

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER: Order/AP/SK/2020-21/9375]

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

In respect of:

National Stock Exchange of India Limited
Exchange Plaza, C-1, Block G,
Bandra Kurla Complex,
Bandra (E),
Mumbai – 400051.

1. Securities and Exchange Board of India (hereinafter referred to as "SEBI") conducted an examination to ascertain whether National Stock Exchange of India Limited (hereinafter referred to as "NSE" or "the Noticee") had engaged in unrelated or non-incidental activities which are not related to its activities as a stock exchange without approval of SEBI as required under Regulation 41(3) of Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2012 (hereinafter referred to as "SECC 2012") and Regulation 38(2) of Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2018 (hereinafter referred to as "SECC 2018"). The period of the examination relates to all the existing stakes/shares in other entities held by NSE as on June 30, 2018. Further, wherever deemed necessary, reference may have also been made to events/timeframe outside the said period.

Background

2. SEBI was in receipt of a letter dated January 02, 2018 from Central Electricity Regulatory Commission (CERC) seeking confirmation from SEBI whether NSE has disclosed to SEBI about the decision for continuation of the business of Power Exchange India Limited ("PXIL"). The confirmation was sought with respect to DRHP filed by NSE for its IPO with SEBI. In this regard, it was noted that no approval has been granted to NSE for acquisition of stake in PXIL and/or continuation of the same. Accordingly, the matter of acquisition of stake in PXIL by NSE and/or its subsidiary was taken up by SEBI for examination.
3. Meanwhile, SEBI was also looking the matter of acquisition of stake in Computer Age Management Systems Pvt. Ltd. ("CAMS") by NSE and/or its subsidiary based on a newspaper report titled

"NSE acquires 45% stake in CAMS" in the Business Standard dated December 24, 2013 stating that NSE through its subsidiary NSE Strategic Investment Corporation Ltd. ("NSICL") had acquired 45% stake in CAMS (SEBI registered RTI & STA agent primarily catering to Mutual Funds) in December 2013.

4. In view of the aforesaid references on matter of acquisition of stake by NSE and/or its subsidiary, acquisition of stake by NSE and/or through its subsidiaries in the following investee entities were taken up for examination by SEBI:

- Power Exchange India Limited (PXIL)
- Computer Age Management Systems Pvt. Ltd (CAMS)
- NSEIT Ltd. ("NSEIT")
- NSDL E-Governance Infrastructure Ltd. ("NEIL")
- Market Simplified India Ltd. ("MSIL")
- Receivables Exchange of India Ltd. ("RXIL")

5. In this regard, SEBI advised NSE to submit details with regard to stakes/shares/rights held by NSE or through its subsidiaries and SEBI approvals in this regard vide SEBI email dated July 05, 2018. In response, NSE submitted requisite details vide its email dated July 10, 2018 and October 30, 2019. As the examination is focused only on aforementioned six entities, details of acquisition of the said six entities alone are enumerated in the table below:

Sr. no.	Exchange/Exchange Subsidiary name	Entity name in which stakes/shares/rights acquired	Date of acquisition / Incorporation	% of acquisition	Details	Whether NSE* is Promoter?	Directorship nominated by NSE* as on Acquisition/Incorporation	Directorship (as on October 30, 2019) nominated by NSE*
1	NSE	PXIL	20-Feb-2008	50.95%	Subsequent to the acquisition NSE transferred its stake to its subsidiary NSE Strategic Investment Corporation Limited (NSICL) on 22-July-2013	Yes jointly with NCDEX	Mr. Ravi Narain Ms. Chitra Ramkrishna	Mr. Yatrik Vin Mr. Ravi Varanasi
2	NSE Strategic Investment Corporation Limited (NSICL); a wholly owned subsidiary of NSE	CAMS	24-Dec-2013	44.99%* *(NSICL divested 7.5% as on 06-09-2018. NSICL holding 37.50%)		No	Mr. M S Sundara Rajan Mr. Tarun Aiyar Ms. Bindu Ananth	Mr. J Ravichandran Mr. H N Sinor Mr. D K Mehrotra

Sr. no.	Exchange/Exchange Subsidiary name	Entity name in which stakes/shares/rights acquired	Date of acquisition / Incorporation	% of acquisition	Details	Whether NSE* is Promoter?	Directorship nominated by NSE* as on Acquisition/Incorporation	Directorship (as on October 30, 2019) nominated by NSE*
3	NSE	NSEIT Limited	29-Oct-1999	100%	Subsequent to the acquisition NSE transferred its stake to its subsidiary NSICL on 30-06-2013	Yes	Mr. R.H. Patil Mr. Ravi Narain Mr. Satish Naralkar	Mr. J. Ravichandran Mr. Yatrik Vin Mr. Muralidaran Krishnaswami
4	NSE	NEIL	01-Apr-2012	25.05%	Subsequent to the acquisition NSE transferred its stake to its subsidiary NSICL on 30-09-2013	Yes (jointly IDBI and UTI originally). Now, no longer a Promoter.	Mr. Ravi Narain	Mr. J. Ravichandran
5	NSE	MSIL	30-Nov-2011	30%	Subsequent to the acquisition NSE transferred its stake to its subsidiary NSICL on 28-03-2013	No	None	None
6	NSICL; a wholly owned subsidiary of NSE	RXIL	25-Feb-2016	30%		Yes jointly with SIDBI	Mr. Mukesh Agarwal Mr. Tarun Aiyar	Mr. Mukesh Agarwal Mr. Ketan Gaiwad

Observation including allegations on acquisition of stake by NSE and/or through its subsidiaries in PXIL

6. NSE acquired 30.95% stake in PXIL on February 20, 2008 and subsequently transferred its stake to its subsidiary NSICL on July 22, 2013 and continued thereafter. Pursuant to receipt of a letter dated January 02, 2018 from CERC seeking confirmation from SEBI whether NSE had disclosed to SEBI about the decision for continuation of the business of PXIL as aforesaid, NSE was advised by SEBI to provide clarification vide emails dated January 18, 2018 and July 19, 2019 on whether acquisition of stake in PXIL was in compliance with the Regulation 41(3) of SECC 2012 and Regulation 38(2) of SECC 2018. In response, NSE submitted its response vide email dated February 02, 2018 and July 23, 2019. The submissions of NSE in this regard, *inter-alia*, are as follows:

- (i) *PXIL was incorporated in the calendar year 2008 and commenced business in the same year. Investment was made by NSE in 2008, the same was subsequently transferred to NSE Strategic Investment Corporation Limited (NSICL), an investment arm of NSE in the year 2013. NSICL currently holds 30.95% of shares in PXIL, which will be reduced to 25% at the earliest opportunity pursuant to CERC Regulations.*
- (ii) *PXIL is not a Subsidiary of NSE or NSICL. PXIL is managed by an Independent management team. Out of its total Board strength of 9 Directors, 2 Directors represent NSICL.*

- (iii) PXIL has been recognized by CERC as a Power Exchange for the purpose of providing the platform for Power Trading. Its activities are predominantly akin to the activities of a Stock Exchange except that instead of providing a platform for Trading in securities, it provides a platform for trading in power with a physical settlement facility. Hence, the activities are related to the activities of a Stock Exchange.*
- (iv) Moreover, the term 'engaged in' has not been defined or explained in the SECC Regulations. However, based on various legal pronouncements, the term is interpreted to mean 'to signify continuous occupation or employment and involved the concept of continuity of action as well as physical participation with full devotion of time, attention and efforts'. The same is not applicable in the current case as explained above.*
- (v) Investment is currently held through a separate investment subsidiary of NSE and not by NSE.*
- (vi) NSE is in compliance of Regulation 41(3) of SECC Regulations in respect of our investment in PXIL.*
- (vii) PXIL was jointly promoted by NSE along with NCDEX in 2008 prior to advent of SECC Regulations in 2012. Subsequently, the investment was transferred to NSICL in July-2013. NSICL is a wholly owned subsidiary of NSE and as the holding Company NSE still holds the investments albeit through a Subsidiary. Hence, there is no ownership change of this investment. Mere transfer of an investment to a wholly owned Subsidiary cannot be considered to be an activity. Moreover, mere holding of a minority stake in another entity without control cannot be considered as undertaking an activity. Further, PXIL is an Exchange platform which is a related and incidental to the activity as a Stock Exchange.*
- (viii) As far as 2018 Regulations are concerned, it continues to be a pre-existing investment in a Company which continues to undertake a pre-existing activity.*
- (ix) Regulations have prospective effect unless otherwise stated and hence, do not cover the existing activities and investments at the time of the Regulations coming into effect.*

7. The contention of NSE that activities of PXIL are related to the activities of a Stock Exchange was not found acceptable by SEBI as the activities of PXIL involves providing electronic exchange for trading of power by its members (Power Generators, Distribution Utilities, Independent Power producers, merchant power plants etc.) (source website of PXIL) and is entirely different from NSE which is for the purpose of assisting, regulating or controlling the business of buying, selling or dealing in securities as specified in Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as "SCRA") which do not cover product as traded on PXIL and that the product traded on PXIL and NSE fall in different domain. Further, submission of NSE on 'engaged' in the activities of PXIL was also not found acceptable by SEBI as NSE is one of the promoter in PXIL and has acquired shareholding as well as nominated directors in the Board of PXIL through which it had engaged in the activities of PXIL.

Allegation-1:

8. In view of the above, it was observed that NSE had engaged in activities that are unrelated/non-incident to its activities as a stock exchange through the acquisition of stake in PXIL and subsequently continued through its wholly owned subsidiary NSICL. At this juncture, it is pertinent to note that from the date when SECC Regulations, 2012 were notified, NSE could only have continued or carrying out unrelated/non incidental activity through a separate legal entity and with permission of SEBI. For continuing with the said stake in PXIL, being unrelated or not incidental to its activity as a stock exchange, NSE ought to have sought approval of SEBI which it had allegedly failed to obtain and thus, violated the provisions of Regulation 38(2) of SECC 2018 read with Regulation 41(3) of SECC 2012.

