BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/GR/BM/2022-23/15973]

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

In respect of

Yug Securities Limited (SEBI Registration No.: INZ000195732)

having address at 20, TCC, 1st floor Sector-10, Faridabad.

In the matter of NSE Co-Location.

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**"), had received multiple complaints pertaining to allegations of malpractices with respect to the co-location facility being provided by the National Stock Exchange of India Limited (**NSE**). In the wake of allegations of preferential access to Tick-by-Tick (**TBT**) data feed given by NSE to certain trading members (**TMs**), the matter was taken up for investigation by SEBI. Yug Securities Limited (hereinafter referred to as "**the Noticee/ YSL**") was one of the trading members identified for comprehensive investigation (including forensic audit) for primary and secondary server connects. Deloitte Touche Tohmatsu India LLP (hereinafter referred to as '**Deloitte**') was entrusted with the forensic audit of the Noticee, which submitted the final report to SEBI during September 2019.

2. SEBI initiated adjudication proceedings under Sections 15HA of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the "**SEBI Act**") and Section 15HB of the SEBI Act read with Regulations 26(xvi) and 26(xx) of SEBI (Stock Brokers & Sub Brokers) Regulations, 1992 (hereinafter

referred to as "**Stock Broker Regulations**") against the Noticee. Adjudication proceedings have been initiated against the Noticee for the alleged violation of provisions of point 2(a) of Chapter V of NSE bye-laws read with clauses A(2) and A(5) of the Code of Conduct specified under Schedule II read with regulation 9(f) of the Stock Broker Regulations and regulations 3(b), 3(c), 3(d) and 4(1) of Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as "**PFUTP Regulations**") and Sections 12A(a), 12A(b) & 12A(c) of the SEBI Act.

APPOINTMENT OF ADJUDICATING OFFICER

3. SEBI appointed the undersigned as Adjudicating Officer (hereinafter referred to as "**AO**") under Section 15I (1) of the SEBI Act read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as the '**Adjudication Rules**') vide order dated February 15, 2021 to inquire into and adjudge under section 15HA and 15HB of the **SEBI Act** for the aforesaid alleged violations against the Noticee.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. Show Cause Notice No. SEBI/HO/EAD/EAD4/P/OW/2022/0000000798/1 dated January 06, 2022 (hereinafter be referred to as, the "**SCN**") was served upon the Noticee under Rule 4 of the Adjudication Rules to show cause as to why an inquiry should not be held and penalty be not imposed against it under the provisions of Section 15HA and 15HB of SEBI Act, 1992, for the alleged violations of Point 2(a) of Chapter V of NSE bye-laws read with Clause A(5) of the Code of Conduct specified under Schedule II read with regulation 9(f) of the Stock Broker Regulations, Clause A(2) of the Code of Conduct specified under Schedule II read with regulation 9(f) of the Stock Broker Regulations and Regulations 3(b), 3(c), 3(d) and 4(1) of PFUTP Regulations read with Sections 12A(a), 12A (b) & 12 A(c) of SEBI Act.

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

a) Findings:

Connection to secondary server:

i. Deloitte, in its report, had stated that NSE Colo Support vide email dated August 30, 2012 to the Noticee provided the NSE COLO guidelines, "NSE Colocation Guideline ver_1.2". The said guidelines inter alia indicated that *"Members should always check 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"*. The aforesaid restriction on secondary server came into effect from April 2012. However, Noticee stated that they have not received any general/ specific guidelines/ communications issued by NSE with respect to connecting to the secondary / fallback server.

ii. 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. Therefore, it's not considered to be normal when brokers repeatedly connect to secondary server without justifiable cause.

iii. From February 2012, TBTCOLO27 and TBTCOLO17 were the secondary servers in the FO segment and the CM segment, respectively. Further, since the restriction on secondary server came in to effect from 2012 only, the data was analysed from 2012 onwards till introduction of MTBT in the respective segments. Secondary server connects by the Noticee is tabulated below:

