BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Order Reserved On : 28.08.2023
Date of Decision : 14.12.2023

Appeal No. 445 of 2022

National Stock Exchange of India Ltd.
Exchange Plaza, Block G, C-1,
Bandra Kurla Complex, Bandra (East),
Mumbai - 400 051. …Appellant

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai - 400 051. … Respondent

Mr. Somasekhar Sundaresan, Advocate with Mr. Abishek Venkatarman, Mr. Prabhav Shroff, Mr. Harshit Jaiswal, Advocates i/b AZB & Partners for the Appellant.

Mr. Shiraz Rustomjee, Senior Advocate with Mr. Suraj Chaudhary, Mr. Jai Chhabria, Mr. Prateek Pai, Mr. Manish Chhangani, Ms. Samreen Fatima, Mr. Sumit Yadav, Mr. Abhay Chauhan, Advocates i/b The Law Point for the Respondent.

WITH
Appeal No. 464 of 2022

Ravi Varanasi
A-1401, Mahindra Splendour,
LBS Road, Bhandup West,
Mumbai-400 078. …Appellant

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai - 400 051. …Respondent

Mr. P. N. Modi, Senior Advocate with Mr. Neville Lashkari, Mr. Rashid Boatwalla, Mr. Juan D'Souza, Advocates i/b MKA & Co. for the Appellant.

Mr. Shiraz Rustomjee, Senior Advocate with Mr. Suraj Chaudhary, Mr. Jai Chhabria, Mr. Prateek Pai, Mr. Manish Chhangani, Ms. Samreen Fatima, Mr. Sumit Yadav, Mr. Abhay Chauhan, Advocates i/b The Law Point for the Respondent.

WITH
Appeal No. 465 of 2022

Deviprasad Singh
Flat No. 101, Building EMP
12, Jupiter CHS,
Thakur Village, Kandivali East,
Mumbai – 400101. …Appellant

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai - 400 051. … Respondent

Mr. P. N. Modi, Senior Advocate with Mr. Neville Lashkari, Mr. Rashid Boatwalla, Mr. Juan D'Souza, Advocates i/b MKA & Co. for the Appellant.

Mr. Shiraz Rustomjee, Senior Advocate with Mr. Suraj Chaudhary, Mr. Jai Chhabria, Mr. Prateek Pai, Mr. Manish Chhangani, Ms. Samreen Fatima, Mr. Sumit Yadav, Mr. Abhay Chauhan, Advocates i/b The Law Point for the Respondent.

WITH
Appeal No. 466 of 2022

Nagendra Kumar SRVS
A 501, Sungrace Apartments,
Raheja Vihar, Powai, Mumbai – 400072. …Appellant

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai - 400 051. …Respondent

Mr. P. N. Modi, Senior Advocate with Mr. Neville Lashkari, Mr. Rashid Boatwalla, Mr. Juan D'Souza, Advocates i/b MKA & Co. for the Appellant.

Mr. Shiraz Rustomjee, Senior Advocate with Mr. Suraj Chaudhary, Mr. Jai Chhabria, Mr. Prateek Pai, Mr. Manish Chhangani, Ms. Samreen Fatima, Mr. Sumit Yadav, Mr. Abhay Chauhan, Advocates i/b The Law Point for the Respondent.

WITH
Appeal No. 482 of 2022

Way2Wealth Brokers Private Limited
Frontline Grandeur, Ground Floor,
No. 14, Walton Road, Bengaluru – 560 001. …Appellant

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai - 400 051. …Respondent

Ms. Shruti Rajan, Advocate with Mr. Anubhav Ghosh, Mr. Vivek Shah, Mr. Harishankar Raghunath, Advocates i/b Trilegal for the Appellant.

Mr. Shiraz Rustomjee, Senior Advocate with Mr. Suraj Chaudhary, Mr. Jai Chhabria, Mr. Prateek Pai, Mr. Manish Chhangani, Ms. Samreen Fatima, Mr. Sumit Yadav, Mr. Abhay Chauhan, Advocates i/b The Law Point for the Respondent.

WITH
Appeal No. 483 of 2022

M. R. Shashibhushan
No. 48, Aadhya, 2nd Circular Road,
Nandini Layout, Bengaluru – 560096,
Karnataka. …Appellant

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai - 400 051. …Respondent

Ms. Shruti Rajan, Advocate with Mr. Anubhav Ghosh, Mr. Vivek Shah, Mr. Harishankar Raghunath, Advocates i/b Trilegal for the Appellant.

Mr. Shiraz Rustomjee, Senior Advocate with Mr. Suraj Chaudhary, Mr. Jai Chhabria, Mr. Prateek Pai, Mr. Manish Chhangani, Ms. Samreen Fatima, Mr. Sumit Yadav, Mr. Abhay Chauhan, Advocates i/b The Law Point for the Respondent.

WITH
Appeal No. 484 of 2022

1. GKN Securities
   414, 4th Floor, Palm Spring Centre,
   Link Road, Malad (West),
   Mumbai-400 064.

2. Sonali Gupta
   506, Juhu Oyster Shell Cooperative Housing
   Society Ltd., Juhu Tara Road,
   Mumbai- 400 049.

3. Om Prakash Gupta
   G-190, Preeth Vihar, Delhi-110092.

4. Rahul Gupta
   506, Juhu Oyster Shell Cooperative Housing
   Society Ltd., Juhu Tara Road,
   Mumbai – 400 049.

…Appellants

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai - 400 051. …Respondent

Ms. Mitravinda Chunduru, Advocate with Mr. Ravichandra S. Hegde, Mr. Shonan Bangera, Advocates i/b RHP Partners for the Appellants.

Mr. Shiraz Rustomjee, Senior Advocate with Mr. Suraj Chaudhary, Mr. Jai Chhabria, Mr. Prateek Pai, Mr. Manish Chhangani, Ms. Samreen Fatima, Mr. Sumit Yadav, Mr. Abhay Chauhan, Advocates i/b The Law Point for the Respondent.

WITH
Appeal No. 531 of 2022

Mr. Anand Subramanian
2/14, Vishranti Shaktimaya II, Main Road,
Teynampet, Chennai – 600018. …Appellant

Versus

Securities & Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai - 400 051. …Respondent

Mr. Shyam Mehta, Senior Advocate with Mr. Ankit Lohia, Ms. Shachi Udeshi, Ms. Pooja Rathi, Advocates i/b Wadia Ghandy & Co. for the Appellant.

Mr. Shiraz Rustomjee, Senior Advocate with Mr. Suraj Chaudhary, Mr. Jai Chhabria, Mr. Prateek Pai, Mr. Manish Chhangani, Ms. Samreen Fatima, Mr. Sumit Yadav, Mr. Abhay Chauhan, Advocates i/b The Law Point for the Respondent.

WITH
Appeal No. 532 of 2022

Mr. Mohit Mutreja
302, Vinayak Heights,
CHS Nargis Dutt Road,
Bandra (West),
Mumbai - 400 051. …Appellant

Versus

Securities & Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai - 400 051. …Respondent

Mr. Venkatesh Dhond, Senior Advocate with Mr. Shenoy Prasad, Mr. Parker Karia, Mr. Shivaang Maheshwari, Ms. Sudarshana Basu, Advocates i/b Finsec Law Advisors for the Appellant.

Mr. Shiraz Rustomjee, Senior Advocate with Mr. Suraj Chaudhary, Mr. Jai Chhabria, Mr. Prateek Pai, Mr. Manish Chhangani, Ms. Samreen Fatima, Mr. Sumit Yadav, Mr. Abhay Chauhan, Advocates i/b The Law Point for the Respondent.

WITH
Appeal No. 533 of 2022

Mr. Parshant Mittal
601, Vinayak Heights,55, Pali Hill,
Bandra (West), Mumbai – 400050. …Appellant

Versus

Securities & Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai - 400 051. … Respondent

Mr. Venkatesh Dhond, Senior Advocate with Mr. Shenoy Prasad, Mr. Parker Karia, Mr. Shivaang Maheshwari, Ms. Sudarshana Basu, Advocates i/b Finsec Law Advisors for the Appellant.

Mr. Shiraz Rustomjee, Senior Advocate with Mr. Suraj Chaudhary, Mr. Jai Chhabria, Mr. Prateek Pai, Mr. Manish Chhangani, Ms. Samreen Fatima, Mr. Sumit Yadav, Mr. Abhay Chauhan, Advocates i/b The Law Point for the Respondent.

WITH
Appeal No. 540 of 2022

Netaji Patil
A2/803, Nandanvan Homes, Parsik Nagar,
Kalwa, Thane, Mumbai -400605. …Appellant

Versus

Securities & Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai - 400 051. …Respondent

Ms. Mitravinda Chunduru, Advocate with Mr. Ravichandra S. Hegde, Mr. Shonan Bangera, Advocates i/b RHP Partners for the Appellant.

Mr. Shiraz Rustomjee, Senior Advocate with Mr. Suraj Chaudhary, Mr. Jai Chhabria, Mr. Prateek Pai, Mr. Manish Chhangani, Ms. Samreen Fatima, Mr. Sumit Yadav, Mr. Abhay Chauhan, Advocates i/b The Law Point for the Respondent.

WITH
Appeal No. 541 of 2022

Jayant Bhusare
Building No. 4, 106,
Anand Vihar Complex,
Near Kharegaon, Railway Phatak, …Appellant
Kharegaon, Kalwa,
Thane -400605.

Versus

Securities & Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai - 400 051. …Respondent

Ms. Mitravinda Chunduru, Advocate with Mr. Ravichandra S. Hegde, Mr. Shonan Bangera, Advocates i/b RHP Partners for the Appellant.

Mr. Shiraz Rustomjee, Senior Advocate with Mr. Suraj Chaudhary, Mr. Jai Chhabria, Mr. Prateek Pai, Mr. Manish Chhangani, Ms. Samreen Fatima, Mr. Sumit Yadav, Mr. Abhay Chauhan, Advocates i/b The Law Point for the Respondent.

