid, the same has been fully performed by the thereto.*

xv. *I further submit that for Regulations 3 and 4 of the PFUTP Regulations to apply, an act alleged to be fraudulent "should have an element of some motive or ill-conceived idea or design", but there is no such allegation against me in the SCN. Therefore, the entire allegations against me are misconceived and untenable.*

xvi. *For the reasons as set out hereinabove in detail, no question could arise of alleging that I had 'failed to take cognizance" of any alleged conflict of interest, more so when there was no conflict of interest as hereinabove explained in detail. I reiterate that there was no conflict of interest as falsely alleged or otherwise. It is reiterated that neither Mr. Suprabhat Lala nor Mr. Ajay Shah nor their respective wives had any role whatsoever in the decision of the NSEIL to award the said contracts. As far as I am aware, none of them were in any of the Committees of the NSEIL which considered or approved the execution or the said contract.*

Submissions of Ms. Chitra/Noticee no.3

i. *The alleged conflict of interest emerges as the director of IFPL was one Ms. Sunita Thomas, who is the spouse of Mr. Suprabhat Lala, who at the relevant time was AVP (Trading Operation) of NSEIL and on the date of initiation of these proceedings was heading the Business Development function. It is further alleged that Mr. Ajay Shah was also the brother in law of Sun-ita Thomas as she is the sister of his wife Susan Thomas.*

ii. *The Noticee No.3 does not admit that these allegations of conflict of interest are correct. There is no material on record to show that Mr. Lala was connected with the decision-making process by Noticee No.l for awarding the contract to IFPL, or that he influenced the decision making process in any manner. In fact, there is no material to demonstrate that , the agreement with IPFL was a sham agreement or that*

IPFL otherwise was not competent to receive the contract from Noticee No. 1. As such any connection between Mr. Lala and IFPL would not on its own raise an issue of conflict of interest or the allegation that this alleged conflict of interest was ignored. SEBI must demonstrate with material available with it that a conflict of interest actually arose or that the same was ignored. Such allegations cannot be raised on mere speculation. Mere familial relations between employees of NSEIL and outside contractors of NSEIL is not sufficient to automatically presume existence of a conflict of interest.

iii. *33.6 Even otherwise, assuming without admitting that the allegations of conflict of interest are correct, in the entire SCN there is no discussion as to how Noticee No.3 had knowledge of, or was aware of this purported conflict at all. In the statement of Mr. Ajay Shah and Ms. Sunita Thomas recorded by SEBI on 3rd April, 2018 and 26th July, 2017 respectively, there is no query put to them as to whether they had disclosed the alleged conflict of interest to anyone in NSEIL. Noticee No. 3 respectfully question to Mr. Ravi Varanasi regarding the policies in relation to data sharing. In fact, Mr Ravi Varanasi, in response to queries on the data sharing, has stated that no data was shared with Mr Ajay Shah, but the data was in fact shared with IGIDR under agreements. Further, SEBI has not recorded the statement of Mr. Mohanty or at least his statement has not been provided to Noticee No.3 before proceeding to ascertain the requisite policies in relation to data sharing. It is submitted that SEBI has proceeded to levy allegations inter alia that confidential data of the NSEIL was being shared without any agreement, on the basis of speculation and pre-mature investigation carried out by it. From the records of SEBI made available to Noticee No.3 by noticee no.l in the circumstances aforesaid, it appears that the SEBI was well aware that even when data was provided to IGIDR in 2003, the same was under the cover of various letters which contained confidentiality clauses. This itself indicates that the practice was prevalent in Noticee No. 1 much prior to the Noticee No. 3 being appointed as Joint MD and subsequently MD.*

iv. *Noticee No. 3 states that on a bare perusal of the SCN it is apparent that SEBI has relied upon facts which are not connected with Noticee No. 3. In fact there is no stand-alone statement/ finding/ observation against Noficee No. 3 which would justify SEBI's action of arraying Noticee No. 3 as a noticee to the said SCN. There is no material on record that in any manner indicates that Noticee No. 3 was aware of any of the alleged actions or omissions, or has in any manner participated in the said actions or omissions, much less procured any benefit whatsoever in her capacity as a Joint Managing Director and/or the Managing Director and/ or the Chief Executive Officer of NSEIL or otherwise.*

v. *36.2 It is also pertinent to note that, on a perusal of the SCN, it is clear that, the instances noted in the SCN cannot in any manner be imputed to Noticee No. 3 and at best, can be attributable to such third parties/ entities as are referred to in the SCN. From the contents and the manner in which this SCN is issued, it appears that the Noficee No. 3 is being targeted and held responsible for alleged actions of such other third parties/ entities. As stated above, it is these third parties who are, if at all, responsible for the alleged misuse of confidential and sensitive data of NSEIL, which was shared with them by NSEIL in a bona fide manner and therefore Noticee No. 3 cannot be held liable for any alleged violation. In this regard, Noticee No. 3 states that SEBI is merely attempting to impute and pass off responsibility of the misdoings of the third parties/ entities on inter alia Noticee No. 3 without any just cause and merely because Noticee No. 3 was in charge of NSEIL at the given point in time.*

vi. *36.3 Noticee No. 3 states and submits that it is incorrect and imprudent on part of SEBI to charge Noticee No. 3 solely on the ground that she was the Joint Managing Director of the NSEIL, at the relevant frne. The same incorrectly and imprudently presupposes the fact that she was responsible for all the day-to-day affairs of the NSEIL and that she had any role to play inter alia in the alleged misuse of the confidenüal data of the exchange. As pointed out hereinabove, apart from baseless allegation, no* material has been brought out by SEBI in support of the same. Therefore, Noticee No. 3 submits that the SCN is misconceived and ought to be withdrawn forthwith.

vii. *Noticee No. 3 states that she is not responsible for any actions/ omissions, overt or covert as noted in the SCN and therefore no inquiry should be held against her in terms of Rule 4 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicaüng Officer) Rules, 1995 read with section 15-1 of the SEBI Act, and Rule 4 of the Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 2005 read with section 23-1 of the SCRA, and hence, penalty should not be imposed under the provisions of sections 15HA and 15HB of the SEBI Act, and secüon 23H of the SCRA wherever applicable for the alleged violations of PFUTP Regulations and SCRA. Noticee No. 3 submits that for reasons stated hereinabove, the present SCN qua her ought to be withdraw forthwith.*

viii. *In response to paragraph no 1, Noticee No 3 states that the contents thereof are a matter of record and do not warrant a response from Noticee No 3.*

ix. *In response to paragraph nos. 2 and 3 of the SCN, Noticee No. 3 states that the alleged dated 1st June 2017 and 7th September, 2017 purportedly sent by Jamie Jones and Daniel Mark respectively are anonymous letters comprising merely defamatory and scandalous statements. Such anonymous complaints cannot be looked at all without first ascertaining the antecedents of the complainants. In fact, during the proceedings conducted before the learned WTM in respect of Show Cause Notice no EFD/DRA-111/DSR/RKS/NM/18800/1/2018 dated July 3, 2018, at the hearing held on 12 February 2019, advocates appearing for Mr. Ajay Shah had pointed out that they analysed the record of the anonymous complaint as provided by SEBI and discovered that the same was in fact drafted by an employee of a competitor of Noticee No.l i.e. Financial Technologies (India) Limited with whom NSEIL had a long standing disputes. It is obvious that such complaints are motivated and malafide and can never be the basis for any investigation. The same are baseless and unsubstantiated information / documents obtained by SEBI with respect to the confidential / sensiüve data allegedly shared by NSEIL without the requisite agreement / data share confracts to enable Noticee No 3 to answer the said observation in the SCN. However, SEBI has refused to provide the said documents / information. Therefore, it is submitted that the said assertion is unsubstanüated in facts and Noticee No 3 denies the same as alleged or at all.*

x. *In response to paragraph no. 7 of the SCN, Noticee No. 3 states that the statements made therein appear to be deduced from the deposition/ statement of Ms. Sunita Thomas (Annexure 5 to the SCN). In this regard, Noticee No. 3 states that neither was she present during the recording of the statement of Ms. Sunita Thomas nor has she been provided with an opportunity to cross-examine Ms. Sunita Thomas. Consequently, Noticee No. 3 is not in a position to verify the veracity of the said statement and therefore cannot comment on the inferences drawn in the paragraph under reply. Significantly there was no question posed to Ms. Sunita Thomas about whether she or her husband Mr. Lala, or her sister Susan Thomas, or her brother-in-law Mr. Ajay Shah had disclosed their relationship to NSEIL, much less Noticee No.3. In the absence of any such corroboration being sought, SEBI cannot rely on this statement at all. Without prejudice to the aforesaid, it is stated that NSEIL, as far as Noticee No.3 recollects, at that time, had a standard internal policy for disclosure of interest which was in line with the corporate laws prevailing at that point in time. Each employee of NSEIL (including Mr. Suprabhat Lala) was obligated to comply with the same. Further, NSEIL had also appointed competent, qualified and experienced functional heads for handling the day to day operations. It was the obligation of these functional heads of various departments (including the Human Resources department) to ensure that* *their subordinates/ employees of NSEIL had complied with all the internal policies of the company (including disclosure of interest) and were conducting themselves in a manner which was not prejudicially to the interest of NSEIL.*

xi. *In response to paragraph no. 8 of the SCN, Noticee No. 3 states that the contents of the paragraph under reply appear to be an extract of the answer given by Mr. Aja Shah durin his deposition/ statement recorded by SEBI. In this regard, Noticee No. 3 states that neither was she present during the recording of the statement of Mr. Ajay Shah nor has she been provided with an opportunity to cross-examine Mr. Ajay Shah. Consequently, Noticee No. 3 is not in a position to verif the veracity o statement and therefore warrants no comment on the paragraph under reply. As in the case of Ms. Sun-ita Thomas, even Mr. Shah was not asked any question as to whether he or his wife Susan Thomas or his brother in law Mr. Lala, or his sister in law Sunita the conflict of interest made by SEBI during the course of examination, Noücee No. 3 repeats and reiterates the submissions made hereinabove as if the same were specifically reproduced herein.*

xii. *In response to paragraph no. 13 of the SCN, Noticee No. 3 states that the statements made therein are merely conjectures and surmise. Noticee No. 3 states that awarding of contract to particular entities is a decision which is driven by the functional heads based inter alia on their past experiences, delivery times etc. with such particular entities. After the functional heads have idenffied the entity through which they proposed to have the requisite work executed, the approvals of the joint managing director and/or the managing director is complied with. As aforesaid Noticee No.3 cannot presently recall the exact circumstances due to which the contract was awarded to IFPL and has no access to the records of Noticee No.l on this issue. In any event the decision making process in Noticee No.l was well defined and required multiple checks and recommendafion before awarding of the contract Be that as it may, it is stated that in the past, NSEIL has, despite having its own specialized subsidiaries contracted work to third parties, as it has deemed fit. NSEIL dealt with its subsidiaries on arms' length basis. One such instance is when NSEIL had contracted Cognizant for developing its trading system, despite its specialized subsidiaries i.e. NSE Tech and NSE IT being in the same business as that of Cognizant. It is not at all unusual or out of the ordinary for NSEIL to outsource its work to other third parties despite having its own specialized subsidiaries in the same level playing field. Consequently, awarding the confract for computing LIX to IFPL instead of IISL is inconsequential and has no bearing on the present case. As aforesaid, SEBI has not indicated that IFPL was not competent to be awarded the contract.*

xiii. *In response to paragraph nos. 14 to 16 of the SCN, Noticee No. 3 states that without prejudice to the fact that SEBI has made joint allegations against her, NSEIL and Mr. Narain (i.e. noticee no.2) without particularly ascribing/ atfributing any instance to her specifically, she states as follows:*

xiv. *With regards to the conflict of interest, Noticee No. 3 repeats and reiterates all that has been stated hereinabove as if the same was specifically reproduced herein. As aforesaid the allegations of conflict of interest itself are unfounded.*

xv. *In any event for the sake of clarity, Noticee No. 3 states that she had no knowledge whatsoever of the alleged conflict of interest. As far as Noticee No. 3 recollects, no such complaint/ communication/ correspondence was ever brought before Noticee No. 3 in her capacity either as a Deputy Managing Director or*

xvi. *Noticee No. 3 denies that her conduct has resulted in compromising the integrity of the securities market which resulted in violations of the provisions of sections 12A(b) and 12A(c) of the SEBI Act, read with regulations 3(c) and 3(d) and also read with regulation 4(1) of the PFUTP Regulations as is alleged or* *even otherwise. Noticee No 3 also refers to the Order of the Learned WTM who held in the Order dated April 30, 2019 that there is no evidence to establish collusion or connivance by*

xvii. *NSE officials and / or that they deliberately extended help to Mr Ajay Shah / IFPL enabling them to misuse data. Further, it was also held that there is no evidence to show that the noticee herein was aware of any hidden agenda of Mr Ajay Shah in respect of his intent behind the LIX project as alleged or at all. These allegations were dropped as against Noticee No 3. In these circumstances, as on date, there is no evidence whatsoever, whether set out in the SCN or at all, that Noticee No 3 indulged in any fraudulent or unfair trade practice and on that ground the SCN and these proceedings ought to be quashed and set aside. In this regard, Noticee No. 3 repeats and reiterates all that has been stated herein above. Noticee No. 3 states that the present SCN is nothing but a frivolous attempt on the part of SEBI to somehow impute liability on Noticee No. 3 for the alleged actions and misdoings of third parties.*

xviii. *In any event, and without prejudice to the aforesaid Noticee No. 3 fails to understand as to how any case is made out for violation of Section 12A(b) and (c) of SEBI Act, Regulaüon 3(c), 3(d) and 4(1) of the PFUTP Regulations, Section 3(2)(b) of the SCRA, and / or Master Circular dated December 31, 2010.*

xix. *There is no identification in the SCN, as to which acts would amount to violation of these provision. In so far as regulation 3 is concerned you will appreciate that Noticee No. 3 has also not employed any device, scheme or arüfice to defraud in connection with dealing in or issue of securities of the Company either prior to the listing of the securities or any point of time thereafter and SEBI has not produced any material on record to attribute violation of the said sub-regulation to Noücee No. 3. Noticee No. 3 has also not engaged in any act, practice, course of business which operates or would operate as a fraud or deceit upon any person in connection with any dealing in or issue of securities of the said Company and SEBI has not produced any material on record to attribute violation of the said sub-regulation to Noticee No. 3. You would appreciate that there is no material in the SCN to demonstrate even prima-facie any action of Noticee No. 3 which is contrary to the prohibitions set out in Regulation 3 and 4 of the PFUTP Regulations. These sweeping allegations have been made on mere conjectures, without satisfying the basic test of fraud under the PFUTP regulaüons. The allegations are without any substance whatsoever. Further, as far as Regulation 4 is concerned, Noticee No. 3 denies that Noticee No. 3 has indulged in any manipulative, fraudulent or unfair trade practice as is alleged or even otherwise*
Part 2: Period after 2012

xx. *In response to paragraph no. 17 of the SCN, Noticee No. 3 states that the contents therein do not warrant any reply save and except the parts of the said paragraph which have been dealt with hereinafter. It is stated that Noticee No. 3's tenure at NSEIL ended on 2nd December, 2016 and therefore she cannot comment on the execution of the 2017 agreement with IGIDR. It is further, stated that all research projects as a matter of routine and in line with NSEIL's internal policy were approved by the internal management of NSEIL and consequently there is nothing unusual or out of the ordinary that 2 research projects granted to IGIDR have been approved by the internal management of NSEIL. In response to paragraph no. 18 of the SCN, Noticee No. 3 states as follows:*

xxi. *With respect to paragraphs 18 (a) to 18 (f) appearing under the heading of 'Observations / allegations w.r. t. Agreement relating to 2013 titled 'Research Contractfor Intra-day Trading Research", Noticee No. 3 states that the same SEBI Act, and secüon 23H of the SCRA, wherever applicable and the subject SCN ought to be dismissed and set aside as against Noticee No 3 at the outset.*

xxii. *In response to paragraph no. 25 of the SCN, Noticee No. 3 requests SEBI to grant her a personal hearing in the captioned matter.*

xxiii. *Noticee No. 3 is astonished and shocked that sweeping allegations having damaging consequences have been made against her without there being any foundation in the SCN to even demonstrate as to how Noticee No. 3 is responsible for contravention of the provisions noted therein. Noticee No. 3 has at all times acted with high standards of integrity and fairness, and has discharged her functions as Deputy Managing Director/ Joint Managing Director and thereafter as a Managing Director and CEO in the manner consistent with her position. The SCN does not allege that Noticee No. 3 had any specific role, or any overt or covert actions were carried out by Noticee No. 3 in (i) alleged ignorance of conflict of interest; (ii) selection of IFPL over IISL; and/or (iii) purported sharing of confidential data of the exchange without any agreement. The incorrectly seeks to attribute responsibility to Noticee No. 3 for the alleged acts of tl-ürd parties solely on account of her designation in NSEIL at that point in time. This is an over simplification of the role of Noticee No. 3 and ignores the ground reality of the actual role of Noticee No. 3 in the various designations she has held.*

xxiv. *As pointed out earlier, in an organization as vast and structured like NSEIL, it is impossible for the Joint Managing Director or Managing Director and the Chief Execuüve Officer to over-see each and every solitary activity happening within the organization. It would be stretching the doctrine of construcüve notice far beyond especially when as far as Noticee No. 3 recollects, nothing at all was brought to her notice to arouse her suspicion that people assigned with responsibilities were not doing their duties. It cannot be expected of the Managing Director to keep a close eye on each and every activity of every subordinate or junior officer at all times. The business of life would not go on if people could not trust those who are put in a position of trust for the express purpose of attending to the details of management. Therefore, it is submitted that Noticee No. 3 cannot be held guilty of any gross or wilful negligence, or even fraud.*

xxv. *To conclude, Noticee No. 3 submits that the SCN is absent of any allegation that Noticee No. 3 was aware of or party to or was informed of or ought to have been statutorily or otherwise aware of any of the allegations and/or alleged transgressions referred to or relied upon in the SCN. No penalty proceedings can be or ought to be initiated against Noticee No. 3 or in respect of transactions/ acts or transgressions.*

