BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

(ADJUDICATION ORDER NO: Order/PM/GD/2021-22/14995)

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

Adroit Financial Services Private Limited

In the matter of NSE Co-Location

BACKGROUND OF THE CASE

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

2. SEBI initiated adjudication proceedings under sections 15HA and 15HB of The Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **the SEBI Act, 1992**) and regulations 26(xvi) and 26(xx) of SEBI (Stock Brokers) Regulations, 1992 (hereinafter referred to as **Stock Broker Regulations, 1992**) against the Noticee. Adjudication proceedings have been initiated against the Noticee for the alleged violation of provisions of clause 2(a) of Chapter V of NSE bye-laws including NSE Co-location Guidelines, clauses A(2) and A(5) of the

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

APPOINTMENT OF ADJUDICATING OFFICER

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

SHOW CAUSE NOTICE, HEARING AND REPLY

4. Show Cause Notice having reference no. SEBI/EAD-8/PM/SM/OW/10755/2021/1 dated May 24, 2021 (hereinafter referred to as **SCN**) was issued to the Noticee in terms of the provisions of rule 4 of the Adjudication Rules, 1995 requiring the Noticee to show cause as to why an inquiry should not be held against it and why penalties, if any, should not be imposed on them under the provision of sections 15HA and 15HB of the SEBI Act, 1992. The allegations in the SCN are as follows:

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

Sl. No.	***Segment***	***Period***
1	*Futures and Options (F&O) Segment*	*June 12, 2010 to April 06, 2014*
2	*Cash Market (CM) Segment*	*October 15, 2010 to November 09, 2014*
3	*Currency Derivatives (CD) Segment*	*January 02, 2012 to April 06, 2014*

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

Exchange- NSE			
Segment	**CM**	**FO**	**CD**
Reg. No.	INZ000173137	INZ000173137	INZ000173137
Date of Reg.	28-Mar-2018	28-Mar-2018	28-Mar-2018
Exchange- BSE			
Segment	**CM**	**FO**	**CD**
Reg. No.	INZ000173137	INZ000173137	INZ000173137
Date of Reg.	28-Mar-2018	28-Mar-2018	28-Mar-2018

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

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

Type Of Rack	Rack No	Date Of Allotment	Date Of Surrender	Current Rack Status
Full Rack	D8	01-Feb-10	-	Active
Full Rack	F7	26-Oct-10	02-Mar-16	Surrender
Full Rack	G9	31-Mar-11	19-Apr-17	Surrender
Half Rack	L5	27-Sep-13	07-Sep-15	Surrender
Half Rack	N8	17-Dec-13	01-Jun-15	Surrender
Half Rack	O10	14-Jul-14	23-Nov-16	Surrender
Half Rack	O9	14-Jul-14	30-Sep-16	Surrender
Full Rack	P3	13-Feb-15	-	Active
Full Rack	P5	13-Feb-15	-	Active
Full Rack	AA19	16-Jan-17	-	Active
Half Rack	AB4	10-Nov-17	28-May-18	Surrender
Full Rack	AB19	02-May-18	-	Active
Half Rack	AH15	14-Jun-18	-	Active
Full Rack	AA13	08-Apr-19	-	Active
Full Rack	AF16	14-Oct-19	-	Active

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

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

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

i. *Based on review of logs, Noticee connected on to the secondary server for 320 trading days in CD/IRF segment, 70 trading days in CM segment and 74 trading days in FO segment during the review period.*

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

Segment	***No. of Trading Days during the Year***					***Total No. of Trading Days during review period***
	2010	***2011***	***2012***	***2013***	***2014***	
CD / IRF segment	*-*	*-*	*34*	*224*	*62*	*320*
CM segment	*-*	*-*	*49*	*1*	*20*	*70*
FO segment	*-*	*2*	*25*	*24*	*23*	*74*
Total	*-*	*2*	*108*	*249*	*105*	*464*

ii. *Adroit connected only to secondary server (i.e. no connections made to primary server) for 34 trading days in CD/IRF segment in 2012.*

iii. *Noticee was reprimanded by NSE for connections made to secondary server on 07 June 2012, however, Adroit made connections to secondary server post reprimand for 296 trading days in either of segment. Below mentioned is the year wise details of the same:*

Number of days Adroit connected to the secondary server post reprimand in either of the segments

Year	***2010***	***2011***	***2012***	***2013***	***2014***
Number of trading days connected to the secondary server in either of the segment	*-*	*-*	*6*	*224*	*66*

iv. *Adroit connected first to secondary server on 23 trading days in CM segment and 209 trading days in CD/ IRF segment during the review period. Below mentioned is the year wise breakup of the same:*

Number of trading days when Adroit connected first to secondary server

Year	***2010***	***2011***	***2012***	***2013***	***2014***
Number of trading days connected first to secondary server in CM segment	*-*	*-*	*11*	*1*	*11*
Number of trading days connected first to secondary server in CD / IRF segment	*-*	*-*	*23*	*179*	*7*

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

a) Adroit in its statement recording to SEBI mentioned that changes to parameters i.e. change from primary server to secondary server were managed by its IT team (i.e. Uday Veer Singh and Pramod Sharma) during the review period.

b) Adroit mentioned that it was not aware of any potential advantage of connection to secondary server. It also further mentioned that it did not observe any advantage on secondary server.

c) Further, when reasons were sought from Adroit for connections made to secondary server it mentioned in its statement recording to SEBI that "To the best of my knowledge, for CD segment it appears that we had mistakenly connected to secondary server. For cash and FO segment, it appears that NSE would have verbally advised us to connect to secondary server when we faced connectivity issues for this segment. However, we did not have any documented evidence for the same."

d) Adroit was reprimanded by NSE for connections made to secondary server on June 07, 2012.

e) As per email dated 14 January 2013, Uday Veer Singh (IT personnel, Adroit) wrote to Colo Support that they needed change in server as there was a delay in CD / IRF segment. Colo Support changed the parameter on Adroit's request and shifted connection to the requested server. However, Adroit continued to face issue on the changed parameters and informed the same to NSE on 18 January 2013 and 21 January 2013.

f) On 18 January 2013, Uday Veer Singh wrote to Colo Support that "Still we are facing same problem on that, kindly move it on any others IP."