Observation including allegations on acquisition of stake by NSE and/or through its subsidiaries in CAMS

9. NSE acquired 45% stake in CAMS in the year 2013 through its wholly owned subsidiary NSICL. Subsequently NSE diluted 7.50% stake in CAMS as on September 06, 2018 and continued to hold 37.50% thereafter. Pursuant to examination based on a newspaper report titled "NSE acquires 45% stake in CAMS" in the Business Standard dated December 24, 2013, as aforesaid, SEBI vide its email/letter dated January 01, 2014, February 06, 2014, February 24, 2014 and May 17, 2019 advised NSE to offer comments on whether acquisition of stake by NSE in CAMS through its subsidiary NSICL was in compliance with the Regulation 41(3) of SECC 2012 and Regulation 38(2) of SECC 2018. In response, NSE vide email/letter February 07, 2014, March 03, 2014 and May 24, 2019 had, *inter-alia*, made the following submissions:

- i) *The acquisition of stake in CAMS does not come within the purview of Regulation 41(3) of SECC Regulations, 2012. NSE, through NSICL's involvement in CAMS could be considered a passive investment as opposed to an active participation in the business of CAMS.*
- ii) *The business of CAMS is incidental or related to NSE's business and this acquisition is a non-controlling stake (i.e., it would get a minority representation on the Board of Directors of CAMS).*
- iii) *The investment was made in December 2013, when the SECC Regulations, 2018 were not in existence. In the absence of any specific statutory provision, the same cannot be given retrospective effect and Regulation 38(2) of SECC Regulation, 2018 also does not state that the ongoing activities or investments in existence as on October 03, 2018 (being the date from which the 2018 Regulation came into force) would require any approval/ratification from SEBI, in order to continue.*

10. The contention of NSE that activities of CAMS are related to the activities of a Stock Exchange was not found acceptable by SEBI as the activities of CAMS is that of a market intermediary and it provides back-end services to market participants. Activities of market intermediaries are always

incidental to capital/securities market wherein buying and selling of the securities takes place. However, it is not related to function of the stock exchange which is for the purpose of assisting, regulating or controlling the business of buying, selling or dealing in securities as per SCRA as market infrastructure institutions ('MII') which is different from the activities specified for other intermediaries to the securities market. Activities which are specified for intermediaries viz. Stock Broking, Depository participants, Credit Rating Agency, Mutual Funds, Registrar & Transfer Agents etc. is not considered as a related activity of a stock exchange. Therefore, activities of CAMS are not related or incidental to activity as a stock exchange. Further, submission of NSE on 'engaged' in the activities of CAMS was also not found acceptable by SEBI as NSE has acquired shareholding as well as nominated directors in the Board of CAMS through which it had engaged in the activities of CAMS.

11. Additional observations on acquisition of stake in CAMS by NSE are as under:

- a) In terms of the Shareholders Agreement dated December 16, 2013 (upon acquisition of shares in CAMS by NSICL) between CAMS and its shareholders, the Board Composition of CAMS will consist of 7 (seven) Directors of which NSICL shall be entitled to nominate and maintain 3 (three) Directors and other shareholder namely HDFC and Acsys shall be entitled to nominate and maintain 2 (two) Directors each.
- b) In terms of the Shareholders Agreement dated March 07, 2018 (upon dilution of 7.5% stake in CAMS by NSICL) between CAMS and its shareholders, the Board Composition of CAMS will consist of 8 (eight) Directors of which NSICL shall be entitled to nominate and maintain 3 (three) Directors and other major shareholder Great Terrain Investment Ltd shall also be entitled to nominate and maintain 3 (three) Directors each.
- c) CAMS provides a platform called FinNet for Distributors and Individual Financial Advisors ("IFAs") to cut across geographic barriers, access information relating to, and transact on the schemes of over 35 Mutual Funds through an internet enabled user interface. Thus, it provides back-end support service to various mutual fund houses. Both FinNet and the platforms offered by BSE and NSE for transacting in Mutual Funds are primarily portals for buying and selling Mutual Fund units by distributors/brokers/investors. The instant transaction gives NSE an indirect hold on FinNet, which accounts for almost 95 per cent of mutual fund transactions in the country. Hence, this acquisition could affect the volume of transactions that get executed through the platform provided by BSE for Mutual Funds which is also an alternate interface for distributors and investors to buy and sell Mutual Fund units.

- d) As Mutual funds RTA, CAMS describes itself as India's premier Mutual Fund Transfer Agency serving over 67% of assets of the industry across 16 Mutual Funds (**source: www.camsonline.com**).
- e) For Mutual Fund RTA business, FinnNet platform provided jointly by the top 2 RTAs (CAMS and Karvy) to facilitate ease of transacting online and to support the MF distributors cover almost 95% of the MF industry (**source: www.fundsnet.camsonline.com**).
- f) By acquiring the controlling stake in CAMS, NSE also captures significant business of mutual fund transactions in country that result into concentration of business which may not be in the interest of investors and overall development of the market.
- g) Since CAMS provides various services in the securities market including processing transactions in mutual funds, it has access to valuable and important client-level data and data relating to distributors, IFAs and mutual fund industry. Hence, acquisition of CAMS by NSE could provide NSE the access to the said data through which they may influence the choice of distributors regarding the platform through which their transactions get executed.
- h) CAMS is one of the major entities in RTA business and falls under the category of Qualified Registrar and Transfer Agent ("QRTA") (servicing more than 2 crore folios) as defined by SEBI vide its circular SEBI/HO/MIRSD/DoP/CIR/P/2018/ 119 dated August 10, 2018.
- i) CAMS being a RTA and an agent to the issuer of securities is subject to various compliances under SEBI (Issue of Capital and Disclosure Requirements), Regulations 2018 and SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 and listing agreement with stock exchanges.
- j) CAMS being an intermediary under SEBI (RTA) Regulations, 1993 is liable for action under SEBI (Intermediaries) Regulations, 2008 for contravention of the Rules, Regulations or Bye-laws of the Stock Exchange-Regulation 22 (e) of SEBI (RTA) Regulations, 1993.
- k) Stock Exchange being a Market Infrastructure Institutions (MIIs) is not expected to have conflict between its commercial and regulatory functions. While MIIs are called upon to undertake regulation and supervision of the markets, at the same time they also pursue commercial objectives. With respect to CAMS (a significantly important entity under the securities market), NSE is having conflict of interest as it:-
- Presently maintain commercial objective as a shareholder in it; and
 - Provides its platform to CAMS for mutual fund transactions and

- Observe compliance by RTAs as an agent to the issuer of securities under SEBI (issue of capital and disclosure requirements), Regulations 2018 and SEBI (listing obligations and disclosure requirements) Regulations, 2015 and listing agreement with stock exchanges.

Allegation-2:

12. In view of the above facts and concerns, it was observed that NSE has engaged in activities that are unrelated/non-incidental to its activities as a stock exchange through the acquisition of stake in CAMS through its wholly owned subsidiary NSICL. Further such acquisition also involves conflict of interest as noted above relating to the activities undertaken by NSE as a MII and the activities undertaken by CAMS. At this juncture, it is pertinent to note that for acquisition of stake in CAMS being unrelated or not incidental to its activity as a stock exchange, NSE ought to have sought approval of SEBI which it had allegedly failed to obtain and thus, violated the provisions of Regulation 38(2) of SECC 2018 read with Regulation 41(3) of SECC 2012.

Observation including allegations on acquisition of stake by NSE and/or through its subsidiaries in NSEIT

13. NSEIT was promoted by NSE in the year 1999 as a wholly owned Subsidiary and thereby held 100% stake in NSEIT. Subsequently, the entire stake was transferred to NSICL in June 2013 and continued thereafter. Pursuant to examination, SEBI vide its email dated July 19, 2019 advised NSE to offer comments on whether acquisition of stake by NSE in NSEIT was in compliance with the Regulation 41(3) of SECC 2012 and Regulation 38(2) of SECC 2018. In response, NSE vide email dated July 23, 2019 had, *inter-alia*, made the following submissions:

- i) *NSEIT was promoted by NSE in 1999 as a wholly owned Subsidiary prior to advent of SECC Regulations in 2012. Subsequently, the stake was transferred to NSICL in June 2013. NSICL is a wholly owned subsidiary of NSE and as the holding Company, NSE still holds the investments albeit through a Subsidiary. Hence, there is no ownership change of this investment. Mere transfer of an investment to a wholly owned Subsidiary cannot be considered to be an activity.*
- ii) *NSEIT is a technology Company which is related and incidental to the activity as a Stock Exchange.*
- iii) *As far as 2018 Regulations are concerned, it continues to be a pre-existing investment in a Company which continues to undertake a pre-existing activity.*
- iv) *Regulations have prospective effect unless otherwise stated and hence, do not cover the existing activities and investments at the time of the Regulations coming into effect.*

14. The contention of NSE that activities of NSEIT are related to the activities of a Stock Exchange was not found acceptable by SEBI as investment in technology solutions for the purpose of increasing efficiency in the services provided by the stock exchange may be termed as a related activity to the stock exchange, it cannot be extended to mean any acquisition in the IT sector as is the case with NSEIT which offers technology, consultancy, business analytics and development services spanning across industry domains such as banking, insurance and financial markets apart from capital markets (source- website of NSEIT). It is noted that NSE has another wholly owned subsidiary namely NSE Infotech Services Ltd which caters to the needs of technology of NSE and all its group companies, exclusively. Further, it is noted that NSE is promoter in NSEIT Ltd and has acquired shareholding as well as nominated directors in the Board of NSEIT Limited through which it has engaged in the activities of NSEIT.

Allegation-3:

15. In view of the above, it was alleged that NSE engaged in activities that are unrelated/non-incident to its activities as a stock exchange through the acquisition of stake in NSEIT and subsequently continued through its wholly owned subsidiary NSICL. At this juncture, it is pertinent to note that from the date when SECC Regulations, 2012 was notified, NSE could only continue carrying out unrelated/non incidental activity through a separate legal entity and with permission of SEBI. For continuing with the said stake in NSEIT, being unrelated or not incidental to its activity as a stock exchange, NSE ought to have sought approval of SEBI which it had allegedly failed to obtain and thus, violated the provisions of Regulation 38(2) of SECC 2018 read with Regulation 41(3) of SECC 2012.

Observation including allegations on acquisition of stake by NSE and/or through its subsidiaries in NEIL

16. NSE hold 25.05% stake in NEIL which was originally promoted as NSDL in 1995 by NSE and other financial institutions. NSDL was renamed as NEIL in the year 2013 on account of a scheme of demerger through which the depository undertaking of NSDL was transferred to a separate company namely National Securities Depository Limited. Pursuant to transfer of depository undertaking to another company, the NEIL ceased to act as a depository under the Depositories Act, 1996. NSE subsequently transferred its stake in NEIL to its subsidiary NSICL on September 30, 2013 and continued thereafter (**Source: www.egov-nsdl.co.in**). NEIL provides technology infrastructure for e-Governance projects of Central/State Government etc. Pursuant to examination, SEBI vide its email dated July 19, 2019 advised NSE to offer comments on whether

acquisition of stake by NSE in NEIL was in compliance with the Regulation 41(3) of SECC 2012 and Regulation 38(2) of SECC 2018. In response, NSE vide email dated July 23, 2019 had, *inter-alia*, made the following submissions:

- i) NSE jointly promoted NSDL in 1995. Subsequently, through a Scheme of Arrangement in April 2012, the depository portion of NSDL was demerged and NSDL was renamed as NSDL E-governance. NSE continued to hold the 25.05% minority interest in the Company without any control which was subsequently transferred to NSICL in Sep 2013. NSICL is a wholly owned subsidiary of NSE and as the holding Company NSE still holds the investments albeit through a Subsidiary. Hence, there is no ownership change of this investment. Mere transfer of an investment to a wholly owned Subsidiary cannot be considered to be an activity. Moreover, mere holding of a minority stake in another entity without control cannot be considered as undertaking an activity. Further, it provides technology infrastructure for e-Governance projects of Central / State Government etc which is a related and incidental activity.*
- ii) As far as 2018 Regulations are concerned, it continues to be a pre-existing investment in a Company which continues to undertake a pre-existing activity.*
- iii) Regulations have prospective effect unless otherwise stated and hence, do not cover the existing activities and investments at the time of the Regulations coming into effect.*

17. The contention of NSE that activities of NEIL are related to the activities of a Stock Exchange was not found acceptable by SEBI as NEIL provides technology infrastructure for e-Governance projects of Central/State Government etc. The services provided by NSDL e-Governance Infrastructure Limited are corporate services that includes IT consulting, Business Process Re-engineering etc., Retail services that includes EzeeWill to assist clients in succession planning & drafting their Will, PAN Card Issuance, Unique Identification Number enrollment (UID), National Pension System (NPS) registration, Vidyasaarathi to manage the online scholarship management, eSign for online electronic signature service to digitally sign a document etc. (**Source: www.egovnsdl.co.in**). Considering the said activities of NEIL, SEBI observed that the said activities of NEIL are activities which are beyond the activities undertaken by the stock exchange. Further, it was observed that NSE was one of the promoter in NEIL and has acquired shareholding as well as nominated directors in the Board of NEIL through which it has engaged in the activities of NEIL.