Segment	Period	No. of trading days [A]	No. of trading days connected to secondary Server post NSE Guideline received [B]	%-age of connection [B as %-age of A]
CM	Jan. 01, 2013 – Dec. 2013	250	58	23.20%
	Jan. 01, 2014 – Nov. 09, 2014	207	205	99.03%
Total		457	263	57.55%

* MTBT was introduced by NSE on November 10, 2014 in CM segment; hence data analyzed till that date

As seen from the above table, in the CM segment, Noticee was seen to have connected frequently to the secondary server as it connected on 58 trading days out of 250 trading days (23.20%) during the calendar year 2013 and on 205 trading days out of 207 trading days (99.03%) during the calendar year 2014.

iv. Further, on analysis of the data with regards to connection to the primary servers, it was observed that on the aforementioned 263 days, the Noticee had only connected to the secondary server i.e. the Noticee had not connected to the primary server on any of those 263 days where it connected to the secondary server.

v. Deloitte analysed the complaint log data provided by NSE for the Noticee, and noted only 14 documented complaints by it regarding performance issues or disconnection related issue for TBT TCP IP during the review period. Thus, the Noticee seems to have ignored NSE Guidelines dated August 30, 2012 and continued to connect to the secondary server. It is alleged that the Noticee 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 which 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."*.

vi. It was contended by the Noticee that they were using the trading software of Omnesys and the parameters for Beginning of Day (BoD) activities was set by Omnesys. Noticee's personnel were not aware of the NSE servers to which Omnesys was logging on to. However, Omnesys, in its statement dated August 14, 2019 stated that trading members provide the necessary details for connection to a particular port or TBT TCP IP and that the trading members instruct Omnesys personnel to connect to a particular port or server. Omnesys had further stated that it connected to the NSE servers as per details provided by the broker. The decision to connect to the secondary server was always taken by the broker and Omnesys would act as per instructions of the broker. In this regard, it is noted that Omnesys was appointed by the Noticee, and it was primary obligation of the Noticee to adhere to the NSE colocation Guidelines.

b) Allegations:

i. Despite receiving the guidelines from NSE, the Noticee continued to connect to Secondary server and therefore, it was alleged that the Noticee has violated the NSE Colocation Guidelines with regard to its unauthorized connection to the secondary/ fallback server of the exchange and Clause 2(a) of Chapter V of the NSE bye-laws.

ii. 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 by NSE, it indulged in unfair trade practices. Thus, it was alleged that it had violated Regulations 3(b), 3(c), 3(d) and 4(1) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 [PFUTP regulations], read with Sections 12A(a), 12A (b) & 12 A(c) of SEBI Act, 1992.

iii. Clause A(5) of the Code of Conduct specified under Schedule II read with Regulation 9(f) of the SEBI(Stock Brokers and Sub-Broker) Regulations, 1992 (hereinafter referred to as "**Stock Broker Regulations**") 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.*". Further, Clause A(2) of the Code of Conduct specified under Schedule II read with Regulation 9(f) of the Stock Broker Regulations obligates a stock broker to exercise due skill and care. Additionally, Regulation 26(xvi) of the Stock Broker Regulations stipulates that a stock broker shall be liable for monetary penalty for *"….failure to exercise due skill, care and diligence."*

iv. In view of the above, it was alleged that being a registered intermediary, Noticee, by its aforesaid conduct of connecting to secondary server repeatedly without valid reason as well as by connecting to secondary server despite reprimand from NSE, violated Clause A(2) and Clause A(5) of Code of Conduct as specified in Schedule II of Regulation 9 of Stock Brokers Regulations.