WITH
Appeal No. 559 of 2022

Ms. Chitra Ramkrishna
201, Laxmi Habitat,
7th Cross Road, Chembur – 400 071. …Appellant

Versus

Securities & Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai - 400 051. …Respondent

Mr. J. P. Sen, Senior Advocate with Mr. Piyush Raheja, Ms. S. Priya, Mr. Dipam Sengupta, Advocates for the Appellant.

Mr. Shiraz Rustomjee, Senior Advocate with Mr. Suraj Chaudhary, Mr. Jai Chhabria, Mr. Prateek Pai, Mr. Manish Chhangani, Ms. Samreen Fatima, Mr. Sumit Yadav, Mr. Abhay Chauhan, Advocates i/b The Law Point for the Respondent.

WITH
Appeal No. 623 of 2022

Ms. Rima Srivastava
A-201, Florentine, Hiranandani Gardens,
Powai, Mumbai – 400 076. …Appellant

Versus

Securities & Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai - 400 051. …Respondent

Ms. Shruti Rajan, Advocate with Mr. Anubhav Ghosh, Mr. Vivek Shah, Mr. Harishankar Raghunath, Advocates i/b Trilegal for the Appellant.

Mr. Shiraz Rustomjee, Senior Advocate with Mr. Suraj Chaudhary, Mr. Jai Chhabria, Mr. Prateek Pai, Mr. Manish Chhangani, Ms. Samreen Fatima, Mr. Sumit Yadav, Mr. Abhay Chauhan, Advocates i/b The Law Point for the Respondent.

WITH
Appeal No. 842 of 2022

Prashant D’Souza
3202, Belvedere, Lodha Aurum Grande,
Kanjurmarg (East), Mumbai - 400 042. …Appellant

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai - 400 051. …Respondent

Mr. Vikram Nankani, Senior Advocate with Ms. Ragini Singh, Ms. Pooja Pandey, Mr. Mehul Talera, Mr. Lavesh Nankani, Advocates i/b Ragini Singh and Associates for the Appellant.

Mr. Shiraz Rustomjee, Senior Advocate with Mr. Suraj Chaudhary, Mr. Jai Chhabria, Mr. Prateek Pai, Mr. Manish Chhangani, Ms. Samreen Fatima, Mr. Sumit Yadav, Mr. Abhay Chauhan, Advocates i/b The Law Point for the Respondent.

WITH
Appeal No. 843 of 2022

Sampark Infotainment Pvt. Ltd.
Unit No. 211 A, B Wing, 2nd Floor,
Kailash Industrial Complex, Vikhroli (W),
Mumbai-400 079. …Appellant

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai - 400 051. …Respondent

Mr. Vikram Nankani, Senior Advocate with Ms. Ragini Singh, Ms. Pooja Pandey, Mr. Mehul Talera, Mr. Lavesh Nankani, Advocates i/b Ragini Singh and Associates for the Appellant.

Mr. Shiraz Rustomjee, Senior Advocate with Mr. Suraj Chaudhary, Mr. Jai Chhabria, Mr. Prateek Pai, Mr. Manish Chhangani, Ms. Samreen Fatima, Mr. Sumit Yadav, Mr. Abhay Chauhan, Advocates i/b The Law Point for the Respondent.

CORAM: Justice Tarun Agarwala, Presiding Officer
Ms. Meera Swarup, Technical Member

Per: Justice Tarun Agarwala, Presiding Officer

1. 16 appeals have been filed against a common order dated June 28, 2022 passed by the Adjudicating Officer ("AO" for convenience) of the Securities and Exchange Board of India ("SEBI" for convenience) imposing penalties of different amounts against each appellant for violation of Section 12A of the SEBI Act and Regulations 3 and 4 of the PFUTP Regulations as well as SEBI's Circulars. Penalties have been imposed under Section 15HA and 15HB of the SEBI Act and 23H of the Securities Contracts (Regulation) Act, 1956 ("SCRA" for convenience). The said order has been challenged by the appellants on different grounds and, therefore, each appeal would be dealt with separately.

2. The facts leading to the filing of the present appeals is, that the respondent received various complaints alleging irregularities in respect of colocation facility in NSE. Another complaint dated October 3, 2015 was received by the respondent alleging that Way2wealth Brokers Pvt. Ltd. (hereinafter referred to as "W2W") was permitted to utilize Point-2-Point (hereinafter referred to as 'P2P') dark fibre connectivity from Sampark Infotainment Pvt. Ltd. (hereinafter referred to as 'Sampark') who was an unauthorized service provider thereby conferring a latency advantage to W2W which,

in turn, resulted in the substantial increase in a turnover during April to August 2015.

3. Based on the said complaint, a Cross Functional Team (hereinafter referred to as 'CFT') was constituted by SEBI. Based on the preliminary findings given by the CFT and thereafter on the basis of the recommendations given by the Technical Advisory Committee (hereinafter referred to as 'TAC') of SEBI, an Expert Committee was constituted to further examine the allegations made in the complaints. The Expert Committee submitted a report which was accepted by the TAC. The recommendations of the TAC was communicated to NSE based on which Deloitte Touche Tohmatsu India LLP (hereinafter referred to as 'Deloitte') was appointed to conduct a forensic investigation.

4. In this backdrop, a detailed investigation was undertaken by SEBI to find out possible violation pertaining to dark fibre connectivity provided by Sampark in connivance / collusion with employees of NSE, with the stockbrokers and the role of the stockbrokers who allegedly benefited from the preferential access to colo facility by way of P2P connectivity from an un-authorised service provider.

5. The investigation revealed various irregularities, based on which, two show cause notices dated May 22, 2017 and July 3, 2018 were issued by WTM in respect of P2P connectivity installed by two brokers of NSE, namely, W2W and GKN Securities Pvt. Limited ("GKN" for convenience) between the Co-location services i.e. (Colo) facility on NSE and Colo centre at BSE Ltd. (hereinafter referred to as 'BSE') during the month of April – May 2015 by engaging an unauthorized service provider i.e. Sampark and, further allowing the aforesaid two stockbrokers to continue to avail the services of Sampark even after getting to know that Sampark did not possess the necessary license from the Department of Telecommunications (hereinafter referred to as 'DoT'). The show cause notices was accordingly issued to show cause as to why suitable directions under Section 11 and 11B of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as 'SEBI Act') read with Section 12A of the Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as 'SCRA') should not be issued for the alleged violations.

6. The basic allegations against the appellants are as under:-

a. NSE was not transparent to its Trading Members (hereinafter referred to as the "TMs") about which

Telecom Service Providers (hereinafter referred to as 'TSPs') were authorized to provide services that could be availed by the TMs for establishing P2P connectivity.

b. Permission was given to an unauthorized service provider Sampark, who did not possess the requisite DoT certificate to install its network equipment and was in violation of the NSE's circular.

c. Preferential treatment given to certain TMs by the NSE with respect to installation of P2P connectivity.

d. Allowing installation of Multiplexer (hereinafter referred to as 'MUX') by Sampark in the NSE Meet Me Room (hereinafter referred to as 'MMR') in the Colo facility without verification of its licenses.

e. Unfair latency advantage conferred to W2W and GKN through the un-authorised P2P connectivity provided by Sampark.

f. Continuation of Sampark connectivity by W2W and GKN even after discovering that Sampark

lacked proper license, thereby acting in collusion between W2W / GKN and NSE.

g. Site inspection of brokers' offices at BSE office building conducted for some other brokers, viz: Millennium, GRD and SMC etc. for considering their P2P connectivity requests but waived off for W2W and GKN.

h. Arrangements between Sampark and Reliance Communications Ltd. (hereinafter referred to as 'Reliance') were facilitated by NSE to regularize their irregular Sampark connectivity.

7. The show cause notice further alleged that the application received by NSE from Mansukh Securities and Finance Ltd. (hereinafter referred to as 'Mansukh') and from Millenium Stock Broking Pvt. Ltd. (hereinafter referred to as 'Millenium') were denied P2P connection through Sampark citing that Sampark was not an authorised vendor. On the other hand, the same kind of activity through Sampark was allowed to W2W and GKN and that Sampark was even allowed to provide services to W2W and GKN till September 2015 even after knowing that Sampark was an unauthorized service provider on July 28, 2015. Consequently, the allegation against NSE was of

meting out preferential treatment to some stockbrokers which was unbecoming of the Market Infrastructure Institution. The show cause notice, thus, alleged that NSE failed to provide equal, unrestricted, transparent and fair access to all its TMs.

8. The appellants and other noticees filed their respective replies and raised various objections which were considered. The WTM after considering the submissions of the parties and the material evidence on record passed the impugned orders issuing various directions. Apart from other directions the WTM directed the noticees to disgorge certain amounts.

9. Against the order of the WTM, several appeals were filed by the appellants which were clubbed together and decided in Appeal No. 334 of 2019 and other companion appeals by judgement dated August 09, 2023. This Tribunal held that the charge of violation of Section 12A and the Regulations 3 and 4 of the PFUTP Regulations was not made out and that there was no collusion between NSE and other noticees. This Tribunal held that the NSE did not collude with any TM nor committed any fraud. The direction to disgorge the amount along with interest was set aside against the appellants. This Tribunal also held that no preferential treatment was granted by NSE to W2W and GKN nor any discriminatory policy was adopted for other

stock brokers and that NSE did not adopt any non-transparent mode of communication to its stock brokers through issuance of circulars and notifications nor any discriminatory policy was adopted over other stock brokers. Further, no latency advantage was given to W2W and GKN.

10. On the same cause of action, the AO also issued four show cause notices to 18 noticees which included the appellants to show cause as to why penalties should not be imposed for the alleged violations. The AO after considering the material evidence on record has passed the impugned order imposing penalties of different amounts to the appellants.