Allegation-4:

18. In view of the above, it was observed that NSE engaged in activities that are unrelated/non-incidental to its activities as a stock exchange through the acquisition of stake in NEIL and subsequently continued through its wholly owned subsidiary NSICL. At this juncture, it is pertinent

to note that from the date when SECC Regulations, 2012 was notified, NSE could only continue carrying out unrelated/non incidental activity through a separate legal entity and with permission of SEBI. For continuing with the said stake in NEIL, being unrelated or not incidental to its activity as a stock exchange, NSE ought to have sought approval of SEBI which it had allegedly failed to obtain and thus, violated the provisions of Regulation 38(2) of SECC 2018 read with Regulation 41(3) of SECC 2012.

Observation including allegations on acquisition of stake by NSE and/or through its subsidiaries in MSIL

19. NSE acquired 30% stake in Market Simplified India Limited on November 30, 2011 and subsequently transferred its stake to its subsidiary NSICL on March 28, 2013 and continued thereafter. Pursuant to examination, SEBI vide its email dated July 19, 2019 advised NSE to offer comments on whether acquisition of stake by NSE in NEIL was in compliance with the Regulation 41(3) of SECC 2012 and Regulation 38(2) of SECC 2018. In response, NSE vide emails dated July 23, 2019 and November 25, 2019 on Shareholder agreement dated December 03, 2010 had, *inter-alia*, made the following submissions:

- i) The Minority stake of 30% was acquired in Nov 2011 without any control and subsequently transferred to NSICL in Mar 2013. NSICL is a wholly owned subsidiary of NSE and as the holding Company NSE still holds the investments albeit through a Subsidiary. Hence, there is no ownership change of this investment. Mere transfer of an investment to a wholly owned Subsidiary cannot be considered to be an activity. Moreover, mere holding of a minority stake in another entity without control cannot be considered as undertaking an activity.*
- ii) It provides internet trading software for market participants which is a related and incidental activity.*
- iii) As far as 2018 Regulations are concerned, it continues to be a pre-existing investment in a Company which continues to undertake a pre-existing activity.*
- iv) Regulations have prospective effect unless otherwise stated and hence, do not cover the existing activities and investments at the time of the Regulations coming into effect.*

20. The contention of NSE that activities of MSIL are related to the activities of a Stock Exchange was not found acceptable by SEBI as MSIL provides Mobile Trading platform which provide ability to trade in securities, with added features like built-in charting tools, news feeds, conditional alerts and other tools, Mobile Banking platform to facilitate mobile banking services viz access account, make transfers, make deposit, payments, service request etc., Mobile insurance platform to facilitate

various services to insurance agent, clients, insurance sector employees relating to insurance sector and Intelligent Virtual Assistant to help retail banks engage deeply with consumers through personalized and proactive services over natural voice based conversations and chat messages. Considering the said activities of MSIL, SEBI observed that the said activities of MSIL are activities which are beyond the activities undertaken by the stock exchange. Further, it was observed that NSE has not nominated any director in MSIL, however it has acquired shareholding and has right to nominate director as per the shareholding agreement dated December 03, 2010 through which it can be stated as engaged in the activities of MSIL.

Allegation 5:

21. In view of the above, was observed that NSE has engaged in activities that are unrelated/non- incidental to its activities as a stock exchange through the acquisition of stake in MSIL and subsequently continued through its wholly owned subsidiary NSICL. At this juncture, it is pertinent to note that from the date when SECC Regulations, 2012 was notified, NSE could only continue carrying out unrelated/non incidental activity through a separate legal entity and with permission of SEBI. For continuing with the said stake in MSIL, being unrelated or not incidental to its activity as a stock exchange, NSE ought to have sought approval of SEBI which it had allegedly failed to obtain and thus, violated the provisions of Regulation 38(2) of SECC 2018 read with Regulation 41(3) of SECC 2012.

Observation including allegations on acquisition of stake by NSE and/or through its subsidiaries in RXIL

22. NSE acquired 30% stake in RXIL on February 25, 2016 through its wholly owned subsidiary NSICL and continued thereafter. Pursuant to examination, SEBI vide its email dated July 19, 2019 advised NSE to offer comments on whether acquisition of stake by NSE in NEIL was in compliance with the Regulation 41(3) of SECC 2012 and Regulation 38(2) of SECC 2018. In response, NSE vide emails dated July 23, 2019 had, *inter-alia*, made the following submissions:

- i) NSICL acquired 30% minority stake in RXIL without control in February 2016. It is a Common Exchange platform for Bills discounting by Banks, Corporates etc. for which NSE's earlier platform "NTrees" (since Dec, 2009) was transferred. Mere holding of a minority stake in another entity without control cannot be considered as undertaking an activity.*
- ii) RXIL is an Exchange platform which is a related and incidental to the activity as a Stock Exchange.*

iii) As far as 2018 Regulations are concerned, it continues to be a pre-existing investment in a Company which continues to undertake a pre-existing activity.

iv) Regulations have prospective effect unless otherwise stated and hence, do not cover the existing activities and investments at the time of the Regulations coming into effect.

23. The contention of NSE that activities of RXIL are related to the activities of a Stock Exchange was not found acceptable by SEBI as RXIL provides online platform for financial receivables and operates the Trade Receivables Discounting System (TReDS) Platform. The TReDS platform facilitate institutional mechanism for financing of trade receivables of MSMEs from corporate and other buyers, including Government Departments and Public Sector Undertakings (PSUs), through multiple financiers (source- website of RXIL). Participants to the TReDS platform are (a) Sellers - The Sellers should be a MSME as defined under Section 7 of the Micro, Small and Medium Enterprises Development Act, 2006 ("MSMED Act"), supplying goods and / or services to buyers; (b) Buyers - Corporates including companies and other buyers including Government Departments and Public Sector Undertaking and such other entities as may be permitted by the Reserve Bank of India ("RBI") from time to time to participate on the TReDS platform as buyers; and (c) Financiers - Banks, NBFC Factors, and such other institutions as may be permitted by RBI from time to time to participate in the TReDS platform as Financiers.

24. Considering the said activities of RXIL, SEBI observed that the said activities of RXIL *viz.* trade receivables discounting system which involves traders supplying goods and / or services to buyers, financiers etc., are activities which are beyond the activities undertaken by the stock exchange. Further, it was observed that NSE is one of the promoter in RXIL and has acquired shareholding as well as nominated directors in the Board of RXIL through which it can be stated as engaged in the activities of RXIL.

Allegation-6:

25. In view of the above, it was observed that NSE has engaged in activities that are unrelated/non-incident to its activities as a stock exchange through the acquisition of stake in RXIL through its wholly owned subsidiary NSICL. At this juncture, it is pertinent to note that for acquisition of stake in RXIL being unrelated or not incidental to its activity as a stock exchange, NSE ought to have sought approval of SEBI which it had allegedly failed to obtain and thus, violated the provisions of Regulation 38(2) of SECC 2018 read with Regulation 41(3) of SECC 2012.

26. The text of the aforementioned provisions alleged to be violated by the Noticee at the relevant time read as under:

SECC Regulations, 2018

Utilization of profits and investments

38 (1)

(2) The recognized stock exchange or recognized clearing corporation shall not carry on any activity whether involving deployment of funds or otherwise without prior approval of the Board:

Provided that prior approval of the Board shall not be required in case of treasury investments if such investments are as per the investment policy approved by the governing board of recognized stock exchange or recognized clearing corporation;

Provided further, that the recognised stock exchange and recognised clearing corporation may engage in activities

whether involving deployment of funds or otherwise that are unrelated or not incidental to its activity as a stock exchange or clearing corporation, as the case may be, through a separate legal entity and subject to approval of the Board.

SECC Regulations, 2012

Equal, fair and transparent access.

41 (1)

(3) The recognised Stock Exchange and recognised clearing corporation shall not engage in activities that are unrelated or not incidental to its activity as a stock exchange or clearing corporation, as the case may be, except through a separate legal entity and as permitted by the Board.

27. Vide a *communication-order* dated July 03, 2020, the competent authority decided to inquire into the affairs and adjudicate upon the alleged violation as aforesaid and appointed the undersigned as Adjudicating Officer under Section 15-I (1) of the SEBI Act, 1992 read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as ‘the Adjudication Rules’) to inquire into and adjudge the alleged violation of the provisions of Regulation 38(2) of SECC 2018 read with Regulation 41(3) of SECC 2012 by the Noticee under Section 15HB of the SEBI Act.

28. Accordingly, the Show Cause Notice (hereinafter referred to as ‘the SCN’) dated July 31, 2020 was issued to the Noticee in terms of Rule 4(1) of the Adjudication Rules and the Noticee was called upon to show cause as to why an inquiry should not be held against it in terms of Rule 4 of the Adjudication Rules and why penalty, if any, should not be imposed under Section 15HB of the SEBI Act for the allegations as per the SCN. The said provision of the SEBI Act reads 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.*

29. In response to the SCN, the Noticee vide letter dated August 11, 2020, sought inspection of documents. In the interest of principles of natural justice, the opportunity of inspection was granted to the Noticee on August 20, 2020 and the same was duly availed by the Noticee. Subsequently, the Noticee filed its reply vide letter dated September 07, 2020 and availed the opportunity of hearing granted to it on September 18 and 20, 2020, through the WebEx platform, when Mr. Somasekhar Sundaresan, Advocate assisted by Mr. S Vivek, Advocate, Authorized Representative (‘ARs’) of the Noticee appeared and made oral submissions on the lines of the reply dated September 07, 2020 and explained the contents thereof. Subsequently, the Noticee filed its post-hearing written note of arguments advanced by Mr. Somasekhar Sundaresan, Counsel for the Noticee, and the compendium of case laws referred to in Noticee’s reply dated September 07, 2020, vide email dated September 29, 2020. I note that the notes are summary of Noticee’s argument advanced during the hearing.