g) On 21 January 2013, Uday Veer Singh wrote to Colo Support marking a copy to Avadhut Gharat (Head, Colo Support, NSE) and Jagdish Joshi (Project Manager, NSE Colo) that "We are awaiting your reply. Kindly provide us any other IP as early as possible as we are getting a lot of losses due to delay."

h) On 21 January 2013, Ritesh from NSE Colo Support requested Adroit to connect to secondary server marking a copy to Avadhut Gharat and Jagdish Joshi. NSE Colo Support on 23 January 2013 wrote an email to Adroit to confirm if there were issues with TBT IP connected to secondary server to which Adroit replied stating that "Right now no issue on secondary server"

i) Post this, Adroit connected to secondary server on CD segment for 285 days (i.e. 23 January 2013 to 04 April 2014).

j) As per the colo tickets raised by NSE, it was observed that Adroit had raised disconnection issue with respect to TBT data on 18 November 2013 in CM and FO segment. As per the remarks, it was mentioned that multiple members faced disconnection issue due to which members had been diverted to secondary port.

k) As per the log review, Adroit connected to secondary server in FO segment for 21 continuous trading days (i.e. 18 November 2013 to 17 December 2013).

l) Disciplinary Action Committee (DAC), NSE conducted review of connections made to secondary server in spite of warning issued by NSE on 7 June 2012 to which Adroit stated that it connected to secondary server because it might have faced issue in connection to primary server and as soon as member received email from NSE, it informed NSE that they will revert to primary server post market hours.

m) DAC in its decision stated Adroit is advised to be vigilant about conforming to the discipline of the technology platform in future.

A.2. Issues pertaining to early login:

Based on submissions made by Adroit, it used software provided by Greeksoft during the review period. It also used in-house software Algowire for the period

November 2012 to October 2014. Omnesys was used by Adroit for below mentioned period:

- ► *May 2010 to October 2010*
- ► *January 2011 to March 2012*
- ► *September 2012 to October 2012*
- ► *December 2012 to January 2014*

Login process followed:

i) *Adroit in its statement of recordings to SEBI mentioned that they followed a manual process to login to NSE TBT servers. The login process was managed by Uday Veer Singh (IT personnel, Adroit). The login process was initiated early during the day around 06:30 am and subsequently tried to connect to NSE TBT servers.*

ii) *Basis our discussion with Uday Veer Singh, login procedure was manual and engineers would start logging in and run the BOD processes around 07:30 am to 08:00 am and attempted to keep the system ready for login at the most by 9:00 am, i.e. before the market went live.*

Log analysis:

i) *Adroit logged in first on 287 trading days in CM segment, 264 trading days in CD / IRF segment and 57 trading days in FO segment.*

***Details of first connects of Adroit across segments**:*

Segment	***2010***	***2011***	***2012***	***2013***	***2014***	***Total***
Number of trading days ranked first in CM segment	-	-	*119*	*114*	*54*	*287*
Number of trading days ranked first in CD/IRF segment	-	-	*54*	*203*	*7*	*264*
Number of trading days ranked first in FO segment	*7*	*25*	*13*	*8*	*4*	*57*

ii) *Based on our log analysis, it was noted that median login time of Adroit during the review period for CM segment was 07:44 am and CD segment was 07:52 am.*

iii) *Basis the log analysis for the review period, in CM and CD segment it was observed that from 2012 and 2013 respectively, Adroit started logging in earlier than its median login time for the previous year, below mentioned are the details of the same:*

Details of year wise median login time of Adroit for CM segment:

Segment	***2010***	***2011***	***2012***	***2013***	***2014***
Median login time for CM segment	*08:36:40*	*08:23:32*	*07:48:57*	*07:46:13*	*07:39:33*
Median login time for CD/IRF segment	-	-	*07:54:11*	*07:52:16*	*07:52:00*

iv) *Adroit logged in before 08:00 am on 606 trading days in CM segment and in CD segment for 442 trading days. Below mentioned is the year wise break-up of the same:*

Details of year wise trading day logins before 08:00 am:

Segment	***2010***	***2011***	***2012***	***2013***	***2014***
Number of trading days logged in before 08:00 am in CM segment	-	*9*	*154*	*243*	*200*
Number of trading days logged in before 08:30 am in CD/IRF segment	-	-	*153*	*229*	*60*

Knowledge of potential early login advantage:

i) *Adroit in its statement recording to SEBI mentioned that it became aware of potential early login advantage basis the market discussions with the traders in 2012 which indicated that if member connected early to NSE TBT server the data would be received faster.*

ii) *Upon understanding the reasons from member for connecting first to NSE TBT server, Adroit mentioned in its statement recording that "Basis the market discussions with the traders, it was mentioned that if you connect early to the NSE TBT server the data is received faster. Hence, we used to try to login to NSE server earliest." However, Adroit mentioned that it did not have any knowledge of its login rank on NSE TCP/ IP TBT servers.*

V. *Submission of Noticee are as follows:*

a. *SEBI issued letter no. SEBI/HO/MRD/DMS-I/2019/11677/1 dated May 09, 2019 to Adroit, informing about the comprehensive forensic audit of Adroit, and directing them to cooperate with the auditors.*

b. *Summons dated May 09, 2019 was served on Shri Ajay Kumar Gupta, to appear before the Investigating Authority, and to compel the production of documents before the Investigating Authority. Vide the said summons, Adroit was directed to furnish documents / records / information etc. as per prescribed format, so as to reach the Investigating Authority by May 22, 2019.*

c. *Vide letter dated May 24, 2019, Adroit provided their response to the information sought vide the aforesaid summons.*

d. *On May 20, 2019, Shri Atul Kumar Gupta appeared before the Investigating Authority for statement recording. He was examined on oath before the Investigating Authority, and his statement was recorded. During the examination, Shri Atul Kumar Gupta, inter alia, submitted the following:*

i. *Adroit opted for colocation services in 2010. The objective of availing colocation services was to ensure fast connectivity with NSE. Initially, Adroit procured one rack at colocation space of NSE. Colocation set up was used majorly for proprietary trading.*

ii. *Colocation setup was started with 1 rack. Colocation processes / logins for the review period was managed by Uday Veer Singh (Former IT head - Till April 2015) and Pramod Sharma (expired in April 2015). Key business decisions such as on-boarding of a new software vendor, application for racks, etc. were taken by Shri Atul Kumar Gupta.*

iii. *Adroit had started with Greeksoft in 2010 and subsequently services of Omnesys were also obtained. Both the algo vendors were providing services. In 2013, Adroit used Algo wire (inhouse software) as a software vendor for a short period. Based on feedback received from the traders, Adroit on-boarded algo vendors for their business.*