Submissions of Mr. Ajay Shah/Noticee no.4

i. *For The Noticees submit that SEBI does not have jurisdiction to proceed against the Noticees. Further, the Noticee is an academician and a researcher and cannot be termed as an intermediary or a person associated with the securities market. Thus, it is submitted that SEBI does not have jurisdiction to issue the SCN against the Noticee in the present case.*

ii. *It is stated that the Noticee was never a part of the board of directors or senior management of NSE nor did he have any role to play or ability to influence the business decisions taken by NSE. Merely because the Noticee was on the board of the NSCCL, it cannot be inferred to mean that he had the ability to influence the decisions of NSE, an independent body with its set of board of directors and management.*

iii. *In this regard, it may be noted that the Noticee has ceased to be a member of NSE committees after the year 2005, which was much before the LIX Agreement Thus, at the time of the LIX Agreement, the Noticee had not been associated with NSE in any way. (Please see paragraph 17(c) of the Reply).*

iv. The LIX agreement between NSE and Noticee No. 2 was duly approved by a Standing Committee I of NSE. Noticee No. 1 was not a part of the Standing Committee I. NSE has also stated in the NSE Reply that the LIX contract was awarded to Noticee No. 2 after following all regular internal processes and Noticee No. 1 did not have any connection with the decision of the Standing Committee to award the contract to Noticee No.2.

v. NSE has also previously outsourced projects to third party vendors as a matter of routine despite having its own specialized subsidiaries. NSE has also stated that neither NSE nor its subsidiary IISL was equipped with in house expertise to develop the proposed software for computation of LIX at that stage.

vi. It is also pertinent to note that it is a standard practice for exchanges to outsource the work of conceptualizing and designing indices. It is also standard practice for exchanges to separate the work of (i) designing indices and (ii) operationalizing and maintaining the same between two different entities, depending on their respective expertise.

vii. In view of the above, the charge that that NSE provided undue support to Noticee No. I and Noticee No. 2 in awarding the LIX contract to Noticee No. 2 instead of NSE's own specialized subsidiary, IISL, is not made out. The aforesaid points provide further evidence in favour of Noticee No. I's contentions that NSE followed the applicable procedure in awarding of the LIX contract and did not favour the Noticee no. 2. the Noticee reiterates that the data shared in MBP format for the purpose of the LIX contract was neither confidential nor sensitive. NSE gives this data to many academic institutions for research.

viii. Further, SEBI has recently announced TBT data must be disseminated free of cost. The TBT data can be re-arranged to give the same MBP display that was shared by NSE under the LIX Agreement. This suggests that SEBI itself does not consider this data to be confidential or sensitive. The said SEBI circulars dated December 03, 2009 and April 09, 2018 are hereto annexed and collectively marked as Annexure J (Colly).

ix. Further, in the NSE Reply, it is stated that the data provided under the LIX Agreement was end of day anonymized data provided for research purposes. This historical data was being made available for research activities to various entities. Further NSE itself has stated that there was nothing unique about this data and the data did not give the recipient any edge over others in developing algorithmic trading software, as alleged in the SCN. (Please see paragraphs 55, 56 & 61 of NSE Reply at Annexure A herein)

x. In any event, the SCN does not show how the LIX data could provide an advantage to the recipient. Further, the SCN has also failed to identify the 'market participants' with whom the data was allegedly shared, the 'deals' that such market participants made using this data and the manner in which the Noticee benefitted from such alleged deals.

xi. SEBI has failed to provide any evidence to show that the data shared for the purpose of the LIX proj ect was unauthorized used.

xii. Further, SEBI has also failed to even provide the Noticee with statements of brokers for inspection to whom such alleged sale of algorithmic strategies took place as per SEBI. The Noticees were informed during the hearing before the Hon'ble WTM that no statement of brokers was recorded by SEBI in connection with the present SCN.

xiii. The Noticee in his capacity as a member of board of NSCCL had consistently made all the necessary disclosures as required under Sections 297 and 299 of the Companies Act, 1956 and the Code of Conduct of the NSCCL from time to time. NSE has also stated that under the Companies Act, 2013 as well as the SEBI's own Master Circular, there is no prohibition against entering into a transaction with a person in whom a director or a functionary is interested. The only precaution required to be taken in *order to avoid a conflict of interest, is that a director or a functionary or shareholder must not participate in any discussion or decision in respect of any matter in which he or she in anyway, directly or indirectly, concerned or interested.*

xiv. *Further, it may be noted that the Section 3(2) (b) of the SCRA relates to the recognition of a stock exchange and does not apply to the Noticee. The WTM Order has also held that the Noticee is not in violation of the SCRA.*

xv. *In view of the above, the allegation in the SCN that the Noticee has violated the provisions of the Master Circular cannot be sustained. SEBI's allegations in this regard are erroneous and without any basis.*

xvi. *The SCN does not demonstrate the key ingredients for invoking Regulations 3(c) & 3(d) or Regulation 4(1) of the PFUTP Regulations:*

xvii. *The SCN has not only failed to make out any case of fraud on part of the Noticee but the SCN fails to even identify and establish the key elements necessary to invoke the provisions relating to fraud as provided under the S. 3 (a) to (d) and s.4 (1) of the PFUTP Regulations.*

xviii. *To establish the link of fraud under the PFUTP Regulations with Noticee, the SCN must, in addition to trading activity, demonstrate the flow of unlawful proceeds or unlawful gains resulting from such alleged fraudulent trading activity to the Noticee.*

xix. *It is stated that the SCN is vague and the allegations against the Noticee therein are based on mere conjecture and surmise and without any proof. The following judgments are relevant in this regard:*

i. In Gorkha Security Services v Government of NCT of Delhi and Ors.

Vikas Ganeshmal Bengani v the Adjudicating Officer, SEBI

xx. *In view of what has been stated in these submissions, the Reply and the arguments made before the Ld. Adjudicating Officer, it is submitted that the SCN has failed to make out any case against the Noticee. The charges levelled against the Noticee are clearly baseless and misplaced. The SCN is vague, ambiguous and fails to provide even an iota of evidence in support of the charges against the Noticees. The SCN has failed to establish the alleged violations of the SEBI Act and the PFUTP regulations under the SCN. The SCN is against the well settled principles of natural justice. In view of the same, it is submitted that the SCN deserves to be dismissed and no adverse order ought to be issued against the Noticee.*

<u>Submissions of Infotech/Noticee no.5, Krishna/Noticee no.6 and Ms. Sunita/Noticee no.7</u>

i. *At the outset, it is stated that the SAT while granting interim relief has observed that the Appellants have made out a prima facie case. SAT in its stay order has also referred to NSE's contention that the information allegedly used by the Appellants was in the public domain.*

ii. *Further, the proceedings before the Hon'ble SAT are ongoing and the same have been listed for hearing on 18 th July, 2022 on a day to day basis. The proceedings before SAT pertain to the same matter as the present matter before the AO. Accordingly, since the matter which concern the same facts is scheduled to be heard by the Hon'ble SAT dated 18th July 2022, the Ld. Adjudicating Officer may consider awaiting the outcome of the proceedings before Sat before passing an order in the present case. Please find annexed hereto the order of SAT dated 10th June 2022 as Annexure Q for your reference.*

<u>SEBI has no Jurisdiction to proceed against the Noticees</u>

iii. *The Noticees submit that SEBI does not have jurisdiction to issue the SCN against the Noticees. The Noticees are neither market intermediaries nor persons associated with the securities market, and SEBI does not have jurisdiction to regulate the Noticees. Noticee No. 2 is a software development company, and its software products are not exclusively associated with the securities market. Noticee Nos. 3 and 4 are the directors of Noticee No. 2. Further, Noticee No. 4 is only focussed on the technology that may be used for development of the various software by Noticee No. While some of Noticee No. 2's projects do involve designing software that may be used by securities market participants, the Noticees cannot be termed as intermediaries or persons associated with the securities market on that ground alone.*

iv. *Further, the SCN has not only failed to make out any case under Regulations 3 and Regulation 4 of the PFUTP Regulations on part of the Noticees but the SCN fails to even identify and establish the key elements necessary to invoke the provisions relating to fraud as provided under the S. 3 (a) to (d) and S.4 (1) of the PFUTP Regulations. In the present case, SEBI has not made out any case of inducement by the Noticees. Further, SEBI has failed to provide even an iota of evidence in support of the allegations of fraud made against the Noticees.*

v. *In this regard please refer to the Judgment in the matter of Price Waterhouse. Co v. Securities and Exchange Board of India [September 09, 2019] passed by the Hon'ble Securities Appellate Tribunal (Para 44) annexed as Annexure M/Pg. 409 to the Additional Submissions dated March 6, 2020.*

<u>Order cannot be passed on the basis of Conjectures and Surmises</u>

vi. *It is submitted that the allegations in the SCN are vague, ambiguous and based on mere conjecture and surmise and without any proof. It is a well settled principle of law that an order cannot be passed on the basis of Conjectures and Surmises. In this regard, please note the following judgments of the Hon'ble Supreme Court of India annexed hereto as Annexure R and Annexure S, respectively:*

Roop Singh Negi v Punjab National Bank and Ors. 2009 (2) SCC 570 (Paragraph 23)

a) *Omar Salay Mohamed Saitv. Commissioner of Income Tax, Madras AIR 1959 SC 1238 (Paragraph 33)*

<u>LIX Data given to the Noticees was unusable and was replete with errors.</u>

vii. *It is submitted that the data provided to the Noticees for the LIX project was unusable for developing the LDC Index itself as it was replete with errors. Further, no data was available with the Noticees when the email dated 22nd February 2009 was written by Noticee No. 1. In this regard, please refer to paras 8 (II) of the Submissions dated 6th March 2020. Please also refer to the emails annexed at Exhibit E of the Reply at Pg. 51 along with Annexure K at Pg. 499 to the Additional Submissions dated 6th March 2020.*

viii. *In absence of any material to show that the data received by the Noticee no. 2 under the LIX Agreement was confidential and that this alleged confidential data was in fact misused to create algorithmic trading work that was sold to market participants, the charges against the Noticees under the PFUTP regulations fail. SEBI has failed to establish even the key elements of the PFUTP regulations in the SCN. The charges against the Noticees are vague, false and unsubstantiated.*

ix. *As explained in the Reply, Noticee no. 2 is a software development company. Noticee no. 2 has been developing the algorithmic trading platform since the year 2002. (Please see paragraphs 9(a), 9(d), 9(e), 9 (D and 9 (h) and paragraph II (11) of the Reply.)*

x. *An algorithmic trading platform is a software platform used by market participants that acts as an interface with the exchange. Each exchange supplies the API (Application programming interface) documents which are technical specifications, to trading members. The Noticees only require these API documents to develop the algorithmic trading platform. There is no market data required for developing an algorithmic trading platform by the Noticees. Hereto annexed is the relevant page of the NSE website, providing API documents for developing a 'Non-Neat front end' as Annexure I. (Please see paragraphs 8(a) & 8(c) and paragraph II (Il) of the Reply).*

xi. *It is pertinent to note that the agreement between NSE and the Noticee No. 2 was signed in the year 2009, whereas the Noticee No.2's algorithmic trading platform was created by the Noticee in the year 2005 and thus, LIX data could not have been used to make the Noticees algorithmic trading platform. There were sales made of the algorithmic trading platform prior to the Noticees receiving the IX data. The purchase order and invoice of two separate clients who have used the Noticees's algorithmic trading platform prior to 2009 are annexed in Annexure J. The first sale of the software in its current version, Chanakya, was made in 2008. The same software continues to be sold by the Noticee No. 2 even now.*

xii. *Further SEBI vide circular dated May 21, 2013 has mandated the stockbrokers to subject their algorithmic trading system to system audit every six months in order to ensure that the requirements prescribed by SEBI/stock exchanges are effectively implemented. It may be noted that no red flags with respect to the software services have been raised by the exchange with any client of Noticee No.2.*

xiii. *It is stated that the data provided under the LIX Agreement was unusable for developing the LIX Index itself as it was replete with errors. The LDC agreement between NSE and Noticee no. 2 was signed on January 19, 2009. The first set of data under the LIX agreement was received by Noticee no. 2 in the month of April, 2009. The Noticee no. 2 initially received 4 months of historical market by price data in csv. file format in April, 2009 (i.e. November, 2008 - February, 2009). As stated by the Noticees in the paragraph 12(d)(vi) of the Reply, this data was replete with errors with respect to both, the data formats and the veracity of the data.*

xiv. *During the course of the project, the research team found that the content of the regenerated data provided had several errors and was inaccurate which made the data unusable and unworkable, and the data was regenerated several times by NSE. The last set of data under the LIX Agreement was sent by NSE in May 2010 wherein NSE provided past, historical data for the period of October, 2009 to April, 2010. In any event, even this data was also inaccurate and unworkable for computing the LIX index. Please find attached the email dated September 27, 2010 showing that the data provided to the Noticee was bad even until October 2010, as Annexure K.*

xv. *While the Noticee no. 2 managed to develop a sample/ prototype code for the LIX index calculation by coding based on fixed data file formats, since the final set of data was also replete with several errors, the LIX index could not be conclusively developed. NSE eventually decided not to go ahead with the LIX project. Noticee no. 2 was not paid any further amounts under the Agreement. Thus, SEBI's allegation that the data received under the Agreement was misused by the Noticees for algorithmic trading work is false and baseless.*

xvi. *The data shared under the LIX Agreement was not confidential and is available in the public domain. The data provided under the I-X Agreement is market by price data which is easily and publicly available. NSE in the NSE Reply has also stated that the data flowing from NSE to the Noticees was not real time data but historical data used for research and hence cannot be characterized as* *'confidential'. Further, the data which was provided to the Noticees was being made available to all persons, either free of cost for research or some for commercial purposes.*

xvii. *Without prejudice to the above, the allegation imputed in paragraph I I of the SCN is based on mere surmise. The SCN has not furnished any proof to show:*

i. that this data is confidential and sensitive; ii. that this data was improperly shared by the Noticees with unauthorised persons; iii. that this data was improperly used for a purpose, prohibited by law; iv. that this data was ever used for any purpose other than the purpose of fulfilling the LIX contract executed between the Noticees and NSE. (Please see Para 12(m) on this issue)

xviii. *Allegations of employing a device/ scheme/ artifice for sale to market participants in connivance with other Noticees and NSE by misusing LIX data is baseless and without merit.*

xix. *In paragraph 13 of the SCN, SEBI has alleged that the Noticees connived with NSE. In this regard it is pertinent to note that in the NSE Order (Annexure G herein), the Hon'ble WTM has observed that there is no concrete evidence so as to establish any collusion by NSE, Mr. Ravi Narain and Mrs. Chitra Ramakrishnan with the Noticees. Accordingly, the charge of connivance by the Noticees with NSE and its employees in paragraph 13 of the SCN must fail.*

xx. *It is stated that SEBI has failed to even identify the market participants who have benefitted from the alleged misuse of the data received under the LIX contract for the algorithmic trading work and the so-called purported sale of such work.*

xxi. *The fact that Noticee no. 1 is related to Noticee no. 3 and that Noticee no. 3 is the wife of Noticee no. 5 has no bearing on LDC contract being awarded to Noticee no. 2. Noticee no. 2 has been associated with NSE since the year 1999, which was much prior to Noticee nos. 3 and 5 getting married i.e. December 2003 and also prior to Noticee no.5 joining NSE. Noticee No. 2 had previously successfully implemented projects with NSE. In fact, NSE was also given the Skoch Challenger award for the PRISM contract.*

xxii. *Further, the fact that Noticee no. 3 is the wife of Noticee no- 5 was always known to NSE. Noticee No. 5 has always filed the necessary disclosures with NSE and complied with the applicable code of ethics applicable to the employees of NSE at all points.*

xxiii. *(Further, Noticee no. l, Noticee no. 5 and NSE in their respective replies have stated that neither Noticee no. 1 nor Noticee no. 5 were members of the committee which approved the LIX project to be awarded to Noticee no. 2. The LIX contract was approved by a Standing Committee of NSE of which neither Noticee no. I or Noticee no. 5 were members.*

xxiv. *Accordingly, it is submitted that the allegations of conflict of interest in the SCN are baseless and without any merit. The email of Mr. Ajay Shah dated February 22, 2009 has been read without proper context and thus the allegations in this regard are untrue: It is submitted that the email dated February 22, 2009 has been taken out of context in the SCN. It is pertinent to consider the following important points in connection with the said email:*

xxv. *This email was written by Noticee no. I when no data was even received by the Noticees under the LIX Agreement. The first set of data under the LIX agreement was received by the Noticee in April, 2009 whereas this email was written in February, 2009 as a part of discussions for staffing the project team of Noticee no. 2.*

xxvi. *As already explained above, the data which was to be received by the Noticees under the LIX agreement was past, historical data with a considerable time lag, not confidential and of no relevance to Noticee no. 2' s algorithmic trading platform. The data received by the Noticees was faulty even until October 2010. (Please see emails at Exhibit E of the Reply and email dated September 27, 2010* *annexed herein as Annexure K. Also see paragraph 12(d)(vi) of the Reply). As stated above, the LIX data is a small subset of the data that was already available with the Noticee no. 2 and the trading members of the exchange.*

Allegations of collusion between the Noticees are baseless:

xxvii. *The email dated April 27, 2014 has nothing to do with the LIX Agreement entered into between the Noticees and NSE. The said email was sent in 2014 whereas the Noticees stopped having access to the data in the year 2010. There is no connection between the said email and the allegations of unauthorized data usage in the SCN. The email being relied upon in the said paragraph is followed up by a calendar invite for a meeting that actually never took place. The said email was sent to several other invitees, majority of who were research students of Noticee No. I*

