

**BEFORE THE ADJUDICATING OFFICER SECURITIES AND EXCHANGE BOARD
OF INDIA [ADJUDICATION ORDER NO. Order/MC/DS/2020-2021/9097]**

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

In respect of –

1. **Advent Stock Broking Pvt. Ltd. (PAN: AAFCA5410Q)** having address at -
3B, Lal Bazar Street, G-3 Ground Floor, Kolkata – 700001.

In the matter of NSE Co-Location.

BACKGROUND

1. Securities and Exchange Board of India (hereinafter be referred to as, the “**SEBI**”), initiated adjudication proceedings under Section 15HA and 15HB of SEBI Act, 1992 (hereinafter be referred to as, the “**SEBI Act**”), read with Regulation 26(xvi) and 26(xx) of SEBI (Stock Brokers) Regulations, 1992 (hereinafter referred to as '**Stock Broker Regulations**') against Advent Stock Broking Pvt. Ltd. (hereinafter referred to as '**the Noticee / Advent / You**'). Adjudication proceedings were initiated against the Noticee for the alleged violation of Point 2(a) of Chapter V of NSE bye-laws read with Clause A(5) of the Code of Conduct specified under Schedule II read with regulation 9(f) of the Stock Broker Regulations, Clause A(2) of the Code of Conduct specified under Schedule II read with regulation 9(f) of the Stock Broker Regulations and Regulations 3(b), 3(c), 3(d) and 4(1) of Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as '**PFUTP Regulations**') read with Sections 12A(a), 12A (b) & 12 A(c) of SEBI Act.

APPOINTMENT OF ADJUDICATING OFFICER

2. SEBI appointed the undersigned as Adjudicating Officer (hereinafter referred to as “**AO**”) vide order dated July 3, 2020 to inquire into and adjudge under section 15HA and 15HB of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act**'), the aforesaid alleged violations against the Noticee. The appointment of the AO was communicated vide order dated July 14, 2020.

SHOW CAUSE NOTICE, REPLY AND HEARING

3. Show Cause Notice No. EAD5/MC/DPS/12174/2020 dated July 23, 2020 (hereinafter be referred to as, the “**SCN**”) was served upon the Noticee under Rule 4(1) of the Adjudication Rules to show cause as to why an inquiry should not be held and penalty be not imposed against it under Section 15HA and 15HB of SEBI Act, 1992, for the alleged violations of Point 2(a) of Chapter V of NSE bye-laws read with Clause A(5) of the Code of Conduct specified under Schedule II read with regulation 9(f) of the Stock Broker Regulations, Clause A(2) of the Code of Conduct specified under Schedule II read with regulation 9(f) of the Stock Broker Regulations and Regulations 3(b), 3(c), 3(d) and 4(1) of PFUTP Regulations read with Sections 12A(a), 12A (b) & 12 A(c) of SEBI Act..
4. The allegations levelled against the Noticee in the SCN are summarized as below:
5. SEBI had received multiple complaints pertaining to allegations of malpractices with respect to the co-location facility being provided by the National Stock Exchange of India Ltd. (NSE). In the wake of allegations of preferential access to Tick-by-Tick (TBT) data feed given by NSE to certain trading members (TMs), the matter was taken up for investigation by SEBI. The relevant findings of the investigation are given below.

6. Noticee was one of the trading members identified for comprehensive investigation (including forensic audit) for primary and secondary server connects. Ernst & Young LLP, India (hereinafter referred to as 'EY') was entrusted with the comprehensive forensic audit of Noticee, which submitted the final report to SEBI, the EY Report in October 2019.
7. The period for the investigation with respect to the various segments are given below:

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

8. The investigation period as above, covers the period from the time of introduction of TBT data dissemination through TCP/IP till the date of introduction of MTBT (Multicast Tick-by-Tick) by NSE in the respective segments.

9. The SEBI Registration of the Noticee active as on February 10, 2020 was as follows

Trading Member [SEBI Reg. No.: INZ000268635]				
Exchange	Segments			
	CM	FO	CD	Commodity Derivatives
NSE	Yes	Yes	Yes	No
BSE	Yes	Yes	Yes	No

10. The Noticee operations as on February 10, 2020 were as follows:

Sl. No.	Description	Nos.
1	No. of Branches	NIL
2	No. of Sub-Brokers	NIL
3	No. of Authorized persons	NIL
4	No. of Terminals	4
5	No. of Clients	NIL

11.EY made the following findings/ observations w.r.t. Noticee:

A. Issues pertaining to connection to the secondary server:

Based on review of logs, it was observed that:

- i. Noticee connected on to the secondary server for 234 trading days in CM and 17 trading days in FO segment during the review period. Noticee did not connect to the secondary server in CD/IRF segment during the review period.