Greeksoft was on-boarded as Adroit was associated with Greeksoft since 2008.

iv. *Algo vendors were providing only software. The login process to NSE TBT servers were managed by in-house IT team of Adroit.*

v. *As per Adroit, based on the feedback given by traders, challenges faced in colocation operations included TBT data disconnection, low fill ratio for the orders, etc. The above mentioned challenges were resolved on the basis of recommendation provided by algo vendors such as change in hardware, for disconnection issues Adroit used to intimate NSE of the same.*

vi. *Uday Veer Singh and Pramod Sharma interacted with Colo support team. Relationship Manager at NSE since 2013 was Gaurav Sabharwal. Gaurav Sabharwal and Hari K from NSE had visited the office of Adroit for marketing purposes post the review period. Officials from Adroit used to attend seminars conducted by ANMI and NSE wherein, there might have been interactions with NSE employees. These interactions (during seminars) to the best of their recollection were not related to colocation.*

vii. *Adroit had no knowledge about NSE TBT architecture. On the basis of trades executed, Adroit requested NSE for change in ports/ server, however Adroit did not know the exact number of servers that NSE had.*

viii. *Speed / time taken for information to reach from NSE trading server to broker system, speed of processing of data by member's systems and time taken for order placement are the key factors for colocation trading. Further, Shri Gupta stated that trading strategy adopted by traders play a major role (i.e. based on his knowledge, 75% is the trading strategy and 25% is the connectivity).*

ix. *Adroit did not perform any latency tests with respect to TCP/IP TBT neither did their Algo vendors perform any latency tests on behalf of Adroit.*

x. *Adroit had not requested NSE for reassignment to a different server or a different port during the review period (apart from email dated 19 January 2012 and 14 January 2013).*

xi. *As per email dated 19 January 2012 from Uday Veer Singh to Colo support with a copy to Jagdish Joshi having subject: "FW: FO TBT PORT CHANGE", Adroit had discussion with Smruti Kaushik for shifting of TBT online feed server.*

In response to detailed communication, Adroit stated that they do not know Ms Smruti Kaushik from NSE. Further, this email would have been written by Uday Veer Singh based on feedback from traders on possibility of trades being better executed on another server. Adroit was not measuring the speed of data being received by each TBT IP, it was based on the feedback of traders which was further based on the successful execution of similar trade strategies.

xii. *As per email of Adroit on 14 January 2013 to Colo support of NSE stating that "We are getting a lot of delay on that, so we are requesting to you kindly shift it on 172.28.124.11 as earlier as possible", NSE moved the Adroit to another port (10970) on the same POP server (172.28.124.13). Post this, Adroit faced the same problem and NSE advised Adroit to connect to secondary server.*

Adroit in response to the above stated that Adroit had not conducted any latency/speed test. The delay mentioned in the above two emails referred to losses faced by Adroit. Further, this email would have been written by Uday Veer Singh based on feedback from traders on possibility of trades being better executed on another server. Adroit was not measuring the speed of data being received by each TBT IP, it was based on the feedback of traders which was further based on the successful execution of similar trade strategies.

xiii. *Adroit did not receive any communication from NSE related to documented policies/ protocols for secondary server connection.*

xiv. *Adroit had no knowledge that TCP/IP TBT was sequential dissemination.*

xv. *Adroit had no knowledge of the startup time of NSE server.*

xvi. *Adroit followed a manual process for log in to NSE TBT servers. Shri Gupta stated that the details of this process can be made clear by*

Adroit's former IT employee (Uday Veer Singh). To his knowledge, Uday Veer Singh started trying the login process early in the day (around 6:30 am), he used to start the algo software and subsequently tried connecting to TBT servers. Shri Atul Kumar Gupta was not aware about the time of login.

xvii. *Adroit did not use any automated scripts for login to NSE TBT system which could be made clear by Adroit's former IT employee (Uday Veer Singh).*

xviii. *Adroit did not know their login rank at the NSE server.*

xix. *In response to the query whether anyone ever communicated to Adroit (algo vendor, NSE employees, other brokers, traders, etc.) that there was an advantage by connecting early to NSE TBT systems, Shri Atul Kumar Gupta informed that "Yes, basis the market discussions with the traders, it was mentioned by traders that if you connect early to the NSE TBT server the data is received faster. Hence, we started login to NSE TBT servers earlier than we used to do it before. This information was received by us in 2012."*

xx. *In response to the query whether there was any early login advantage in TCP/IP TBT, Shri Atul Kumar Gupta stated that "Yes, basis the market discussions with the traders, it was mentioned that if you connect early to the NSE TBT server the data is received faster. Hence, we used to try to login to NSE server earliest."*

xxi. *In response to the query regarding the reason for logging in first for 287 days in CM, 57 days in F&O and 264 days in CD segment and logging in first on the secondary server for 209 days in CD segment and 23 days in CM segment during the review period, Shri Atul Kumar Gupta replied that Adroit was trying to login early but never knew its ranks on servers.*

xxii. *In response to the query as to why Adroit connected to secondary servers, Shri Atul Kumar Gupta replied that for CD segment it appears that Adroit had mistakenly connected to secondary server. For cash and FO segment,* *it appears that NSE would have verbally advised Adroit to connect to secondary server when the Adroit faced connectivity issues for this segment. According to Shri Gupta, they did not have any documented evidence for the same.*

xxiii. *Shri Atul Kumar Gupta stated that Uday Veer Singh and Pramod Sharma of IT team were responsible to change the login parameters for connecting to secondary server.*

xxiv. *In response to the query regarding the advantage Adroit had by connecting to secondary server, Shri Atul Kumar Gupta stated that "we did not notice any advantage. Further, we relied on the feedback of the traders on performance of connectivity and their trade execution. We would not be in a position to point out that the successful trades were executed due to market volatility, trading strategy, connection to secondary server, etc."*

xxv. *As per email dated 23 January 2013, colo support requested Adroit to confirm if they were satisfied with the performance to which Uday Veer Singh confirmed that there were no issues on secondary server.*