Pseudonymous Complaints are mala fide and factually wrong:

xxviii. *The origin of this entire investigation by SEBI and the basis of the SCN are the two pseudonymous complaints received by SEBI from the Daniel Mark and Jamie Jones. SEBI has relied upon the said complaints in the SCN. The said complaints are false and motivated as explained in paragraph 10 of the Reply. The said complaints allegedly draw links between the Noticee no. 2, OPG securities and Omnesys with whom the Noticee no. 2 has no connection. It is stated that SEBI has not even interviewed these brokers to corroborate the allegations made against the Noticees in the SCN.*

xxix. *SEBI has failed to establish or corroborate any of the allegations made in the said complaints. It is submitted that a charge under the PFUTP regulations cannot be sustained on the basis of the said complaints.*

<u>Submissions of Mr. Suprabat Lala/Noticee no.8</u>

i. *Our client submits that the proceedings by SEBI under Sections 11 & 11B of the SEBI Act and the present proceedings are based on account of the two complaints filed by one Jamie Jones and one Mark Daniel. Our client repeats, reiterates and submits that both complaints were pseudonymous complaints since the actual complainant was using the pseudonyms, Jamie Jones and one Mark Daniel and as seen from the properties of the electronic document which contained the complaint, the same was made by an employee of the erstwhile Financial Technologies Limited, which was a rival of the National Stock Exchange of India Limited ("NSE"), our client's employer.*

ii. *our client submits that during the relevant period, he was associated with the trade operations department of the NSE; awarding of contract for the LIX project was not in his scope of work. The LIX project was handled by Mr. R Sundararaman who was at that time working in NSE as Senior Vice President. In this regard our client places reliance on a copy of the Contract commitment and Advance payment approval note dated January 13, 2009 authorizing Mr. R Sundaraman to sign the agreement with Noticee No 2 and work order on behalf of NSEIL (Annexure F). The Professional Services Agreement with Noticee No 2 was executed by Mr. R Sundararaman on behalf of NSE (Annexure E). Our client never reported to Mr. R Sundararaman, whether directly or indirectly.*

iii. *in addition to averments made by NSE, we also rely on the corroborating statements made by Mr. Ravi Narian, the then Managing Director of NSE and Ms. Chitra Ramakrishna, the then Deputy Managing Director of NSE in their replies to SEBI. It is submitted that Mr. Ravi Narain, who was the MD & CEO of NSE from 2000 to 2013, in his reply dated February 16, 2019 (Annexure C) explicitly stated that our client had no role to play in the awarding of the contract in para 8 & 16 and the said The relevant extract of para 8 & 16 are reproduced below .*

iv. *as far as he was aware, during his tenure, neither Mr. Suprabhat Lala nor . had any role at all to play in the NSEIL awarding of any of the contracts which are referred to in the SCN. Therefore, in any event, there can be no question of any conflict of interest in awarding either of the contracts in 2009 or 2013 {pg. 7, para 8(d)}.*

v. *neither Mr. Suprabhat Lala nor Mr. Ajay Shah nor their respective wives had any role whatsoever in the decision of NSEIL to award the said contracts; none of them were in any of the Committees of the NSEIL which considered or approved the execution of the said contract*

vi. *There is no material on record to show that Mr. Lala was connected with the decision-making process by Our client No. 1 for awarding the contract to IFPL, or that he influenced the decision making process in any manner. In fact, there is no material to demonstrate that the agreement with IFPL was a sham agreement or that IFPL otherwise was not competent to receive the contract from Our client No. 1 ... " (pg. 13/14 para 27.5)*

vii. *Our client submits that the above averments of NSE, Mr. Ravi Narain and Ms. Chitra Ramakrishna confirm and support his submission that our client had no role to play in the awarding of the LIX contract or the to Noticee No. 2. In view of the above, we submit that our client had no role whatsoever in the awarding of the LIX contract or the ZCYC Contract by NSE to Noticee No.2 as falsely alleged or otherwise.*

viii. *Our client submits that to the best of his knowledge and understanding, IISL is in the business of creating, owning and managing indices; it does/did not have any software development capability.*

ix. *It is clear from the above that the LIX contract was awarded by NSE to Noticee No.2 after considering all the relevant aspects and its own capabilities as well as that of its subsidiary IISL. The attempt to second guess the decision of the NSE after several years and based on pseudonymous and malafide complaints, without appreciating the capabilities of IISL amounts to a witch hunt against our client; the same is illegal and unsustainable.*

x. *We submit in view of the above averments, the entire edifice for holding our client responsible for the said alleged a conflict of interest is rendered unsubstantiated since our client had no role in the decision to award the contract and the contract was awarded by an independent committee and his employment or marital relationship with the director of the Noticee No.2 cannot be a ground for alleging a conflict of interest.*

xi. *Our client submits that the attached document refers to the action points of a Technical Advisory Committee meeting and referred to the status of the discussions in a vague manner without anything specific being stated in great detail. The attached document by its very contents did not contain anything confidential or which was of any relevance to the general public or which would have been beneficial to either Noticee No 2 or to our client's wife. To any reader, the contents of the minutes would be of no relevance in forming any opinion about the contents thereof. For example, it is stated that two exchanges had telephonic discussions but does not state in details what was discussed. It is also pertinent to note that the document was still a draft one and not the final version.*

xii. *in view of the above, our client repeats, reiterates and denies that he shared any confidential information with his wife as falsely alleged or otherwise.*

xiii. *We submit that there was no confidential data which was contained in the email/ trailing emails forwarded by our client to his wife. The data which is contained in the trail emails contained inter alia marketing data, distance between different locations etc. Our client submits that the contents of the email were not at all confidential and nothing contained in the email secured any advantage to either*

Noticee No 2 or to Noticee No.3, his wife in the course of their business and no advantage is shown to have accrued to Noticees 2 or 3.

xiv. *In view of the above, our client repeats, reiterates and denies that he shared any confidential information with his wife as falsely alleged or otherwise.*

xv. *Our client further submits that the four emails which were relied upon in the show cause are dated November 5, 2009, December 3, 2012, January 30, 2013 and December 4, 2014 i.e. the emails are interspersed with huge gap of time in between each of them. All the emails sent or received by our client during the examination period of 2009 to 2016 i.e. 7 years were considered out of which only 4 emails which were sent to his wife have been identified as having potential confidential information Our client submits that the sharing of 1 email in a year by itself cannot be considered as sharing of confidential information to satisfy the essential elements for being a fraudulent device / scheme / artifice as erroneously alleged in the said Notice.*

xvi. *Our client denies that there was any collusion between him and Noticee 1, 3 and 4 as falsely alleged or otherwise. The said allegation of collusion is based on the contents of an email invitation dated April 27, 2014 sent by Noticee 1 to our client and Noticee 3 and 4 inviting them for a meeting at Gokuldham CCD at 10.30 pm.*

xvii. *c) The elements of fraud under FUTP Regulations are not satisfied by the contents of the four emails since none of the emails had confidential information which could be considered as resulting in lapse in confidentiality and compromise of the integrity of the securities market. Furthermore, the exchange of these emails could not have posed as establishing the elements essential for employment of a device/ scheme/ artifice and defrauding NSE by sharing confidential information of the exchange in a fraudulent manner. A combined reading of the four emails interspersed with gap of many months cannot establish or indicate the presence of a desire to defraud NSE.*

xviii. *Our client submits that the invitation for the I-IFT discussion was an invitation to discuss the research paper being worked upon by the research students and not an instance or evidence of collusion between the Noticees. In any event, our client repeats, reiterates and submits that he did not accept the invitation.*

It is evident from the above that: -

xix. *The term "fraud" applies only to an act, expression, omission or concealment committed whether in a deceitful manner or not by a person or by any other person with his connivance or by his agent while dealing in securities in order to induce another person or his agent to deal in securities and*

xx. *Provisions of Regulations 3 (c) & (d) are applicable only in respect of any device, scheme or artifice to defraud or any act, practice or course of business which operates or would operate as fraud or deceit upon any person in connection with dealing in or issue pf securities which are listed or proposed to be listed on a recognized stock exchange.*

xxi. *Admittedly, the allegations made against the Noticee do not relate to any acts by him in connection with dealing in or issue of securities on a recognized stock exchange and therefore, do not constitute fraud as defined in the PFUTP Regulations.*

xxii. *In this regard the Noticee seeks to rely on the judgement and order of the Securities Appellate Tribunal in Mani Oommen vs SEBI (Appeal No.183 of 2020) where the SAT held that*

"Section 12A(a) & (b) of the SEBI Act is obviously not applicable to the appellant as they are not dealing in the securities. Similarly, Section 12(c) cannot be made applicable because no fraud has been carried out by the appellant. Further, in the absence of connivance, deceit, or manipulation Regulation 3 & 4 of

the PFUTP Regulations cannot be made applicable" (paragraph 15). A copy of the said order is annexed hereto and marked as Annexure A.

xxiii. *It is alleged that the Noticee defrauded NSE by sharing confidential data of the exchange in a fraudulent manner to Ms. Sunita Thomas, Infotech Financial Pvt. Ltd ("IF-PE') and Mr. Krishna Dagli. It is further alleged that since IFPL was in the business of developing algorithmic software and selling it to market participants for dealing in the securities market, the said sharing of information allegedly compromised the integrity of the securities market. In this regard it is pertinent to note that:-*

xxiv. *At the outset it is submitted that even as per the SCN and the record, no emails or other correspondence were exchanged between the Noticee and IF-PL and between the Noticee and Mr. Krishna Dagli. Therefore, the allegation that any confidential information was shared by the Noticee with IFPL and/or Mr. Krishna Dagli is erroneous, false and unsustainable.*

xxv. *The record shows that NSE did not consider the contents of the 4 emails as being confidential; this is evident from the fact that NSE's Data Leakage Prevention Tool did not flag or identify the emails as secret or confidential. In the absence of the same, the allegation that the Noticee defrauded NSE is premature and nothing but conjecture and surmise.*

xxvi. *The SCN does not set out how and in what manner the information contained in the 4 allegedly confidential emails shared by the Noticee with his wife i.e. Noticee No.3 have benefitted her or IFPL or the clients of IF-PL in any manner whatsoever;*

xxvii. *The SCN also does not set out how and in what manner the integrity of the securities market could have been adversely affected by sharing the contents of the said 4 emails.*

xxviii. *As mentioned above, NSE's Data Leakage Prevention Tool did not consider the contents of the emails as being secret or confidential. Further, the Noticee repeats, reiterates and submits that in 3 out of the 4 emails, he had only sought his wife's opinion on the language used by him (while responding to emails received by him) and the remaining 1 email was merely forwarded from his desktop computer at home to his official email ID.*

xxix. *Moreover, SEBI has failed to consider that each of 4 emails forms a part of a thread or series of emails exchanged on a single subject as may be observed from records. 4 emails interspersed with a huge gap of time between each of them (2009 to 2016 i.e. 7 years) when considered in isolation does not reflect the whole truth about the conduct of our client.*

xxx. *In this regard, the Noticee seeks to rely on the "Krishna lyer J. in Jasraj Inder Singh v. Hemraj Multanchandl (1977) 2 SCC 155 described truth and justice as ... Truth, like song, is whole, and half-truth can be noise! Justice is truth, is beauty and the strategy of healing injustice js discovery of the whole truth and harmonizing human relations. Law's finest hour is not in meditating on abstractions but in being the delivery agent of full fairness. This divagation is justified by the need to remind ourselves that the grammar of justice according to law is not little litigative solution of isolated problems but resolving the conflict in its wider bearings. "*

xxxi. *The Noticee submits that cherry picking of perfectly legal email correspondence between a husband and wife to try and make out a charge of fraud against him on the purported basis that such emails affected market integrity, without setting how and in what manner market integrity was adversely affected is mere conjecture and surmise and therefore, unsustainable in law.*

xxxii. *Without prejudice to the aforesaid submissions, the Noticee submits that SEBI's investigation has failed to show that the Noticee made any gain or profit from his actions, which are allegedly in violation of the SEBI Act and the PFUTP Regulations.*

xxxiii. *In view of the above submissions, Respondent once again prays that he may be discharged from the said Notice and from the present proceedings and an order may be passed accordingly.*

10. As mentioned earlier, parallel proceedings under Section 11 of the SEBI Act against the Noticees were also initiated and two SEBI orders viz. WTM/SKM/EFD1-DRAIII/18/2019-20 dated April 30, 2019 and WTM/SKM/EFD1-DRAIII/17/2019-20 dated April 30, 2019 were passed against the Noticees and specific directions were also issued by the WTM-SEBI against them. Aggrieved by the aforesaid two orders, the Noticees filed appeals before the Hon'ble SAT. In this regard, I note that the Hon'ble SAT in respect of the aforesaid two WTM Orders dated April 30, 2019, held the following:

> "***In Mr. Suprabhat Lala & Ors vs SEBI*, *Hon'ble SAT vide order dated May 06, 2019 inter-alia held:***
>
> *"..Prima-facie, at this stage, we are of the opinion that the alleged violation, if any, was in the year 2009. More than 10 years have elapsed and the appellants were associated with the market during this period and no complaint on any other score has been found against them. We also find that the data which is alleged to have been used by the appellants for preparation of Algo trading software was explained by NSE to be in the public domain in related proceedings made against NSE.*
>
> *For the reasons stated aforesaid, we find that a prima-facie case is made out. Balance of convenience also lies in favour of the appellants for grant of an interim order. In the meanwhile, the effect and operation of the impugned order shall remain stayed till further orders.."*
>
> "***In Mr. Ravi Narain & Ors vs SEBI*, *Hon'ble SAT vide order dated May 14, 2019 inter-alia held:***
>
> *"..The appeals of Infotech Financial Services Pvt ltd and others have been entertained in which an interim order has been passed. Prima facie we are of the opinion that the appellant who has been made responsible on the ground that he was in overall control of the exchange during the relevant period and was responsible for all acts of omissions and commissions and for the procedural lapses is also entitled for a similar relief.*
>
> *For the reasons stated aforesaid the effect and operation of the impugned order in so far as it relates to the appellant shall remain stayed.."*

11. Further, from various other orders passed by the Hon'ble SAT in respect of the appeals filed by the entities against the aforementioned two WTM orders dated April 30, 2019, I note that the Hon'ble SAT had held that the ratio of the judgment of the aforesaid *Mr. Suprabhat Lala & Ors vs SEBI dated May 06, 2019* would apply in respect of the appeals filed by other

Noticees and stayed the effect and operation of the orders in as far as it relates to the appellants.

12. It is observed that the Noticees quoted the aforementioned judgment of Hon'ble SATand mentioned that since the said two WTM orders dated April 30, 2019 in respect of parallel Section 11 proceedings and the instant adjudication proceedings are based on the similar facts and circumstances and alleged violations of the provisions of law also being similar, Noticee requested to keep the instant adjudication proceedings in abeyance till the final outcome of the Hon'ble SAT Order. While I do agree with the fact that in the instant matter, Section 11 proceedings and the adjudication proceedings are based on the same set of facts, it is noted that there is no stay that has been imposed in the instant Adjudication proceedings, by Hon'ble SAT in its judgements. In view of the above, I am inclined to proceed in the matter.

CONSIDERATION OF ISSUES AND FINDINGS

13. I have carefully perused the allegations leveled against the Noticees in the SCNs, the replies of the Noticees and the documents/evidence available on record. The issues that arise for consideration in the present case are discussed in following paragraphs. Before proceedings further, the provisions of the SEBI Act, SCRA and the regulations/circulars issued thereunder at the relevant point of time, allegedly violated by the Noticees are mentioned as under: -

> ***Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.***
>
> ***12A**. No person shall directly or indirectly—*
>
> *(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—

(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.

SCRA

Application for recognition of stock exchanges.

3. (2) Every application under sub-section (1) shall contain such particulars as may be prescribed, and shall be accompanied by a copy of the bye-laws of the stock exchange for the regulation and control of contracts and also a copy of the rules relating in general to the constitution of the stock exchange and in particular, to—

(a) …

(b) the powers and duties of the office bearers of the stock exchange;

Grant of recognition to stock exchanges.

4. (1) If the Central Government is satisfied, after making such inquiry as may be necessary in this behalf and after obtaining such further information, if any, as it may require, —

(a) that the rules and bye-laws of a stock exchange applying for registration are in conformity with such conditions as may be prescribed with a view to ensure fair dealing and to protect investors;

14. Before I proceed to deal with the allegations made against the Noticee, I would like to give a brief background information regarding the relationship among the Noticees. The examination that was carried out by SEBI, pursuant to the receipt of complaints referred to above, revealed that Mr. Ajay Shah and his wife Ms. Susan Thomas of Indira Gandhi Institute of Development Research (hereinafter referred to as '**IGIDR**') have been associated with NSE and its affiliate companies from about 1994 onwards and have been engaged by NSE and its subsidiaries such as National Securities Clearing Corporation Limited (hereinafter referred to as '**NSCCL'**), India Index Services & Product Limited (hereinafter referred to as '**IISL**') and Dotex International Limited (hereinafter referred to as '**DotEX'**) for different assignments. Mr. Ajay Shah and Ms. Susan Thomas have been associated with important assignments from NSE, such as development of NIFTY Index in the year 1996, building of PRISM (Parallel Risk Management), setting up of Clearing Corporation, setting up of NSDL, Designing Mumbai Interbank Offer Rate (NSE MIBOR) in 1998, and launch of Derivatives trading etc. Mr. Ajay Shah was also on the board of NSCCL from August 30, 1996 till August 24, 2012. Mr. Ajay Shah and Ms. Susan Thomas were part of the Index Policy committee of IISL, Risk Containment committee and Executive committee of NSCCL. Mr. Shah and Ms. Susan Thomas have received sitting fees for attending committee meetings, professional fees for conducting training, workshops, research projects, etc. from NSE and its affiliate companies. Thus, Mr. Ajay Shah and Ms. Susan Thomas were found to be having a long professional association with NSE and its affiliate companies almost since its inception, in different capacities. Mr. Ajay Shah in his statement recorded before SEBI stated that "*My relationships at NSE began with Dr. R.H. Patil, Ravi Narain, Chitra Ramakrishna, Raghavan Putran, Ashish Chauhan. In later years I have engaged with Ravi Apte, Ravi Varanasi, J. Ravichandran, etc*." Further, NSE engaged the services of Infotech for computing of Liquidity Index (hereinafter referred to as '**LIX**') in the year 2009-10. Noticee 6 / Ms. Sunita Thomas, who is the director of Infotech is the wife of Noticee 8 / Mr. Suprabhat Lala, who was the Assistant Vice President, Trading Operations of NSE. Further, Ajay Shah is the husband of the sister of Noticee 6 / Ms. Sunita Thomas. Thus, Ajay Shah, Sunita Thomas and Suprabhat Lala are family relatives. Noticee 7 / Mr. Krishna Dagli is also connected with Ajay Shah, Sunita Thomas and Suprabhat Lala as he is a director of Infotech along with Sunita Thomas. Infotech is a profit making financial technology firm engaged in providing trading software products in the securities market and in the past, has been associated with the projects of NSE through IGIDR, Mr. Ajay Shah and Ms. Susan Thomas. Both Ravi Narain (Noticee no. 2) and Chitra (Noticee no. 3) were the MD & Joint MD of NSE (Noticee no. 1) at the relevant point of time.