6. **Submissions by the Noticee:**

a) I note from available records that the SCN was duly delivered to the Noticee. Thereafter, the Noticee, vide letter dated January 19, 2022, submitted its reply and also requested for inspection of documents. The said request of the Noticee was not acceded to as all the relied upon information and documents to substantiate the allegations in respect of the Noticee was already provided in the SCN. This was communicated to the Noticee vide mail dated January 28, 2022. Vide the same mail, the Noticee was granted an opportunity of hearing on February 09, 2022. However, the

Noticee, vide mail dated January 29, 2022 sought additional time to file reply along with postponepent of hearing date which was accepted by the competent authority. Accordingly, vide mail dated February 02, 2022, the hearing was rescheduled on February 22, 2022. Meanwhile, the Noticee, vide mail dated February 15, 2022, submitted additional reply to the SCN.

b) The Authorised Representative **(‘AR’**) of the Noticee attended the hearing on February 22, 2022 through WebEx video conference and reiterated the earlier submissions made by the Noticee. The Noticee inter alia made the following submissions vide the aforesaid letters dated January 19, 2022 and mail dated February 15, 2022:

i. *There is an inordinate delay in initiation of proceedings by SEBI.*
ii. *They are not in violation of any rule, regulation, guideline or circular as they connected to secondary server only when they were facing non-availability and/or inefficient/ inadequate data.*
iii. *Not all of their IP's got connected on any given day to secondary server. Further no mechanism was available to verify whether primary connections are now available, hence on receipt of communication from NSE they used to shift to primary server again as soon as possible.*
iv. *During the period of alleged secondary connection, they raised performance issue with NSE multiple times.*
v. *They have never been instructed to connect to the primary server. They were never warned and reprimanded by NSE and no action had been taken for the violation of code of the conduct, or any Rules, regulations and bye laws of the exchange.*
vi. *Copy of documents has not been given to them, hence due to inadequate data they were not able to give comprehensive reply.*
vii. *They have not gained anything, by connecting to the secondary/ fall back server.*
viii. *They have duly followed all the guidelines and recommendations issued by NSE from time to time and shifted to secondary server in line*

with the policy of the exchange and with due consideration of Colo support team.

ix. *There was no stringent requirement adopted by NSE at the relevant time as far as connection to Secondary TBT server is concerned. 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.*

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

CONSIDERATION OF ISSUES AND FINDINGS

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

Issue No. I *Whether Noticee is in violation of Point 2(a) of Chapter V of NSE bye-laws read with Clause A(5) of the Code of Conduct specified under Schedule II read with regulation 9(f) of the Stock Broker Regulations, Clause A(2) of the Code of Conduct specified under Schedule II read with regulation 9(f) of the Stock Broker Regulations and Regulations 3(b), 3(c), 3(d) and 4(1) of PFUTP Regulations read with Sections 12A(a), 12A (b) & 12 A(c) of SEBI Act as alleged in the SCN?*

Issue No. II *If yes, whether the failure, on the part of the Noticee would attract monetary penalty under Section 15HA and 15HB of the SEBI Act read with Regulations 26(xvi) and 26(xx) of Stock Broker Regulations?*

Issue No. III *If yes, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated* *in Section 15J of the SEBI Act read with Rule 5(2) of the Adjudication Rules?*

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

SEBI ACT

CHAPTER VA

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

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

12A. No person shall directly or indirectly—

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

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

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

PFUTP Regulations

3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

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

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

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

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

4. Prohibition of manipulative, fraudulent and unfair trade practice

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

SCHEDULE II

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

CODE OF CONDUCT FOR STOCK BROKERS

[Regulation 9]

A. General.

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

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

<u>SEBI Act:</u>

<u>Penalty for fraudulent and unfair trade practices.</u>

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.*

<u>Penalty for contravention where no separate penalty has been provided.</u>

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

SEBI (STOCK-BROKERS) REGULATIONS, 1992

CHAPTER VI

PROCEDURE FOR ACTION IN CASE OF DEFAULT

Liability for monetary penalty.