In response to the query regarding any performance issues observed, subsequent to the above reply to NSE, on secondary server with the TBT IP 10.230.28.145 to which Adroit connected subsequently, Shri Atul Kumar Gupta stated that "it appears that in case there were any performance issues, we would have raised it with NSE team, however, in absence of such communications, it appears that the performance might have been satisfactory."

xxvi. *As per the TBT login logs, Adroit had connected to secondary server for approximately 70 trading days in CM segment (from October 15, 2010 to November 9, 2014), and approximately 72 trading days in F&O (from June 12, 2010 to April 6, 2014) and 319 days in CD segment. In this regard, Shri Atul Kumar Gupta has the following reason for connecting to secondary server on above days "in case of CD segment, we connected to secondary server post instructions from NSE Colo support dated 21 January 2013, post which it appears that we had mistakenly stayed connected to secondary server. For cash and FO* *segment, it appears that NSE would have verbally advised us to connect to secondary server when we faced connectivity issues for this segment. However, we do not have any documented evidence for the same."*

xxvii. *Shri Atul Kumar Gupta stated that Adroit had received warning/ reprimand from NSE on 7 June 2012 for not to connect to secondary server.*

xxviii. *Shri Atul Kumar Gupta stated the following as the reason for connecting to secondary server for 285 days in CD segment and around 22 days in CM segment after reprimand mail from NSE on 7 June 2012-*

"In case of CD segment, we connected to secondary server post instructions from NSE Colo support dated 21 January 2013. Our major volumes are on CM and FO segment, we have low turnover on CD segment and it appears that we might have connected to secondary server on CD segment and stayed connected without any further change inadvertently.

For CM segment, it appears that we would have raised a connectivity issue over a telephonic conversation post which NSE would have requested us to connect to secondary server."

xxix. *In response to query regarding any interaction with Chitra Ramakrishna / Ravi Narain / Ravi Varanasi / Ravi Apte / R Muralidharan / Mahesh Soparkar / Devi Prasad Singh / Sujoy Das / Jagdish Joshi, Shri Atul Kumar Gupta stated that he had no interactions with any of the above during the review period. Recently, one or two interactions with Ravi Varanasi have taken place during seminars.*

VI. *Observations and Findings of investigation are as follows:*

NSE introduced TBT data feed services to the market in 2009, and notified the market of this vide its Circular No: NSE/MEM/13599 dated December 03, 2009. TBT architecture at the exchange changed over period of time since its introduction in 2010. The number of servers were increased as the demand for the same increased. Moreover, older servers were also replaced/ renamed. Dates of TBT rollout in various market segments under TCP/IP and Multicast transmission protocol are as under:

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

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

Connection to secondary server:

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

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

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

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

iv) *Secondary server was provided by NSE in order to enable members to connect to the same in case of disconnection / failure to connect to primary server. Thus, suspicion arises only when brokers repeatedly connect to secondary server without justifiable cause.*

v) *The details of connections of Adroit to the secondary server at NSE during the review period is as follows:*

<table>
<tr><th rowspan="2">Year</th><th rowspan="2">Total number of trading days**</th><th colspan="6">Number of trading days connected to the secondary server***</th></tr>
<tr><th>FO</th><th>%age</th><th>CM</th><th>%age</th><th>CD/IRF</th><th>%age</th></tr>
<tr><td>2011</td><td>247</td><td>2</td><td>0.81%</td><td>0</td><td>0</td><td>-</td><td>0</td></tr>
<tr><td>2012</td><td>252</td><td>25</td><td>9.92%</td><td>49</td><td>19.44%</td><td>34</td><td>13.49%</td></tr>
<tr><td>2013</td><td>250</td><td>24</td><td>9.60%</td><td>1</td><td>0.40%</td><td>224</td><td>89.60%</td></tr>
<tr><td rowspan="3">2014*</td><td>FO: 67</td><td rowspan="3">23</td><td rowspan="3">11.11%</td><td rowspan="3">20</td><td rowspan="3">9.66%</td><td rowspan="3">62</td><td rowspan="3">92.54%</td></tr>
<tr><td>CD/IRF: 67</td></tr>
<tr><td>CM: 207</td></tr>
</table>

** MTBT was introduced by NSE on April 7, 2014 for FO and CD/IRF segments, and on November 10, 2014 in CM segment; hence data analysed till that date*
*** As received from NSE vide email dated November 21, 2019*
**** Connection logs as received from EY*

vi) *It is observed that Adroit had significant numbers of connections to the secondary server in the CD segment, especially during calendar years 2013 and 2014.*

vii) *From the log analysis of review period, EY in its report submitted that Adroit logged in first on 287 trading days in CM segment, 264 trading days in CD / IRF segment and 57 trading days in FO segment.*

viii) *Atul Kumar Gupta in his statement recording mentioned that Adroit became aware of potential early login advantage basis the market discussions with the traders in 2012 which indicated that if member connected early to NSE TBT server the data would be received faster.*

ix) *As seen from the table above, in the FO segment, Adroit was seen to have connected to the secondary server on 9.92% (25 trading days), 9.60% (24* *trading days) and 11.11% (23 trading days) of the trading days during calendar years 2012, 2013 and 2014 respectively.*

In CD/IRF segment, Adroit connected to secondary server on 13.49% (34 trading days), 89.60% (224 trading days) and 92.54% (62 trading days) trading days during the calendar year 2012, 2013 and 2014 respectively.
In CM segment, Adroit connected to secondary server on 19.44% (49 trading days), 0.40% (1 trading day) and 9.66% (20 trading days) in CM segment during the calendar year 2012, 2013 and 2014 respectively.

Adroit was reprimanded by NSE for connections made to secondary server on 18 May 2012 and 07 June 2012. However, Adroit made connections to secondary server post reprimand for 296 trading days in either of segment.