15. I shall now deal with the allegations made against each of the Noticees in the SCNs, one by one and record my findings as under:

<u>SCN – 1</u>

<u>Noticee 1 / NSE</u>

16. It is observed that the LIX project was given by NSE to Infotech by overlooking its own subsidiary, viz. IISL which was also engaged in such specialized activities. It was found that neither Mr. Ajay Shah who was on the board of NSCCL at the relevant point of time, has disclosed his conflict of interest nor did NSE and its officials verify the inherent conflict of interests involved in awarding the LIX project to Infotech. Further, after examining certain email conversations between Mr. Ajay Shah and Ms. Sunita Thomas of Infotech, between Mr. Suprabhat Lala and his wife Ms. Sunita Thomas, it is observed that the trading data that was received by Infotech from NSE for the LIX project was being misused for developing algorithm trading products for the securities market participants. As already mentioned in previous paragraph, Infotech is a profit making financial technology firm engaged in providing trading software products in the securities market and in the past, has been associated with the projects of NSE through IGIDR, Mr. Ajay Shah and Ms. Susan Thomas.

17. One such email conversation dated February 22, 2009 addressed by Mr. Ajay Shah to his sister-in-law, Ms. Sunita Thomas (Director of Infotech) read as follows:

> *"… on day 1 Anupam is a finance guy. He is not a programmer. So drive him appropriately. He can go into all your existing projects-but in a domain knowledge roll e.g. he can start working on trading strategies which can go into all algorithm trading work. (But you have to swear everyone to silence on the fact that the data that we are getting out of NSE for VIX and LIX is being used for algorithmic trading work - it would be a severe problem if this fact comes to light since NSE has not given anyone else this data.)*"

18. Thus, from the aforesaid conversation and the conduct of the connected parties, viz: Mr. Ajay Shah, Infotech, Ms Sunita Thomas and Mr. Krishna Dagli (the other director of Infotech) and Mr. Suprabhat Lala, as revealed from various other evidences, it has been alleged that these persons, with active support of NSE and its officials (Chitra Ramakrishna and Ravi Narain), have misused the confidential and sensitive data provided by NSE for the LIX project, for

developing algorithmic trading software for sale in the securities market, thereby compromising the integrity of securities market.

19. It is further alleged that NSE and its senior officials, viz: Mr. Ravi Narain and Chitra Ramakrishna who were managing the affairs of NSE at the relevant point of time, have ignored issues of conflict of interest and awarded the LIX project to Infotech when they had an existing subsidiary company (IISL) already engaged in such specialized activities. Further, they also failed to do due diligence to ensure fairness and transparency while awarding the contract to Infotech, as Infotech was itself in the business of developing and selling of algorithmic software to market participants for dealing in securities market. It is further alleged that Mr. Ajay Shah has misused his position by virtue of being on the Board of NSSCL and his influence in NSE to procure the contract from NSE for his related entity i.e. Infotech. It is also alleged that Mr. Ajay Shah and Infotech and its directors have ultimately misused the data of NSE received through LIX project for their commercial interest thereby compromising the integrity of the securities market.

20. It is further alleged that prior to the year 2012, Mr. Ajay Shah and Ms Susan Thomas used to receive data without executing any formal agreement with NSE. It is only from the year 2012 that there existed a process warranting for execution of formal agreements between NSE and Mr. Ajay Shah & Ms. Suzan Thomas. This is corroborated by Mr. Ajay Shah in his statement wherein he has stated that *"In case of NSE, in roughly 2012, a data use contract was established. Prior to 2012,* there *was data flow from NSE to us without a data use contract. The data use contract has Ajay Shah and Susan Thomas as signatories. Prior to data use contract also, the data flow was to Ajay Shah and Susan Thomas."*

21. It is further observed that in the post-2012 period, NSE had given two data research projects to Ms. Susan Thomas of IGIDR, first in the year 2013 and then in the year 2017. Both the projects were approved internally by the management of NSE. The 2013 data research project was titled as "Research Contract for Intra Day Trading Research" and the 2017 research agreement was titled as "NSE-IGIDR Research Contract". SEBI's examination of these two data research agreements revealed a number of discrepancies and irregularities in the execution of these contracts. It was found that the agreements have not been properly signed, do not have dates, do not bear any cross reference to the undertaking provided by IGIDR, have discrepancies in the date of contract, date of undertaking and date of internal approvals, etc. While the projects were officially awarded to IGIDR, it is seen that Mr. Ajay Shah who was a professor at NIPFP and not officially associated with IGIDR, had also signed

the undertaking dated December 03, 2012, inter-alia, to the effect that the researchers (viz: Mr. Ajay Shah and Ms. Susan Thomas) irrevocably and unconditionally agree to abide by and be bound by the terms and conditions of the undertaking, that they shall keep the data obtained from NSE confidential and shall not divulge to any person. Thus, the examination by SEBI pointed out various infirmities in the agreements which have been detailed out in the SCNs, to substantiate the allegation that NSE failed to ensure due diligence with respect to execution of agreements with the above named two researchers and has also failed in ensuring fair dealing, thereby compromising the integrity in the functioning of the exchange which has resulted in non-compliance of the conditions of grant of recognition to NSE.

22. As already discussed above, Mr. Ajay Shah, Ms. Susan Thomas, Ms. Sunita Thomas, Mr. Suprabhat Lala and Infotech were closely connected to each other. Mr. Ajay Shah and his wife Ms. Susan Thomas were actively associated with NSE and its subsidiary companies since 1994 onwards. Their association with NSE had apparently transcended beyond the institutional framework as he had personal relationship with most of the senior management personnel. In his statement dated April 03, 2018, Mr. Ajay Shah has claimed that his relationships at NSE began with Dr. R.H. Patil, Ravi Narain, Chitra Ramakrishna, Raghavan Putran, Ashish Chauhan and subsequently he had engaged with Ravi Apte, Ravi Varanasi, J. Ravichandran, etc. Ravi Narain, in his statement recorded before SEBI has also referred to Mr. Ajay Shah "*as one of the very few such economists known in capital markets who write policy papers based on data analytics*."

23. Thus, the personal influence that Mr. Ajay Shah was exerting on NSE becomes clear when one goes through the statement of Mr. Ajay Shah, as recorded by SEBI on April 3, 2018 in which he has narrated his association with NSE in various initiatives and has also stated that "*his relationship with NSE was at its peak till 2001*" when he moved to New Delhi to work for Ministry of Finance. Mr. Ajay Shah has also stated that he and his wife Ms. Susan Thomas had been utilizing data from NSE for their research work for many years. Prior to 2012, they used to get data from NSE without any contract and after 2012, it was he and his wife received data from NSE by signing data use contracts with NSE.

24. Mr. Ajay Shah has further submitted that he has associated his sister-in-law and her company in some of his projects including the PRISM project with NSE for which Infotech was assigned to do the work of implementation. I also observe that the idea about the LIX project was also first mooted by Mr. Ajay Shah and his wife Ms. Susan Thomas and Mr. Ajay Shah used his

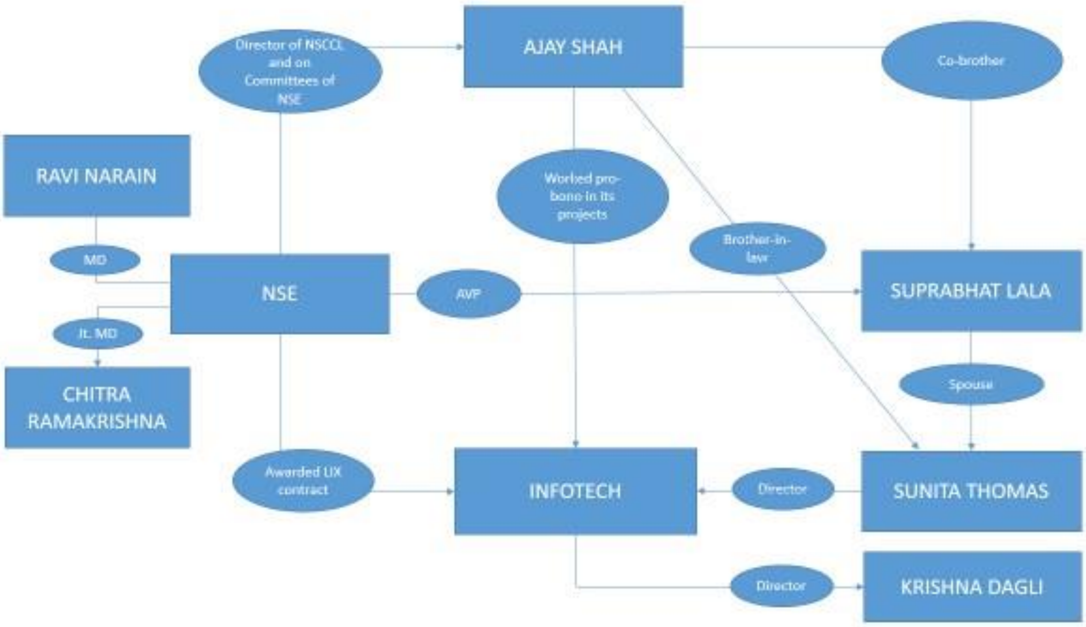
relationship with NSE for Infotech being awarded the LIX project by NSE. This is corroborated from the following statement of Ajay Shah that

> "*Susan Thomas and I imagined two new information systems, LIX and VIX. We discussed these with NSE. The plan was that we would work on these pro bono. We required software development to go with this. Through discussions with the NSE top management, it was agreed that NSE would contract with Infotech financials, through which they would be the software development team that would support the research that would lead up to LIX. Through the contract with NSE, the presence of data at Infotech financials and their use of it for software development*"

Thus, it is clear that the LIX project was undertaken by NSE with the recommendation of Mr. Ajay Shah and his wife in which both of them agreed to work pro bono and it was on the suggestion of Mr. Ajay Shah and his wife Ms. Susan Thomas only that NSE agreed to award software implementation part of the project to Infotech.

25. With respect to the business activities of Infotech, from the perusal of the statement submitted by Ms. Sunita Thomas before SEBI on July 26, 2017, it is noted that Infotech was incorporated in the year 1999 and has been in the business of software development primarily for capital market. Its clients largely comprised stock brokers, financial institutions, mutual funds, etc., to whom it supplied customized solutions and products. From 2006 onwards, Infotech has been providing its Chanakya product to its customers which is an algorithmic trading platform to cater to enable its customers, to have their algo software customized for trading in securities market. One of the source of the revenue for Infotech was through profit sharing agreement with its customers who used its algo trading platform and software.

26. In the context of the aforesaid factual position, the agreement dated January 19, 2009 was entered between NSE and Infotech with regard to the development of software for the project called 'LIX'. For this purpose, NSE provided sensitive and confidential trade data to Infotech. It can be seen from the factual position that there was an inherent conflict of interest in awarding the LIX project of NSE to Infotech. For the sake of clarity, the apparent conflict of interest allegedly emerging out of the contract between NSE and Infotech is diagrammatically presented below:



27. NSE has raised a preliminary issue that it has not been afforded a fair opportunity of inspecting documents. In this regard, I also note that the inspection of all the relevant documents were completed during the course of proceedings under Section 11. As the allegations, findings, evidence of the instant adjudication proceedings are exactly same as that of Section 11 proceedings, NSE was informed that inspection of all the relevant documents have already been done by them. Under the circumstances, in my view, there remains nothing unknown or hidden to any of the Noticees on any aspect of the matter. In view of these facts, I find that the prejudice, if any, which would have been caused to NSE because of non-inspection of any particular document with respect to other Noticees, has been taken care of. As such, these contentions do not survive now.

28. NSE has contended that under the Companies Act, 2013 as well as SEBI's own Master Circular of 2010, there is no prohibition against entering into a transaction with a person/entity in which, a director or functionary is interested. The only precaution required to be taken in order to avoid a conflict of interest, is that a director or a functionary or shareholder must not participate in any discussion or decision in respect of any matter in which he or she is in any way, directly or indirectly, concerned or interested. I have already explained that the influence of Mr. Ajay Shah over NSE as far as the decision of awarding the LIX contract of Infotech is concerned. It is clear that the idea of LIX was proposed by Mr. Ajay Shah only and he was instrumental in Infotech getting the contract for the same. As already mentioned the influence of Mr. Ajay Shah over NSE is also evident from the fact that till the year 2012, they were generously providing the data to Mr. Ajay Shah and Susan Thomas without any contractual

agreement. Moreover, two agreements signed in the year 2013 & 2017 with Ajay Shah and Susan Thomas were full of infirmities and procedural lapses embedded into it.

29. It has already been pointed out earlier that Mr. Ajay Shah and his wife Ms. Susan Thomas were having very close connection with NSE which is clearly borne out of the facts of the matter and also from the statements of Mr. Ajay Shah recorded before SEBI officials, the details of which have already been mentioned in earlier paragraphs. It has already been noted from his statement how the idea of LIX project originated from Mr. Ajay Shah and his wife and how Infotech was awarded the contract for LIX by NSE on the recommendation of Mr. Ajay Shah and Ms. Susan Thomas. It has also been seen earlier that Ms. Sunita Thomas, sister of Ms. Susan Thomas who is wife of Mr. Ajay Shah, was a director of Infotech. Further, Mr. Suprabhat Lala, husband of Ms. Sunita Thomas, was Assistant Vice President, Trading operations of NSE. Under the circumstances, the dealing of NSE with Infotech was having several conflict of interests, which should have been addressed with due diligence by the NSE. As a first level regulator in the securities market and as a Market Infrastructure Institution, it was incumbent upon NSE to ensure that all its acts are guided by fairness, transparency and reasonableness. In the present case, a director on the board of an entity (NSCCL) which was a wholly owned subsidiary of NSE and was performing the essential function of clearing and settlement function of NSE, procured with his personal influence a contract for Infotech, a company wherein he was personally interested. Further, the allegation of misuse of confidential data of NSE, received by Infotech under the said contract for preparing algo trading software for commercial gain, which is strongly supported by the personal communication between Mr. Ajay Shah and Ms. Sunita Thomas, as cited earlier in this order, shows that the said award of contract to Infotech was part of a premeditated scheme. This was rendered possible because of lack of due diligence and lack of proper mechanism to address conflict of interest at the end of NSE. Therefore, the argument advanced by the NSE that there was no law prohibiting awarding contract to related party provided precaution regarding non-involvement in the decision making by the interested director is ensured, appears to be an evasive response without appreciating the fact that due diligence extends much beyond the token compliance of non-involvement by the interested persons in the decision making process.

30. I note that NSE has also claimed that NSCCL is a clearing corporation and therefore is involved in post-trading clearing and settlement of trades. Therefore, even though it’s a subsidiary of NSE, NSCCL is distinct company from exchange. Thus, even if Ajay Shah is a

member of board of NSCCL, no nexus can be construed of NSE awarding LIX contract to Infotech. The same was done as the subsidiary of NSE viz. IISL did not have the in-house expertise to develop LIX by itself. In this regard I note that during the relevant period of time, NSCCL was a separate subsidiary entity of NSE but it was not performing any separate business from NSE. During the relevant period, clearing and settlement (a function performed by the NSCCL) was an essential and integral part of the business of a stock exchange which was being carried out by the stock exchanges either through an in-house clearing house or through a subsidiary company (as in the present case). During the relevant period of time, all the persons working with NSCCL were on deputation from NSE (as per annual report of 2010-11).

31. Further, it was only in the year 2012, with the coming into force of SEBI (Stock Exchanges and Clearing Corporations) Regulation, 2012 (hereinafter referred to as '**SECC Regulations'**) that clearing corporations were given recognition as separate entities for regulatory purposes. Thus, prior to the year 2012, NSCCL was performing an essential and integral function of a stock exchange i.e. NSCCL and was an integral part of NSE for regulatory purposes. Therefore, governance norms including the Code of Conduct, as applicable to directors and functionaries of the stock exchanges at that point of time, were equally applicable to the directors and functionaries of its subsidiary performing clearing & settlement functions, (in the present case NSCCL).

32. If the interpretation offered by the NSE that Mr. Ajay Shah does not have to abide by the Code of Conduct prescribed for the stock exchanges as because he was on the Board of the subsidiary entity (NSCCL) and not on Board of NSE is to be accepted, then the very objective of having a separate regulatory Code of Conduct for the stock exchanges which perform a critical function in the securities market would be defeated. Hence, the Code of Conduct prescribed by SEBI for adherence by the directors on the Board of stock exchanges was very much applicable to Mr. Ajay Shah which have been violated by the acts attributed to him. Therefore, NSE cannot segregate the interest of Mr. Ajay Shah in the LIX project awarded to Infotech by it from his role on the board of NSCCL and the code of conduct attached to his position as a director on the said board. Further, I note that NSE has not provided any evidence to show that how they have arrived at the conclusion that their own subsidiary IISL did not have the requisite expertise and Infotech had such expertise. It is an admitted position that LIX was ultimately developed and put on live during 2012-2013 by the NSE's in-house resource at IISL. I find that NSE has not provided any specific reasons detailing as to why the

LIX project was developed only in the year 2012-13 and put to live by its own in house subsidiary i.e. IISL when the agreement was entered in the year 2009 with Infotech, based on their so called expertise to develop the LIX. Thus, NSE has not been able to substantiate the preference shown to Infotech and has failed to maintain fair dealing with regard to its activities in securities market while awarding LIX contract to Infotech.