11. We have heard Shri Somasekhar Sundaresan, the learned counsel, Shri P.N. Modi, the learned senior counsel, Ms. Shruti Rajan, the learned counsel, Ms. Mitravinda Chunduru, the learned counsel, Shri Shyam Mehta, the learned senior counsel, Shri Venkatesh Dhond, the learned senior counsel, Shri J. P. Sen, the learned senior counsel, Shri Vikram Nankani, the learned senior counsel for the Appellants and Shri Shiraz Rustomjee, the learned senior counsel for the Respondent.

12. At the outset, we find that the show cause notice issued by WTM and AO are on the same cause of action. We have

already given our findings against the WTM's order and therefore hold that the findings given by this Tribunal will squarely apply in the present proceedings against the order of the AO to the said noticees. Thus, the present order is to be treated in continuation of our earlier order. The facts and findings given in our order has been given in detail and is not been repeated here.

Appeal No. 445 of 2022
National Stock Exchange of India Limited

13. Appeal No. 445 of 2022 has been filed by the National Stock Exchange of India wherein the following penalty has been imposed.

a) Rs. 5 crores under Sections 15HA of the SEBI Act (for alleged violation of Regulation 3(d) and 4(1) of the provisions of the PFUTP Regulations read with Section 12A(c) of the SEBI Act).

b) Rs. 1 crore under Section 15HB of the SEBI Act (for alleged violation of Clause 4(i) of the SEBI Circular dated March 30, 2012, Minutes of the SMAC dated November 11, 2011 and Clauses 3.1, 3.2 and 3.6 of the SEBI Circular dated May 13, 2015); and

c) Rs. 1 crore under Section 23H of the SCR Act (for alleged violation of Regulation 41(2), 47 and 48 of the SECC Regulations).

14. The impugned order of the AO contains nine charges against the NSE out of which seven charges are the same as given by the WTM. The seven charges against NSE were set aside by this Tribunal in its order of August 09, 2023. Thus, the finding on the seven charges by the AO in the impugned order cannot be sustained in view of our order dated August 09, 2023. This view of ours is duly accepted by the learned senior counsel appearing for the respondent. In view of the aforesaid, the penalty of Rs. 5 crores under Section 15HA of the SEBI Act for violation of the Regulations 3 and 4 of the PFUTP Regulations read with Section 12A of the SEBI Act cannot be sustained and are quashed.

15. The two charges issued against NSE by the AO are as under, namely, (i) delay in processing the request of the members (ii) inconsistent and contradictory reply given by NSE to SEBI.

16. With regard to the delay in processing the request of the members we find that the AO has found that NSE did not

adhere to be prescribed timeline of 15 days while deciding the request from the stock brokers for availing P2P connectivity and, therefore, NSE was in violation of clause 3.1, 3.2 and 3.6 of the SEBI Circular dated May 13, 2015.

17. In this regard, we find that the AO has misdirected itself and has wrongly considered the Circular dated May 13, 2015 which is not applicable to the case in hand. The Circular dated May 13, 2015 prescribes the timeline of 15 days for deciding the request by trading members with regard to collocation facilities which is different and distinct from inviting applications for P2P connectivity. Thus, in our considered view, the Circular dated May 13, 2015 has no application to request by trading members for P2P connectivity which is a distinct and different value added service availed by brokers from third party service providers. This Tribunal in paragraph 81 of its order of NSE vs SEBI dated August 09, 2023 (supra) has distinguished between collocation facility and P2P facility. Assuming, that the Circular dated May 13, 2015 applies, we find that para 3.6 of the said circular clearly specifies that the application should be processed expeditiously within 15 days. The word “expeditiously” makes it clear that the provision is directory in nature and does not mean that if the application is not processed within 15 days then there is a violation of that

circular. Thus, non-compliance of the said provision by a few days will not make NSE liable for penalty. Therefore, the charge levelled against NSE on this score cannot be sustained and is quashed. The penalty of Rs. 1 crore under Section 15HB of the SEBI Act for violation of the Circular dated May 13, 2015 cannot be sustained.

18. With regard to the charge regarding inconsistent and contradictory information and reply given by SEBI the AO has found that the NSE has not cooperated with SEBI and had provided contradictory statement that the policy of the site visit had commenced in May 2015 whereas the site visit was conducted in November-December 2014. The AO came to the conclusion that this inconsistent reply given by NSE was a deliberate attempt to exclude the action that took place with respect to Sampark connectivity vis-à-vis W2W and GKN. In this regard, we find that NSE vide email dated April 13, 2018 and May 02, 2018 stated that the process to conduct site visit of member offices in BSE building was implemented from May 2015. The AO however found that site visit was observed from November-December 2014 when a request was conducted by NSE in the case of Shastra Securities Pvt. Ltd. In this regard NSE submitted that site visit was conducted by NSE in December 2014 in the case of Shastra Securities Pvt. Ltd. but

when several requests were made from other trading members for P2P connectivity to their office at BSE it was decided to implement a policy in May 2015 undertaking site visit in all cases where P2P connection terminated at the trading members office at BSE. In our opinion, even if a site visit was conducted in the case of one trading member in December 2014 it does not lead to any inference that a deliberate attempt was made on the part of NSE to exclude the action that took place with respect to Sampark connectivity vis-à-vis W2W and GKN in the month of April 2015. We are of the opinion, that this technical infraction does not in any way violate Regulation 48(2) of the SECC Regulations. For facility, Regulation 48(2) of the Securities Contracts (Regulation) (Stock Exchange and Clearing Corporation) Regulations, 2012 ("SECC Regulations" for convenience) is extracted hereunder:-

> *"**48(2)** Where an inspection under sub-regulation (1) is undertaken by the Board, such recognized stock exchange or recognized clearing corporation or shareholder or associate and every manager, director, managing director, chairperson or officer and other employee of such recognized stock exchange, recognized clearing corporation, shareholder or associate shall co-operate with the Board.*"

19. A perusal of Regulation 48(2) of the SECC Regulations indicate that a stock exchange was required to cooperate with the Board during the inspection. There is no allegation of lack of cooperation by NSE either during inspection or with any officials of SEBI. If a reply has been given which is bonafide the same does not indicate lack of cooperation warranting a penalty. In our view, response given by NSE which are bonafide does not in any manner indicate lack of cooperation warranting a penalty. Thus, the imposition of penalty of Rs. 1 crore for violation 41(2), 47 and 48 of the SECC Regulations cannot be sustained and is quashed.

Appeal No. 464 of 2022 Ravi Varanasi
Appeal No. 465 of 2022 Deviprasad Singh
Appeal No. 466 of 2022 Nagendra Kumar SRVS

20. Ravi Varanasi has filed Appeal No. 464 of 2022, Deviprasad Singh has filed Appeal No. 465 of 2022 and Nagendra Kumar SRVS has filed Appeal No. 466 of 2022. These three appeals are being taken up together. The AO after considering the matter imposed the following penalty:-

Mr. Ravi Varanasi	Regulations 3(d) and 4(1) of PFUTP Regulations read with Section 12A(c) of SEBI Act. SEBI Master circular dated December 31, 2010. Part A & B of Schedule II of SECC Regulations read with Regulation 26(1) and 26(2) of SECC Regulations.	Sections 15HA of the SEBI Act. Section 15HB of the SEBI Act. Section 23H of the SCRA	Rs. 3,00,00,000/- (Rs. Three crore only) Rs, 1,00,00,000/- (Rs. One crore only) Rs. 1,00,00,000/- (Rs. One crore only)

Mr. Nagendra Kumar SRVS.	Regulations 3(d) & 4(1) of the PFUTP Regulations read with Section 12A(c) of the SEBI Act.	Section 15HA of the SEBI Act	Rs. 1,00,00,000/- (Rs. One crore only)
Mr. Deviprasad Singh	Regulations 3(d) & 4(1) of the PFUTP Regulations read with Section 12A(c) of the SEBI Act.	Section 15HA of the SEBI Act	Rs. 1,00,00,000/- (Rs. One crore only)

21. The allegations, circumstances and findings in the impugned order are identical as those in the order dated April 30, 2019 passed by the Whole Time Member ("WTM" for convenience) against which the appellants had filed Appeal Nos. 323 of 2019, 324 of 2019 and 325 of 2019 which was disposed of judgement dated August 09, 2023 wherein the Tribunal had exonerated the appellants of all the allegations except on the obligation to check the Department of Telecommunications ("DoT") license of Sampark who was a P2P network service provider. This Tribunal in its order of August 09, 2023 has dealt with the submissions from paragraphs 127 to 136. This Tribunal exonerated the appellants with regard to the allegations of fraud and other violations under the PFUTP Regulations especially with regard to providing preferential treatment to some brokers and discriminating other brokers as well as non-conducting site visits for all brokers or providing latency advantage to some of the brokers. This Tribunal held:-

> *"**135.** In view of the aforesaid, the direction that the appellants shall not hold any position either*

directly or indirectly or be associated directly or indirectly with any stock exchange, clearing corporation or depository or any intermediary registered with SEBI for a period of two years is harsh and excessive and cannot be sustained and is quashed. Such direction if implemented would lead to automatic termination of their services which can never be the intention of the Regulator. In addition to the aforesaid, the additional direction against Mr. Ravi Varanasi of being debarred from holding any position either directly or indirectly or have been associated directly or indirectly with any listed company in any of the stock exchanges recognized by SEBI for a period of three years also cannot be sustained and is quashed. However, for the violation found by us, a penalty, if any, can be imposed."

22. In paragraph 150 we directed as under:-

*"**150.** The direction given by the WTM against Mr. Ravi Varanasi, Mr. Nagendra Kumar and Mr. Devi Prasad Singh in Appeal Nos. 324 of 2019, 325 of 2019 and 323 of 2019 respectively restraining them from holding any position in any exchange, clearing corporation or depository for a period of two years cannot be sustained and is quashed. The appeals are partly allowed. Penalty, if any, can be imposed."*

23. From the aforesaid it is clear that the directions against the appellants were set aside and for the violation we held that penalty, if any, can be imposed upon them.