During the period under review, Adroit had raised colocation related issues in CD/IRF segment with NSE only on three occasions January 14, 2013, January 18, 2013 and January 21, 2013. Subsequent to that Adroit connected to secondary server on CD segment for 285 trading days (i.e. January 23, 2013 to April 04, 2014).

Further, Adroit had raised disconnection issue with respect to TBT data on November 18, 2013 in CM and FO segment. Subsequent to that Adroit connected to secondary server on FO segment for 21 trading days (i.e. November 18, 2013 to December 17, 2013).

Thus, Adroit seems to have ignored NSE Colocation Guidelines dated April 16, 2012 and the reprimand dated May 18, 2012 and June 07, 2012 and continued to connect to the secondary server. Thus, it appears that Adroit did not have sufficient reasons to connect to secondary server and has thereby violated the NSE Colocation Guidelines read with Point 2(a) of Chapter V of NSE bye-laws. Thereby, Adroit is in violation of Clause 2(a) of Chapter V of NSE byelaws as well as Clause A(2) and A(5) of Code of Conduct specified in Regulation 9 of the Stock Broker Regulations.

Connection to secondary server post NSE reprimand:

i) NSE had reprimanded Adroit for connecting to the secondary server on May 18, 2012 and June 07, 2012. NSE vide its email dated June 07, 2012 had clearly instructed:

"It has been observed that in spite of informing you several times still you are connecting to TBT fallback server, which is considered as an offence and due to which your ports might get blocked in the future. Request you to connect to the TBT primary server only, TBT IP which is connected to Fall back server: 10.230.38.14 (CM)"

ii) EY stated in its report that post reprimand, it connected for 296 days in either of the segments. Thus, Adroit did not pay heed to the NSE reprimand dated May 18, 2012 and June 07, 2012, and continued to connect to the secondary server.

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

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

Adroit was reprimanded by NSE for connections made to secondary server on 18 May 2012 and 07 June 2012. However, Adroit made connections to secondary server post reprimand for 296 trading days in either of segment.

VII. *In view of the above, it is alleged that the Noticee continued to login to the secondary server without valid reasons during 2012, 2013 and 2014 in the FO* *segment, CM segment and CD/IRF segment. Further, immediately after receiving a reprimand from NSE Colo Support on May 18, 2012 and June 07, 2012 for their connection to TBT fallback server/secondary server, Noticee still continued to connect to secondary servers for 296 trading days in either of segment. Noticee has thereby alleged violation of the NSE Colocation Guidelines with regard to its unauthorized connection to the fallback server of the exchange. Point 2(a) of Chapter V of the Exchange's Byelaws states that "Trading member shall adhere to the Bye Laws, Rules and Regulations of the Exchange and shall comply with such operational parameters, rulings, notices, guidelines and instructions of the relevant authority as may be applicable." As such, Adroit has violated Point 2(a) of Chapter V of the NSE bye-laws.*

Further, Clause A(5) of the Code of Conduct specified under Schedule II read with Regulation 9(f) of the Stock Brokers Regulations, 1992 mandates that "A stock-broker shall abide by all the provisions of the Act and the rules, regulations issued by the Government, the Board and the Stock Exchange from time to time as may be applicable to him." Also, clause A(2) of the Code of Conduct specified under Schedule II read with Regulation 9(f) of the Stock Broker Regulations, 1992 obligates a stock broker to exercise due skill and care. Further, Regulation 26(xvi) of the Stock Broker Regulations, 1992 stipulates that a stock broker shall be liable for monetary penalty for "…..failure to exercise due skill, care and diligence."

Being a registered intermediary, Noticee has, by its aforesaid conduct of connecting to secondary server repeatedly without valid reason, as well as connecting to secondary server despite reprimand by NSE, it is alleged that Noticee violated the clause A(2) and A(5) of Code of Conduct as specified in Schedule II of Regulation 9 of Stock Brokers Regulations, 1992. Further, as the Noticee repeatedly connected to the secondary server, which was meant to be used in case of non-availability of data from TBT primary source, without valid reason as well as connected to secondary server despite guidelines and advisory by NSE, it has indulged in unfair trade practices. Thus, it is alleged that it has violated Regulations 3(b), 3(c), 3(d) and 4(1) of PFUTP Regulations, 2003 r/w Sections 12A(a), 12A (b) & 12 A(c) of SEBI Act, 1992.

5. The aforesaid SCN was sent through speed post acknowledgement due and the same was delivered to the Noticee. Noticee vide its letter dated June 16, 2021 requested for inspection of various documents/information such as copy of investigation report, details of analysis done by Investigations department. Vide e-mail dated July 08, 2021, it was informed to the Noticee that all the relevant documents that have been relied upon in the instant adjudication proceedings have been provided to the Noticee during the issuance of the SCN. Noticee was advised to reply to the SCN by July 26, 2021. In the interest of natural justice, an opportunity of hearing was granted to the Noticee on August 05, 2021. Noticee vide its letter dated July 29, 2021 reiterated its request for inspection of documents and to adjourn the hearing. Acceding to the request of the Noticee, vide e-mail dated September 22, 2021, Noticee was provided inspection of documents which have been relied upon and again an opportunity of Hearing was granted on October 28, 2021. The Noticee did not avail the said hearing opportunity. Further, in the interest of natural justice, hearing opportunities were provided on December 06, 2021 and December 21, 2021. Noticee vide email dated December 20, 2021 submitted its reply to the SCN. Noticee availed the hearing on the scheduled date i.e. December 21, 2021 on behalf of the Noticee, the Authorized Representative (AR) attended the hearing. and reiterated the submissions made by the Noticee vide its email dated December 20, 2021.