33. I have already discussed at length, how the awarding of contract to Infotech by NSE for development of LIX was erroneous on the part of NSE. NSE has raised the contention that the data that was provided to Ajay Shah or Infotech was not confidential and was public in nature. In this regard, I have already mentioned that vide its email dated November 09, 2009 addressed by Mr. Ajay Shah to Ms. Sunita Thomas and Mr. Krishna Dagli of Infotech in which it is clearly indicated that the data so provided by NSE to Infotech was exclusive and was not meant to be shared with anyone else except for Mr. Ajay Shah and his team. This clearly indicates the sensitiveness of the data. The relevant extract of the email is reproduced as below:

> "*Before going anywhere with this data, a lot of experimentation is required to verify that it makes basic sense. NSE has never produced this data before and we are their only users.*"

34. Further, vide email dated February 22, 2009 addressed by Ajay Shah to his sister-in-law, Sunita Thomas who was the director of Infotech, he had mentioned the following:

> "… *on day 1 Anupam is a finance guy. He is not a programmer. So drive him appropriately. He can go into all your existing projects-but in a domain knowledge roll e.g. he can <u>start working on trading strategies which can go into all algorithm trading</u> <u>work</u>. (But you have to swear everyone to silence on the fact that the data that we are getting out of NSE for VIX and LIX is being used for algorithmic trading work - it would be a severe problem if this fact comes to light since NSE has not given anyone else this data*

35. With regard to its contention that algo trading software requires real-time data and not historical data, NSE has not put forth any supporting evidence to justify this claim. Even if it is assumed that algo trading software requires real time data, it cannot be denied that development of such algo trading software would require historical data to back test and validate the software so developed. The submission made by NSE cannot be taken at face value since there is tangible & material evidence in the form of email of Mr. Ajay Shah to Ms.

Sunita Thomas to clearly suggest that the data was being misused for the purpose of developing algo trading software for sale to market participants.

36. Moreover, it is a common knowledge that the stock exchange is well aware of the algo software being used by the stock brokers for trading on its platform. The exchange is also aware of the algo software products and its vendors. In this case, it can be presumed that NSE having already dealt with Infotech in the past was well aware of the fact that Infotech was commercially engaged in development and sale of algo trading softwares in the securities market. Therefore, NSE cannot claim ignorance of the business of algorithmic trading software of Infotech while granting it LIX contract in the year 2009 or the fact that awarding the LIX contract to them may lead to inherent conflict as well as possibility of their data being misused by Infotech for their business purposes which may be detrimental to the interest of securities market.

37. With regard to alleged misuse of data by Infotech, NSE has stated that the alleged misuse of data by Infotech would be at best called a matter of contractual breach by Infotech and NSE cannot be held liable for such misuse by Infotech. I agree with the contention of NSE that the misuse of data by Infotech has amounted to breach of contract with NSE. However, I also note that till date, NSE has not taken any action against either Infotech or Mr. Ajay Shah for the misuse of data despite there being a prima facie case of breach of contract from the SCNs. Instead, NSE continues to defend Infotech and Mr. Ajay Shah and their actions in a manner to suggest that the NSE is not perturbed by the fact that there has been a violation, of the confidentiality clause of the LIX agreement.

38. With respect to the explanations of NSE on various procedural lacunae and irregularities observed in entering into research agreement with Mr. Ajay Shah and Ms. Susan Thomas, I am unable to ignore the fact that both the agreements (of 2013 and 2017) signed in this regard are fraught with crucial omissions and significant mistakes as well as unacceptable discrepancies because of which the agreements signed with Mr. Ajay Shah and Ms. Susan Thomas are grossly falling short of being called valid enforceable agreements. All these point out to the lack of seriousness and lack of basic due diligence as well as due process on the part of NSE and such lapses are not accepted of a frontline regulator and a MII, that is expected to adopt higher standards of self-regulation and self-governance while dealing with outside entities / persons especially those dealings which involve sharing of confidential trading data with them. So it is not correct to state that such lapses in due diligence do not warrant measures contemplated by SEBI.

39. Therefore, I conclude that NSE has not behaved as a responsible stock exchange and failed at various juncture in protecting the data available with it. Ajay Shah and Susan Thomas were having close connections with NSE which allowed them to receive sensitive data from NSE. NSE showed a callous approach by providing the trade data information to Ajay Shah and Susan Thomas prior to the year 2012, without any contractual agreement. Subsequently, when the data use agreements were eventually signed by NSE, they were fraught with such glaring errors and lacunas that such agreements were practically infructuous and unenforceable. Further, there were inherent conflict of interest in awarding the contract for development of LIX to Infotech as Sunita Thomas who was the director of Infotech was sister of Susan Thomas and wife of Mr. Suprabhat Lala, who was Assistant Vice President (AVP) of Trading Operations of NSE.

Noticee 2 / Ravi Narain

40. I note that Mr. Ravi Narain was appointed as the MD and CEO of NSE in the year 2000 and in 2009, he informed the Board of directors his desire to retire, however, at the insistence of the Board, he continued further and retired on March 31, 2013. After 2009, the day to day management rested with the then Joint MD, Ms. Chitra Ramakrishna till he retired in March, 2013. During this period, he was travelling extensively overseas to build overseas presence of NSE and to explore possibility of setting up of stock exchanges in other European countries and Australia. He was on the board of Directors of World Federation of Exchanges and was involved in framing global policies on various issues of securities market. After 2013, he was appointed as the Non-Executive director till June 2017, after which he had no involvement with NSE. In this regard, Ravi Narain has also submitted that even as MD & CEO, it was impossible for him to be constantly involved with every detail of every department. Further, Mr. Ravi Narain has also submitted that he did not have the expertise to scrutinize the agreements and NSE had followed the due process for awarding the said contracts and he was party to the approval and sanction of the budget / cost for the same. Further, any such alleged technical lapses cannot amount to failure to exercise due diligence or non-compliance with SCRA.

41. I have perused the submissions of Mr. Ravi Narain. It is noted that with regard to the technical and legal preliminary contentions raised by the him, I find from records that these objections are vague, ambiguous and are not maintainable. With respect to access of documents, I find that Ravi Narain has been given adequate access to inspect all the documents that have been referred to and relied upon in the SCNs and has been provided with the copies of all

the documents as desired by him. Thus, Ravi Narain has in his possession all the relevant materials and also the explanations offered by other Noticees in their defense, so as to be able to furnish explanation in response to the SCNs. The case laws cited by Ravi Narain in his written submission do not support his contention. The contention raised by Ravi Narain has not been convincing as to which document or which specific material has been denied to him because of which he is not able explain his case. As regards cross examination, I find the demand of Mr. Ravi Narain for cross examination is general in nature and he has failed to show as to how his interest stands prejudiced by the statements of various persons that have been recorded by SEBI when no third party statement has been used in SCNs to level any specific allegation against him. Therefore, his contention about not getting any opportunity of cross examination is found to be a general statement without any basis. On the issue of SCN not mentioning the grounds which necessitate an action on him and also not identifying any unlawful gain or profit made by him, as required by the ruling in the case of Gorkha Securities Services, this issue has been dealt with earlier in this order while dealing with the contention raised by NSE, in this regard and in the light of that discussion, I reject the contention of Ravi Narain that the SCN should invariably specify the measures proposed to be taken against the Noticee.

42. I find the contentions of Ravi Narain on various other issues pertaining to the contract awarded to Infotech such as conflict of interest, confidentiality of the data, misuse of data by Infotech and also on the irregularities and procedural lapses with respect to the research agreements signed with IGIDR, are similar to the contentions raised by NSE which have been referred to and discussed earlier in this order. I have already expressed my observations on those issues in the relevant paragraphs of this order while dealing with the explanation of NSE which I maintain as far as the submissions of the suRavi Narain on those issues are concerned. Therefore, for the reasons recorded and observations made by me on these issues while dealing with the submissions of NSE, I find the explanation of Ravi Narain, on the aforesaid issues pertaining to Infotech contract and the agreement signed with IGIDR, as not sustainable. Ravi Narain cannot escape from his accountability as the MD & CEO of NSE, by not adhering to the principles of fairness and reasonableness and not enforcing high standards of due diligence in the matter of awarding contracts or signing agreements with outside agencies/entities.

Noticee 3 / Chitra Ramakrishna

43. I note that Ms. Chitra Ramakrishna has submitted that awarding of contracts is a decision driven by the respective functional heads and then approvals of MD or JMD is taken. In the past, NSE has contracted work to third parties despite having own specialized subsidiaries. NSE had contracted out many assignments, both on technology and IT including to companies like Cognizant, TCS etc., therefore, Infotech was not the only private contractor engaged by NSE for any project assignment. The concerned departments would have examined the issue of conflict of interest and Chitra Ramakrishna was not informed of any issue of conflict of interest. There is no material to show that Mr. Suprabhat Lala was connected with the decision making process by NSE for awarding the contract to Infotech or he influenced the decision making process or that Infotech was not competent to be awarded the contract. Further, it has not shown in the SCN in what manner there was a conflict of interest.

44. The explanations offered by Chitra Ramakrishna have been carefully perused and considered. On the issue of inspection of records, I find that Chitra Ramakrishna has made certain general and vague grievances for having not been granted inspection of records. In this regard, I find that all the relevant documents that have been relied upon by SEBI to frame charges against Chitra Ramakrishna were provided to her during the course of instant proceedings and also during the proceedings under Section 11 of SEBI Act. I don't find any plausible explanation given by Chitra as to how such additional documents which are beyond the scope of SCN issued to her and which have not been relied upon in the SCN support her in providing submissions in response to the SCNs. Similarly, I do not find the request of cross-examination submitted by Chitra to be acceptable. Chitra has failed to show that how her interest stands prejudiced by the statements of various persons that have been recorded by SEBI when no third party statement has been used in SCNs to level any specific allegation against her. Therefore, her contention about not getting any opportunity of cross examination is found to be a general statement without any basis.

45. I find that the contention of Chitra that SCN has not shown the ground which necessitated an action on her and further SCN has not identified any unlawful gain or profit made by her is without any merit. Once it is established that the act of the Noticee has caused confidential data of NSE to leak to the interested parties with vested interest, it cannot be said that such act has not caused any loss to the investors at large. In case such data is used to develop software which enhances the efficacy of software used for the purpose of trading, it will result in loss to the investors who do not have access to such software.

46. Chitra has also argued that the SCN cannot hold her vicariously liable for the acts committed by NSE and its employees. In this regard, she has relied upon her own statement recorded before SEBI, wherein she has stated that her role was a 'top management' role with policy and strategic direction for the company and the key heads of different functions were reporting to her post April, 2013 after she became MD & CEO. Further, she has relied upon the judgment, information and advice of the functional head and had no reason to suspect the integrity and competency of these persons. I find the explanation of Chitra as evasive and not acceptable. I note that Ravi Narain in his submissions has clearly stated that from 2009 onwards till 2013, Chitra, as the Joint Managing Director was looking after the day-to-day management of the exchange as he was preoccupied with his overseas assignments. Further, Ravi Narain has also stated in his submission that in the year of 2009 Ms. Chitra Ramakrishna was elevated as Joint Managing Director so that her position was equivalent to Ravi Narain and she could start taking over all his functions. Thus it is clear that from the year 2009 onwards, Chitra Ramakrishna was practically in complete command and control of NSE, first as Joint MD till 2013 and then as MD & CEO from 2013 till she resigned in December, 2016.

47. Therefore, any act of negligence, lack of due diligence or any actions or inactions on the part of NSE reflecting on its poor governance shall automatically reflect on the performance of Chitra. As the executive head of the organization, as the Key Management Personnel and as a Whole Time Director on the Board, Chitra is answerable for all the actions, performance or lack of performance by her functional heads which could have a bearing on the governance of the exchange. Chitra cannot take shelter under the plea that her role was top management role and she was not responsible for the functions and performance of her functional heads. Therefore, all the arguments advanced by Chitra with a view to escape from her responsibility and accountability to maintain high standards of Corporate Governance, due diligence and adoption of fair, equitable and transparent policy towards the market participants in the interest of securities market, are not maintainable. Therefore, Chitra's contention that she was not aware about any arrangement of sharing data with Mr. Ajay Shah or about the conflict of interest involved in the Infotech agreement and it were the functional heads who may be knowing the details of such transactions, are elusive and give an impression as if she was not at all involved in day-to-day operations of the exchange which were left to the discretion of the respective functional heads. Such an explanation is nothing but an attempt to escape from her liability as the executive head of the exchange.

48. The explanation of Chitra on other aspect of allegations pertaining to the conflict of interest, confidentiality of data and misuse of data by Infotech for commercial gains are on the same lines as the explanations offered by NSE and Ravi Narain as discussed above. Similarly, Chitra has offered similar views in respect of the agreements signed by NSE with Ms. Susan Thomas of IGIDR and Mr. Ajay Shah by stating that there is no allegation in the SCNs that she was responsible for irregularities in these agreements. To sum up, Chitra in her entire submission has vehemently made attempts to hide behind the plea that she was not involved in the day-to-day operations which were being managed by the functional heads and she was not aware of the details of any of the transactions such as LIX contract with Infotech or agreements/undertaking with Mr. Ajay Shah and Ms. Susan Thomas, hence, she does not have any liability as a Director of the exchange. In this regard, it would be appropriate to refer to the judgment of the Hon'ble Supreme Court in S.M.S. Pharmaceuticals Ltd. vs. Neeta Bhalla and Ors. (2005) 8 SCC 89, wherein the Hon'ble Supreme Court examined the liability of an MD of a company, in a proceeding under the Negotiable Instruments Act, 1881. In the said judgment, Hon'ble Supreme Court has held as under:

> *" ….the managing director or joint managing director would be admittedly in charge of the company and responsible to the company for the conduct of its business. When that is so, holders of such positions in a company become liable under Section 141 of the Act. By virtue of the office they hold as managing director or joint managing director, these persons are in charge of and responsible for the conduct of business of the company….."*

49. The said judgment pertains to the liability for prosecuting MD/JMD of a company under the Negotiable Instruments Act, 1881 which requires much higher degree of proof than the present proceedings which are only of civil in nature. Thus, the liability and accountability of a MD who also happens to be CEO of a company are onerous in nature and it is not open to the MD and CEO of a company to escape from his/her responsibility and accountability that has been entrusted upon him/her in view of the immense power that is vested in him/her under the law, therefore, I note that these observations by Hon'ble Supreme Court applies with more force and vigour, in case of MD of stock exchanges which are Market Infrastructure Institutions. In view of the aforesaid observations of the Hon'ble Supreme Court, the contentions raised in this regard by Chitra cannot be accepted.

50. I note that Noticee has placed reliance on In Re Denham & Co. 1883 LR 25 Ch. D, 752 and Dovey and the Metropolitan Bank (of England and Wales) Ltd. Vs. John Cory 1901 A.C. 477 regarding legal position on liability of directors. However, such judgments have only a

persuasive value when there is no Indian case law specifically dealing with the issue dealt therein. On the other hand, in the case of N. Narayanan Vs. Adjudicating Officer, SEBI (2013) 12 SCC 152, Hon'ble Supreme Court has specifically dealt with the role of the director in the context of the Indian securities market and have made observations as under:

"33. Company though a legal entity cannot act by itself, it can act only through its Directors. They are expected to exercise their power on behalf of the company with utmost care, skill and diligence. This Court while describing what is the duty of a Director of a company held in Official Liquidator v. P.A. Tendolkar (1973) 1 SCC 602 that a Director may be shown to be placed and to have been so closely and so long associated personally with the management of the company that he will be deemed to be not merely cognizant of but liable for fraud in the conduct of business of the company even though no specific act of dishonesty is provide against him personally. He cannot shut his eyes to what must be obvious to everyone who examines the affairs of the company even superficially."

51. Chitra has further placed reliance on the judgment of the Hon'ble Supreme Court in Chintalapati Srinivasa Raju & Ors. Vs. SEBI (2018) 7 SCC 443 to contend that the decision in Dovey case (supra) has been followed in the case. In this regard, it is noted that the Hon'ble Supreme Court was examining the liability of a non-executive director of the company while referring to Dovey case. However, in the instant case, Chitra was not a non-executive director but was the MD and CEO of NSE at the relevant time. Therefore, the judicial decisions relied upon Chitra in her defence do not cover the facts on the basis of which the SCN has been issued to her.

52. Being MD and CEO of NSE, Chitra was completely in command and control of the exchange during the relevant period of time. Since, responsibility is always co-terminus with power, the MD & CEO at all points of time has to be responsible for all the decisions and acts of omissions and commissions by the exchange or any of its employees. Under the circumstances, the contentions of Chitra that she does not owe any liability towards the data misuse under the LIX project, is not sustainable.

<u>Conclusion – SCN-1:</u>

53. I have carefully considered the allegations made in the SCN-1 and the responses including written submission made by NSE, Ravi Narain and Chitra Ramakrishna on those allegations. There is no denying the fact that Mr. Ajay Shah and his wife Ms. Susan Thomas have been closely connected with NSE, its affiliate companies and its top management by virtue of their

active professional engagement with NSE over more than last two decades. Mr. Ajay Shah has already mentioned in his statement about his personal rapport with the senior officials of NSE including Chitra and Ravi Narain.

54. It is also evident from the records and statement of Mr. Ajay Shah that the LIX project was his brainchild and he was instrumental in getting the LIX project awarded to Infotech in which he and his wife had vested interest. It is also established from the evidences available in the form of emails addressed by Mr. Ajay Shah to Ms. Sunita Thomas that the data that was being made available by NSE to Infotech was confidential and exclusive in nature. The email also contained a confession by Mr. Ajay Shah that the data so received from NSE was being misused for the purpose of developing algo based trading software for their commercial gains. It is also found from the record that the LIX project was ultimately developed and implemented by subsidiary arm of NSE i.e. IISL the own subsidiary of NSE. It appears that LIX project was never a priority for Infotech who had their greater interest in obtaining data from NSE under the garb of the said project so that the said data can be put to use for their commercial gains. All the aforesaid facts are strongly supported by evidence gathered during the course of examination and establish the fact that Mr. Ajay Shah in collusion with Infotech and its two directors had pre-planned a scheme in the form of LIX project which was utilized by them for enjoying seamless data transmission in the name of developing LIX whereas the data was meant to be misused by them for their commercial gains by developing algo trading products for sale in securities market.