24. Ravi Varanasi was the head of business development team at NSE, Nagendra Kumar was head of the membership department which was part of the business development team at NSE and Deviprasad Singh was the head of the IT operations at NSE. The contention of the appellants that they had no role to play was disbelieved. The contention that it was not their responsibility to verify the license of Sampark was found to be incorrect. We found that evasive replies were given by these appellants contending that it was not their role and responsibility to verify the license of the vendor. This Tribunal found that the appellants were fully involved in the process of granting permission to Sampark and should have verified the license of the vendor. The Tribunal also found that Deviprasad Singh and Nagendra Kumar were reporting to Ravi Varanasi and, therefore, Ravi Varanasi could not feign ignorance in the matter relating to granting permission to Sampark. This Tribunal consequently held that the appellants were guilty of lack of due diligence / negligence in not verifying the license of the service provider Sampark.

25. In the light of the aforesaid, the penalty against the appellants for violation of Regulation 3 and 4 of the PFUTP Regulations cannot be sustained and is squarely covered by the decision of this Tribunal dated August 09, 2023. The penalty imposed under that head is set aside.

26. In the case of Ravi Varanasi a further penalty of Rs. 1 crore has been imposed for alleged violation of Part-B of Schedule-II of the Code of Assets for Directors of KMPs of Stock Exchanges of Clearing Corporations read with Regulation 26(2) of the SECC Regulations, 2012. Another penalty of Rs. 1 crore has been imposed on Ravi Varanasi for alleged violation of the Master Circular of SEBI dated 31.12.2010. In this regard, we find that the SECC Regulations and Master Circular of SEBI applies only to Directors and Key Managerial Personnel's (KMPs). Ravi Varanasi was never a Director of NSE and, at the relevant time, i.e. April-August 2015 he was not designated nor identified by NSE as KMP. Ravi Varanasi was designated as KMP only on 05.12.2016 much after the alleged incident. This fact has not denied by the respondent. Consequently, we are of the opinion, that the imposition of Rs. 1 crore each under Section 15HB and under Section 23H of the SCRA upon Ravi Varanasi cannot be sustained.

27. In view of the fact that this Tribunal in its order of August 09, 2023 held that penalty, if any, can be imposed, the respondents contended that instead of remanding the matter on this issue this Tribunal may quantify the penalty which proposition was also accepted by the learned counsel for the appellants. In view of the said statement and considering the fact that this Tribunal also found that a mountain had been made out of a molehill and the entire timeframe of the discovery of the lacuna in Sampark license was from July 27, 2015 to August 19, 2015 which constituted 24 days and, therefore, the central charge in the proceedings was much ado about nothing. In view of this finding, considering that the appellants were guilty of lack of due diligence and negligence in not verifying the license of the Sampark, we are of the opinion, that in the given facts and circumstances of the case, coupled with the fact that the three appellants are no longer employees of NSE and have either retired or resigned and left the services, we are of the opinion that substantial justice would be done if a minimum penalty of Rs. 5 lakhs each is imposed on Ravi Varanasi, Deviprasad Singh and Nagendra Kumar for the alleged violation found by this Tribunal under Section 15HB of the SEBI Act.

Appeal No. 532 of 2022 Mohit Mutreja
Appeal No. 533 of 2022 Parshant Mittal
Appeal No. 623 of 2022 Rima Srivastava

28. The charge against these three noticees is, that they had provided false information to SEBI in their statement given during the investigation and, therefore, they had deliberately misled the investigation thereby violating Section 11(2)(i), 11(C)(3) and 11(C)(5) of the SEBI Act. The findings have been given by the AO in paragraph 180 to187 of the impugned order. The AO held that the statements made by these noticees pertaining to P2P link of W2W terminating at their own rack in NSE Colo instead of their office in BSE was contradictory when compared with the evidence available on record. The AO came to the conclusion that these noticees were aware of the layout of the cable and were aware that the cable terminated at BSE Colo end and not at their office in BSE and, therefore, the statement given by them in the investigation was false and violative of Section 11(2)(i), 11(C)(3) and 11(C)(5) of the SEBI Act. The AO accordingly imposed a penalty of Rs. 10 lakhs each on these three noticees under Section 15HB of the SEBI Act.

29. We find that the appellants / noticees were summoned by SEBI in March 2018 to provide a statement in relation to an

investigation being carried out regarding leased line connectivity allowed to certain brokers by NSE. In response to the summons these noticees appeared before the investigating officer and gave their statements. AO found these statements to be false and accordingly imposed a penalty for providing false information regarding point to point ("P2P") connectivity.

30. In the first instance, we find that the AO has given a general finding that the statements made by these noticees were contradictory when compared with the evidence available on record. What part of the statement of these noticees were found contradictory is not known. What was the general evidence available on the record which showed contradictory statements made by the noticees is not known and, therefore, the finding of the AO that contradictory statements were made by these noticees when compared with the evidence available on record is a vague finding and cannot be sustained.

31. We also find that the AO has taken selective extracts of the statements of these noticees which if read in isolation conveys a different picture. In our opinion, the entire statement as a whole should be read and, thereafter an assessment should be made as to whether the statements made by these noticees were false which in the instant case has not been done. Picking

a sentence from the entire statement and then concluding that the entire statement was false is wholly erroneous and cannot be sustained since we find that no finding whatsoever is contained in the impugned order as to which specific part of statement of the appellants' amounts to a false statement.

32. Merely because someone else may have said something contradictory does not ipso-facto make the appellants' statements false especially when no evidence has come forward to show as to how the appellants' statements were contradictory when compared with the evidence available on record since such evidence available on record is not known.

33. False statement implies an intentional act of deception or fabrication, with the intent to mislead or manipulate the course of an investigation. We find that the impugned order misinterprets the statements of the appellants by taking a perverse / skewed reading of the statements of the appellants. Merely because there was some inconsistencies in the emails and the statements made by the appellants cannot lead to a conclusion that the charge of false statement is proved. The charge of false statement has to be conclusively proved by relying upon the evidence but such evidence with regard to the actual laying of cable has not been produced by SEBI either in

the investigation report or in the impugned order and, therefore, the AO cannot come to a conclusion regarding falsity of the statements made by the appellants.

34. We are also of the opinion, that the statements made by the appellants' was made on the basis of mere interpretation and / or understanding and / or on their belief regarding the layout of the cable. Such information given by the appellants on the basis of their understanding may be incorrect or the respondent may not agree with the appellants' contention and may arrive at a different conclusion and that by itself will not make the statement of the appellants a false statement.

35. In any case, even assuming that the appellants have furnished a false statement, we are of the opinion that there is no provision under the SEBI Act to penalize them for furnishing false statement. The appellants have been penalized for violation of Sections 11(2)(i), 11(C)(3) and 11(C)(5) of the SEBI Act. For facility the said provisions are extracted hereunder:-

> ***"11(2)(i).*** *calling for information from, undertaking inspection, conducting inquiries and audits of the [stock exchanges, mutual funds, other persons associated with the securities market],*

intermediaries and self-regulatory organisations in the securities market;

11(C)(3). *The Investigating Authority may require any intermediary or any person associated with securities market in any manner to furnish such information to, or produce such books, or registers, or other documents, or record before him or any person authorised by it in this behalf as it may consider necessary if the furnishing of such information or the production of such books, or registers, or other documents, or record is relevant or necessary for the purposes of its investigation.*

11(C)(5). *Any person, directed to make an investigation under sub-section (1), may examine on oath, any manager, managing director, officer and other employee of any intermediary or any person associated with securities market in any manner, in relation to the affairs of his business and may administer an oath accordingly and for that purpose may require any of those persons to appear before it personally."*

36. A perusal of the provision of 11(2)(i) indicates that SEBI has the power to call for information from the stock exchange, mutual funds and other persons associated with the securities market. Section 11(C)(3) provides that the investigating authority may require any person to furnish such information as

required and Section 11(C)(5) empowers the investigating authority to examine any person on oath.

37. In the instant case, the appellants have complied with Sections 11(2)(i), 11(C)(3) and 11(C)(5), namely, that the information which was sought was supplied. Under Section 11(C)(3) the investigating authority issued summons pursuant to which they appeared and furnished the information and such statement was recorded under Section 11(C)(5). There is no charge that the person failed or refused to provide information. We find that under Section 11(C)(6) if a person fails without reasonable cause or refuses to furnish information then he would be punishable with imprisonment or with fine. For facility, Section 11(C)(6) is extracted hereunder:-

> ***"11(C)(6).*** *If any person fails without reasonable cause or refuses-*
> *(a) to produce to the Investigating Authority or any person authorised by it in this behalf any book, register, other document and record which is his duty under sub-section (2) or sub-section (3) to produce; or*
> *(b) to furnish any information which is his duty under sub-section (3) to furnish; or*
>
> *(c) to appear before the Investigating Authority personally when required to do so under sub-section*

(5) or to answer any question which is put to him by the Investigating Authority in pursuance of that sub-section; or

(d) to sign the notes of any examination referred to in sub-section (7), he shall be punishable with imprisonment for a term which may extend to one year, or with fine, which may extend to one crore rupees, or with both, and also with a further fine which may extend to five lakh rupees for every day after the first during which the failure or refusal continues."

38. It is thus clear that if a person fails to furnish information or refuses to furnish information then he can be imprisoned or a fine could be imposed under Section 11(C)(6) of the SEBI Act. The refusal under Section 11(C)(6) is non-furnishing of information as provided under Section 11(C)(3) and 11(C)(5) of the SEBI Act. In the instant case, the appellants have furnished information under 11(2(i), 11(C)(3) and 11(C)(5) and, therefore, they have not violated these provisions.