Year	2010	2011	2012	2013	2014
Number of trading days connected to the secondary server in CM segment	-	-	-	105	129
Number of trading days connected to the secondary server in FO segment	-	-	-	-	17

- ii. On 199 trading days, Noticee connected only to secondary server, in CM segment during the review period.

Year	2010	2011	2012	2013	2014
Number of trading days connected to the secondary server in CM segment	-	-	-	80	119

- iii. Noticee was not reprimanded by NSE for connections made to secondary server. Noticee connected first to secondary server on 72 trading days in CM segment during the review period. Below mentioned is the year wise breakup of the same:

Year	2010	2011	2012	2013	2014
Number of trading days connected first to the secondary server in CM segment	-	-	-	29	43

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

Noticee in its statement dated May 02, 2019 to SEBI mentioned that changes to parameters i.e. change from primary server to secondary server were managed by it or its IT team. Noticee also mentioned that it was not aware of any potential advantage of connection to secondary

server. It further mentioned that it did not observe any advantage on secondary server. Moreover, in case of login/ connectivity issues on primary server, connections were made to secondary server.

C. Issues pertaining to first connect:

- i. Noticee logged in first on either of the ports on 106 trading days in CM segment and 1 trading day in FO segment respectively. Based on log analysis, it was observed that Noticee did not log in first on either of the ports on CD/IRF segment.

Segment	2010	2011	2012	2013	2014	Total
Number of trading days ranked first in CM segment	-	-	-	29	77	106
Number of trading days ranked first in FO segment	-	-	-	-	1	1

- ii. Based on log analysis, it was noted that median login time of Noticee during the review period for CM segment was 8.10 am. Noticee logged in before 08:00 am on 135 trading days in CM segment during the review period. Below mentioned is the year wise break-up of the same:

Segment	2010	2011	2012	2013	2014
Number of trading days logged in before 08:00 am in CM segment.	-	-	-	16	119

- iii. Knowledge of potential early login advantage:
Noticee informed that they were not aware of early login advantage. Also, it was not aware of being connected first to the TBT server.

12. Submissions by the Noticee:

- A. SEBI issued letter no. SEBI/HO/IVD/2019/10346/1 dated April 24, 2019 to Noticee, informing about the initiation of comprehensive forensic audit of Noticee and directing it to co-operate with the auditors. Additionally, summons dated April 24, 2019 were served on Rishi Kumar Somani, Director of Noticee, to appear before the Investigating Authority on May

02, 2019 and to compel production of documents before the Investigating Authority.

- B. On May 02, 2019, Rishi Kumar Somani (Director, Noticee), appeared before the Investigating Authority. Director, Noticee was examined on oath and his statement was recorded.

13. Observations based on EY Report and Noticee's reply:

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

Segment	TCP TBT Introduction Dates	Multicast TBT Introduction Dates
FO	June 01, 2010	April 07, 2014
CM	July, 2010	November 10, 2014
CD	March 16, 2011	April 7, 2014

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

14. Consideration of TBT TCP/IP server architecture post February 02, 2012:

15. TBT architecture at the exchange changed over the period of time since its introduction in 2010. Also, the number of dissemination servers were increased as the demand for TBT connections increased. It was observed that during the period from June, 2010 to February 02, 2012, NSE had classified same server as primary server for a set of TMs and secondary for another set of different TMs.

16. Reliable data is not available for period prior to February 02, 2012. Hence, for the purpose of analysis, NSE's TBT TCP/IP server architecture post February 02, 2012 was considered.

17. Connection to secondary server:

18. Secondary server was provided by NSE in order to enable members to connect to the same in case of disconnection / failure to connect to primary server. NSE had issued colocation guidelines. This is apparent from Clause 2 of the colocation guidelines issued by NSE (Document no SEIL/ITSM/INT/072, revised on April 16, 2012), which reads as: *“Member’s should always check the secondary TBT parameters are working fine with their application in case of non-availability of data from TBT primary source they can move to secondary source.”*

19. It was observed that Noticee had frequently connected to the secondary server in the CM segment, during calendar years 2013 and 2014. Noticee connected on to the secondary server for 238 trading days in CM and 17 trading days in FO segment during the review period. Noticee did not connect to the secondary server in CD/IRF segment during the review period.