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

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

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

Issue No. I ***Whether Noticee is in violation of Point 2(a) of Chapter V of NSE bye-laws read with Clause A(5) of the Code of Conduct specified under Schedule II read with regulation 9(f) of the Stock Broker Regulations, Clause A(2) of the Code of Conduct specified under Schedule II read with regulation 9(f) of the Stock Broker Regulations and Regulations 3(b), 3(c), 3(d) and 4(1) of PFUTP Regulations read with Sections 12A(a), 12A (b) & 12 A(c) of SEBI Act as alleged in the SCN?***

10. I note that the Noticee in its submissions has raised the issue regarding copy of all the documents not been given to them and due to which they were not able to give comprehensive reply. In this respect, I note 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. I note that the same was also communicated to the Noticee vide mail date January 28, 2022. In this regard, I note that Hon'ble SAT in the matter of **Mayrose Capfin Private Limited Vs. SEBI** (decided on 30.03.2012) held that: *"....the principles of natural justice require that the inquiry officer should make available such document and material to the delinquent on which reliance is being placed in the inquiry. It is not necessary for the inquiry officer to make available all the material that might have been collected during the course of investigation but has not been relied upon for proving charge against the delinquent. No prejudice can, therefore, be said to have been caused to the appellant on this count...."*

11. I also note that Hon'ble SAT, in its order dated February 12, 2020, in the matter of **Shruti Vora vs. SEBI** had held that: *"Reliance was also made of a decision of the Supreme Court in Union of India and Others vs E. Bashyan (1988) 2 SCC 196 which has no bearing to the controversy involved in the present context, in as much as, the said decision relates to a disciplinary proceedings wherein the Supreme Court observed that the inquiry report was required to be made available to the delinquent. An inquiry report is totally distinct and different from an investigation report. The inquiry report considers all the materials in the inquiry proceedings which form the basis of the final order and therefore the said report is required to be made available to the delinquent. In the instant case, the show cause notice relies upon certain documents*

which have been made available. Thus the investigation report is not required to be supplied".

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

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

12. 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".*

13. 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. Therefore, I am now proceeding further and examining the matter on merits.

14. The charge against the Noticee is based on the fact that it frequently logged in to secondary server in CM segment during the investigation period without any sufficient reason during the period of investigation. In the CM segment, Noticee

connected to secondary server, “TBTCOLO17” instead of primary server on 58 and 205 days respectively during the year 2013 and 2014 (till November 09), which works out to 23.20% and 99.03% of the total trading days. I note that the Noticee has not disputed the above facts.

15. I also note from the Deloitte report that there were 46 instances of first connects made by the Noticee during 2011-13 i.e. 40 in CM segment and 06 in FO segment.

16. I note that, the relevant colocation guidelines issued by NSE (Document no SEIL/ITSM/INT/072, revised on April 16, 2012) provides that: *“Member’s should always check the secondary TBT parameters are working fine with their application in case of non-availability of data from TBT primary source they can move to secondary source.”* The guidelines indicate that secondary source for TBT data is to be used in the event of non-availability of TBT primary source and that Trading Members should not routinely connect to the secondary server. However, the Noticee continued to login to the secondary server without valid reasons during 2013 and 2014 in CM segment. This can be seen from the exceptionally high number of connections (99.03% in 2014).

17. I further note from the analysis of the data that on the aforementioned 263 days, the Noticee had only connected to the secondary server i.e. the Noticee had not connected to the primary server on any of those 263 days where it connected to the secondary server.

18. I further note that Deloitte analyzed the complaint log data provided by NSE for the Noticee, and noted only 14 documented complaints by the Noticee regarding performance issues or disconnection related issue for TBT TCP IP during the review period.

19. In this regard, the Noticee has contended that they raised performance issue with NSE multiple times and submitted the telephone bills from July 2013 to November 2014 showing multiple calls to Colo support contact number.

However, I note that the aforesaid documents does not indicate the purpose of the call and whether the calls were related to FO segment or CM segment and if its related to performance issue of primary server of CM segment, than whether the same was subsequently resolved. Therefore, I reject the contention of the Noticee in this regard.