39. If the information submitted by the appellants are false, they could have been punished and penalized provided there was a provision for such purpose under SEBI Act. In ***Bonanza Biotech Limited vs. SEBI Civil Appeal No(s). 5859 / 2006 decided on 07.03.2017*** the only question that arose before the

Supreme Court was whether the AO could impose penalty on the ground that the documents so furnished by the noticees were false. The Supreme Court by its decision of March 07, 2017 held that since the appellant had already furnished the material no penalty could be imposed on the ground of furnishing false information. Paragraph 2 and 3 of the order is extracted hereunder:-

> ***"2).*** *It appears that the only question in this matter is whether the Adjudicating Officer under Section 15A of the Securities and Exchange Board of India Act, 1992 is authorized to impose penalty on the ground that the documents which has been asked for has been furnished are false or whether power of the Adjudicating Officer to impose penalty is limited and can be exercised only in the event of failure to furnish documents.*
>
> ***3).*** *We have perused the order passed by the Adjudicating Officer. It appears from the order which was passed that the Adjudicating Officer had specifically stated in para 31 "that the appellant has already furnished the materials which are available on record". Since the materials have already been furnished, in our opinion, the said Section is not attracted on the given facts."*

The aforesaid decision is squarely applicable in the instant case.

40. We may also note that an expert group constituted by SEBI under the Chairmanship of Shri Justice M. H. Kania, former Chief Justice of India recommended as under:-

> *"The group noted that as per the provisions of Chapter VIA of SEBI Act, SEBI can impose monetary penalty for the failure to furnish information or delay in furnishing information. However, there is no provision for monetary penalty for giving false information.*
>
> *The Group felt that during the course of investigation under the provisions of SEBI Act, SEBI may come across situations, where intermediaries/persons associated with securities market furnish false information. In order to tackle the said situation, SEBI should have specific power under the SEBI Act, which would empower SEBI to initiate adjudication proceedings for furnishing false information."*

41. Based on the aforesaid, recommendation the SEBI Act was amended by adding / modifying Section 15A(a) which came into effect March 08, 2019. This amendment being prospective permitted SEBI to impose penalty under Section 15HA(a) of the SEBI Act for furnishing false information. Thus, penalty under Section 15HB could not be imposed. The order imposing penalty upon these three appellants thus, cannot be sustained and is quashed.

Appeal No. 559 of 2022 Chitra Ramakrishna

42. The charge against the noticee Chitra Ramakrishna is the same as given by the WTM. The findings are the same. The decision of this Tribunal dated August 09, 2023 is squarely applicable. This Tribunal had given its findings from paragraph 113 to 126 holding that the direction to debar Chitra Ramakrishna cannot be sustained and at best a penalty could be imposed.

43. The charge levied against Chitra Ramakrishna by the AO and the penalty imposed is as under:-

Regulations 3(d) and 4(1) of PFUTP Regulations read with Section 12A(c) of SEBI Act.	Sections 15HA of the SEBI Act	Rs. 3,00,00,000/- (Rs. Three Crore only)
SEBI Master circular dated December 31, 2010.	Section 15HB of the SEBI Act.	Rs. 1,00,00,000 (Rs. One crore only)
Part A & B of Schedule II of SECC Regulations read with Regulation 26(1) and 26(2) of SECC Regulations.	Section 23H of the SCRA	Rs. 1,00,00,000/- (Rs. One crore only)

44. In our order dated August 09, 2023 we held that the appellant was negligent in her duties as Managing Director and Chief Executive Officer of NSE and failed to exercise the necessary due diligence in relation to the failure by NSE to verify the license of Sampark Infotainment Pvt. Ltd. to provide P2P connectivity. We also held that when the NSE's own policies were being violated by functional heads and subordinate officers, the appellant, being head of the institution,

was morally responsible for the alleged violation. In this regard, this Tribunal held :-

> ***"119***. *The only charge that was proved against NSE was lack of due diligence and negligence in not verifying the license of Sampark. We have held that it was the duty of NSE to verify the license, since it was part of their policy. The contention of the appellant noticee nos. 3 that such alleged violation was never brought to her notice by the functional heads and, therefore, she cannot be made vicariously liable for their actions since she had no knowledge appears to be attractive but cannot be believed. It may be true that while permission was granted by the functional heads and its subordinate officers to W2W and GKN to install the P2P connectivity through Sampark which decision may not have been intimated to MD being a routine matter, nonetheless, we are of the opinion that when at some stage it was found by the concerned department that Sampark did not hold a valid license, such violation being serious and the measures taken thereafter must have been brought to the notice of the MD / CEO, namely, the appellant, noticee nos. 3."*
>
> ***120.*** *Even though, the appellant noticee nos. 3 may not have any specific role in the matter of permitting members to select the service provider or to set up equipment in the NSE colo services, the fact that the license of the service provider was not scrutinized by the functional heads and its subordinates cannot lead to the conclusion that the appellant being not aware would be allowed to go scot-free. Noticee nos. 3 was responsible for the over-all functioning by NSE. She was in control of the affairs of NSE and, therefore, when its own policies are being violated by the functional heads and its subordinate officers, the appellant being the head of the institution is morally responsible for the alleged violation. It cannot be denied that all the departments / divisions of NSE were under her supervision and control and all the functional heads were*

reporting to her. Thus, by virtue of the office of the MD and CEO, we are of the opinion that being in-charge and responsible for the conduct of the business of NSE, the liability and accountability falls on her head with regard to an action or lack of action of any activities committed by the subordinate officers.

122. *Even though, NSE is a well organized corporate structure with several vertical with 450 employees, the day to day operations and implementations of NSE's policies are handled by responsible functional heads. When a violation is committed by the company, the liability cannot be imposed on all the officers of the company and the penalty is imposed upon a person who is found guilty. The Companies Act makes a departure from this conventional pattern. It gives an opportunity to the board of directors to distribute the work between the members of the board or to appoint managerial personnel like MD or whole time director, etc. It is, therefore not necessary under the Companies Act that every director is required to be penalized merely because he is a director but being a managing director, he is an officer in default as per the Companies Act and is over all responsible for the affairs of the company and in the larger context is morally responsible for any violation committed of its own policies.*

123. Thus, given the lack of due diligence and negligence committed by NSE in not verifying the license, we are of the opinion that in the given circumstances, it is presumed that when the matter came to the light that Sampark did not have a valid license, it must have brought this fact to the knowledge of the MD. In any case, the appellant noticee nos. 3 is morally responsible for this lapse which she cannot escape."

45. This Tribunal, however, held that the NSE could not be said to have acted in breach of the PFUTP provisions which had been invoked against it. In this context, this Tribunal also held

that various other charges of preferential treatment, etc. raised against the NSE could not be sustained.

46. On this basis, this Tribunal set aside the order of debarment against the appellant, but held that a penalty could be imposed upon her as set out below:-

> ***"124****. The WTM directed that Chitra Ramakrishna shall not hold any position in any stock exchange, clearing corporation, depository for a period of three years. Further she will not hold any position in a listed company for three years.*
>
> ***125.*** *The powers conferred on SEBI under Section 11 and 11B is to protect the interests of investors in securities and to promote the development of and to regulate the securities market. Therefore, the measure to be adopted by SEBI is remedial and not punitive. In a given case a measure of debarring a person from entering the securities market will be justified, but in our view, by no stretch of imagination debarring noticee nos. 3 for the alleged lapse could be remedial in nature. A remedial action is to correct a wrong or a defect. Preventive measure can be issued in a given case of unfair trade practice or where fraud is proved. In the instant case, the above is lacking and debarring the noticee would be clearly punitive and violation of Article 19(1)(g) of the Constitution of India as it*

takes away the fundamental right to carry on its business.

126. *Thus, the direction to debar the appellant noticee nos. 3 cannot be sustained and is quashed. At best penalty could be imposed upon appellant noticee nos. 3."*

47. In view of the aforesaid, the penalty of Rs. 3 crores for violation of Regulations 3 and 4 of the PFUTP Regulations read with Section 12A of the SEBI Act cannot be sustained and is quashed.

48. A penalty of Rs. 1 crore each has been imposed for violation of the Master circular dated December 31, 2010 and Part A & B of Schedule II of SECC Regulations read with Regulation 26(1) and 26(2) of the SECC Regulations. These provisions emphasis the responsibility and obligation of the appellants to exercise due diligence in the performance of duties. We have already found that the Chitra Ramakrishna was negligent in her duties as Managing Director and Chief Executive Officer of NSE and failed to exercise due diligence in relation to the failure by NSE to verify license of Sampark and consequently we had observed in our order dated August 09, 2023 that penalty could be imposed. We however find that the

penalty of Rs. 1 crore each is apparently arbitrary and excessive and that a maximum penalty under Section 15HB of the SEBI Act and 23H of SCRA has been imposed. We are of the opinion, that if a maximum penalty is imposed, the authority is required to give reasons which are lacking. Further the factors contemplated under Section 15J read with Section 23J of the SCRA has also not been considered in the right perspective. In the light of the aforesaid and in the peculiar facts of the present case, we are of the opinion that a cumulative penalty of Rs. 25 lakhs would be just and proper in the circumstances of the case.

Appeal No. 482 of 2022
Way2Wealth Brokers Private Limited
AND
Appeal No. 483 of 2022 M. R. Shashibhushan

49. The charges levelled against W2W and M. R. Shashibhushan is the same as levelled by the WTM. The basic charge against W2W is, that they had introduced Sampark for P2P connectivity without verifying itself as to whether Sampark had the requisite DoT license to carry out such activity. Thus, W2W failed to exercise due skill and diligence which was expected from a registered stock broker and violated Clause A(2) of the Code of Conduct as specified in Schedule II of Regulation 9 of the Stock Brokers Regulations read with regulation 26(xi), 26(xvi) and 26(xx) of the Stock Brokers Regulations. It was also

alleged that W2W continued to avail the services of Sampark and switched over to Reliance Communications Limited only after termination of the services of Sampark. It was further alleged that W2W and its Chief Executive Officer M. R. Shashibhushan was aware that the P2P connectivity had not terminated in their office but went straight to the BSE colo rack which was in violation of the NSE circular / directions. The show cause notice alleged that W2W gave a false undertaking.