30. I have gone through the submissions made by the Noticee and the other material on record and I now proceed to deal with the same.

Preliminary Objections:

31. Before proceeding to deal with the merits of the matter, I deal with the Noticee’s preliminary objections with respect to these proceedings as under:

(i) Delay in initiating the proceedings:

(a) It is submitted by the Noticee that the inordinate delay in the initiation of proceedings against the Noticee, vitiates these proceedings. The Notice has been issued in respect of

investments that were always to the knowledge of not just SEBI, but the world at large and would be noticed from the multiple inspections conducted by SEBI on the NSE. The delay in the issuance of the Notice ranges from 4.5 years to 21 years from the date of the investments. The delay in issuance of the Notice, which was issued on July 31, 2020, would be seen from the table below:

Sr. No.	Name of the investee entity	Date of initial investment	Period of Delay (approx.)
1.	NSEIT	October 29, 1999 ¹	20 years, 9 months
2.	PXIL	February 20, 2008 ²	12 years, 5 months
3.	MSIL	November 30, 2011 ³	8 years, 8 months
4.	NSDL EGov	April 1, 2012 ⁴	8 years, 4 months
5.	CAMS	December 24, 2013 ⁵	6 years, 7 months
6.	RXIL	February 25, 2016 ⁶	4 years, 5 months

Note:

¹Investment currently held by NSE Investments – transferred to it on June 30, 2013

²Investment currently held by NSE Investments – transferred to it on July 22, 2013

³Investment currently held by NSE Investments – transferred to it on March 28, 2013

⁴Investment currently held by NSE Investments – transferred to it on September 30, 2013

⁵Investment undertaken by NSE Investments directly, and not made or held by the Noticee

⁶Investment undertaken by NSE Investments directly, and not made or held by the Noticee

- (b) In this regard, the Noticee has relied upon the order of Hon’ble Securities Appellate Tribunal (“SAT”), where the Tribunal quashed proceedings, including on grounds of undue delay. The Hon’ble SAT has, in the matter of *Ashlesh Gunvantbbai Shah v. SEBI* made the following pertinent remarks:

*“It is no doubt true that no period of limitation is prescribed in the Act or the Regulations for issuance of a show cause notice or for completion of the adjudication proceedings. **The Supreme Court in Government of India vs, Citedal Fine Pharmaceuticals, Madras and Others, [AIR (1989) SC 1771]** held that in the absence of any period of limitation, the authority is required to exercise its powers within a reasonable period. What would be the reasonable period would depend on the facts of each case and that no hard and fast rule can be laid down in this regard as the determination of this question would depend on the facts of each case. This proposition of law has been consistently reiterated by the Supreme Court [..]. The Supreme Court recently in the case of *Adjudicating Officer, SEBI vs. Bhavesh Pabari (2019) SCC Online SC 294* held:*

*“**There are judgments which hold that when the period of limitation is not prescribed, such power must be exercised within a reasonable time.** What would be reasonable time, would depend upon the facts and circumstances of the case, nature of the default/ statute, prejudice caused, whether the third-party rights had been created etc.”*

- (c) In this regard, I note that SEBI was in receipt of a letter dated January 02, 2018 from Central Electricity Regulatory Commission (CERC) seeking confirmation from SEBI whether NSE has disclosed to SEBI about the decision for continuation of the business of Power Exchange India Limited (“PXIL”). The confirmation was sought with respect to DRHP filed by NSE for its IPO with SEBI. In this regard, it was noted that no approval has been granted to NSE for acquisition of stake in PXIL and/or continuation of the same. Accordingly, the matter of acquisition of stake in PXIL by NSE and/or its subsidiary was taken up by SEBI for examination. In view of the aforesaid references on matter of acquisition of stake by NSE and/or its subsidiary, acquisition of stake by NSE and/or through its subsidiaries in the following entities were taken up for examination by SEBI: PXIL, CAMS, NSEIT Ltd. (‘NSEIT’), NSDL E-Governance Infrastructure Ltd. (‘NEIL’), Market Simplified India Ltd. (‘MSIL’), Receivables Exchange of India Ltd. (‘RXIL’).
- (d) I further note that after conducting a detailed examination in the matter, the competent authority vide communication order dated July 03, 2020 appointed the undersigned as Adjudicating Officer under Section 15-I (1) of the SEBI Act, 1992 read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as ‘the Adjudication Rules’) to inquire into and adjudge the alleged violation of the provisions of Regulation 38(2) of SECC 2018 read with Regulation 41(3) of SECC 2012 by the Noticee under Section 15HB of the SEBI Act. Pursuant to this SCN was issued on July 31, 2020 and the hearings were held on September 18 and 20, 2020. This period also included lock down period due to the Covid pandemic.
- (e) The Noticee has relied upon a ruling of Hon’ble SAT, in the matter of *Ashlesh Gunvantbhai Shah v. SEBI* where the SAT has held that it is no doubt true that no period of limitation is prescribed in the Act or the Regulations for issuance of a show cause notice or for completion of the adjudication proceedings but in the absence of any period of limitation, the authority is required to exercise its powers within a reasonable period. In this regard I note that SAT has qualified the said ruling by saying that the reasonable period would depend on the facts of each case and that no hard and fast rule can be laid down in this regard as the determination of this question would depend on the facts of each case. As regards application of the said ruling in this matter, I am of the view that present

proceedings do not suffer from any infirmity on the ground of delay for the following reasons:

- The trigger for initiating the examination was on January 02, 2018 when CERC sought confirmation from SEBI about disclosures by the Noticee, and since then matter has proceeded with in a timely manner.
- I note that the SECC 2012 came into force on June 20, 2012. The alleged unrelated activities continued in contravention of SECC Regulations, even after coming into force of SECC 2012 and the same position exists even as on the date of hearing in this matter. Therefore, it cannot be said that the violations as observed in SCN was a one-time violation which happened 4 to 21 years back, but at the same time it is observed that violations are continuing one.

(ii) Charge in the SCN being unclear:

- (a) It is submitted by the Noticee that while the Notice sets out the provisions of Regulation 38(2) of SECC 2018 and Regulation 41(3) of SECC 2012, it does not demonstrate how the ingredients of these provisions are satisfied based on the facts of the case. It is submitted by the Noticee that the SCN and the provisions of SECC are silent as to how the Noticee is engaged in an activity through its subsidiary, as to how the alleged activity is not incidental or not related to stock exchange. In support of their contention the Noticee has placed reliance upon a ruling by the Hon'ble Supreme Court in *Gorkha Security Services Vs. Govt. of NCT, (2014) 9 SCC 105*.
- (b) In regard to above, I note that the SCN deals with acquisition of stake by NSE and/or its subsidiary, acquisition of stake by NSE and/or through its subsidiaries in six entities namely PXIL, CAMS, NSEIT, NEIL, MSIL and RXIL. There are six parts in the SCN which deals with the case entity-wise in detail and demonstrate as to how the Noticee is engaged in an activity through its subsidiary, and as to how the alleged activity is not incidental or not related to stock exchange. In support of this observation I refer to the case of PXIL wherein in para 7 of the SCN, details about the engagement of the Noticee in un-related or not incidental activity has been dealt in great detail. Similarly, for other activities the SCN has dealt in great detail about the same. I also find reliance of Noticee as misplaced on the ruling of Hon'ble Supreme Court in Gorkha matter. In the said ruling, the Hon'ble Supreme Court decided that the consequence of non-compliance should be communicated to the Noticee in the show-cause notice. In the matter before me, I observe

that consequence of failures were clearly communicated in the SCN to the Noticee and thus the ruling has no application. I therefore do not agree with the contention of the Noticee that the charge in the SCN is not clear.

(iii) Retrospective application of SECC Regulations:

(a) The Noticee has submitted that it is well settled that a statute or a regulation can be given retrospective effect only if there is a specific legal provision in this regard. We would like to bring the Learned AO's attention to the fact that Regulation 41(3) of the SECC 2012 does not purport to operate retrospectively, and therefore, cannot be made applicable, in any manner, to the Noticee's investments in PXIL, NSEIT, NSDL EGov, and MSIL. From a bare reading of Regulation 41(3) of the SECC 2012, it is clear that there is no express language to suggest that the said provision would operate retrospectively. Accordingly, the absence of any specific requirement, Regulation 41(3) the SECC 2012 cannot be given retrospective effect. It is further submitted that Regulation 41(3) of SECC 2012 also does not state that investments already in existence as on June 20, 2012 (being the date from which the SECC 2012 came into force) would require any reassessment and approval/ ratification from SEBI, in order for such investments to be continued to be held by the relevant stock exchange.

(b) I do not agree with the contention of the Noticee that the SECC Regulations are being applied with retrospective effect due to the following reasons:

➤ I note that the SECC 2012 commenced from June 20, 2012, and from the date of its commencement they apply with respect to the affairs of Noticee. In this regard, I refer to the first proviso to regulation 3 of the SECC Regulations which inter-alia provides as under:

"Provided that a stock exchange, which has been recognised under the Act as on the date of commencement of these regulations, shall be deemed to have been recognised under these regulations and all the provisions of these regulations as they apply to a recognised stock exchange shall also apply to such stock exchange ." (Emphasis supplied)

From the plain reading of the above provisions, it is clear that all the provisions of SECC 2012, as existed on the date of its notification i.e. on June 20, 2012, shall apply to an existing recognized stock exchange. There is no dispute on the fact that Noticee

was an existing recognized stock exchange on the date of commencement of SECC 2012.

- As regards transition requirement, wherever required, transition provisions were also specified in SECC Regulations such as- 3 years period was provided vide proviso to regulation 14 for meeting net worth, 3 months period specified for composition of governing board under regulation 23 etc. The Noticee has relied upon rulings of Hon'ble Supreme Court in *Rafiquennesa v. Lal Bahadur Chetri (Dead) through his Representatives and Ors.8* ("Rafiquennesa Case") and *K. Sashidhar v. Indian Overseas Bank and Ors.9* ("IOB Case") and submitted that as regulation 41(3) SECC 2012 does not specify that it will apply to investments made prior to the date on which regulation 41(3) came into force and it also does not specify that ongoing investment would be subject to reassessment and approval/ ratification by SEBI, and in the absence of such requirement Noticee cannot be held liable. In this regard, I refer to my findings recorded in previous para and reiterate that in view of proviso to regulation 3 of SECC 2012, all the provisions of SECC Regulations as existed on the date of its commencement i.e. on June 20, 2012 shall apply to an existing recognized stock exchange.
- The 4 of the investment activities by Noticee in NSEIT, PXIL, MSIL, and NSDL EGov, for which SCN is issued, are continuing activities and they are being carried on by the Noticee. The other two activities in CAMS and RXIL have commenced post commencement of SECC 2012 and hence there is no issue on these activities as far as retrospective application is concerned. As regards the four continuing activities, which are continuing, I refer to a ruling dated March 31, 2010, of the Hon'ble Bombay High Court, in the case of ***Kingfisher Airlines Ltd. Vs. Competition Commission of India (W.P. No. 1785/2009)***. In this matter Hon'ble Bombay High Court held that though the Act (Competition Act) is not retrospective, it would cover all agreements covered by the Act though entered into prior to the commencement of the Act but sought to be acted upon now i.e. if the effect of the agreement continues even after 20.5.2009 (date of commencement). Thus, even in cases where the alleged anti-competitive conduct was started before coming into force of sections 3 and 4, the Commission has the jurisdiction to look into such conduct if it continues even after the enforcement of relevant provisions of the Act. I observe that similar is the case in respect of the Noticee in the present matter where the four of the activities had started before commencement of SECC 2012, but these regulations will have

application in respect of such four activities since these activities continued even after the commencement of the provisions of SECC 2012. I also note that the said ruling attained finality as the SLP(C) No.16877/2010 preferred by Kingfisher Airlines Limited in the Supreme Court was dismissed as withdrawn on 24th September, 2010.