55. As regards the accountability of Ravi Narain and Chitra Ramakrishna are concerned, they cannot get away from the fact that they were in the management position during the relevant point of time and by awarding the contract to Infotech without checking their antecedents and without any due diligence, they have not only overlooked the conflict of interest involved in awarding of this contract to Infotech but also have put the confidential data of the exchange vulnerable to misuse and thereby have compromised on the exchange governance. While Mr. Ravi Narain was the MD &CEO of the exchange during the relevant period, Ms. Chitra Ramakrishna was the Joint MD and was supposed to be on an equivalent position as that of the MD, practically looking after all the functions of a MD. Moreover, even after having a prima facie case of misuse of data by Infotech before them after being served with the SCN-1, NSE has not made any attempt even to ask for an explanation from Mr. Ajay Shah or Infotech, let alone taking any legal measures against them. NSE, Ravi Narain and Chitra Ramakrishna, by not acting upon the allegations of misuse of data by Infotech made in the SCN -1, have

overtly tried to ignore or reject the allegation of misuse of data by Infotech in spite of the fact that the allegation is built upon evidence found from the email addressed by Mr. Ajay Shah to his sister-in-law Ms. Sunita Thomas. Such attitude on the part of NSE, Ravi Narain and Chitra Ramakrishna, indicates deliberate negligence, unwillingness to recognize evidence, and an overzealous attitude to protect the interest of Mr. Ajay Shah and Infotech for reasons best known to them. Under the circumstances NSE, Ravi Narain and Chitra Ramakrishna, are liable to be held responsible and accountable for failure to do proper due diligence, ensure fairness and transparency and avoid conflict of interest as specified in the Master Circular No. CIR/MRD/DSA/SE/43/2010 dated December 31, 2010.

56. Similarly, for the reasons recorded in the SCNs, glaring negligence and irregularities as well as procedural lapses have been committed by NSE, Ravi Narain and Chitra Ramakrishna while executing data use agreements with Mr. Ajay Shah and Ms. Susan Thomas of IGIDR in a manner rendering the agreements practically infructuous and unenforceable. Moreover, NSE, Ravi Narain and Chitra Ramakrishna have not furnished any documents to show the execution of similar agreement having been executed with any institution/organization. It is also evident that till the year 2012 i.e. for about 18 years of its existence, NSE did not have any policy with regard to sharing of data with researcher's / research organizations. NSE, Ravi Narain and Chitra Ramakrishna have not come forward with any explanation as to why they did not have any policy with respect to data sharing nor have they explained as to why Mr. Ajay Shah and Ms. Susan Thomas were being provided with data so generously over the years without signing any agreement with the exchange. This fact itself reflects very poorly on the governance of exchange. Moreover, when the policy on data sharing by way of executing agreement was commenced in 2012, as evident from the two agreements signed in the year 2013 & 2017, the policy was implemented in a slip-shod and casual manner so much so that the agreements were full of infirmities and procedural lapses embedded into it. I also note that the two agreements entered into with IGIDR and the undertaking executed by Mr. Ajay Shah and Ms. Susan Thomas have no relation as far as the projects for which the agreements were executed as there was no cross reference to the undertaking furnished by Mr. Ajay Shah and Ms. Susan Thomas for those agreements. The undertaking of Mr. Ajay Shah and Ms. Susan Thomas does not mention any specificity as to the data and purpose of making such data available to them by the Noticees. Keeping the aforesaid in consideration, I am of the view that the allegation in the SCNs that NSE has failed to ensure proper due diligence with respect to execution of agreements and to ensure fair dealing while executing

these agreements and thereby have compromised on the integrity of the securities market stands vindicated by the aforesaid observations.

57. As regards the allegations made against NSE, Ravi Narain and Chitra Ramakrishna in terms of Section 12 A (b) and 12 A (c) of SEBI Act read with Regulations 3(c) & (d) and 4(1) of PFUTP Regulations, I am of the view that although Mr. Ajay Shah, Infotech and its directors fraudulently utilized the LIX project as a device/scheme/artifice to defraud NSE so as to obtain data for misusing the same for their commercial use as brought out from the record and evidences discussed above, no concrete evidence so as to establish any collusion by NSE, Ravi Narain and Chitra Ramakrishna in this proceedings appeared to have been adduced in the SCNs issued against them. Material on records do not suggest that NSE, Ravi Narain and Chitra Ramakrishna have connived with or have deliberately extended any help to Mr. Ajay Shah or Infotech in their plan to misuse the data that was provided to them through the LIX project. I find it is Mr. Ajay Shah, Infotech and its directors who have pre-planned their scheme to obtain data from NSE for which the LIX project was itself conceived by Mr. Ajay Shah to which NSE and its senior officials agreed because of the implicit advantages of having a LIX on the exchange platform. Similarly, it was Mr. Ajay Shah who was instrumental in getting the LIX project awarded to Infotech. As far as NSE, Ravi Narain and Chitra Ramakrishna are concerned, there is no evidence found from the records to suggest that they were aware about the hidden agenda of Mr. Ajay Shah and his intentions behind the LIX project although NSE, Ravi Narain and Chitra Ramakrishna are certainly liable for not taking any precaution or checking the antecedents of Infotech as algo software vendor in the securities market and thereby have not ensured any fairness and transparency nor have they looked at the possible conflict of interest at the time of awarding the contract. Therefore, while I have no adverse finding against NSE, Ravi Narain and Chitra Ramakrishna in respect of their culpability in terms of Section 12 A (b) and 12 A (c) of SEBI Act read with Regulations 3(c) & (d) and 4(1) of PFUTP, I hold NSE, Ravi Narain and Chitra Ramakrishna accountable and liable for violations of SEBI Master Circular dated December 31, 2010. Further, on perusal of Sections 3(2) (b) of SCR Act, 1956, it has found that the said provision refers to documents to be furnished by a stock exchange while making application for recognition as stock exchange and hence, is not violated in the present case.

58. I note from the SCN issued to NSE that for violation of SEBI Master Circular no. CIR/MRD/DSA/SE/43/2010 of December 31, 2010, the penal provision quoted is Section 23 H of SCRA instead of Section 15HB of the SEBI Act. In this regard I note that the Hon’ble

Securities Appellate Tribunal in HDFC Vs. SEBI had held that violation of Regulation 3(4) attracts penalty under Section 15A(a) of the SEBI Act as the reporting requirement is towards the Board under Regulation 3(4) and Section 15 A(a) provides penalty for default in filing report to the Board. The Hon'ble Securities Appellate Tribunal in VLS Finance Ltd V P. Sri Sai Ram (2000) 28 SCL 205 has further observed that *"It is well settled that mere mention of wrong provision of law, when the power exercised is available even though under a different provision, is by itself not sufficient to invalidate the exercise of that power"*. Also, the Hon'ble Supreme Court in Municipal Corporation of the City of Ahmedabad V. Ben HaribenManilal (1983) 2 SCC 422 stated that *"It is well settled that the exercise of power, if there is indeed a* power*, will be referable to a jurisdiction, when the validity of the exercise of that power is in issue, which confers validity upon it and not to a jurisdiction under which it would be nugatory, though the section was not referred, and a different or a wrong section of different provision was mentioned....that a wrong reference to the power under which action was taken by the Government would not per se vitiate the action if it could be justified under some other power under which government could lawfully do that act*." Further, in State of Karnataka V Muniyalla (1985) 1 SCC 196 therein, the Hon'ble Supreme Court had reiterated the view held in Ahmedabad Municipal Corporation that ... *merely because an order is purported to be made under a wrong provision of law, it does not become invalid so long as there is some other provision of law under which the order could be validly made. Mere recital of a wrong provision of law does not have the effect of invalidating an order which is otherwise within the power of the authority making it*." Therefore, I am of the view that NSE is liable for penalty under Section 15HB of the SEBI Act for the violation of SEBI Master Circular no. CIR/MRD/DSA/SE/43/2010 of December 31, 2010.

<u>SCN-2</u>

<u>Ajay Shah</u>

59. In response to the SCN issued to Ajay Shah, one of the contention raised by Ajay Shah is that he has not been afforded a fair opportunity of inspecting documents. In this regard, I note that the inspection of all the relevant documents were completed during the course of proceedings under Section 11. As the allegations, findings, evidence of the instant adjudication proceedings are exactly same as that of Section 11 proceedings, Ajay Shah was informed that inspection of all the relevant documents have already been done by him. Under the circumstances, in my view there remains nothing unknown or hidden to any of the Noticees on any aspect of the matter. In view of these facts, I find that the prejudice, if any,

which would have been caused to Ajay Shah because of non-inspection of any particular document with respect to other Noticees, has been taken care of. As such, these contentions do not survive now.

60. As regards the application of Regulations 3(c) & 3(d) and 4(1) of PFUTP Regulations on him, according to Ajay Shah, in order to invoke these provisions there must be existence of "dealing in securities" and there must be some persons who have been defrauded. Both of these two ingredients, according to Ajay Shah are absent in his case. To deal with this contention, it is necessary to have a look at the definition of "dealing in securities" as given under Regulation 2(1)(b) of the PFUTP Regulations, 2003 and extracted hereunder:

"(b) "dealing in securities" includes an act of buying, selling or subscribing pursuant to any issue of any security or agreeing to buy, sell or subscribe to any issue of any security or otherwise transacting in any way in any security by any person as principal, agent or intermediary referred to in Section 12 of the Act.

61. The scope of aforesaid definition came for consideration of the Hon'ble Supreme Court in ***SEBI Vs.*** **Kanaiyalal** ***Baldevbhai Patel (2017) 15 SCC 1***, wherein Hon'ble Supreme Court observed as under:

"24……………….. The definition of 'dealing in securities' acquires some importance as charge under regulation 3 completely depends on the aspect whether the tippee was dealing in securities in the first instant or not. For a transaction to be termed as dealing in securities, following ingredients need to be satisfied-

1. *includes an act of buying, selling or subscribing pursuant to any issue of any security, or*
2. *Agreeing to buy, sell or subscribe to any issue of any security, or;*
3. *Otherwise transacting in any way in any security by any person as principal, agent or intermediary referred to in Section 12 of the Act.*

25. The definition of 'dealing in securities' is broad and inclusive in nature. Under the old regime the usage of term 'to mean' has been changed to 'includes', which prima facie indicates that the definition is broad. Moreover, the inclusion of term 'otherwise transacting' itself provides an internal *evidence for being broadly worded so as to include situations such as the present one…………………………..”*

62. Thus, as can be noted from the plain language of the definition as provided under Regulation 2(1)(b) of the PFUTP Regulations, and also from the observation made by the Hon'ble Supreme Court, the definition of "dealing in securities" is an inclusive definition and is not confined only to the acts of buying, selling or subscribing to securities. In the present case, the allegations levelled against Ajay Shah is that he misused his position by virtue of being on the Board of NSCCL and by using his influence on the senior management of NSE, he procured a contract from NSE for Infotech, a company which is in the business of developing algorithmic software and selling it to market participants for dealing in securities market. Further, there is a charge against Ajay Shah that he, in connivance with Infotech, its directors viz. Sunita Thomas and Krishna Dagli and with NSE and its officials, employed a device/scheme/artifice wherein the confidential and sensitive data provided by NSE for being used for research for LIX project was misused for creating algo trading software for sale to market participants for dealing in securities market. Thus, the acts alleged against Ajay Shah have a close nexus with trading in securities and hence fall in the definition of "dealing in securities" and he can be charged with the violations of PFUTP Regulations. Needless to mention here that the algorithmic trading software which was allegedly being developed and sold to the traders/brokers in the market were meant to induce and encourage market participants to trade in securities for better trading results on the strength of capability of such software so sold to them by Infotech prepared out of exclusive data, in collusion with other Noticees as alleged in the SCN-2. The acts of Ajay Shah as alleged in the SCN-2 were necessarily aimed at trading in securities. Therefore, I find no infirmities in the SCN-2 so far as the allegations under PFUTP Regulations levelled against Ajay Shah.

63. Another contention of Ajay Shah is that merely because he was on the board of NSCCL, which is a subsidiary company of NSE and merely because he was engaged in the past by NSE and its subsidiaries for unconnected assignments, and was part of certain committees of NSE and its subsidiaries, it cannot be inferred that he had the ability to influence the decisions of NSE, an independent body with its own set of board of directors and management. In this regard, it is noted that LIX agreement between NSE and Infotech was made in January, 2009 and at the relevant point of time, Ajay Shah remained as director on the Board of NSCCL till August 24, 2012. Moreover, Ajay Shah has been

closely associated with important assignments from NSE, such as conceptualization and development of NIFTY Index in the year 1996, building of PRISM, setting up of Clearing Corporation, setting up of NSDL, launch of Derivatives trading, Designing Mumbai Interbank Offer Rate (NSE MIBOR) in 1998, etc. It is also noted that at the relevant point of time, NSCCL was a 100% subsidiary entity of NSE and also was being manned by personnel of NSE and practically was serving as an integral part of NSE.

64. Mr. Ravi Narain, Ex-MD & CEO of NSE, in his statement recorded before SEBI has referred to Ajay Shah as one of the very few such economists known in capital markets who write policy papers based on data analytics. Ajay Shah has himself admitted that on his suggestion NSE undertook the LIX project and awarded the said project to Infotech on the basis of his discussion with the senior management of NSE. Such an observation coming from the senior management of NSE about Ajay Shah and his own statement on the instrumental role he played in getting the project to Infotech, certainly, explains the fact that Ajay Shah was enjoying a position of influence in NSE. At the same time the fact that Ajay Shah was instrumental in getting Infotech to develop the software for the LIX project shows that Ajay Shah misused his position to get the contract of LIX project for Infotech in which he was interested.

65. In his submission, Ajay Shah has contended that the charge of connivance with the other Noticees levelled against him in the SCNs for employing a device/scheme/artifice wherein confidential and sensitive data of NSE was misused and he along with the other Noticees have compromised the integrity of the securities market, is without any basis. In this context, Ajay Shah has disputed the inference drawn in the SCN-2 from the email dated February 22, 2009 sent by him to Sunita Thomas and Krishna Dagli and has contended that the said email does not suggest that the data received from the NSE for preparing LIX was being used for making algo trading software. In this regard, Ajay Shah has submitted as under:

(i) The said email was a sort of warning for the employees of Noticee no. 4 for future work rather than admitting to the fact of using the data for algorithmic trading work.

(ii) No data was received from NSE by the time when the aforesaid email was written.

(iii) Data as provided by NSE was not confidential/sensitive as it was available to academic institutions for research and also available for sale by NSE.

(iv) Data, as provided by NSE, was replete with errors and virtually unusable.

66. For better understanding of the aforesaid allegation and the explanation offered by Ajay Shah, the relevant extracts of the said email addressed by him to his sister-in-law (Sunita Thomas) with copy marked to Krishna Dagli are reproduced once again hereunder:

> "… *on day 1 Anupam is a finance guy. He is not a programmer. So drive him appropriately. He can go into all your existing projects-but in a domain knowledge roll e.g. he can start working on trading strategies which can go into all algorithm trading work. (But you have to swear everyone to silence on the fact that the data that we are getting out of NSE for VIX and LIX is being used for algorithmic trading work - it would be a severe problem if this fact comes to light since NSE has not given anyone else this data.)"*

67. A plain reading of the aforesaid email suggests that Ajay Shah is clearly asking the recipient of the email to be silent on the fact that the data being received from NSE for LIX was being used for algo trading work. It also indicates that the said trade data was being exclusively received by them from NSE which was being used for the purpose of developing "*trading strategies which can go into all algorithm trading work".* Ajay Shah, in his statement made before SEBI on April 03, 2018 has stated that the data for LIX project was transported from NSE using CD ROMs and USB hard disks or through IP addresses and password given by NSE. That data for LIX was shared between Ajay Shah and Infotech who were to write the LIX codes. Since, the data was being jointly shared and used by Ajay Shah and Infotech, in effect it may be said that Ajay Shah, Infotech, Sunita Thomas and Krishna Dagli were working together on LIX project and were using the data provided by NSE for the said project. It is in this context that the attempt of Ajay Shah to suppress their secret about using NSE data for algorithmic trading work is visible from his concerns expressed in the aforesaid email addressed by him. Ajay Shah wanted other Noticees and the employees of Infotech to maintain silence about their covert endeavour to misuse the trade data for the purpose of their commercial interest. This

single piece of evidence speaks volumes about the collusive involvement of Ajay Shah with other Noticees and leaves no doubt about the fact that the aforementioned four Noticees were using the NSE trade data together for the development of algorithmic trading products with a commercial motive and not for the purpose for which the data was shared with them by NSE under the LIX project.

68. The contents of the aforesaid email further falsify the claim of Ajay Shah that the data being received from NSE for the LIX project was not confidential, since the Noticee himself has admitted in his email that "it would be a severe problem if this fact comes to light since NSE has not given anyone else this data". Moreover, under the Professional Service Agreement dated January 19, 2009 signed between NSE and Infotech, the salient features of which are discussed in subsequent paragraphs, the data for LIX project was meant to be treated as confidential.

69. Further, a perusal of an email dated November 9, 2009 addressed by Ajay Shah to Sunita Thomas and Krishna Dagli with regard to treatment of the data received from NSE regarding the LIX project, it is observed that the data so provided by NSE is exclusive and not shared with anyone else except for Ajay Shah and Infotech (and its directors viz. Sunita Thomas and Krishna Dagli). The relevant extract of the email is reproduced as below:

"*Before going anywhere with this data, a lot of experimentation is required to verify that it makes basic sense. NSE has never produced this data before and we are their only users.*"

70. It is thus established that the trade data received from NSE was admittedly confidential in nature and as the email dated November 9, 2009 referred to above suggests, Ajay Shah, Infotech, Sunita Thomas and Krishna Dagli were the only users of NSE data and such data was not being given to anyone else.