Year	2010	2011	2012	2013	2014
Number of trading days connected to the secondary server in CM segment	-	-	-	99	139
Number of trading days connected to the secondary server in FO segment	-	-	-	-	17

20. Further, on 202 trading days, Noticee connected only to secondary server, in CM segment during the review period.

Year	2010	2011	2012	2013	2014
Number of trading days connected to the secondary server in CM segment	-	-	-	80	122

21. Noticee was not reprimanded by NSE for connections made to secondary server.

22. Noticee connected first to either ports of secondary server on 72 trading days in CM segment during the review period. Below mentioned is the year wise breakup of the same:

Year	2010	2011	2012	2013	2014
Number of trading days connected first to the secondary server in CM segment	-	-	-	29	43

23. From the submissions made by Noticee it was observed that:

- i. Noticee used to connect to primary servers, however, if the login was not happening on primary server (after trying for around 20-30 minutes), they used to connect to secondary server. This would have happened very rarely across all the 3 segments, viz. FO, CM and CD. Connection to secondary server happened post market opening.
- ii. Shri Somani / his team used to change the parameters for login to secondary server. He was trained on the same by Noticee's hardware vendor (Diamond). There was a default IP of NSE TBT server to which the colo server connected. They used to change that default IP to secondary IP of NSE in case of any login issue.
- iii. Logins to secondary server were made on account of login failures to primary server. There might have been more login issues in CM segment which resulted in Noticee connecting to secondary server.
- iv. On the query regarding connection only to secondary server (and not to primary servers) in CM segment for 199 trading days from October 15, 2010 to November 9, 2014, Shri Somani said that they might have forgotten to change the parameters for connecting to primary servers and instead secondary server parameters may have continued. Shri Somani further submitted that he had no knowledge of ever connecting to only to the secondary server.

24. From the data it was observed that during 2013 and 2014 (till November 09, 2014) Noticee had connected to the secondary server in the CM segment

before 9:00 a.m. on 210 days. Therefore, the submission made by Noticee that “*connection to secondary server happened post market opening*” is inconsistent with the time of actual connections to secondary server made by the TM.

25. Summary of observations made regarding secondary server connections made by Noticee during the review period:

Particulars	Noticee
No. of trading days connected to secondary server on CM	238 days
No. of trading days connected to secondary server on CD	NIL
No. of trading days connected to secondary server on FO	17 days
Whether reprimand emails were sent by NSE for connecting to secondary server on either of the segment	No
No. of trading days when member connected only to secondary server in either segment	202 days
Change in TBT connections parameters handled by	Noticee itself
Had heard hearsay information about secondary server advantage	No
Algo vendors used	Omnesys
Whether there was a profit-sharing agreement with Algo vendors?	No

26. The colocation guidelines issued by NSE (Document no SEIL/ITSM/INT/072, revised on April 16, 2012) provides that: “*Member’s should always check the secondary TBT parameters are working fine with their application in case of non-availability of data from TBT primary source they can move to secondary source.*”

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

27. In view of above, it was alleged that Noticee being an intermediary failed to comply with operational guidelines and instructions issued by NSE and thereby failed to exercise due skill, care and diligence. Therefore, Noticee was alleged to be in violation of Point 2(a) of Chapter V of NSE bye-laws read with Clause A(5) of the Code of Conduct specified under Schedule II read with regulation 9(f) of the Stock Broker Regulations, Clause A(2) of the Code of Conduct specified under Schedule II read with regulation 9(f) of the Stock Broker Regulations. Further, it was also alleged that Noticee has connected to the secondary server, which was meant to be used in case of non-availability of data from TBT primary source, repeatedly without valid reason, thus it has indulged in unfair trade practices in violation of Regulations 3(b), 3(c), 3(d) and 4(1) of PFUTP Regulations read with Sections 12A(a), 12A (b) & 12 A(c) of SEBI Act.

28. The aforesaid provisions of law are mentioned below;

SEBI ACT

CHAPTER VA

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

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

12A. No person shall directly or indirectly—

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

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

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

PFUTP Regulations

3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

- (a) buy, sell or otherwise deal in securities in a fraudulent manner;*
- (b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made thereunder;*
- (c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;*
- (d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made thereunder.*

4. Prohibition of manipulative, fraudulent and unfair trade practice

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

SCHEDULE II

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

CODE OF CONDUCT FOR STOCK BROKERS

[Regulation 9]

A. General.

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

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

29. The aforesaid alleged violations, if established, make you liable for monetary penalty under Section 15HA and 15HB of the SEBI Act read with Regulation 26(xvi) and 26(xx) of Stock Broker Regulations, which reads as follows:

SEBI Act:

Penalty for fraudulent and unfair trade practices.