(iv) Repeal and Saving Clause does not save these proceedings:

- (a) Regulation 52 of SECC 2018 repeals the SECC 2012. The Noticee submitted that unless proceedings for alleged violation of SECC 2012 had been initiated before such repeal, there would be no proceedings to be saved under the savings provisions in Regulation 52 of the SECC 2018. It is evident that the first time any notice was taken to level allegations is the Notice on July 31, 2020, which clearly indicates that the inquiry and the proceedings relating to the alleged and purported violation of SECC 2012 has been commenced two years after its repeal. Therefore, these proceedings or even an inquiry before these proceedings not having been underway before such repeal, no allegation of any nature whatsoever can now be leveled in connection with violation of SECC 2012.
- (b) In this regard, I note that sub-regulation (2) of regulation 52 of SECC 2018 provides that *“Notwithstanding such repeal, anything done or any action taken or purported to have been taken or contemplated under the repealed regulations and circulars before the commencement of these regulations shall be deemed to have been done or taken or commenced or contemplated under the corresponding provisions of these regulations.”* This sub-regulation clearly saves any action purported to have been taken or contemplated under the repealed regulations. Moreover, in the instant matter SEBI initiated examination on the basis of a letter dated January 02, 2018 from Central Electricity Regulatory Commission (CERC) seeking confirmation from SEBI whether NSE has disclosed to SEBI about the decision for continuation of the business of Power Exchange India Limited (“PXIL”). This development took place when SECC 2012 were in force. I therefore do not find any merit in the objection of Noticee that present proceedings are not saved under regulation 52 of SECC 2018.

Noticees Investment in Relevant Entities:

32. I now deal with the contention of the Noticee as to how Noticee has violated regulation 41(3) of SECC 2012, through its investments in the Relevant Entities. In view of the above, following is submitted by the Noticee:

- (i) Regulation 41(3) is to be interpreted in the context of ensuring 'Equal, fair and transparent access' and not to prohibit all investments by stock exchanges.
- (ii) The type of engagement that is regulated under Regulation 41(3) is a continuous engagement through a series of transactions, and not a one-time financial investment undertaken by a stock exchange. This is also evident from the use of the same term 'activity' twice in Regulation 41(3).
- (iii) The terms 'related' and 'incidental' are to be interpreted widely as there is no definition of such term in the SECC 2012. Based on judicial pronouncements, the term is to be interpreted as associated in any manner, which may be direct or remote.

Interpretation of the term 'activity'

- (iv) In order to determine if investments in the Relevant Entities would be subject to SEBI's approval, the Noticee must, in the first instance, be determined to be engaging in an activity in terms of the SECC 2012.
- (v) Only in the event that it is established that the Noticee has engaged in the activities of the Relevant Entities, it has to be determined if such activities were unrelated or not incidental to its activities as a stock exchange.
- (vi) It is submitted that the Notice does not set out the standard based on which the terms '*engaged in*', '*activity*', '*related*' or '*incidental*' have been interpreted. Given that the terms '*activity*', '*engage in*', '*related*' and '*incidental*' are not defined in the SECC 2012, reliance must be placed on the generally accepted legal meaning for such terms.
- (vii) In the matter of *Armstrong Builders and Developers v. Vishvanath Naik* [2007(1)AllMR 167], the Bombay High Court (at Goa) had examined the import of the term '*activity*' under the Goa Money Lenders Act, 2001, and observed as follows:

*"The expression "activity" is not defined under the said Act and the **ordinary dictionary meaning as per Black's Law Dictionary activity is an occupation or pursuit in which a person is active, and, as per Oxford English Dictionary, it is the condition in which things are happening or being done. In other words, the very subject of activity suggests continuity and therefore a single act of giving a loan would not come within the definition of Sub-clause (a) of Clause (1) of Section 2 of the said Act**".*

- (viii) In view of the above, it is evident that the term ‘activity’ is in the nature of an occupation or business, which involves the element of continuity and a ‘series of transactions’, as opposed to a solitary, one-time, standalone action. Therefore, interpreting Regulation 41(3) of SECC 2012 based on the above, if a stock exchange proposes to undertake a series of transactions with an element of continuity that is unrelated or not incidental to the continuous activity undertaken by it as a stock exchange, such an ‘activity’ can be undertaken only through a separate legal entity and as permitted by SEBI. It is submitted that a one-time financial investment in the Relevant Entities does not constitute an ‘activity’. The discussion in the Jalan Committee Report on ‘related business’ of MIIs and its express recognition (in paragraph 5.4) of the need to segregate activities that are not incidental or are unrelated to the activities of a stock exchange was the genesis of Regulation 41(3) of the SECC 2012. Therefore, the wording of Regulation 41(3) of the SECC 2012 has to be considered in the broader context of the discussion on ‘business’ of stock exchanges.
- (ix) Black’s Law Dictionary, 10th Edition, defines ‘business’ as “a commercial enterprise carried on for profit; a particular occupation or employment habitually engaged in for livelihood or gain.” The Supreme Court has also examined the meaning of ‘business’ in various instances and had observed in the matter of *Barendra Prasad Ray and Ors. vs. Income Tax Officer*¹⁶ that “The word ‘business’ is one of wide import and it means an activity carried on continuously and systematically by a person by the application of his labour or skill with a view to earning an income.” (emphasis supplied).

Interpretation of the term ‘engage in’

- (x) Illustratively, in the case of *National Projects Construction Corporation Ltd. vs. Commissioner of Wealth Tax* [1969] 74 ITR 465 (Delhi), the Delhi High Court had explained the term ‘engage in’ in the following manner:

“The word “engage” may have variety of meanings depending on the context and setting in which it is used. Ordinarily the expression connotes doing of more than one act or one transaction. Continuity of action is implicit in the meaning of the word. It has also been used in the sense of being busy or conducting or devoting attention or effort or employing oneself. The words “engaged in the manufacture, production”, etc., should normally, therefore, mean continuously occupied in the manufacture as a principal business as distinguished from an occasional participation or single act or casual employment or a mere supervision without physical participation. The extent of activity

would be a relevant factor and if such activity is at an extended scale it may be suggestive of being “engaged” in manufacturing activity.”

- (xi) The Lucknow Bench of the Allahabad High Court, in *Pramod Kumar v. State of UP (1989 AWC 745 All)*, quoted the observation made in *Head v. New York Life Ins. Co. C.C.A. Okl.19* with respect to the interpretation of the term ‘engage’ as under:

“Engage’ means to take part in or be employed in, and connotes more than a single act or single transaction and involves some continuity of action, while the word “participate” means simply to take or have a part or share in, and may apply equally to a single act or to many acts.”

Interpretation of the terms ‘unrelated’ and ‘incidental’

- (xii) Similar to the above, the terms ‘unrelated’ and ‘incidental’ have not been defined under the SECC 2012 and accordingly, the generally accepted usage of such terms based on judicial pronouncements and legal dictionaries are to be relied upon.

- (xiii) In the case of *Income Tax Officer v. Vickers Sperry of India [1983] 3 ITD 739 (Mum)*, the special bench of the Income Tax Appellate Tribunal, Bombay, had discussed the term ‘related’ as under:

“The words “related to” according to plain dictionary meaning, mean connected or associated with which connection or association may be direct or remote. It may mean related in some manner or the other. The word ‘related’ has been defined in the Webster Universal Dictionary (unabridged international edition 1970) as having a causal [sic] or logical connection etc.”

- (xiv) The term ‘incidental’ was examined by the Supreme Court, in the case of *Royal Talkies, Hyderabad vs. Employees State Insurance Corporation*²¹ while determining if something were incidental to another, and in that instance, the Supreme Court had observed as follows: *“a thing is incidental to another if it merely appertains to something else as primary. Surely, such work should not be extraneous or contrary to the purpose of the establishment but need not be integral to it either.”*

- (xv) The Noticee has referred to the definitions of *incidental* as:

-P. Ramanatha Aiyar: The Law Lexicon, fifth edition, 2017, it has been noted that “a thing is incidental to another when it appertains to, or follows on, that other which is more worthy, or principal.”

-Black’s Law Dictionary, 10th edition, the term “incidental” has been defined as:

“subordinate to something of greater importance; having a minor role.”

-*Bakshi's Law Lexicon, 2008*, the definition of the term “incidental”, as set out under *Stroud's Judicial Dictionary* (set out above) has been reiterated.

33. With regard to Noticee's submission on issue of interpretation of terms activity, engaged in, and unrelated / incidental, I record my findings as under:

- (i) The Noticee has attempted to define terms activity, engaged in, and unrelated / incidental in the context of regulation 41(3) of SECC 2012. The said regulation provides that the recognised stock exchange and recognised clearing corporation **shall not engage in activities that are unrelated or not incidental to its activity as a stock exchange or clearing corporation**, as the case may be, except through a separate legal entity and as permitted by the Board. The core issue according to me is interpretation of word 'stock exchange' and if we are able to define this term in true sense, then the meaning of other terms used, such as activity, unrelated, or not incidental, will automatically fall in line.
- (ii) In regard to import of dictionary meaning, it is a well settled legal position that when a word is not defined in the Act itself, it is permissible to refer to dictionaries or any similar legislations to find out the sense in which that word is understood. However, in selecting one out of the various meanings of a word, regard must always be had to the context as it is a fundamental rule that *“the meanings of words and expressions used in an Act must take their colour from the context in which they appear”*. Therefore, *“when the context makes the meaning of a word so clear, it becomes unnecessary to search for and select a particular meaning out of the diverse meanings a word is capable of, according to lexicographers”*. To stick to the context principle, while interpreting a term, it is always better to look for the meaning of the term within the act, rules, regulation as applicable.
- (iii) In this regard, I refer to the residual definition clause, in regulation 2 (2) in SECC 2012, which *inter alia* provides as under:

“(2) Words and expressions used and not defined in these regulations but defined in the Act, the Companies Act, 1956, the Securities and Exchange Board of India Act, 1992, the Depositories Act, 1996 or any rules or regulations made thereunder shall have the same meanings respectively assigned to them in those Acts, rules or regulations made thereunder or any statutory modification or re-enactment thereto, as the case may be.”*

[Reg 2(1)(a) defines- "Act" means the Securities Contracts (Regulation) Act, 1956 (42 of 1956);]*

- (iv) Taking guidance from the above, I refer to the provisions of Sec 2 (j) of Securities Contracts (Regulation) Act, 1956 (SCRA) for the purpose of defining the term 'stock exchange'. Sec 2(j) of SCRA provides as under:

"stock exchange" means -

- (a) *any body of individuals, whether incorporated or not, constituted before corporatisation and demutualisation under sections 4A and 4B, or*
- (b) *a body corporate incorporated under the Companies Act, 1956 (1 of 1956) whether under a scheme of corporatisation and demutualisation or otherwise, **for the purpose of assisting, regulating or controlling the business of buying, selling or dealing in securities.** (Emphasis supplied)*

- (v) In terms of the definition of term 'stock exchange' as defined above, if the investment activities matches with the activities of assisting, regulating or controlling the business of buying, selling or dealing in securities, then it can be fairly establish that these activities are related or incidental. Further the term 'securities' also needs to be kept in mind and which has been defined under sec 2(h) of SCRA in great detail.
- (vi) In the light of above discussions, I now proceed to record findings with respect to the issue whether the activities of entities in which stakes/shares/rights were acquired by the Noticee, were related or incidental to Noticee's activities as 'stock exchange'.