50. The WTM after considering the matter directed W2W to disgorge a sum of Rs. 15.34 crores along with interest @ 12% per annum and further directed not to accept / induct / enroll any new client for a period of 1 year and further were restrained from undertaking any trades on any Stock Exchange for a period of 2 years. M.R. Shashibhushan, who was the Chief Executive Officer was also restrained from holding any position directly or indirectly with any Stock Exchange, Clearing Corporation or Depository for a period of 2 years.

51. This Tribunal considered the matter which has been discussed from paragraph 137 to 142 of order dated August 09, 2023. This Tribunal held that there is no collusion between W2W with the employees of NSE nor any fraud was played either by NSE employees or by the broker and the charge of

collusion / fraud under Regulations 3 and 4 of the PFUTP Regulations read with Section 12A of the SEBI Act was not proved. The Tribunal further held that no latency advantage was given to W2W in the P2P connectivity nor any preferential treatment was given. This Tribunal however found that W2W introduced Sampark to NSE for the purpose of laying P2P connectivity without finding out as to whether Sampark was an authorized service provider. This Tribunal found that W2W failed to conduct due diligence and care in finding about the antecedent of the service provider and without verifying as to whether Sampark was an authorized service provider W2W introduced Sampark to NSE and allowed NSE to get misled. This Tribunal found W2W was at fault in introducing Sampark to NSE.

52. This Tribunal after considering the matter quashed the direction of disgorgement against W2W but upheld the direction that W2W will not enroll or induct any new client for a period of 1 year nor would it undertake any trades in its proprietary account for a period of 1 year. This Tribunal further found that the restraint order against M.R. Shashibhushan from holding any position with any Stock Exchange, Clearing Corporation or Depository for a period 2 years was harsh and inappropriate and

was quashed. This Tribunal however held that for the violation found by this Tribunal appropriate penalty could be imposed.

53. Thus, for the reasons stated by this Tribunal in paragraph 137 to 142 of our order dated August 09, 2023 in Appeal No. 334 of 2019 and other companion appeals, the order of the AO imposing a penalty of Rs. 5 crores under Regulations 3 and 4 of the PFUTP Regulations cannot sustained and is quashed. A penalty of Rs. 1 crore has been imposed upon W2W for violation of the Code of Conduct as specified under the Stock Brokers Regulations. We are of the opinion, that the maximum penalty imposed under Section 15HB of the SEBI Act of Rs. 1 crore is harsh and arbitrary and does not commensurate with the alleged violations. In view of the fact, that we have found that W2W failed to conduct due diligence and care and finding about the antecedence of the service provider and introduced an authorized service provider to NSE and allowed NSE to be misled we are of the view that in the facts and circumstances a penalty of Rs. 20 lakhs would be just and appropriate. The penalty of Rs. 1 crore is accordingly reduced to Rs. 20 lakhs/-.

54. Similarly, the penalty of Rs. 1 crore upon M.R. Shashibhushan for violation of Regulations 3 and 4 of the

PFUTP Regulations cannot be sustained and is quashed. We, however, find that M.R. Shashibhushan was the Chief Executive Officer in W2W and was held to be in charge of day to day affairs and operational decision making in the company. M.R. Shashibhushan was also a Key Managerial Personnel ("KMP") and was also an officer in default under the Companies Act. We find that M.R. Shashibhushan himself admitted that he was in charge of ten business non-business divisions which included operations at headquarters and regional office and that business heads and technology heads were reporting to him. We, thus find that M.R. Shashibhushan was in complete control and command of the company's operation. We also find that there is clear cut evidence of direct involvement of M.R. Shashibhushan in the matter of engaging Sampark for establishing P2P connectivity which is borne out from the email correspondence between W2W and the CTO. The CTO in one of the email has expressly stated that since Shashibhushan is aware that the P2P connectivity from NSE colo is going straight to BSE colo instead of taking it through their office, the said fact was known to Shashibhushan and thus he was fully aware of the acts committed by W2W in the matter of establishing Sampark connectivity.

55. Under the aforesaid circumstances, we are of the opinion that there was clear cut involvement of Shashibhushan in the matter of establishing Sampark connectivity and for this violation, we are of the opinion, that the penalty of Rs. 10 lakhs would be just and proper. Thus, the penalty of Rs. 1 crore is set aside and is substituted by a penalty of Rs. 10 lakhs under Section 15HB of the SEBI Act.

Appeal No. 484 of 2022
GKN Securities, Sonali Gupta, Om Prakash Gupta and Rahul Gupta

56. The charge against GKN Securities and its partners were that they were direct beneficiary of preferential treatment by NSE since NSE allowed GKN Securities to use Sampark connectivity even after knowing that Sampark did not have the requisite license to provide such connectivity. Further GKN Securities did not carry out due diligence in finding out whether Sampark had the requisite license as a service provider. The WTM found that the charges stood proved against them and accordingly directed GKN to disgorge a sum of Rs. 4.9 crores and further restrained GKN from accepting new clients for a period of 2 years. Sonali Gupta, Om Prakash Gupta and Rahul Gupta were restrained from holding any position in any Stock Exchange, Clearing Corporation, Depository etc. for a period of 2 years.

57. This Tribunal dealt with the contention of GKN Securities and its partners in paragraph 143-146 and found that no preferential treatment was given to them by NSE and consequently the disgorgement of unlawful gain did not arise. However, the direction restraining the company from accepting new client for a period of 1 year and not to undertake any trades in its proprietary account for a period of 2 years was justified. This Tribunal also found that due diligence was not carried out and accordingly directed that penalty, if any, can be imposed upon the company and its directors.

58. The AO also found the aforesaid noticees guilty of the charges and imposed the following penalties:-

GKN Securities	Regulation 3(d) & 4(1) of the PFUTP Regulations read with Section 12A(c) of the SEBI Act. Clauses A(1), A(2), A(3) and A(5) of Code of Conduct as specified in Schedule II of Regulation 9 of the Stock Brokers Regulations read with regulation 26(xi), 26(xvi) & 26(xx) of the Stock Brokers Regulations Section 11C(5) of the SEBI Act read with Regulation 26(xx) of the of the Stock Brokers Regulations.	Sections 15HA of the SEBI Act. Section 15HB of the SEBI Act	Rs. 4,00,00,000/- (Rs. Four crore only) Rs. 1,00,00,000/- (Rs. One crore only)
Mr. Om Prakash Gupta	Regulation 3(d) & 4(1) of the PFUTP Regulations read with Section 12A(c) of the SEBI Act. Section 11(2)(i) of the SEBI Act.	Sections 15HA of the SEBI Act. Section 15HB of the SEBI Act	Rs. 1,00,00,000/- (Rs. One crore only) Rs. 10,00,000/- (Rs. Ten lakh only)

Ms. Sonali Gupta	Regulation 3(d) & 4(1) of the PFUTP Regulations read with Section 12A(c) of the SEBI Act. Section 11(2)(i) of the SEBI Act	Sections 15HA of the SEBI Act. Section 15HB of the SEBI Act	Rs. 1,00,00,000/- (Rs. One crore only) Rs. 10,00,000/- (Rs. Ten lakh only)
Mr. Rahul Gupta	Regulation 3(d) & 4(1) of the PFUTP Regulations read with Section 12A(c) of the SEBI Act. Sections 11(2)(i), 11C(3) and 11 C(5) of the SEBI Act.	Sections 15HA of the SEBI Act. Section 15HB of the SEBI Act	Rs. 1,00,00,000/- (Rs. One crore only) Rs. 10,00,000/- (Rs. Ten lakh only)

59. In view of the aforesaid, the penalty of Rs. 4.90 crore imposed upon GKN Securities for violation of Regulations 3 and 4 of the PFUTP Regulations cannot be sustained and is quashed. The penalty of Rs. 1 crore for violation of the Code of Conduct of the Stock Brokers Regulation is excessive an arbitrary and in the light of the decision given in case of W2W, the penalty is reduced from Rs. 1 crore to Rs. 20 lakhs for not carrying out due diligence. In so far as the partners are concerned, we find that Sonali Gupta, Om Prakash Gupta and Rahul Gupta were partners and as per Section 25 of the Partnership Act their liability is joint and several. Admittedly, the three partners were involved in the affairs of the company and were responsible for not carrying out due diligence with regard to the license of the service provider. The imposition of Rs. 1 crore each for violation of Regulations 3 and 4 of the PFUTP Regulations cannot be sustained and, therefore, the penalty of Rs. 1 crore each against the three

partners is quashed. A penalty of Rs. 10 lakhs for violation of Sections 11(2)(i), 11(C)(3) and 11(C)(5) has been imposed for furnishing false information. We have already dealt on this aspect in detail in the case of Ravi Varanasi and Ors. and consequently, the penalty under this head cannot be sustained and are quashed. However, we have already found that the appellants are responsible for not carrying out due diligence in relation to the license of Sampark and consequently, we direct that in the given circumstances a penalty of Rs. 10 lakhs to be paid joint and severally by the three partners would be just and appropriate under Section 15HB of the SEBI Act.

Appeal No. 531 of 2022
Mr. Anand Subramanian

60. The allegation against Anand Subramanian is that he was a Group Operating Officer and Advisor to the Managing Director ("MD") of the NSE at the relevant moment of time and, therefore, responsible for the violation committed by NSE. The WTM found that the charges stood proved against him and accordingly issued an order of debarment for 3 years. The WTM directed that Anand Subramanian will not hold any position either directly or indirectly in the management or with any stock exchange, clearing corporation or depository for a period of 3 years. Anand Subramanian did not challenge the order of the

WTM and, therefore, the findings given by the WTM has attained finality.