6. The Noticee vide its letter and e-mail dated June 16, 2021 and December 20, 2021 submitted reply to the SCN.

   The submissions of the Noticee are as under:

   a. *……. Delay in initiation of proceedings against us, at the outset, we state that the present SCN has been issued after a gap of almost 8 to 9 years from the date of alleged violations as mentioned in the SCN (i.e. from 2012). Hence, there is an inordinate delay in initiation of proceedings by SEBI. In this regard, we had referred to and relied upon the Orders which mentioned under Para 3 (Internal page nos. 2 to 5) of our Preliminary Submissions dated 16.06.2021 hence not repeated herein for the sake of brevity and to avoid repetition. Importantly, due to in-ordinate delay, even after putting our best efforts, we could not collate all the necessary documents and information which are critically required by us to defend ourselves. Pertinently, the maximum period for which Brokers are required to maintain their records is 5 years. In fact, complete details w.r.t TBT IPs assigned to us by NSE in relation to co-location facility* *during the review period is not available in our records. Therefore, in the past we had sought relevant data from the Stock Exchange i.e. NSE. For instance, we had by our email dated 19.05.2019 requested NSE to provide us the relevant Logs of TBT IP. However, NSE vide their Email dated 21.05.2019 inter alia stated that "The exchange only provides historical order and trade files to members on request basis with certain nominal charges applicable. Any other details/ data are not provided by Exchange. Such data is provided only to regulators of request." Hence, great prejudice is caused to us owing to inordinate delay in belatedly initiating of proceeding against us.*

b. *Compliance to the Evidence Act, 1872, as stipulated u/s 65B (4) of the Indian Evidence Act, 1872 in so far as the electronic evidence is concerned, it must be accompanied by an appropriate certificate. Thus, we respectfully submit that in case any documents relied upon or referred to by SEBI which have been obtained on email/ extracted from the database or electronic system, please ensure that the above requirement of law has been complied with.*

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

d. *…..Under Para 10 (v) (Page No.18) of the SCN, the details about connection to secondary server is furnished. On perusal of the same, we find that proper calculation of No. of times we got connected to Secondary Server is not taken into cognizance.*

e. *It is pertinent to mention that whenever we face connectivity issues on the primary server, we connect to secondary server on the basis of the suggestions provided by NSE. Post the aforesaid connection to secondary connection, we might* *have not changed the parameters due to which it continues to remain connected to secondary server. Further, in certain cases where we faced disconnection issues, we ought to have connected to secondary server.*

f. *On perusal of the SCN, we understand that reliance has been placed on several documents/ statements in order to allege the charges against us. In this regard, we respectfully submit that Inspection of Documents is an essential part of all legal proceedings and a fundamental principle of Natural Justice. In this regard, we humbly reiterate our request to your kind selves to kindly grant us an opportunity of inspection of documents as mentioned in our letters dated 16.06.2021 and 29.07.2021 since in our view they are vital and relevant and hence their perusal is absolutely essential for us in preparation of our defense in response to various findings and allegations made against us in the SCN. Further, we reiterate to provide us with a copy of the following documents which were referred to and relied upon while issuing the present SCN:*

Sr.No.	*Particulars*
1.	*Details of analysis done by Investigations Department, SEBI on our daywise turnover using TBT secondary servers.*
2.	*Copy of detailed Investigation report along with annexures enclosed therewith.*
3.	*Copy of Annexures/attachments as mentioned in NSE's email dated 16.06.2017 (Annexure - 14 of the SCN)*
4.	*Copy of Annexures/ attachments as mentioned in NSE's email dated 24.05.2018 (Annexure - 15 of the SCN)*
5.	*Copies of complaints received by SEBI pertaining to Allegations of malpractices with respect to the co- location facility being provided by the NSE.*
6.	*Details of telephonic calls and email communications exchanged between Adroit Financial Services Pvt. Ltd and NSE as submitted by NSE to SEBI.*
7.	*Copies of communications exchanged between SEBI and NSE as it relates to us.*
8.	*Copies of communications exchanged with other Brokers/ Trading Members and other service providers to NSE on the subject matter of present proceedings.*
9.	*Copies of statements recorded in the course of Investigation proceedings conducted by SEBI other than what is provided along with the SCN dated 24.05.2021.*
10.	*Any other and additional documents in possession of SEBI on the subject matter of present proceeding which can be helpful to us for our defense.*

g. It is pertinent to mention that NSE had made submissions before SEBI wherein under Para 8.2.16.3. (Internal Page No.72) of Order 30.04.2019 passed by Hon'ble Whole Time Member, SEBI in the matter of NSE Co-location, it is mentioned that ('To ensure that members could easily and quickly switch to the Secondary Server if the primary server failed, the backup server was always in active-active mode - i.e., the members would be able to connect to the Secondary Server at all times and receive data....."

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

h. Besides, the constitution of Disciplinary Action Committee ("DAC") is under NSE Rules, Regulations and Bye laws as approved by SEBI and have been functioning as quasi-judicial / semi quasi-judicial body. Therefore, SEBI ought not to have initiated action against us in contradiction to DAC's conclusive findings on the subject matter in our favour.

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

j. It is alleged that we have been reprimanded by NSE vide Emails dated 18.05.2012 and 07.06.2012. (Ref: Para 10 (iv) unnumbered para 2 on internal page No. 21 of SCN). It is pertinent to mention that in Email dated 18.05.2012 it is interalia mentioned that " Request you to connect to primary server with the given TBT parameters". In view thereof, we humbly submit that these statements are merely intimations from NSE Team and not in the nature of Reprimands as alleged or otherwise. The aforesaid communications (Emails) were in the normal and routine correspondences as done with the Exchange.

k. Submissions on Login Issue Raised with NSE. It is pertinent to mention that under Para 10 (ix) (Unnumbered Sub Para 2) Page No. 20 of the SCN, SEBI has observed that we have raised the colocation related login issue with NSE only on four occasion i.e. 14.01.2013, 18.01..2013, 21.01.2013 and 18.11.2013 during the relevant period. In fact, SEBI has not taken cognizance of the fact that we had raised issues w.r.t.connection to primary server on several occasions even through verbal communication. Pertinently, the above dates represent that there was connectivity issue even post alleged reprimand i.e. 07.06.2012, hence it is humbly submitted that we connected to the secondary server as and when there was an issue w.r.t the Primary Server. Further, it is submitted that vide our Email dated 14.01.2013 we had inter alia informed NSE Colo Support that we are getting *a lot of delay in connection and had requested to shift the server as early as possible. Further, vide our Email dates 21.01.2013. we had inter alia stated that we are waiting for the NSE Colo Teams response and requested them to provide any other IPs since due to the delay we were incurring losses. In view thereof, we submit that we have complained to NSE even after the alleged reprimand and cognizance of the same has not been done by SEBI. Hence, it is submitted that there was regular communication and correspondence with NSE in this regard. Further, NSE have vide email dated 21.01.2013 inter alia directed us to connect to secondary server. Hence, we submit that we were connecting to secondary on instruction of NSE. We further humbly submit that we have not been provided any preferential access in NSE colocation system. Further, we had no knowledge of any potential server advantage as alleged or otherwise.*