PXIL

- (vii) It is observed that during examination of this matter by SEBI, NSE vide email dated February 02, 2018 and July 23, 2019 informed that PXIL has been recognized by CERC as a Power Exchange for the purpose of providing the platform for Power Trading. Its activities are predominantly akin to the activities of a Stock Exchange except that instead of providing a platform for Trading in securities, it provides a platform for trading in power with a physical settlement facility. Having said this the Noticee submitted that the activities of PXIL are related to the activities of a Stock Exchange.
- (viii) From the above submission of Noticee, it is observed that PXIL is engaged in an activity which provides a trading platform for Trading in 'power'. This activity is regulated by CERC under Central Electricity Regulatory Commission (Power Market) Regulations, 2010. As per Regulation 2(1)(cc) of these regulations "Power Exchange" means the exchange registered under these regulations. Regulation 4 of these regulations defines the

kind of contracts which can be traded on Power Exchange. From the perusal of these provisions, it may be observed that not only the product which is traded on Power Exchange is different but the law, regulator etc. altogether different and no parallel can be drawn with respect to the term stock exchange under SECC 2012.

- (ix) It is thus observed that the term 'power' is not a 'security' in terms of sec 2(h) of SCRA. Secondly, PXIL's activity cannot be said to be related and incidental to activity of 'stock exchange' in terms of regulation 41(3) of SECC 2012, as this activity is not for the purpose of assisting, regulating or controlling the business of buying, selling or dealing in securities.

CAMS

- (x) NSE submitted that activities of CAMS are related to the activities of a Stock Exchange. CAMS, as a registrar and transfer agent for securities is an information technology enabled service provider, primarily providing services to mutual funds. CAMS' business is related and incidental to NSE's business since NSE provides mutual fund service system ("MFSS") platform to enable investors to purchase and redeem mutual fund units through NSE members on the platform. The transactions collected by the MFSS platform of NSE are processed by CAMS as a registrar and transfer agent for mutual funds.
- (xi) It may be observed that the activities of CAMS are that of a market intermediary which provides back-end services to market participants. Activities of market intermediaries may always be considered incidental to capital/securities market wherein buying and selling of the securities takes places. However, it is not related to function of the stock exchange which is for the purpose of assisting, regulating or controlling the business of buying, selling or dealing in securities as per SCRA as market infrastructure institutions ("MII") which is different from the activities specified for other intermediaries *viz.* Stock Broking, Depository participants, Credit Rating Agency, Mutual Funds, Registrar & Transfer Agents etc. cannot be considered as a related activity of a stock exchange in terms of definition of stock exchange under SCRA. Therefore, activities of CAMS are not related or incidental to activity as a stock exchange in terms of regulation 41(3), as this activity is not for the purpose of assisting, regulating or controlling the business of buying, selling or dealing in securities.

NSEIT Limited

- (xii) The Noticee submitted that NSEIT is involved in the business of information technology in the area of digital technology and testing services (“TCOE”) and information technology enabled service (“TTeS”) in the area of online assessments, infrastructure services, cyber security response centre and analytics services, development of software for the financial services, banking, capital market and other industries and works, in India or elsewhere. The Noticee relied upon the Jalan Committee Report and the judicial pronouncements in *V.V. Rana Vs. S. Dalmia, AIR 1968 Bom 347*, according to which stock exchanges should undertake related and incidental activities to promote their primary objective, including through support functions, investment in technology, establishment of market infrastructure, etc. As such, the Noticee submits that the business activities of NSEIT (i.e., information technology, infrastructure services, cyber security, etc. as set out above) are related and incidental to its activities as a stock exchange.
- (xiii) It is observed that investment in technology solutions for the purpose of increasing efficiency in the services provided by the stock exchange may be termed as a related activity to the stock exchange, but it cannot be extended to mean any acquisition in the IT sector as is the case with NSEIT which offers technology, consultancy, business analytics and development services spanning across industry domains such as banking, insurance and financial markets apart from capital markets. Therefore, the activities of NSEIT cannot be considered as a related activity of a stock exchange in terms of definition of stock exchange under SCRA. Therefore, activities of NSEIT are not related or incidental to activity as a stock exchange in terms of regulation 41(3) of SECC 2012, as this activity is not for the purpose of assisting, regulating or controlling the business of buying, selling or dealing in securities.

NEIL (NSDL EGov.)

- (xiv) It is submitted by the Noticee that the activities of NSDL EGov are related and incidental to the activities of the Noticee, as a stock exchange, and therefore, there does not exist any requirement for SEBI approval to be obtained under Regulation 41(3) of the SECC 2012. NSDL EGov provides technology infrastructure for e-governance projects of the central and state governments. The observations under the Jalan Committee Report and the judicial pronouncements, indicate that stock exchanges should undertake related and incidental activities to promote their primary objective, including through support

functions, investment in technology, establishment of market infrastructure, etc. Given that NSDL EGov is a provider of technology infrastructure, it is related and incidental to the activities of the Noticee, as a stock exchange.

- (xv) It is observed that NEIL provides technology infrastructure for e-Governance projects of Central/State Government etc. The services provided by NSDL e-Governance Infrastructure Limited are corporate services that includes IT consulting, Business Process Re-engineering etc., Retail services that includes EzeeWill to assist clients in succession planning & drafting their Will, PAN Card Issuance, Unique Identification Number enrollment (UID), National Pension System (NPS) registration, Vidyasaarathi to manage the online scholarship management, eSign for online electronic signature service to digitally sign a document etc (Source: www.egov-nsdl.co.in). Considering the said activities of NEIL, it is observed that the said activities of NEIL are activities which are beyond the activities undertaken by the stock exchange in terms of regulation 41(3), as this activity is not for the purpose of assisting, regulating or controlling the business of buying, selling or dealing in securities.

MSIL

- (xvi) The Noticee submitted that the activities of MSIL are related and incidental to the activities of the Noticee, as a stock exchange, and therefore, there does not exist any requirement for SEBI approval to be obtained under Regulation 41(3) of the SECC 2012. MSIL is engaged in the business of providing internet trading software for market participants. Having regard to the observations in the Jalan Committee Report as set out above, as well as the definition of a stock exchange as set out under the SCRA, it is evident that the business of Noticee encompasses assisting the business of buying, selling, or dealing in securities. MSIL provides the software/ application, which in turn enables the provisioning of the NOW on the on the mobile platform for trading purposes. In view of the same, the Noticee submits that the activities of MSIL are related and incidental to the Noticee activities as a stock exchange.
- (xvii) It is observed that MSIL provides Mobile Trading platform which provide ability to trade in securities, with added features like built-in charting tools, news feeds, conditional alerts and other tools, Mobile Banking platform to facilitate mobile banking services viz access account, make transfers, make deposit, payments, service request etc., Mobile insurance platform to facilitate various services to insurance agent, clients, insurance sector employees

relating to insurance sector and Intelligent Virtual Assistant to help retail banks engage deeply with consumers through personalized and proactive services over natural voice based conversations and chat messages. Considering the said activities of MSIL, it is found that the said activities of MSIL are activities which are beyond the activities undertaken by the stock exchange in terms of regulation 41(3) of SECC 2012, as this activity is not for the purpose of assisting, regulating or controlling the business of buying, selling or dealing in securities.

RXIL

- (xviii) It is submitted by the Noticee that the activities of RXIL are related and incidental to the activities of the Noticee, as a stock exchange, and therefore, there does not exist any requirement for SEBI approval to be obtained under Regulation 41(3) of the SECC 2012. RXIL is a common exchange platform for bills discounting by banks, corporates, etc., for which, the Noticee's earlier platform, 'NTREES' (a web based electronic platform for receivables discounting, in December, 2009) was transferred. Being an exchange platform providing the necessary infrastructure for banks, corporates, etc., to discount bills, and having regard to the fact that stock exchanges are expected to invest in market infrastructure, it is submitted that the activities of RXIL are related and incidental to the Noticee's activities as a stock exchange.
- (xix) It is observed that RXIL provides online platform for financial receivables and operates the Trade Receivables Discounting System (TReDS) Platform. The TReDS platform facilitate institutional mechanism for financing of trade receivables of MSMEs from corporate and other buyers, including Government Departments and Public Sector Undertakings (PSUs), through multiple financiers (source: the website of RXIL). Participants to the TReDS platform are (a) Sellers - The Sellers should be a MSME as defined under Section 7 of the Micro, Small and Medium Enterprises Development Act, 2006 ("MSMED Act"), supplying goods and / or services to buyers; (b) Buyers - Corporates including companies and other buyers including Government Departments and Public Sector Undertaking and such other entities as may be permitted by the Reserve Bank of India ("RBI") from time to time to participate on the TReDS platform as buyers; and (c) Financiers - Banks, NBFC Factors, and such other institutions as may be permitted by RBI from time to time to participate in the TReDS platform as Financiers.

- (xx) It is observed that the said activities of RXIL viz. trade receivables discounting system which involves traders supplying goods and / or services to buyers, financiers etc. are activities which are beyond the activities undertaken by the stock exchange in terms of regulation 41(3) of SECC 2012, as this activity is not for the purpose of assisting, regulating or controlling the business of buying, selling or dealing in securities. Further the findings in this regard related to PXIL are also relevant here.