71. Regarding the allegation in the SCN-2 that Ajay Shah has violated the Code of Conduct for the office bearers of a stock exchange and provisions related to fairness and transparency, due diligence and conflict of interest mandated under SEBI's Master Circular dated December 31, 2010 read with Section 3 (2) (b) of the SCRA, Ajay Shah has contended that he was never an office bearer of a stock exchange. Therefore, the Master Circular does not apply to him. Further, NSCCL on whose board Ajay Shah was

a member, has its own code of conduct and the same has always been compiled with by him.

72. In this regard, it is noted that Clause 3.8. of the SEBI's Master Circular dated December 31, 2010 provides Code of Ethics for Directors and Functionaries of Stock Exchange (hereinafter referred to as "**the Code**"). Some of the relevant clauses of the Code are reproduced hereunder:

> *"3**.8.9 Disclosures of beneficial interest***
>
> *All Directors and functionaries shall disclose to the Governing Board, upon assuming office and during their tenure in office, whenever the following arises,*
>
> *i……………*
>
> *ii………*
>
> *iii. any other business interests.*
>
> ***3.8.12 Misuse of Position***
>
> *Directors/ committee members shall not use their position to obtain business or any pecuniary benefit (as intermediaries like brokers or in any other capacity like professional or consultancies) in the organization for themselves or family members."*

73. Ajay Shah is contending that the Code is not applicable to him and there was a separate code of conduct of NSCCL which was duly followed by him. Regarding the applicability of the aforestated Code on Ajay Shah, I have already recorded my findings while dealing with the similar submission made by NSE in this regard, which are not being repeated here for the sake of brevity. Therefore, I conclude that Ajay Shah failed to disclose his interest in Infotech, used his position to procure the LIX contract for Infotech, and connived with other Noticees to fraudulently use confidential data of NSE for developing and selling of algo trading software in securities market, have rendered the contention of Ajay Shah not maintainable. Hence, the Code referred to above as prescribed by SEBI in the Master Circular for adherence by the directors and functionaries of stock exchanges

was very much applicable to Ajay Shah and the same stood violated by the acts attributed to him, in the SCNs.

74. On the allegation of collusion, Ajay Shah has further submitted that SCN-2 fails to identify any trading or dealing in securities, or even orders placed, which are alleged to be fraudulent and in the absence of existence of any of these essential ingredients that are required for invoking the provisions of PFUTP Regulations, there is no scheme or artifice to collude over. Ajay Shah has further argued that his email dated April 27, 2014 to Suprabhat Lala and others as referred to in the SCN-2, was meant to invite his students and some practitioners in the field to meet and have discussions on various topics with respect to which he had been doing research. Ajay Shah has submitted that the emails referred to in the SCNs (exchanged between Sunita Thomas and Suprabhat Lala wherein confidential information originating from NSE was allegedly shared) have no connection with High Frequency Trading (HFT). The details of aforesaid emails are given below:

75. In this connection, I note that applicability of the provisions of the PFUTP Regulations has already been explained in earlier paragraphs. As regards, the charge of collusion amongst Noticees, the same has to be seen in the entirety of the facts and circumstances of the case. It has been observed that Ajay Shah along with Infotech, Sunita Thomas and Krishna Dagli misused the NSE data for the purposes other than as specified in the LIX agreement executed between NSE and InfoTech. It has also been noted that the said contract was awarded to Infotech by giving it preference over NSE's own specialised subsidiary i.e. IISL which is also engaged in this specialised field, on the recommendation by Ajay Shah. These facts along with the email dated February 22, 2009 send by Ajay Shah to Sunita Thomas and Krishna Dagli, disclose collusion amongst the Noticees to use the LIX contract as a device/scheme/ artifice so as to fraudulently misuse the data for the purpose of developing and selling algo trading products for the securities market. Therefore, the contentions of Ajay Shah in this regard do not hold good and are not supported by his actions.

76. As regards explanation submitted by Ajay Shah on the emails referred in the SCN-2 (exchanged between Suprabhat Lala and Krishna Dagli), it is noted that the SCNs attributes collusion between Suprabhat Lala and Krishna Dagli on the basis of said emails wherein confidential information pertaining to NSE was allegedly exchanged between them. The details of the said emails are given below:

a. Email dated November 05, 2009 sent by Ms. Sunita Thomas to Suprabhat Lala containing a narrative on Suprabhat Lala's views on the Pre-open session. This email is addressed to a certain '*Sirjee'*.

b. Email dated December 03, 2012 sent by Suprabhat Lala to Ms. Sunita Thomas containing a document referencing to the deliberations held during the Technical Advisory Committee (TAC) meeting on October 17, 2012, wherein certain action points were finalized.

c. Email dated January 30, 2013 sent by Suprabhat Lala to Ms. Sunita Thomas referring to certain internal issues specific to NSE.

d. Email dated December 04, 2014 sent by Suprabhat Lala to Ms. Sunita Thomas containing certain statistics shared internally amongst NSE employees in the trail.

77. Given the fact that Sunita Thomas and Suprabhat Lala are related to each other and Sunita Thomas is not entitled to any internal information of NSE, the exchange of such emails by Suprabhat Lala with Sunita Thomas indicate that she had access to data and information about functioning of NSE other than the data that her company i.e. Infotech was entitled to receive from NSE for the LIX project. Therefore, such email correspondences and the easy access to the internal information / data of NSE which Infotech had through its director (Sunita Thomas) strengthen the preponderance of probability of collusion of Suprabhat Lala and other Noticees. In view of the same, whether these emails pertained to LIX or not, does not makes any difference.

Noticee 5 / Infotech
Noticee 6 / Krishna Dagli
Noticee 7/ Sunita Thomas

78. Infotech, Krishna Dagli and Sunita Thomas have given a common reply to the SCNs issued to them. One of the contention raised by them is that they have not been afforded a fair opportunity of inspecting documents. In this regard, I also note that the inspection of all the relevant documents were completed during the course of proceedings under Section 11. As the allegations, findings, evidence of the instant adjudication proceedings are exactly same as that of Section 11 proceedings, Infotech, Krishna Dagli and Sunita Thomas were informed that inspection of all the relevant documents have already been done by them. Under the circumstances, in my view there remains nothing unknown or

hidden to any of the Noticees on any aspect of the matter. In view of these facts, I find that the prejudice, if any, which would have been caused to Infotech, Krishna Dagli and Sunita Thomas because of non-inspection of any particular document with respect to other Noticees, has been taken care of.

79. The primary contention raised by Infotech, Krishna Dagli and Sunita Thomas is that SCNs have been issued without jurisdiction and are not maintainable against them. In support of this contention, they have submitted that they are neither market intermediaries nor persons associated with the securities market. Infotech is a software development company, and its software products are not exclusively associated with the securities market. In this connection, it would be appropriate to refer to the judgment of the Hon'ble Bombay High Court in ***Price Waterhouse & Co. &Ors. Vs. SEBI [2010] 160 Comp Case 324 (Bom)*** wherein while dealing with the contention that the auditors of a listed company cannot be treated as persons associated with securities market, Hon'ble High Court observed as under:

> *"…………...27. In so far as the submission of Mr. Dwarkadas that the petitioners are not directly associated by the securities market is concerned, it is true that the petitioners may not have any direct association with the securities market since they were performing their duties as Auditors of the Company and were associated with the preparation of the balance-sheets of the Company. It is however required to be noted that normally an investor would like to invest his money in the shares of a Company on the basis of reflection of Company's financial health as disclosed in the balance-sheet of the Company and he may consider that it is safe to invest money in a particular company, if the balance sheets have been certified by reputed Chartered Accountants and it reflects that the financial position of the Company is sound. An investor is likely to be guided by the audited balance-sheet of the Company and would presume that the facts incorporated in the balance-sheet are true and correct. Considering the said aspect, even though the petitioners may not have direct association in the share market activities, yet the statutory duty regarding auditing the accounts of the Company and preparation of balance-sheets may have a direct bearing in connection with the interest of the investors and the stability of the securities market. In our view, the petitioners in their capacity as auditors of the Company Satyam, which was at one point of time considered to be a blue chip company who had a defining influence on the securities market, can be said to be persons associated with the securities market within the meaning of the provisions of the said Act………..."*

80. Applying the aforesaid dictum to the facts of the present case, it can be very well said that Infotech, Krishna Dagli and Sunita Thomas are the persons associated with securities market as they are admittedly in the business of developing algo trading platforms as well as algo trading software which are used for dealing in securities by market participants in the securities market. Needless to state that such products developed by Infotech, Krishna Dagli and Sunita Thomas would induce the brokers and other market participants to trade in securities by using these products on the strength of the advantages associated with these products. As the developer of these trading softwares, Infotech and its directors i.e. Krishna Dagli and Sunita Thomas, can very well be termed as persons associated with securities market.

81. Regarding misuse of data received by them from NSE under the agreement for developing LIX, for the purpose of developing algo trading software, Infotech, Krishna Dagli and Sunita Thomas have submitted that Infotech does not write or develop algorithmic trading strategies on its own. It only does computer programming for algorithmic trading strategies as per the instructions of its clients. Their's is a mere software services function which does not require any trade data from the exchange. The information and data required for development of an algorithmic trading platform is completely different from the data that was provided to Infotech under the LIX agreement with NSE. Infotech does not write the algo-trading strategies and as such the data provided under the LIX Agreement would not be of any use to Infotech for development of its software.

82. In this regard, it is noted that Infotech, as per its own submission, was involved in programming of trading strategy as part of the customized work done for its clients. Infotech was also into the business of development of software to convert trading strategies of its clients into algo trading software. As an integral part of any process of software development, the algo trading software also needs to be back tested or validated with the help of data. This is where the role of data comes into play as the algo trading softwares which are code based trading strategies for the use of end customers would be necessarily, required to be validated by back testing with the help of actual market data. On the one hand Infotech states that it does not require any data for its work and at the same time it claims that the data required for its Algo trading platform is different from the data it received from NSE. Thus none of the contentions of Infotech has been substantiated by it.

83. It is also seen from the work order annexed to the Professional Service Agreement signed by Infotech with NSE, wherein it is stated that *"LIX would be directly used for index arbitragers, who would use it in their internal calculations".* It implies that the product (LIX) was meant for use by the arbitrage traders. In this regard, I have noticed from the statement of Sunita Thomas, recorded before SEBI, that Infotech was in the business of providing decision support system to market players to help them in their arbitrage trading for which, Infotech had profit sharing arrangement with such traders such as CrossSeas Capital Services Pvt. Ltd. It indicates that the data that was being obtained from NSE was of significant relevance for the business of Infotech.

84. Infotech, Sunita Thomas and Krishna Dagli have further submitted that the projects implemented by Infotech for NSE including LIX project were non-standard research projects of small value and was conceptualised by the researchers. On the issue of awarding the project to Infotech and not to IISL which is a subsidiary company of NSE, the reasons furnished by Infotech, Sunita Thomas and Krishna Dagli are that unlike Infotech, IISL is not a software firm and Infotech had already successfully implemented research projects for NSE in the past, hence, it was awarded the LIX project based on past performance. According to them IISL on the other hand, operates and maintains indices. The explanations offered by Infotech is not satisfactory. I note that in the said LIX project, Ajay Shah and his wife, Ms. Susan Thomas, were working on a *pro bono* basis and the project was awarded to Infotech on the basis of discussion by Ajay Shah with the senior management of NSE. From the beginning, it was envisaged that while Infotech would carry out the software development of the project, the research part was to be carried out by Ajay Shah and his wife. In view of the implicit vested interest of Ajay Shah in the project which was undertaken by NSE on the basis of his suggestion, the involvement of IISL in this project was never contemplated from the very beginning. Therefore, the contention of Infotech that the project was awarded to it on the basis of their antecedent and past performance is devoid of merit. Incidentally, it is understood that it is IISL (subsidiary of NSE) who finally developed and implemented the LIX project at NSE. Therefore, the explanations offered by Infotech in this regard are not sustainable.

85. Infotech, Sunita Thomas and Krishna Dagli have further contended that the data in question which was shared by NSE for the LIX project was not unique, sensitive or confidential data. It was also contended that information contained in this data was already available in the public domain and was available for sale by DotEx, subsidiary of

NSE. In this regard, to understand the extent of confidentiality and sensitivity of the aforesaid data in more detail, it would be appropriate to look at the relevant clauses of LIX agreement dated January 19, 2009 entered into between the NSE and Infotech. The relevant clauses of the agreement (Titled as 'Professional Service Agreement') are as follows:

> *(a)* ***"Definition clause*** *– It defines "Information" as meaning and including all confidential or proprietary information related but not limited to:-*
>
> *(a) Software products and documentation.*
>
> *(b) Proprietary documentation duly endorsed on the face by the party before making the information available to other party. In some cases information could be in the nature of verbal or group dicussions between the parties. For the said purpose there shall be a system of documentation of each and every such points discussed. Such discussions shall be recorded in form of minutes of meeting and shall be a part of the Proprietary information.*
>
> *(c) Market, operation, personal and business dealings, third party dealing with either party which by their very nature may neither be documented not endorsed a confidentiality notice.*
>
> *(d) Information which have commercial value for the business and is confidential or proprietary in nature including but not limited to inventions (patentable or otherwise) technology software development tools, trade secrets, processes, schedules, knowhow designs, formulas, computer programmes, databases, techniques, algorithims, customer and product development plans, ideas, improvements, research or development, customer and supplier list, business strategies, financial information and other confidential information of parties, their affiliates, exposed to (all of which including copies and material containing such information).*
>
> *(b)* ***Clause 3(b)*** *– All the team members who were directly or indirectly involved in developing the deliverables shall be bound by*

the terms and conditions of the said agreement individually as well as through Infofin during the subsistence of their contract/employment with Infofin as well as after leaving Infofin, as the case may be.

(c) ***Clause 4(a)****- Infofin agrees that the proprietary information is the sole property of NSEIL or its affiliates, customers, suppliers. Further, NSEIL is the sole owner of the all patents, copy rights, trade marks, if any, and other proprietary rights in connection thereto and no license of any kind is granted hereby to Infofin.*

(d) ***Clause 4(b)*** *- Infofin agrees that it shall not use the proprietary information of NSEIL except to evaluate such information for the sole limited business purposes of NSEIL.*

(e) ***Clause 7(d)*** *– Infofin shall be responsible for all the acts, actions, commissions and omissions of the individuals of its team involved in developing the Deliverables. Infofin shall obtain individual undertaking from the team members with respect to the maintaining of secrecy of the Deliverables, confidential and proprietary information and other incidental information which the team members may come across during, the period of developing the Deliverables.*

(f) ***Clause 10(k) – Confidentiality:*** *The parties shall maintain utmost confidentiality of the information provided pursuant to this Agreement at all times and none of the parties shall make any announcement to the public or to any third party regarding the arrangements contemplated under this Agreement without the consent of the other, such consent shall not be unreasonably withheld or delayed, save (in the absence of agreement of both the parties) for any statement or disclosure which may be required by law or is required to be disclosed by way of an action or order of a court of competent jurisdiction or of any requirement of legal process, law or governmental or regulatory order, decree, regulation or rule. Such statement or disclosure shall be no more extensive than is usual or necessary to meet the requirements imposed upon the party making such statement or disclosure. Such*

information may be disclosed by the parties to such of their own employees who need to know the same. This clause shall survive the termination or expiration of this Agreement."

86. Even for a moment, assuming that the said trade data was also available in public domain, as contended by Infotech, Sunita Thomas and Krishna Dagli, it cannot be stated with certainty that it was available in public domain with same granular details and in the desired format as was exclusively been made available to Infotech by NSE in terms of the agreement.

87. Infotech, Sunita Thomas and Krishna Dagli have not explained as to why Infotech had agreed to various terms of confidentiality of data, in the agreement if such data was available in public domain for anyone to obtain, process and use the way one wanted to use them for its business requirements. The very fact of existence of a specific Professional Service Agreement for the purpose of receiving data with specific clauses relating to confidentiality, shows that the data with its granularity receivable by Infotech, was unique and confidential. Further, email dated November 9, 2009, as addressed by Ajay Shah to Sunita Thomas referred to above reveals that Ajay Shah, Infotech, Sunita Thomas and Krishna Dagli were the only users of NSE data and such data was not being given to anyone else. In view of the aforesaid, the submission of Infotech, Sunita Thomas and Krishna Dagli that the data received by them from NSE was not confidential/sensitive is not tenable.

88. Infotech, Sunita Thomas and Krishna Dagli have also given their own interpretation of email dated February 22, 2009 addressed by Ajay Shah to Sunita Thomas with a copy marked to Krishna Dagli. It is explained that the said email was intended to warn that the LIX data should not be used for programming of trading strategy as part of the customised work done by Infotech for its clients. Noticee no. 1 in his reply has further submitted that the LIX data might be used by Mr. Anupam Jain (employee proposed to be hired by Infotech) for algorithmic trading strategies for which he wanted everyone to be sworn to silence. These explanations lacks substance and all the more, it points to the fact that it was in the contemplation of Ajay Shah, Infotech, Sunita Thomas and Krishna Dagli that the LIX data will be used by them for algorithmic trading strategies for which they were ensuring secrecy. It also supports the observation made in this order that the data so received from NSE was very much usable for developing algo softwares, contrary to the contention of the Noticees that the data being historic in nature was not suitable for

making algo trading software. Further, the data was also evidently misused as clearly brought out above from the contents of the email addressed by Ajay Shah to Sunita Thomas.