l. *Clarification on connection to secondary server. At the outset we state that, we had connected to the secondary server only in case of disconnections in primary server. It was not done intentionally and we were not aware of any advantages of connecting to the secondary server. We had not made any gains out of these connections otherwise it would have reflected in our turnover. We had no knowledge of the TBT TCP IP architecture at the exchange's end. We followed a manual process for log in to NSE TBT servers. Mr, Uday Veer Singh started trying the login process early in the day (around 6:30 am), he used to start the algo software and subsequently tried connecting to TBT servers. We did not use any automated scripts for login to NSE TBT system and neither did we have any login rank at the NSE server. As a procedure when a problem was reported to the IT team/inadvertently, one of the team members may have connected to the secondary server and did not shift it back to the primary server as he was not aware about the consequence of the same. We had not made any gains out of these connections otherwise it would have reflected in our turnover. It can be seen from our turnover records that there was no substantial rise in our turnover during the period of TCP IP. There was no mechanism/ device to know which server is less crowded. Had it been the case, we would have connected all the servers with secondary parameters, but not all the IPs were connected to secondary server on any given day. Pertinently at all times, the connection to the secondary server was known and within the knowledge of the Exchange who kept on monitoring the usage of the servers by all the members and therefore warnings were issued by Exchange whenever there was a need to disconnect from secondary server. We confirm having complied with all such directions. Exchange used to provide login credentials for secondary servers and was keeping the secondary ports open. Hence, it is reasonable to understand that the connection to the secondary server was left to the discretion of the Member who required using the secondary server based on their requirement of contingency. Pertinently post reprimand since we faced login issues, we connected to secondary server on the basis of the suggestion of NSE Colo team which was provided to us verbally. Pertinently,* *the observation made by DAC of NSE in their order dated 04.09.2017 states that " . Keeping in view the above factors and particularly no repeat instance of this nature coming to the Notice after June 07, 2012, the DAC recommended that Adroit be advised to be vigilant about conforming to the discipline of the technology platform in future .... " (Part 3, DAC Observation and Decision- Annexure 8 of SCN) shows that even NSE was unaware about our further connections to Secondary TBT Server, at least till 04.09.2017.*

m. *DAC committee compromising of high profile respected peoples had concluded that there are no adverse findings and also not alleged violation of code of conduct against us.*

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

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

CONSIDERATION OF ISSUES AND FINDINGS:

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

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

with (r/w) sections 12A(a), 12A(b) & 12A(c) of the SEBI Act, 1992, as alleged in the SCN?

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

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

8. Before going to the merits of the case, I note that Noticee has raised the preliminary issue with regard to inordinate delay in issue of SCN after a gap of almost 8 to 9 years from the date of alleged violations. I note that the investigation generally is a detailed process involving analysis of various data, gathering of evidences, etc. that shall stand the test of legal scrutiny at various judicial fora. This, generally, consumes considerable time and efforts depending on the number of entities involved, the complexity of the transactions, correspondences with the entities involved etc. In this context, it is relevant to refer to the order passed by Hon'ble SAT in the case of Hemant Sheth & Ors vs. SEBI (Appeal No. 521 of 2021, DoD: 07.01.2022) held that:

   "….. Insofar as the delay is concerned, we find that after the observation made by the WTM in its order of May 10, 2013 SEBI took action and appointed the AO dated July 4, 2013. No doubt the show cause notice was issued in January 2016 but the delay in the issuance of the show cause notice in the instant case will not vitiate the proceedings initiated against the appellants in the peculiar facts and circumstances of the case. Consequently, we are not inclined to quash the proceedings only on the ground of inordinate delay as asserted by the learned counsel for the appellant."

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

proceedings for violation of any provision of the Act cannot be a ground to quash the penalty imposed for such violation." I would like to rely upon the judgement of Hon'ble SAT in the case of *Ravi Mohan & Ors. vs. SEBI* (SAT Appeal No. 97 of 2014, DoD 16/12/2015) wherein it was held that : -

"....................Based on decision of this Tribunal in case of HB Stockholdings Ltd. vs. SEBI (Appeal no.114 of 2012 decided on 27.08.2013) it is contended on behalf of the appellants that in view of the delay of more than 8 years in issuing the show cause notice, the impugned order is liable to be quashed and set aside. There is no merit in this contention, because, this Tribunal while setting aside the decision of SEBI on merits has clearly held in para 20 of the order, that delay itself may not be fatal in each and every case. Moreover, the Apex Court in case of Collector of Central Excise, New Delhi vs. Bhagsons Paint Industry (India) reported in 2003 (158) ELT 129 (S.C) has held that if there no statutory bar for adjudicating the matter beyond a particular date, the Tribunal cannot set aside the adjudication order merely on the ground that the adjudication order is passed after a lapse of several years from the date of issuing notice..................". In this context, I would also like to refer the observations of Hon'ble Supreme Court of India in the matter of ***State vs. R. Vasanthi Stanley*** reported in AIR 2015 SC 3691 wherein the Apex Court has held that "…*serious economic offence or for that matter the offence that has the potentiality to create a dent in the financial health of the institutions, is not to be quashed on the ground that there is delay in trial…*".

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

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

case. This proposition of law has been consistently reiterated by the Supreme Court [..].

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

11. I note that notice has contended the independence of investigation done by third party expert and selectively relies upon the opinions given in the Expert Report i.e. EY report. Noticee also quoted the limitation provided under EY report. In this regard, I note that, SEBI has requested EY to conduct a forensic review of certain members including the Noticee with the objective to determine if any member availing Colo facility were given preferential access/treatment at NSE either by possessing confidential information of NSE's TBT architecture or by way of collusion with the exchange officials and/or third parties. In the view of all these circumstances it clearly established that EY's forensic audit is part of SEBI's independent investigation who is the one of the expert of the area of forensic audit and therefore, I am unable to accept this contention of noticee.