61. Similar findings have been given by the AO by the impugned order holding that Anand Subramanian was culpable of various violations specified in the show cause notice as he was re-designated as a Group Operating Officer and Advisor to the MD w.e.f. 01.04.2015 and, thereby Anand Subramanian was at par with Job Grade M 13 i.e. equivalent to Group President, just next to MD and CEO. Further, in the annual report of 2015-2016 of NSE, Anand Subramanian was shown to be part of the Management Team. The AO further found that the report of Nomination and Remuneration Committee dated November 22, 2017 indicated that the re-designation of Anand Subramanian was tabled to the Nomination and Remuneration Committee otherwise he would have become a KMP. The AO further found that the Board of NSE resolved on August 11, 2015 delegating substantial power of management which were akin to the power granted to MD and CEO based on which a large number of departments / divisions including business heads, CTO-operations were reporting to the appellant. In view of the said findings, the AO imposed the following penalty:-

Mr. Subramanian Anand	Regulations 3(d) and 4(1) of PFUTP Regulations read with Section 12A(c) of SEBI Act. SEBI Master circular dated December 31, 2010. Part A & B of schedule II of SECC Regulations read with Regulation 26(1) and 26(2) of SECC Regulations.	Sections 15HA of the SEBI Act. Section 15HB of the SEBI Act. Section 23H of the SCRA	Rs. 3,00,00,000/- (Rs. Three Crore only) Rs. 1,00,00,000/- (Rs. One crore only) Rs. 1,00,00,000/- (Rs. One crore only)

62. In view of our order dated August 09, 2023 the charge of violation of Regulations 3 and 4 of the PFUTP Regulations cannot be sustained and consequently the penalty of Rs. 3 crores imposed under Section 15HA of the SEBI Act for violation of Regulations 3 and 4 of the PFUTP Regulations cannot be sustained and to that extent the order is quashed.

63. The AO has further imposed a sum of Rs. 1 crore under Section 15HB of the SEBI Act for violation of the Master circular dated 31.12.2010 and another Rs. 1 crore for violation of Regulation 26(1) and 26(2) of SECC Regulations under Section 23H of the SCRA. In the first instance, we find that the Master circular dated 31.12.2010 is not applicable. The appellant Anand Subramanian was never a KMP and, therefore, he cannot be charged under the said circular as has been held in the preceding paragraphs. Therefore, the penalty of the Rs. 1 crore under this head cannot be sustained. A penalty of Rs. 1 crore has been imposed for violation of Regulation 26(2) of the SECC

Regulations on the ground that Anand Subramanian did not adhere to the code of ethics as specified under Part B of Schedule II of the SECC Regulations. In this regard, the finding is, that he had failed to conduct himself in a fair and transparent manner while dealing with the issues relating to P2P connectivity from an unauthorized service provider. The AO observed that a large number of departments / divisions including business heads were reporting to him after his elevation as Group Operating Officer and Advisor to MD. In our opinion, the AO has travelled beyond the show cause notice in as much as there is no charge in the show cause notice that after Anand Subramanian was elevated as Group Operating Officer and Advisor to MD a large number of departments / divisions of NSE including business heads were reporting to him. In the absence of any charge being framed on this issue, the AO committed an error in holding him to be guilty under Regulation 26 of the SECC Regulations for violating the code of ethics under Part B of Schedule II of the SECC Regulations.

64. In any case, we are further of the view, that the finding of the AO that a large number of departments / divisions of NSE including business heads were reporting directly to Anand Subramanian is not based on any material evidence on record and in the absence of any evidence the finding given by the AO

is purely based on surmises and conjectures which cannot be sustained.

65. Consequently, the penalty of Rs. 1 crore imposed under Section 23H of the SCRA cannot be sustained and is quashed.

Appeal No. 843 of 2022 Sampark Infotainment Pvt. Ltd.
And
Appeal No. 842 of 2022 Prashant D'Souza

66. The charge against Sampark and Prashant D'Souza who was the Chief Operating Officer was that they acted in collusion with W2W and NSE in laying the cabling in such a way that W2W had a lower latency compared to other stock brokers. Further, installation of Multiplexer ("MUX") in NSE Meet Me Room ("MMR") was unauthorized. It was also alleged that Prashant D'Souza had deleted certain emails and, therefore, destroyed evidence which was violative of Sections 11(2)(i), 11(C)(2), 11(C)(3) and 11(C)(5) of the SEBI Act. The show cause notice alleged that Sampark had violated Regulations 3 and 4 of the PFUTP Regulations. The violations committed by Sampark and Prashant D'Souza were upheld by the WTM. The WTM directed Sampark and Prashant D'Souza not to offer, directly or indirectly, any new telecom services in any manner to any Stock Exchange, Clearing Corporation or Depository etc. for

a period of 2 years. Prashant D'Souza was directed not to be associated with any telecom service provider, in any manner for a period of 2 years. Sampark and Prashant D'Souza filed a belated appeal against the order of the WTM which was dismissed on the ground of laches, as a result the findings of the WTM against these two entities were affirmed.

67. On the same charges, the AO has also arrived at a similar finding and has affirmed the charges levelled against Sampark and Prashant D'Souza. The AO accordingly passed the following order:-

M/s Sampark Infotainment Pvt. Ltd	Regulations 3(d) & 4(1) of the PFUTP Regulations read with Section 12A(c) of the SEBI Act.	Section 15HA of the SEBI Act	Rs. 3,00,00,000/- (Rs. Three crore only)
Mr. Prashanth D'souza	Regulations 3(d) & 4(1) of the PFUTP Regulations read with Section 12A(c) of the SEBI Act.	Sections 15HA of the SEBI Act.	Rs. 1,00,00,000/- (Rs. One crore only)
	Sections 11(2)(i), 11C(2), 11C(3) and 11C(5) of the SEBI Act	Section 15HB of the SEBI Act	Rs. 10,00,000/- (Rs. Ten lakh only)

68. The penalty of Rs. 3 crores was imposed upon Sampark for violation of Regulations 3 and 4 of the PFUTP Regulations and a penalty of Rs. 1 crore was imposed upon Prashant D'Souza for violation of Regulations 3 and 4 of the PFUTP Regulations and Rs. 10 lakhs for violation of Sections 11(2)(i), 11C(2), 11C(3) and 11C(5) of the SEBI Act.

69. Having heard the learned counsel for the parties, we find that the charge of fraud and collusion levelled against Sampark and Prashant D'Souza cannot be sustained, in view of reasoning given in our order dated August 09, 2023 wherein we have held that there is no collusion between NSE and Sampark and nor any latency advantage was given to W2W or the other trading members from the laying of the cable. Therefore, the penalty of Rs. 3 crores imposed upon Sampark for violation of Regulations 3 and 4 of the PFUTP Regulations and Rs. 1 crore upon Prashant D'Souza for violation of Regulations 3 and 4 of the PFUTP Regulations cannot be sustained and is quashed.

70. However, we found that W2W introduced Sampark to NSE for the purpose of laying the P2P connectivity. We also found that Sampark was an unauthorized vendor. We also observed that it was the lure of more data speed and more bandwidth that motivated the trading members to accept the offer of Sampark to establish a new P2P connectivity. For facility, paragraph 140 of our order dated August 09, 2023 is extracted hereunder:-

> *"**140.** We, however, find that W2W introduced Sampark to NSE for the purpose of laying P2P connectivity which turned out to be an unauthorized vendor. It was on W2W request that permission was granted to Sampark. In our opinion, the record indicates that W2W was an old TM of NSE since 2010 and was already using a leased line of a*

> *service provider. Switching over from one authorized service provider to another service provider was a major decision and, therefore, it was all the more necessary for the broker to conduct due diligence and care in finding about the antecedent of the service provider. Without verifying as to whether Sampark was an authorised service provider, the broker introduced Sampark to NSE and allowed NSE to get misled. We find that W2W was at fault in introducing Sampark to NSE. We however find that the appellant was guilty in introducing Sampark to NSE for laying the P2P connectivity. The appellant was a TM since 2010 and was using TATA leased lines. It leads to an irresistible inference that it was the lure of more data speed and more bandwidth that motivated noticee nos. 8 to accept the offer of Sampark to establish a new P2P connectivity."*

71. We found that a specific assertion was made by W2W that Sampark had misled them into believing that Sampark had a valid license and consequently approached NSE to grant permission for laying the cables. We also find that pursuant to the permission granted by NSE, Sampark laid the cables when he was not authorised to do so. At no moment of time did Sampark ever intimate W2W or NSE that he was an unauthorised service provider for laying the cables or for activating the P2P connectivity. On the other hand, there is ample evidence which shows that Sampark had contacted other trading members to provide P2P connectivity. We also find that installation of MUX in the MMR of NSE could not have been installed by Sampark as he was not the authorised vendor. The aforesaid, facts are admitted by Sampark coupled with the fact that eventually the

infrastructure installed by Sampark was handed over to Reliance as that entity was the authorised service provider. In the light of the evidence which has come on record there is no dispute that Sampark did not have the requisite license to lay the cabling for the trading members. We are of the opinion, that Sampark acted in collusion with W2W for the purpose of laying the cable and thereby violated the provisions of the SEBI Act. The contention of Sampark that it had carried out the cabling instructions at the behest of its customer is patently erroneous in as much as when Sampark itself was not an authorised vendor it could not have acted on the instructions of the customer to lay the line.

72. Similarly, Prashant D'Souza was the Chief Operating Officer of Sampark at the relevant moment of time and was driving the business of Sampark. The evidence clearly indicates that he was actively engaged with W2W and GKN throughout the transactions with them and also with NSE. Prashant D'Souza never intimated to any of the aforesaid entities that he was not authorised to lay the cable. However, we find that penalizing Prashant D'Souza for destruction of evidence by deleting the emails is based on no evidence. There is no finding as to what emails Prashant D'Souza had deleted and whether such deleted emails were relevant for the purpose of the case.

The fact that some entity had informed Prashant D'Souza that he was free to delete the emails does not mean that he had actually deleted the emails. Thus, penalty under Sections 11(2)(i), 11C(2), 11C(3) and 11C(5) of the SEBI Act is erroneous.