20. With regards to connection to the secondary server, Noticee has contended that not all of their IP's got connected on any given day to secondary server and no mechanism was available to verify whether primary connections are now available, hence on receipt of communication from NSE they used to shift to primary server again as soon as possible.

In this regard, I note that as per the NSE Colo guidelines, the connection to the secondary server could be made only in case of non-availability of data from the primary server. This implies that at the beginning of the day the broker has to first try to connect to the primary server and in case of any issues they could move to the secondary server. However, from the submission of the Noticee, I note that they kept on connecting to the secondary server till the receipt of any communication from the exchange.

The Noticee has also contended that they have never been instructed to connect to the primary server and were never warned and reprimanded by NSE and no action had been taken for the violation of code of the conduct, or any Rules, regulations and bye laws of the exchange.

I note that the above two contentions of the Noticee are contradictory. On one hand the Noticee is contending that they have never been instructed to connect to the primary server and on other hand it is contended that on receipt of communication from NSE they used to shift to primary server again as soon as possible.

Further, on analysis of data, it was noted that Noticee last connected to the primary server, ‘TBTCOLO13’ on October 4, 2013. Thereafter, since October

07, 2013, the Noticee only connected to the secondary server ‘TBTCOLO17’ i.e. on 263 days and never switched back to the primary server, as contended above.

Therefore, I note that aforesaid contentions are liable to be set aside on the above grounds.

21. Further, I note that the Noticee connected to the secondary server on 263 out of 457 trading days, i.e., 57.55% of the trading days without having sufficient reasons to connect to secondary server. Therefore, I note that the Noticee connected frequently to the secondary server in violation of the NSE colocation guidelines, thereby also failing to exercise due skill care and diligence in conducting its trading operations.

22. Noticee has further made a contention that there is an inordinate delay in initiation of proceedings by SEBI. I find it relevant to 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. Subsequently, in the present matter SEBI has contemplated various actions including prosecution and adjudication proceedings.

23. In this context I find it relevant to refer to the order passed by Hon’ble SAT in the case 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.”*

24. Further, 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..................".*

25. Considering the facts and circumstances of the matter, as aforesaid, I find no merit in the arguments of the Noticee in this regard.

26. Noticee has made a contention that there was no stringent requirement adopted by NSE at the relevant time as far as connection to Secondary TBT server is concerned and 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. This contention cannot be accepted as the Colo guidelines specifically states that the trading member can move to the secondary server only in case of non-availability of data from primary server. The reasonable and legitimate expectation from the Noticee would be that it will adhere to all such rules and procedures as required by NSE from time to time in writing or otherwise. In this case, it is established that the Noticee had connected to the secondary server on several occasions in violation of the said NSE guidelines and the same was not disputed by the Noticee.

27. 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. "

28. Thus it is established that the Noticee violated Point 2(a) of Chapter V of NSE bye-laws read with Clause A(5) of the Code of Conduct specified under Schedule II read with regulation 9(f) of the Stock Broker Regulations and Clause A(2) of the Code of Conduct specified under Schedule II read with regulation 9(f) of the Stock Broker Regulations.

29. 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 various orders including the Adjudication Orders bearing no. ORDER/SS/SK/2019-20/4608 dated September 25, 2019, in the matter of SMC Global Securities Ltd(SMC), ORDER/MC/DS/2020-2021/9097 dated September 22, 2020, in the matter of Advent Stock Broking Pvt. Ltd., ORDER/AP/SK/2020-2021/9661 dated November 25, 2020, in the matter of Crosseas Capital Services Private Limited, Order/AP/SK/2021-22/12253 dated June 15, 2021 in the matter of IKM Investors Private Limited among others. Noticee has contended that their matter is also similar and no allegation of PFUTP Regulations was alleged against the Noticees in the above orders. The Noticee has also contended that they have not gained anything, by connecting to the secondary/ fall back server AND there are no investor's complaints against them.