Investments in activities through a subsidiary are not Noticee's Investment

34. As regards investment in these activities through a subsidiary, the Noticee submitted that these investments cannot be regarded as its investments. In this connection, the Noticee made the following submissions:

PXIL:

- (i) The Noticee has pointed out that in terms of the Notice it has been alleged that the Noticee has engaged in the activities of PXIL, since the Noticee: (i) is a promoter of PXIL; (ii) holds investment in PXIL; and (iii) has nominated just 2 of the 9 directors on the board of PXIL. It is reiterated that none of the three points above automatically lead to the conclusion that the Noticee has engaged in the activity of another entity. Indeed, it is a basic principle of corporate law that corporate entities have separate legal personalities and are to be treated independently of their shareholders. This principle was affirmed by the constitutional bench of the Supreme Court in *Tata Engineering and Locomotive Co. Ltd. v. State of Bihar and Ors.* (TELCO matter) wherein the following was observed:

“Once a company or a corporation is formed, the business which is carried on by the said company or corporation is the business of the company or corporation and is not the business of the citizens who get the company or corporation formed or incorporated, and the rights of the incorporated body must be judged on that footing and cannot be judged on the assumption that they are the rights attributable to the business of individual citizens.”

Noticee submitted that it holds a non-controlling stake in PXIL, i.e., 34.2%, and which stake will be further reduced, in accordance with regulatory framework applicable to PXIL. Further, by virtue of this non-controlling stake. As regards control, the Noticee has relied upon the orders of Hon'ble SAT in the matter of *Ashwin K. Doshi and others v. SEBI and others.*

CAMS:

- (ii) It is submitted by the Noticee that in view of the principles set out above, a one-time financial investment by NSE Investments in CAMS in December, 2013, does not constitute the Noticee ‘*engaging in*’ any activity insofar as activities of CAMS are concerned. Accordingly, Regulation 41(3), even on merits, is not attracted in the instant case. It is to be noted that NSE Investments initially held a 44.99% stake in CAMS. This was subsequently reduced to 37.50% in September, 2018. Further, in line with the communication dated September 4, 2020 from the Noticee, it has been decided to divest NSE Investment’s holding in CAMS through offer for sale in the forthcoming initial public offer (“**IPO**”) of CAMS and /or through a pre-IPO sale. The Noticee has reiterated submissions related to control and stated that none of the two points above automatically lead to the conclusion that the Noticee has engaged in the activity of another entity. Indeed, it is a basic principle of corporate law that corporate entities have separate legal personalities and are to be treated independently of their shareholders, as has also been confirmed by the Supreme Court in the Tata Engineering Case.

NSEIT Limited:

- (iii) It is submitted by the Noticee that NSEIT was promoted by the Noticee in 1999, and is a wholly owned subsidiary of NSE Investments. The information technology department of the Noticee was split into two entities in 1999, i.e., NSE Infotech and NSEIT. While NSE Infotech functioned as a captive IT company, i.e., catered solely to cater to the Noticee’s IT related requirements, NSEIT was established as a separated subsidiary to develop financial products to service and cater to the requirements of the other participants in the capital market, in addition to rendering the said services to the Noticee. NSEIT was a support function vis-à-vis the Noticee. The activities of NSEIT (i.e. information technology business as set out below) is activity carried on by NSEIT, with its own governing board, and its own charter documents, and under its own framework. NSEIT’s operations cannot be regarded as activity engaged in by the Noticee.

NEIL (NSDL EGov.)

- (iv) On the basis of the modification of the regulatory framework governing depositories, the depository and other businesses of NSDL were segregated through a scheme of arrangement in April 2012. In terms of this scheme, the depository business of NSDL was

transferred to a separate company, i.e. National Securities Depository Limited, and the other businesses were retained in the original entity, which was renamed as NSDL EGov in 2013. Shareholders of NSDL were issued shares in NSDL EGov. Therefore, no new deployment of capital or any investment was made by the Noticee. The investment made in 1996 in NSDL as a company now became investments held in the two companies emerging from a split of the NSDL. Given that the Noticee was a shareholder in the original undivided entity, it, consequent to the scheme of arrangement, was allotted equity shares in the entities where the segregated businesses were housed, i.e., NSDL EGov and National Securities Depository Limited. As such, this was not a new investment undertaken by the Noticee. It is also submitted that the Noticee holds a non-controlling stake in NSDL EGov, i.e., 25.05%.

MSIL

- (v) It is submitted that in view of the principles set out above, a one-time investment by NSE Investments in MSIL in November, 2011, does not constitute the Noticee '*engaging in*' any continuous actions by itself or being involved in the continuous activities of MSIL. Noticee submits that in terms of the Notice, it has been *inter alia* alleged that the Noticee has engaged in the activities of MSIL, since the Noticee: (i) holds investment in MSIL; and (ii) has the right to nominate 1 director out of 7 directors on the board of MSIL, in terms of the contractual arrangements. The Noticee reiterated that none of the points above automatically lead to the conclusion that the Noticee has engaged in the activity of another entity. Indeed, it is a basic principle of corporate law that corporate entities have separate legal personalities and are to be treated independently of their shareholders, as has also been confirmed by the Supreme Court in the Tata Engineering Case. It is also to be noted that the Noticee holds a non-controlling stake in MSIL, i.e., 30 %.

RXIL

- (vi) The Noticee submitted that a one-time investment by NSE Investments in RXIL in February, 2016, does not constitute the Noticee '*engaging in*' any continuous actions by itself or being involved in the continuous activities of RXIL. In terms of the Notice, it has been *inter alia* alleged that the Noticee has engaged in the activities of RXIL, since the Noticee: (i) is a promoter of RXIL; (ii) holds investment in RXIL; and (iii) has nominated 2 of the 7 directors on the board of RXIL. reiterated that none of the three points above automatically lead to the conclusion that the Noticee has engaged in the activity of another entity. Indeed,

it is a basic principle of corporate law that corporate entities have separate legal personalities and are to be treated independently of their shareholders, as confirmed by the Supreme Court in the Tata Engineering Case. It is to be noted that the Noticee holds a non-controlling stake in RXIL, i.e., 30 %.

35. I observe from the examination made by SEBI, the details of acquisition of the six entities in question are enumerated in the table below:

Sr. No.	Exchange/Exchange Subsidiary name	Entity name in which stakes/shares/rights acquired	Date of acquisition / Incorporation	% of acquisition	Details	Whether NSE* is Promoter?	Directorship nominated by NSE * as on Acquisition/Incorporation	Current Directorship (as on October 30, 2019) nominated by NSE*
1.	NSE	PXIL	20-Feb-2008	30.95%	Subsequent to the acquisition NSE transferred its stake to its subsidiary NSE Strategic Investment Corporation Limited (NSICL) on 22- July-2013	Yes jointly with NCDEX	Mr. Ravi Narain Ms. Chitra Ramkrishna	Mr. Yatrik Vin Mr. Ravi Varanasi
2.	NSE Strategic Investment Corporation Limited (NSICL); a wholly owned subsidiary of NSE	CAMS	24-Dec-2013	44.99%* *(NSICL divested 7.5% as on 06-09-2018. NSICL holding 37.50%)		No	Mr. M S Sundara Rajan Mr. Tarun Aiyar Ms. Bindu Ananth	Mr. J Ravichandran Mr. H N Sinor Mr. D K Mehrotra
3.	NSE	NSEIT Limited	29-Oct-1999	100%	Subsequent to the acquisition NSE transferred its stake to its subsidiary NSICL on 30-06-2013	Yes	Mr. R.H. Patil Mr. Ravi Narain Mr. Satish Naralkar	Mr. J. Ravichandran Mr. Yatrik Vin Mr. Muralidaran Krishnaswami
4.	NSE	NEIL	01-Apr-2012	25.05%	Subsequent to the acquisition NSE transferred its stake to its subsidiary NSICL on 30-09-2013	Yes (jointly IDBI and UTI originally). Now, no longer a Promoter.	Mr. Ravi Narain	Mr. J Ravichandran
5.	NSE	MSIL	30-Nov-2011	30%	Subsequent to the acquisition NSE transferred its stake to its subsidiary	No	None	None

Sr. No.	Exchange/Exchange Subsidiary name	Entity name in which stakes/shares/rights acquired	Date of acquisition / Incorporation	% of acquisition	Details	Whether NSE* is Promoter?	Directorship nominated by NSE * as on Acquisition/Incorporation	Current Directorship (as on October 30, 2019) nominated by NSE*
					NSICL on 28-03-2013			
6.	NSICL; a wholly owned subsidiary of NSE	RXIL	25-Feb-2016	30%		Yes jointly with SIDBI	Mr. Mukesh Agarwal Mr. Tarun Aiyar	Mr. Mukesh Agarwal Mr. Ketan Gaikwad

36. (i) **PXIL:** From the above table it is observed that NSE acquired 30.95% stake in PXIL on February 20, 2008 and subsequently transferred its stake to its subsidiary NSICL on July 22, 2013 and continued thereafter. by NSE is one of the promoter in PXIL and has acquired shareholding as well as nominated directors in the Board of PXIL through which it had engaged in the activities of PXIL.

(ii) **CAMS:** NSE acquired 45% stake in CAMS in the year 2013 through its wholly owned subsidiary NSICL. Subsequently NSE diluted 7.50% stake in CAMS as on September 06, 2018 and continued to hold 37.50% thereafter. It is also observed that : (i) In terms of the Shareholders Agreement dated December 16, 2013 (upon acquisition of shares in CAMS by NSICL) between CAMS and its shareholders, the Board Composition of CAMS will consist of 7 (seven) Directors of which NSICL shall be entitled to nominate and maintain 3 (three) Directors and other shareholder namely HDFC and Acsys shall be entitled to nominate and maintain 2 (two) Directors each, (ii) In terms of the Shareholders Agreement dated March 07, 2018 (upon dilution of 7.5% stake in CAMS by NSICL) between CAMS and its shareholders, the Board Composition of CAMS will consist of 8 (eight) Directors of which NSICL shall be entitled to nominate and maintain 3 (three) Directors and other major shareholder Great Terrain Investment Ltd shall also be entitled to nominate and maintain 3 (three) Directors each.

(iii) **NSEIT:** NSEIT was promoted by NSE in the year 1999 as a wholly owned Subsidiary and thereby held 100% stake in NSEIT. Subsequently, the entire stake was transferred to NSICL in June 2013 and continued thereafter. Further, it is noted that NSE is promoter in NSEIT Ltd and has acquired shareholding as well as nominated directors in the Board of NSEIT Limited through which it has engaged in the activities of NSEIT

(iv) **NEIL:** NSE hold 25.05% stake in NEIL which was originally promoted as NSDL in 1995 by NSE and other financial institutions. NSDL was renamed as NEIL in the year 2013 on account of

a scheme of demerger through which the depository undertaking of NSDL was transferred to a separate company namely National Securities Depository Limited. Pursuant to transfer of depository undertaking to another company, the NEIL ceased to act as a depository under the Depositories Act, 1996. NSE subsequently transferred its stake in NEIL to its subsidiary NSICL on September 30, 2013 and continued thereafter (**Source:** www.egov-nsdl.co.in). Further, it was observed that NSE was one of the promoter in NEIL and has acquired shareholding as well as nominated directors in the Board of NEIL through which it has engaged in the activities of NEIL.