12. The Noticee made a contention regarding non furnishing of documents /informations such as copy of investigation report, copy of annexures/ attachments as mentioned NSE's email dated 16.06.2017 and 24.05.2018, copy/ies of complaints received by SEBI pertaining to allegations of malpractices with respect to the colocation facility being provided by the NSE, details of telephonic calls and email communications exchanged between Noticee and NSE as submitted by NSE to SEBI etc. In this respect, it is noted that documents which have been relied upon in the SCN to make allegations against the Noticee,

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

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

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

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

"A bare reading of the provisions of the Act and the Rules as referred to above do not provide supply of documents upon which no reliance has been placed by

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

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

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

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

The SEBI Act, 1992

CHAPTER VA

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

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

12A. No person shall directly or indirectly—

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

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

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

PFUTP Regulations

3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

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

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

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

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

4. Prohibition of manipulative, fraudulent and unfair trade practice

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

Stock Brokers Regulations, 1992

SCHEDULE II

Securities and Exchange Board of India (Stock Brokers) Regulations, 1992

CODE OF CONDUCT FOR STOCK BROKERS

[Regulation 9]

A. General.

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

(5) Compliance with statutory requirements: *A stock-broker shall abide by all the provisions of the Act and the rules, regulations issued by the Government, the Board and the Stock Exchange from time to time as may be applicable to him.*

Stock Brokers Regulations, 1992
CHAPTER VI
PROCEDURE FOR ACTION IN CASE OF DEFAULT

Liability for monetary penalty.

26. A stock broker shall be liable for monetary penalty in respect of the following violations, namely—

(xvi) Failure to exercise due skill, care and diligence.

(xx) Violations for which no separate penalty has been provided under these regulations.

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

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

(a) The charge against the Noticee continuously logged in to secondary server in CD, CM and FO segment during the investigation period without any sufficient reason during the period of investigation. Noticee connected on to the secondary server for 70 trading days in CM, 74 trading days in F&O segment and 320 trading days in CD segment during the relevant period. In the CD/IRF segment, Noticee connected to secondary server on 34, 224 and 62 days respectively during the year 2012, 2013 and 2014 respectively, which works out to 13.49%, 89.60% and 92.54 % of the total trading days during the review period.

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

(c) The relevant colocation guidelines issued by NSE (Document no SEIL/ITSM/INT/072, revised on April 16, 2012) provides that: *"Member's should always check the secondary TBT parameters are working fine with their application in case of non-availability of data from TBT primary source they can move to secondary source."* The guidelines indicate that secondary source for TBT data is to be used in the event of non-availability of TBT primary source and that Trading Members should not routinely connect to the secondary server. The facts show that during the relevant period Noticee connected to the secondary server 74 days in F&O segment, 70 days in CM segment and 320 days in CD segment. Further, it is noted that Noticee frequently connected to the server in the CD segment and F&O segment during the year 2013 and 2014. The Noticee connected to the secondary server on 224 days out of 250 trading days comprising of 89.60% of the total trading days in the year 2013 and 62 days out of 67 trading days comprising of 92.54% of the total trading days in the year 2014. Further in the FO segment, out of 250 trading days, the Noticee connected to the secondary server in 24 days which is 9.60% of the total trading days in the 2013 and 23 days out of 67 trading days comprising of 11.11% of the total trading days in the year 2014.

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

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

(f) It is noted from the EY report that NSE had reprimanded Noticee for connecting to the secondary server on 18.05.2012 and 07.06.2012. NSE vide its email dated May 18, 2012 had clearly instructed Noticee not to connect to secondary server without exchange intimation. EY stated in its report that post reprimand, it connected for 296 trading days in either of segments i.e. 6 trading days in the year 2012, 224 trading days in 2013 and 66 trading days in 2014.Thus, Noticee did not pay heed to the NSE reprimand dated May 18, 2012 , June 07, 2012 and continued to connect to the secondary server and did not comply with multiple instructions/ notices /warnings issued by NSE with regard to its unauthorized connection to the fall back servers of the exchange, which is a violation of the Exchange Bye Laws. In other words, the Noticee connected frequently to the secondary server is in violation of the NSE colocation guidelines, thereby also failing to exercise due skill care and diligence in conducting its trading operations.

(g) It is further noted from EY report that Adroit had raised complaints relating to login issues only three times viz. emails dated January 14, 2013, January 18, 2013 and January 21, 2013 and communicated verbally with NSE which is undocumented, however the total no. of trading days in which secondary server accessed is very significant. In other words, Noticee has also not denied the said fact of connecting to the Secondary Server instead of Primary Server as alleged.

(h) Noticee has contended that Disciplinary Action Committee (DAC) committee comprising of high profile people had concluded there are no adverse findings, however as per material available on record, I note that noticee has accessed to secondary server in CM, CD and FO segments without any valid reasons and despite NSE reprimands. In view of the same, I am not inclined to accept said submission of the Noticee.

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

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

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

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

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

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

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

The SEBI Act, 1992

Penalty for fraudulent and unfair trade practices.

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

Penalty for contravention where no separate penalty has been provided.

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

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

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

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

(c) the repetitive nature of the default.

(c) I note that the material on record does not bring out any gains made or unfair advantage availed or loss caused to investors by the Noticee due to the aforesaid violation. The Noticee has connected to the secondary server for 74 days in the FO segment during the relevant period. The secondary server connections in the CM and CD/IRF segments are only on 70 days and 320 days respectively in the relevant period and even after several reprimands from NSE, Noticee had continued to login the secondary server. Therefore, it is established that the Noticee has failed to comply with aforesaid guidelines and hence violated the aforesaid provisions of Code of Conduct specified under Stock Broker Regulations, 1992 and PFUTP Regulations, 2003.

ORDER

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

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

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

a) Name and PAN of the entity (Noticee)

b) Name of the case / matter

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

d) Bank Name and Account Number

e) Transaction Number

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

Place: Mumbai	**PRASANTA MAHAPATRA**
Date: February 16, 2022	**ADJUDICATING OFFICER**