30. In this regard, I note that the material on record does not establish any unfair gain or advantage which may have accrued to the Noticee as a result of connecting to the secondary server. I also note that the Noticee was not reprimanded by NSE for the secondary server connections unlike some other Brokers. The material on record establishes that Noticee connected to secondary server, but does not state whether these were early connections vis-à-vis other brokers and there is also no material to say that the early connection could have benefitted the Noticee in any manner. Further, it is noted that the Noticee made 46 first connects during 2011-13 i.e. 40 in CM segment and only 06 in FO segment.

31. 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 read with Sections 12A(a), 12A (b) and 12 A(c) of SEBI Act.

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

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

Issue No. II ***If yes, whether the failure, on the part of the Noticee would attract monetary penalty under Section 15HA and 15HB of the SEBI Act?***

&

Issue No. III ***If yes, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5 (2) of the Adjudication Rules?***

34. As it is established that Noticee is in violation of Point 2(a) of Chapter V of NSE bye-laws read with Clause A(5) of the Code of Conduct specified under Schedule II read with regulation 9(f) of the Stock Broker Regulations, Clause A(2) of the Code of Conduct specified under Schedule II read with regulation 9(f) of the Stock Broker Regulations, I am of the view that it warrants imposition of monetary penalty under Section 15HB of the SEBI Act on the Noticee, text of which is reproduced as under:

SEBI Act:

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.*

35. While determining the quantum of penalty under Section 15HB the SEBI Act, the following factors stipulated in Section 15J of the SEBI Act, have to be given due regard:

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

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

(c) the repetitive nature of the default.

36. I note that the material on record does not bring out any gains made or unfair advantage availed or loss caused to investors by the Noticee due to the aforesaid violations. The Noticee has connected to the secondary server connection roughly on 58% or 263 days out of total around 457 trading days in the CM segment during the period 2013 and 2014 (till Nov 09, 2014) despite NSE guidelines. Therefore, it is established that the Noticee has failed to comply with aforesaid guidelines and hence, violated the aforesaid provisions of the NSE bye-law and Code of Conduct specified under Stock Broker Regulations, 1992.

ORDER

37. After taking into consideration all the facts and circumstances of the case, gravity of violations and material available on record, I, in exercise of powers conferred upon me under Section 15I of the SEBI Act read with Rule 5 of the Adjudication Rules, hereby impose a penalty of Rs.3,00,000/- (Rupees Three Lakh only) under section 15HB of the SEBI Act upon the Noticee i.e. Adjudication Order in respect of Yug Securities Limited for violation of Point 2(a) of Chapter V of NSE bye-laws read with Clause A(5) of the Code of Conduct specified under Schedule II read with regulation 9(f) of the Stock Broker Regulations and Clause A(2) of the Code of Conduct specified under Schedule II read with regulation 9(f) of the Stock Broker Regulations. I am of the view that the said penalty is commensurate with the violation committed by the Noticee.

38. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, OR through online payment facility available on the SEBI website www.sebi.gov.in on the following path, by clicking on the payment link:

ENFORCEMENT → Orders → Orders of AO → PAY NOW

39. The said demand draft or forwarding details and confirmations of e-payments made (in the format as given in table below) should be forwarded to "The Division Chief, Enforcement Department (EFD1 – DRA III), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C –4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai –400 051.

1. Case Name:	
2. Name of the Noticee:	
3. PAN No. of the Noticee	
4. Date of payment:	

5. Amount paid:	
6. Transaction no.:	
7. Bank details in which payment is made:	
8. Payment is made for: (like penalties/ disgorgement/ recovery/ settlement amount etc.)	

40. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, consequential proceedings including, but not limited to, recovery proceedings may be initiated under Section 28A of the SEBI Act, for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

41. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticee and also to the Securities and Exchange Board of India.

Date: April 12, 2022
Place: Mumbai

G RAMAR
ADJUDICATING OFFICER