73. Considering the aforesaid, for the violations committed by Sampark, we are of the opinion, that for misleading W2W, GKN and NSE that he is an authorised vendor and in laying the cable when he was not authorised to do so we are of the opinion, that substantial justice would be done in the given circumstances that a penalty of Rs. 25 lakhs is imposed under Section 15HB of the SEBI Act. Similarly, we are of the opinion, that on account of the involvement of Prashant D'Souza a penalty of Rs. 10 lakhs under Section 15HB of the SEBI Act would be just and proper. This order is being passed in order to do substantial justice and in exercise of the powers conferred under Rule 21 of SAT (Procedure) Rules, 2000.

74. The contention of the respondent that since the order of the WTM had attained finality it was no longer open to Sampark to challenge the order of the AO which deals and renders findings virtually on the same issues. In support of their contention, reliance was made on decision of this Tribunal in

Comfort Intech Ltd. vs SEBI Appeal No. 318 of 2021 decided on 21.09.2022 and other companion appeals.

75. We are of the opinion, that under the SEBI Act two separate proceedings can be initiated. One to be decided by the WTM and other to be decided by the AO. We are of the opinion, that principles of *res judicata* will not apply as parallel proceedings can be initiated under the SEBI Act. Therefore, even though the order of the WTM became final, nonetheless, it was open to the party to question the veracity and legality of the order passed by the AO.

Appeal No. 540 of 2022 Netaji Patil
And
Appeal No. 541 of 2022 Jayant Bhusare

76. The charge against Netaji is with regard to destruction of evidence, namely, destroying emails which was violative of Section 11(C)(2) of the SEBI Act. It was alleged that Netaji along with Prashant D'Souza had violated Section 11(C)(2) of the SEBI Act for failure to preserve the relevant record relating to Sampark by engaging in destruction of emails.

77. We have already held above that there is no finding that Prashant D'Souza had destroyed any emails and accordingly we

had exonerated Prashant D'Souza of this charge. In the instant case, we find that in the 186 pages order there are only two sentences against Netaji Patil, namely, that a WhatsApp conversation dated December 13, 2017 found between Netaji Patil and Prashant D'Souza wherein Netaji had stated that he had reviewed all the PST files i.e. email files before handing it over to Prashant D'Souza and that if Prashant had any issues he was free to delete mails without any further discussion and, therefore, came to the conclusion that Prashant D'Souza and Netaji Patil were involved in destroying the email information and, therefore, they were in violation of Section 11(C)(2) of the SEBI Act.

78. We are of the opinion, that no case is made out that Netaji was involved in the laying of the cable and the alleged violation in NSE. Further, there is nothing on record to indicate that Netaji had in fact deleted the emails. There is also nothing on record to suggest that these emails were material evidence relating to the charges contained in the show cause notice. We also find that Netaji had started working with Sampark, since February 2015 and there is no evidence to show that he was involved in any manner with the core issues, namely, laying of the cable in NSE. Thus, the penalty of Rs. 10 lakhs imposed

under Section 15HB for violation of Section 11(C)(2) of the SEBI Act cannot be sustained and is quashed.

79. In so far as Jayant Bhusare is concerned a separate order dated June 29, 2022 was passed. The charge against him is, that he deleted the emails pertaining to the investigation period in the matter and that he also admitted deleting the emails while giving his statement before the investigating officer. The AO has imposed a penalty of Rs. 10 lakhs for violation of Section 11(C)(2) of the SEBI Act. We are of the opinion, that the impugned order cannot be sustained for the following reasons:-

80. The order is in violation of the principles of natural justice. Copies of the statement of Jayant recorded during the course of investigation was not supplied inspite of repeated demands. Inspection of the documents was also denied. The application seeking the statements and inspection remained pending for 3 years which was rejected and the noticee was directed to file his reply within 10 days. This method of adjudication is totally arbitrary and violative of the principles of natural justice. On this short ground, the impugned order cannot be sustained. At the time when Sampark was laying the cable the appellant / noticee was still in college finishing his studies. He joined Sampark only in June 2015 on a salary of Rs. 22,000/-.

According to the noticee when he joined, the cabling work had already been completed and, therefore, he had no data with him pertaining to the core issues in the matter. These facts have not been denied by the respondent.

81. Admittedly, the noticee submitted to the investigation officer and stated that he had deleted certain emails but for reasons best known his statement has not been considered in its entirety and portion of it has been extracted for the purpose of the case. We find that Sampark was maintaining two separate servers for storing its email related data. One was in Outlook and one in Webmail. The noticee clearly stated that Sampark had a policy to delete emails from the Webmail server from time to time due to shortage of space and that all emails remained intact in the other Outlook server.

82. The aforesaid facts are admitted to the respondents. The respondent admits the existence of the second server, namely, the Outlook server and also the fact that the deleted emails were existing in the Outlook server. Thus, we are of the opinion, that even if an email has been deleted from one server the email was still found in the deleted item box of the Webmail server as well

as in the Outlook server and, therefore, the question of destruction of evidence does not arise.

83. In view of the aforesaid, the impugned order in so far as it relates to Jayant Bhusare cannot be sustained is quashed. The appeal is allowed.

84. In view of the aforesaid,

(i) In Appeal No. 445 of 2022 of NSE, the penalty of Rs. 5 crores under Section 15HA of the SEBI Act for violation of the Regulations 3 and 4 of the PFUTP Regulations read with Section 12A of the SEBI Act cannot be sustained and is quashed. The penalty of Rs. 1 crore under Section 15HB of the SEBI Act for violation of the Circular dated May 13, 2015 cannot be sustained and is quashed. The imposition of penalty of Rs. 1 crore under Section 23H of SCRA for violation of Regulations 41(2), 47 and 48 of the SECC Regulations cannot be sustained and is quashed. The Appeal is allowed.

(ii) In Appeal No. 464 of 2022 of Ravi Varanasi, Appeal No. 465 of 2022 of Deviprasad Singh and Appeal No.

466 of 2022 of Nagendra Kumar SRVS, the penalty against the appellants for violation of Regulation 3 and 4 of the PFUTP Regulations cannot be sustained and is quashed. The penalty of Rs. 1 crore each under Section 15HB of SEBI Act and under Section 23H of the SCRA upon Ravi Varanasi cannot be sustained and is quashed. However, a penalty of Rs. 5 lakhs each is imposed upon Ravi Varanasi, Devi Prasad Singh and Nagendra Kumar under Section 15HB of the SEBI Act. The Appeal is partly allowed.

(iii) In Appeal No. 532 of 2022 of Mohit Mutreja, Appeal No. 533 of 2022 of Parshant Mittal and Appeal No. 623 of 2022 of Rima Srivastava, the order imposing penalty upon these three appellants cannot be sustained and is quashed. The Appeals are allowed.

(iv) In Appeal No. 559 of 2022 of Chitra Ramakrishna, the penalty of Rs. 3 crores for violation of Regulations 3 and 4 of the PFUTP Regulations read with Section 12A of the SEBI Act cannot be sustained and is quashed. The penalty of Rs. 1 crore each under Section 15HB of the SEBI Act and under

Section 23H of the SCRA is reduced to Rs. 25 lakhs. The Appeal is partly allowed.

(v) In Appeal No. 482 of 2022 of Way2Wealth Brokers Private Limited, the penalty of Rs. 1 crore is reduced to Rs. 20 lakhs/-. and Appeal No. 483 of 2022 of M.R. Shashibhushan, the penalty of Rs. 1 crore is set aside and is substituted by a penalty of Rs. 10 lakhs under Section 15HB of the SEBI Act. The appeals are partly allowed.

(vi) In Appeal No. 484 of 2022 of GKN Securities & Ors. the penalty of Rs. 4 crore imposed upon GKN Securities for violation of Regulations 3 and 4 of the PFUTP Regulations cannot be sustained and is quashed and the penalty of Rs. 1 crore under Section 15HB of the SEBI Act is reduced to Rs. 20 lakhs. The penalty of Rs. 1 crore each imposed upon Sonali Gupta, Om Prakash Gupta and Rahul Gupta are quashed. The penalty of Rs. 10 lakhs each to be paid by these noticees under Section 15HB of the SEBI Act is reduced to Rs. 10 lakhs to be paid joint and severally by the three partners. The appeals are partly allowed.

(vii) In Appeal No. 531 of 2022 of Mr. Anand Subramanian, the penalty of Rs. 3 crores under Section 3 and 4 of the PFUTP Regulations cannot be sustained and is quashed. The penalty of Rs. 1 crore each imposed under Section 15HB of the SEBI Act and under Section 23H of the SCRA cannot be sustained and are quashed. The appeal is allowed.

(viii) In Appeal No. 843 of 2022 of Sampark Infotainment Pvt. Ltd. and in Appeal No. 842 of 2022 of Prashant D'Souza, the penalty of Rs. 3 crores imposed upon Sampark for violation of Regulations 3 and 4 of the PFUTP Regulations and Rs. 1 crore upon Prashant D'Souza for violation of Regulations 3 and 4 of the PFUTP Regulations cannot be sustained and is quashed. The penalty of Rs. 10 lakhs imposed upon Prashant D'Souza for violation of Section 11(2)(i), 11(C)(2), 11(C)(3) and 11(C)(5) is also quashed. However, for the violation found by us Sampark will pay a penalty of Rs. 25 lakhs and Prashant D'Souza would pay a penalty of Rs. 10 lakhs under Section 15HB of the SEBI Act. The Appeals are partly allowed.

(ix) In Appeal No. 540 of 2022 of Netaji Patil, the penalty of Rs. 10 lakhs imposed under Section 15HB for violation of Section 11(C)(2) of the SEBI Act cannot be sustained and is quashed. In Appeal No. 541 of 2022 of Jayant Bhusare, the penalty imposed cannot be sustained and is quashed. The appeals are allowed.

Justice Tarun Agarwala
Presiding Officer

Ms. Meera Swarup
Technical Member

14.12.2023
PK