89. Regarding email dated April 27, 2014 from Ajay Shah to Krishna Dagli and Sunita Thomas inviting them for a discussion on “NSE HFT”, Infotech, Sunita Thomas and Krishna Dagli have submitted that a mere reliance on an email with a subject-line NSE-HFT cannot form the basis of an allegation of collusion against them. Further, the email being relied upon in the said paragraph is followed up by a calendar invite for a meeting that actually never took place. In this regard, it is important to note that irrespective of the fact whether the meeting as per the invitation took place or not it shows that Ajay Shah, Infotech, Sunita Thomas and Krishna Dagli involved in such interaction were acting together with a commonality of purpose, be it academic or professional. It is further noted that the charges against Ajay Shah working in collusion with other Noticees is to be seen in the entire web of events wherein Suprabhat Lala was found sharing confidential information of NSE through emails mentioned at earlier paragraphs with Suniat Thomas (his wife) who is also a director in Infotech. Moreover, the finding earlier made in this order that Ajay Shah and Infotech, Sunita Thomas and Krishna Dagli have misused the LIX data for the purposes other than as specified in the agreement between NSE and Infotech, is strongly supportive of the allegation of collusion against the aforesaid Noticees. All these events when seen together provide a clear picture of irrefutable preponderance of probability of a nexus amongst Ajay Shah, Infotech, Sunita Thomas and Krishna Dagli to use LIX project as a conduit to achieve their commercial goals.

Noticee 5 / Suprabhat Lala

90. I have gone through the reply filed by Suprabhat Lala has raised some preliminary objections such as, initiation of investigation based on pseudonymous complaints, non-furnishing of complete set of documents to enable the Noticee to defend properly, not making available the original documents during the course of inspection, proceedings pertaining to an event which is around 10 years old and that the SCNs lacks reasons for the delay etc. As regards the inspections and non-furnishing of the documents are concerned, I find that Suprabhat Lala has been provided with inspection of all the relevant documents during the course of Section 11 proceedings. I find that the objections of Suprabhat Lala are general in nature and not specific. Suprabhat Lala has not brought out the denial of inspection of any specific documents, which has caused prejudice to his

interest. Therefore, the submission of Suprabhat Lala are nothing but general observations without raising any specific point which needs to be addressed and hence, are devoid of any merit. As regards delay in issuing SCNs, I find that there is no provision in the SEBI Act, 1992 which lays down any time frame beyond which SEBI cannot take cognizance of a matter, although it is expected that there should not be any undue delay. As regard the delay in initiating the proceeding is concerned, the relevant factor to be determined is the time when the violation came to the notice of the authority. Delay has to be reckoned from the date when the matter comes to the notice of the authority. In the present case, I note that the SCNs clearly mentioned that the SCNs has been issued pursuant to the examination conducted by SEBI after the receipt of the complaints dated June 01, 2017 and September 07, 2017 and consequently, the SCNs were issued to the Noticees in September 2018. In view of the same, I find that there is no delay in taking cognisance of the complaints and in initiating the proceedings against Suprabhat Lala. Hence, the contention of Suprabhat Lala in this regard are rejected.

91. Further, Suprabhat Lala has raised objection to the initiation of examination on the pseudonymous complaints, which are motivated and filed with malafide objective and has stated that the action initiated based on such complaints is without verifying the credentials of the complaints. It may be noted here that the allegations made in the SCNs are not merely based on the said complaints received by SEBI. Pursuant to receipt of the aforesaid complaints, SEBI has conducted necessary examination and based on the finding of such examination of facts, SCNs were issued. Hence, the objections raised by Suprabhat Lala in this regard, are not acceptable.

92. From a perusal of the SCN-2, it is noted that the allegations levelled against Suprabhat Lala are that he, in collusion with other Noticees has employed a scheme/artifice/device to defraud NSE and has thus compromised with the integrity of the securities market. Suprabhat Lala has relied on the decision of Hon'ble Supreme Court in ***P.C. Joshi Vs. State of UP and Other (Dated 08/08/2001)*** to contend that there must be legally acceptable evidence to support the charge of misconduct. Accordingly, it has been submitted by Suprabhat Lala that despite conducting elaborate examination, no legally acceptable evidence has been found except the emails exchanged between him with Sunita Thomas and therefore, there is nothing which adversely reflect on his reputation, integrity, commitment and devotion. It is also submitted that during his career of 18 years with NSE, Suprabhat Lala has not been found indulging in any act, which could be

categorized as being not in the interest of the institution i.e. NSE or against the interest of the securities market.

93. The contentions of Suprabhat Lala have been carefully considered. I note that in the present case, the allegation against Suprabhat Lala has been specifically made based on certain emails exchanged / shared by Suprabhat Lala with Sunita Thomas, in breach of his duties. These emails addressed by Suprabhat Lala to Sunita Thomas indicate his close nexus with Infotech through Sunita Thomas who were recipient of the data from NSE under the LIX project. It is a fact that Sunita Thomas (wife of Suprabhat Lala) was under a data sharing agreement with NSE for the purpose of her business through Infotech and therefore was an interested party as far as her relationship with NSE was concerned. Therefore, the acts of Suprabhat Lala in sharing various information/ data through emails addressed to his wife alludes to the fact that Suprabhat Lala was closely associated with the business activities of his wife and through her was also actively engaged with the Noticees 4 to 7. Further, the conduct of Suprabhat Lala in sharing internal data/ information with Sunita Thomas and also being an invitee of Ajay Shah to discuss about HFT at NSE at an outside venue also strongly point to the fact that Suprabhat Lala was actively associated with Noticees 4 to 7 in their commercial activities. Thus, in the present case there is sufficient evidence available on record to prove the acts attributed to Suprabhat Lala in the SCN-2. Therefore, his reliance upon the P.C. Joshi case (supra) is not maintainable.

94. It has been further contended by Suprabhat Lala that NSE has a policy in place to prevent/monitor data flowing outside the organization and alert is generated, in case confidential/secret information is mailed, printed or copied on USB and in the entire career of Suprabhat Lala, no such alert has ever been generated for leakage of the secret or confidential information. Suprabhat Lala also submits that e-mails exchanged with Sunita Thomas are not related to the work done by Infotech for the development of LIX nor was it containing any secret/confidential information. The said emails are text of mails proposed to be sent by Suprabhat Lala for which he sought the suggestion of Sunita Thomas for appropriate syntaxing and/or readability. In this regard, it needs to be noted that the allegations against Suprabhat Lala is not about leaking of any specific or confidential data / information related to the project (LIX) awarded to Infotech. The allegations against Suprabhat Lala is about colluding with the other Noticees (Noticees 4 to 7) through sharing of confidential information in course of his employment in NSE,

through the aforesaid emails which were exchanged with Sunita Thomas. In this regard, I find that specific allegations have been made SCN-2, wherein, inter alia, it is alleged that Suprabhat Lala has shared with Sunita Thomas details of deliberations held of the Technical Advisory Committee (hereinafter referred to as "TAC") meeting held on October 17, 2012 and other information pertaining to internal issues specific to NSE. The observations of TAC are confidential in nature and there was no justification regarding sharing of the said information with Sunita Thomas.

95. To support his claim that the e-mails have been exchanged for syntax and or readability, Suprabhat Lala has also enclosed a table exhibiting the corrections made by Sunita Thomas to the said e-mails of Suprabhat Lala. Suprabhat Lala has submitted that these emails were part of the personal correspondence and not part of any official correspondence of NSE or otherwise. I find contradiction in the submissions advanced by Suprabhat Lala in this regard. Suprabhat Lala on the one hand submitted that the said emails are part of personal correspondence and on the other hand has mentioned that they were draft emails proposed to be sent to his NSE superiors/colleagues. It is clear from the perusal of the emails that the content of the emails contained information which were relating to the functioning of NSE, which should not have been shared with Sunita Thomas in light of the fact that Sunita Thomas was already having a data based project with NSE and was herself in the business of making Algo softwares for use in the securities market.

96. The close nexus of Suprabhat Lala with other Noticees (Noticees 4 to 7) has also to be understood in the light of email dated April 27, 2014 wherein Ajay Shah wanted to have a meeting, inter alia, with Sunita Thomas, Krishna Dagli and Suprabhat Lala to discuss regarding happenings in NSE HFT (High Frequency Trade) and to make further plans. The question that arises is if Suprabhat Lala, who was looking after trading operations at NSE, had no nexus with Ajay Shah or Infotech, what was the need for him to be invited outside the Exchange office premises to discuss the latest development about HFT trades at NSE? Why was he expected to share NSE's trade information to outsiders at an outside venue amongst strangers? Whether the meeting eventually took place or not is not relevant, as long as the fact remains that Suprabhat Lala was invited by Ajay Shah and others to discuss about NSE matters outside NSE premises. It shows collusion as well as professional misconduct on the part of Suprabhat Lala for accepting invitation to discuss internal issues of NSE with other Noticees (Noticees 4 to 7). Under the

circumstances, the sharing of official information by Suprabhat Lala through emails addressed to his wife, who happened to be having a data sharing engagement with NSE through her company (Infotech) reflects adversely on the integrity of Suprabhat Lala and shows that he was in collusion with other Noticees. Therefore, the said contention of Suprabhat Lala cannot be accepted

<u>Conclusion – SCN-2</u>

97. The allegations levelled against Ajay Shah, Infotech, Sunita Thomas, Krishna Dagli and Suprabhat Lala in the SCN-2 have been examined, the explanations offered and arguments advanced by them have been carefully considered. The aforesaid discussions and my observations bring out certain admitted factual positions that impinge on the merit of the allegations made in the SCNs. It is a fact that Ajay Shah has been long associated and actively engaged with NSE and its subsidiaries in various capacities. Ajay Shah held a position of high esteem and influence in the minds of the senior management of NSE, as evident from the statement of Mr. Ravi Narain, former MD and CEO of NSE. Ajay Shah was capable of influencing the decision making of NSE management which is exemplified by the fact that Ajay Shah and his wife suggested to NSE and NSE undertook the LIX project for which Infotech was awarded the contract. An examination of the relevant provisions of the Professional Service Agreement signed by Infotech with NSE has already revealed that the data received by Infotech from NSE was confidential and exclusive in nature which was made available only to Ajay Shah and Infotech and its two directors (Krishna Dagli and Sunita Thomas). There is no denying the fact that Infotech and its two directors have been in the active business of providing trading solutions to the market participants on algorithmic trade through various products. Further, evidently Suprabhat Lala has committed professional compromise by sharing internal data / information with Krishna Dagli through the emails referred in the SCNs and also by accepting invitation from Ajay Shah to discuss HFT at NSE at an outside venue in the presence of Sunita Thomas and Krishna Dagli.

98. The convergence of interests of Ajay Shah, Infotech, Sunita Thomas, Krishna Dagli and Suprabhat Lala in receiving the data which was confidential and exclusive in nature, is borne out from the fact that Ajay Shah in his own emails has acknowledged its confidential nature and also the fact that he along with Infotech, Sunita Thomas, Krishna Dagli and Suprabhat Lala was involved in using the said confidential data for developing algo trading software for sale to traders in the securities market.

99. To sum it up, all the Noticees were collectively responsible for misuse of the data received from NSE. The fact that Infotech was paid only Rs. 2 Lakh out of the total fees of Rs. 10 Lakh receivable by it under the agreement and it did not recover the remaining fees, further strongly signifies that the underlying intention of Infotech and its directors behind entering into said agreement was not monetary consideration but to have access to the exclusive wealth of data of NSE, so that the same can be commercially exploited for the benefit of other Noticees. The aforesaid leads to a conclusion that Ajay Shah, Infotech, Sunita Thomas and Krishna Dagli have collusively worked to fulfil their commercial goals by fraudulently using the data that was obtained by them from NSE to develop algo trading software. Keeping in line with the regular business of Infotech, i.e. providing algo trading software to traders in securities, the algorithmic trading software so developed from LIX data was meant to be sold to the traders/brokers in the market to induce them to trade in securities with better trading results, on the strength of capability of such algo trading software prepared out of such exclusive data not ordinarily available to other market participants. Further, Suprabhat Lala being a senior official of NSE ought to have displayed professional integrity by disclosing to the senior management his connection with Infotech through his wife which had a strong cause to give rise to a conflict of interest to him as well as to Ajay Shah. Moreover, by sharing internal information / data about NSE and the minutes of TAC etc. with his wife who was a beneficiary party of the LIX project, Suprabhat Lala has committed breach of his duties to collude with Ajay Shah, Infotech, Sunita Thomas and Krishna Dagli for the aforesaid fraudulent acts. In my view, there is no difficulty in sharing of data by Ajay Shah with an outside entity for commercial purpose as long as the agreement spells out clearly its objectives and provides for the commercial terms and conditions in the agreement in compliance with the stated data sharing policy of the exchange. However, when a data sharing agreement purely meant for research purposes assumes the colour of a commercial agreement thereby providing privileged access to confidential and exclusive trade data of the exchange to a select few persons who, clandestinely exploit the said data for their commercial gains, it leads to serious issues leading to compromise on market integrity. This is certainly not a desirable situation as it leads to violation of principles of transparency, equity and fairness in dealing with market participants by the Exchange which is not permissible under the regulations. Under the circumstances, the acts attributable to Ajay Shah, Infotech, Sunita Thomas, Krishna Dagli and Suprabhat Lala for the reasons recorded and observations made in the foregoing paragraphs of this order, are clearly violative of the various legal provisions,

as alleged in the SCNs and Ajay Shah, Infotech, Sunita Thomas, Krishna Dagli and Suprabhat Lala are liable to be held accountable for the acts and the breach of law committed by them.

100. In view of the above observations and strong preponderance of probabilities supported by the aforesaid factual evidence, I am of the view that the allegations levelled against Ajay Shah, Infotech, Sunita Thomas, Krishna Dagli and Suprabhat Lala, in the SCN-2, stand established. Accordingly, I find that:

(a) Ajay Shah has violated Section 12A (b) & (c) of SEBI Act, Regulations 3(c) &(d) and 4(1) of PFUTP Regulations and SEBI's Master Circular no. CIR/MRD/DSA/SE/43/2010 dated December 31, 2010. However, on perusal of Sections 3(2) (b) of SCR Act, 1956, it is found that the said provision refers to documents to be furnished by a stock exchange while making application for recognition as stock exchange and hence, is not violated in the present case.

(b) Infotech, Sunita Thomas, Krishna Dagli and Suprabhat Lala have violated Section 12A (b) & (c) of SEBI Act, 1992 and Regulations 3(c) & (d) and 4(1) of PFUTP Regulations.

101. Therefore, in the facts and circumstances of this case, I am of the view that such default by the Noticees, as discussed above attract the liability to pay penalty as prescribed under Sections 15HA and 15 HB of the SEBI Act which existed at the relevant time, 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.*

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*

102. 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."

103. 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 Noticees or loss caused to the investors, by their acts in relation to the unfair advantage w.r.t sharing of confidential information of NSE with Ajay Shah, Infotech and its directors. However, as discussed above, one cannot lose sight of the fact that such an act on the part of the Noticees had a huge impact on the market. Ajay Shah and Infotech along with its directors made unfair gains by preparing software related to algorithmic trading at the cost of other investors who did not have access to such softwares developed on the basis of confidential data shares by NSE. In this context, reliance is placed 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

104. 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 penalties on the Noticees according to the details given in table below. In my view, the said penalty is commensurate with the violation committed by the Noticee in this case.

Sr. No.	Entity name/Noticee no.	Provision of law/regulation violated	Charging Provisions	Penalty imposed
1.	National Stock Exchange Limited	Provisions related to fairness & transparency, due diligence and conflict of interest as specified in Master Circular no. CIR/MRD/DSA/SE/43/2010 of December 31, 2010	Section 15HB of the SEBI Act	Rs. 1,00,00,000/- (Rs. One crore only)
2.	Mr. Ravi Narain	Provisions related to fairness & transparency, due diligence and conflict of interest as specified in Master Circular no. CIR/MRD/DSA/SE/43/2010 of December 31, 2010	Section 15HB of the SEBI Act	Rs. 1,00,00,000/- (Rs. One crore only)
3.	Ms. Chitra Ramakrishna	Provisions related to fairness & transparency, due diligence and conflict of interest as specified in Master Circular no. CIR/MRD/DSA/SE/43/2010 of December 31, 2010	Section 15HB of the SEBI Act	Rs. 1,00,00,000/- (Rs. One crore only)
4.	Mr. Ajay Shah	Sections 12A (b) and 12A (c) of SEBI Act read with regulations 3 (c), 3 (d) and 4(1) of the PFUTP Regulations. Provisions related to fairness & transparency, due diligence and conflict of interest as specified in Master Circular no. CIR/MRD/DSA/SE/43/2010 of December 31, 2010	Sections 15HA of the SEBI Act Section 15HB of the SEBI Act	Rs. 2,00,00,000/- (Rs. Two Crore only) Rs. 1,00,00,000/- (Rs. One crore only)
5.	Infotech Financial Services Private Limited	Sections 12A (b) and 12A (c) of SEBI Act read with regulations 3 (c), 3 (d) and 4(1) of the PFUTP Regulations	Section 15HA of the SEBI Act	Rs. 2,00,00,000/- (Rs. Two crore only)
6.	Ms. Sunita Thomas	Sections 12A (b) and 12A (c) of SEBI Act read with regulations 3 (c), 3 (d) and 4(1) of the PFUTP Regulations	Section 15HA of the SEBI Act	Rs. 1,00,00,000/- (Rs. One crore only)
7.	Mr. Krishna Dagli	Sections 12A (b) and 12A (c) of SEBI Act read with regulations 3 (c), 3 (d) and 4(1) of the PFUTP Regulations	Section 15HA of the SEBI Act	Rs. 1,00,00,000/- (Rs. One crore only)
8.	Mr. Suprabhat Lala	Sections 12A (b) and 12A (c) of SEBI Act read with regulations 3 (c), 3 (d) and 4(1) of the PFUTP Regulations	Sections 15HA of the SEBI Act	Rs. 1,00,00,000/- (Rs. One crore only)

105. Noticees 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 Noticees may contact the support at portalhelp@sebi.gov.in.

106. The said confirmation of e-payment made in the format as given in table below should be sent to "The Division Chief, EFD1-DRA-II, 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)	

107. In terms of the provisions of Rule 6 of the Adjudication Rules, copies of this order are sent to the Noticees and also to the Securities and Exchange Board of India.

Date: June 30, 2022 **Suresh B Menon**

Place: Mumbai **ADJUDICATING OFFICER**