(v) MSIL: NSE acquired 30% stake in Market Simplified India Limited on November 30, 2011 and subsequently transferred its stake to its subsidiary NSICL on March 28, 2013 and continued thereafter. Further, it was observed that NSE has not nominated any director in MSIL, however it has acquired shareholding and has right to nominate director as per the shareholding agreement dated December 03, 2010 through which it can be stated as engaged in the activities of MSIL.

(vi) RXIL: NSE acquired 30% stake in RXIL on February 25, 2016 through its wholly owned subsidiary NSICL and continued thereafter. Further, it was observed that NSE is one of the promoter in RXIL and has acquired shareholding as well as nominated directors in the Board of RXIL through which it can be stated as engaged in the activities of RXIL.

37. In short the objection of Noticee is twofold *viz*: (i) Investment is by its wholly owned subsidiary and not by the Noticee, and (ii) Wholly owned subsidiary is not in control over the investee company. In support of its first objection the Noticee has relied upon a ruling in TELCO matter. The objection seems to be that a subsidiary company is independent of its holding company. Now as the law has developed, the courts have laid down principles when a corporate veil can be lifted or pierced, to look at and take into account, the shareholders or entities in actual control of the company concerned. In this regard, the Hon'ble Supreme Court in LIC Vs. Escorts [(1986) 1 SCC 264] took the opportunity to set out the basic conditions and principles to be applied and the various circumstances under which the corporate veil of a company could be pierced, i.e. to cast responsibility or liability for an act carried out by the company. Such acts would include fraud or improper conduct, the evasion of a taxing or a beneficent statute or where associated companies are inextricably connected as to be, in reality, part of one concern and should therefore, be treated as such. In another landmark decision of the Supreme Court in *New Horizons Ltd. v. Union of India*, [(1995) 1 SCC 478] the court observed that the corporate veil may be lifted and the independence of the corporate entity disregarded, in cases where the principle of corporate personality is flagrantly opposed to justice, convenience, or in the interest of revenue. Applying the said principles, I am of

the view that this case is a fit case for lifting of corporate veil as the Noticee and its 100% owned subsidiary NSICL is closely connected. It may be noted that regulation 41(3) of SECC 2012 is an enabling provision and not a plain prohibitory provision. While it prohibits MIIs to carry out unrelated or non-incidental activities, it also allows them to undertake such activities through a separate legal entity but with the permission of SEBI. Therefore, an exception is in built in this provision. However, it is a settled position that in order to avail any relaxation/exemption/exception from the obligation under the rule, the attendant conditions therefor must be complied with. Further, the conditions of exemption are subject to strict interpretation. It is amply clear that in order to undertake *unrelated* and *non – incidental* activities, both the conditions namely; (i) to undertake such activities through a separate legal entity and (ii) with the permission of SEBI, under Regulation 41(3), being mutually inclusive, must be fulfilled by the recognized stock exchange; and if both or either of them is not fulfilled the benefit of exception under regulation 41(3) will not be available. In the present case there is no doubt that the investment arm of Noticee is 100% owned subsidiary and the subsidiary is found to be involved in an unrelated and non-incidental activity without permission of SEBI. Therefore, it is observed that the Noticee engaged in the activities of investee companies. Further, either way whether the corporate veil is lifted or not, the Noticee is on the wrong side. If corporate veil is lifted then the investments have not been segregated by the Noticee, and if the veil is not lifted then the permissions of SEBI to undertake unrelated and non-incidental activities through a separate legal entity have not been taken by the Noticee. As regards the second leg of the argument of ‘control’ in the investee company, I do not find such a pre-condition for invoking and applying the provisions of regulation 41(3) of SECC 2012. However, I find that the investments of Noticee’s 100% owned subsidiary in investee companies are substantial in nature i.e. from 25.05% to 100%. In terms of regulation 3 of Takeover Regulations 2011, acquisition of 25% or more voting rights by an acquirer in a target company is considered as substantial acquisition. In the present case though the investee companies may not be listed entities but the parallel is drawn to arrive at a finding that these investments were substantial in nature.

38. In view of aforesaid discussions, I now sum up my findings as under:

- (i) That the matter, before me, does not suffer from any infirmity on account of delay for the reasons recorded in para 31 (i) above;
- (ii) That the charge in the SCN is clear in view of reasons recorded in para 31(ii) above;
- (iii) That the SECC Regulations are not being applied with retrospective effect for the reasons detailed in para 31(iii) above;

- (iv) That the present proceedings are saved under regulation 52 of SECC 2018 for the reasons detailed in para 31(iv) above;
- (v) That the investment activities as observed in this case by the Noticee, through its 100% owned subsidiary, are not related and incidental to activity of 'stock exchange' in terms of regulation 38(2) of SECC 2018 read with regulation 41(3) of SECC 2012, for the detailed reasons as recorded in para 33 above, and further these activities were undertaken without approval of SEBI;
- (vi) That the Noticee engaged in the activities of investee companies for the reasons recorded in paras 35, 36 and 37 above.

39. In view of the above, it is concluded that Noticee had engaged, directly and/ or through its wholly owned subsidiary NSICL, in activities that are unrelated/non-incidental to its activities as a stock exchange by way of acquisition of stake in PXIL, CAMS, NSEIT Limited, NEIL, MSIL, and RXIL without seeking approval of SEBI and thus, it has violated the provisions of regulation 38(2) of SECC 2018 read with regulation 41(3) of SECC 2012. I observe that each investment activities constitute an independent violation and as such there are six instances of violations of the provisions of regulation 38(2) of SECC 2018 read with regulation 41(3) of SECC 2012. The breach in the facts and circumstances as found hereinabove, in my view deserves imposition of monetary penalty upon the Noticee under section 15HB of the SEBI Act.

40. For the purpose of adjudication of quantum of penalty, it is relevant to mention that under section 15-I of the SEBI Act, imposition of penalty is linked to the subjective satisfaction of the Adjudicating Officer. The words in the section that "*he may impose such penalty*" are of considerable significance, especially in view of the guidelines provided by the legislature in section 15J. Further, while adjudging the quantum of penalty the adjudicating officer has discretion and such discretion should be exercised having due regard to the factors specified in section 15J. The factors stipulated in Section 15J of the SEBI Act, which reads as follows:

15J- Factors to be taken into account by the adjudicating officer

While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-

- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*
- (b) the amount of loss caused to an investor or group of investor/ +s as a result of the default;*
- (c) the repetitive nature of the default.*

Explanation-

For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.

41. Having regard to the factors listed in section 15J and the guidelines issued by Hon'ble Supreme Court of India in *SEBI Vs Bhavesh Pabari Civil Appeal No(S).11311 of 2013* vide judgement dated February 28, 2019, it is noted that from the material available on record that any quantifiable loss suffered by the investors as a result of the default in this case cannot be computed. However, it can be said that the Noticee have benefited out of these investments in substantial terms. In this regard, as an example, I refer to one of the auditor report of NSICL, as on March 31, 2018, from which it is observed that NSICL paid ₹ 47.90 crores as dividend to the Noticee. It is further observed that NSICL received dividend of ₹ 1 crore from NSEIT, ₹ 43.21 crores from CAMS, ₹ 6.51 crores from NSDL-Egov. It is also observed that though there are no investor complaints on record arising out of such lapses, the violation in this case are serious in nature. I also note that the Noticee has failed to take corrective steps and they have not furnished any material to suggest that they now have applied for post facto approval of SEBI under regulation 41(3) of the SECC 2012 about the said investments. The Noticee, being the leading regulated stock exchange in India, should have set higher standards of compliance which is found lacking in the present case. Further, the violation is repetitive in nature and has continued for a long period.
42. I observe that there is a lot of policy importance attached to the provisions of regulation 41(3) of SECC 2012 as it deals with to resolve the conflict issues of MIIs. The compliance of this provision also provide ring fencing to the Noticee from the challenges, such as net worth erosion due to financial losses, bankruptcy etc. The importance of compliance with reg. 41(3) of SECC 2012 is further evident from the fact that any irregularity, or misconduct in other business activities, if done by the entity like Noticee, may cost it dearly and it may lead to violation of the condition of grant of recognition i.e. to be a fit and proper person, if that irregularity or the misconduct has a potential to affect Noticee's general reputation, record of fairness and integrity, including but not limited to:
- (i) financial integrity;
 - (ii) good reputation and character; and
 - (iii) honesty;
43. The fit and proper criteria for consideration of grant of recognition to the stock exchange has been dealt in detail under regulation 7 read with regulation 20 of SECC 2012. In other words, compliance with regulation 41(3) of SECC 2012, will save an important MII of the securities market from

disqualification in case of any disciplinary action by other agencies. Such nature of default with regard to non-adherence to the laid down obligations under the SECC Regulations as observed in this case would compromise the regulatory framework and should be dealt with by imposing monetary penalty so as to send an effective message to the market participants as a whole.

44. Taking into consideration all the facts and circumstances of the case including the aforesaid 15] factors and exercising the powers conferred upon me under section 15I of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose a monetary penalty under section 15HB of the SEBI Act against the Noticee for carrying out activities which are unrelated/non-incidental to its activities as a stock exchange through the acquisition of stake in six entities, as mentioned in the table below:

Sl. No.	Name of the entity in which unrelated/non-incidental activities were carried out by the Noticee	Penalty Amount under section 15HB of the SEBI Act (In ₹)
1	Power Exchange India Limited	1,00,00,000
2	Computer Age Management Systems Pvt. Ltd	1,00,00,000
3	NSEIT Ltd.	1,00,00,000
4	NSDL E-Governance Infrastructure Ltd.	1,00,00,000
5	Market Simplified India Ltd.	1,00,00,000
6	Receivables Exchange of India Ltd.	1,00,00,000
Total Penalty Amount		6,00,00,000

45. In my view, the aforementioned consolidated penalty amount of ₹ 6,00,00,000/- (Rupees Six Crores Only) is commensurate with the violation of regulation 38(2) of SECC 2018 read with regulation 41(3) of SECC 2012 as committed by the Noticee in this case.
46. The Noticee shall remit / pay the said total amount of penalty within 45 days of receipt of this order in either of the way of demand draft in favour of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai, or by following the path at SEBI website www.sebi.gov.in, ENFORCEMENT > Orders > Orders of AO > PAY NOW; OR by using the web link <https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html>. In case of any difficulties in payment of penalties, the Noticee may contact the support at portalhelp@sebi.gov.in
47. The Demand Draft or details and confirmation of e-payment made in the format as given in table below should be sent to "The Division Chief, EFD-DRA-III, Securities and Exchange Board of India, SEBI Bhavan, Plot no. C- 4A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051" and also to e-mail id:- tad@sebi.gov.in.

1	Case Name	
2	Name of the 'Payer/Noticee'	
3	Date of Payment	
4	Amount Paid	
5	Transaction No.	
6	Bank Details in which payment is made	
7	Payment is made for (like penalties along with order details)	

48. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties.
49. In terms of Rule 6 of the Adjudication Rules, copies of this order are sent to the Noticee and also to SEBI.

Date: October 01, 2020

Place: Mumbai

Amit Pradhan

Adjudicating Officer