15HA. If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty which shall not be less than five lakh rupees but which may

extend to twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher.

Penalty for contravention where no separate penalty has been provided.

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

SEBI (STOCK-BROKERS) REGULATIONS, 1992

CHAPTER VI

PROCEDURE FOR ACTION IN CASE OF DEFAULT

Liability for monetary penalty.

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

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

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

30. The SCN was served to the Noticee and Noticee vide email dated August 4, 2020 requested for inspection of documents. In this regard, Noticee was informed vide email dated August 5, 2020, that the contents of the investigation report have been included in the SCN. Further, all the material relied upon for coming to the conclusion of the alleged violations has been included in the SCN and Noticee was advised to file its reply by August 25, 2020. An opportunity of hearing was also provided to the Noticee on August 26, 2020 vide said email dated August 5, 2020. Noticee vide letter dated August 25, 2020 filed its reply.

31. The submissions of the Noticee vide letter dated August 25, 2020 are reproduced below:

- a) The NSE Co-location ("Colo" or "NSE Colo") service is a legal, paid premium services to get tick by tick data faster and any broker / Trading Member (TM) who has availed the Colo facility has an advantage over those who have not availed the Colo facility. The entire purpose of availing the

Colo facility is high speed connectivity. Different data dissemination infrastructure speed is approved by SEBI and it is not required that different market participants need to have equal access to data dissemination speeds.

- b) We have learned that SEBI had issued Show Cause Notices in the NSE Colo matter to many other entities on similar lines as ours. During the course of such proceedings, a report, commissioned by Accel Trading and conducted by Indian Institute of Technology Madras professor Ramakrishna Pasumathy, was submitted to SEBI which counters the findings of separate investigations into this matter that SEBI had conducted over three years. This report establishes that brokers were far from benefitting from alleged preferential access or secondary connections. Thus we believe that as per this report, we are not in any position of advantage and also did not make any unfair gains.
- c) Further, NSE's Circular dated August 31, 2009 (Ref: NSE/MEM/12985) in respect of Colo facility contained no restriction on the usage of secondary server access. Till date, this is the only circular issued by NSE on colocation facility and the same merely informs the members of the introduction of the colocation services at the NSE premises. It only provides information as to the facilities that will be available at the colocation and the process for member applications.
- d) NSE Colocation Guidelines Document No. NSEIL/1TSM/1NT/072 dated August 8, 2011 ("Colocation Guidelines") contained no reference at all as regards the utilization of the Secondary Server.
- e) The updated Colocation Guidelines dated April 16, 2012 contained one of the 'processes' with regards to the Secondary Server and stated that "Member's should always check the secondary TBT parameters are working fine with their application in case of non-availability of data from TBT primary source they can move to secondary source". Thus, the updated 2012 Colocation Guidelines, that contained these 'processes' for improving the experience to TMs on the Colocation platform were only in the form of

guidelines / tips provided by NSE and were not binding upon the TMs. It only advised the TMs to connect to the Secondary Server for smooth functioning and did not bar the same as mentioned in the SCN. Also, the only way to check whether the TBT parameters were working fine with the application was by initiating a secondary server login and staying connected to it. Moreover, such guidelines were not available in public domain due to which Noticee was unaware of the same.

- f) In the absence of any regulation or norm in relation to the usage of the secondary server, there cannot be any allegation or questioning around the manner of connecting to the Secondary Server for reprimanding or punishing a TM accessing the Secondary Server.
- g) Large number of TMs, almost all on colocation, were connecting to the secondary server constantly. Had there been any restriction or regulation or rules setting out the conditions for secondary server access, none of the TMs would be connecting to the secondary server as frequently. For the same reason, NSE maintained no policing system, and therefore NSE never 'warned' or 'reprimanded' any TM for connecting to secondary server for the larger period of the TCP-IP regime, despite the fact that most of the Secondary Server connections were established by the TMs before the market opening hours.
- h) We would like to refer to NSE's submissions made in the proceedings before the Whole Time Member in the case of NSE Co-location. This submission states that the secondary server was always in 'active mode' and that the TMs were free to connect to the secondary server at all times, based on such TM's considerations. It was even clarified that NSE advised the TMs to stay connected to both primary and secondary servers to avoid suffering due to server failure [Reference - Para 8.2.16.3. of Order no. WTM/GM/EFD/03/2018-19 dated April 30, 2019 passed by Hon'ble Shri G. Mahalingam, Whole Time Member- In the matter of NSE Co-location ("WTM Order")]

- i) SEBI has itself admitted that there was no restriction, regulation or conditions regarding the usage and connection of the secondary server and that NSE had left the usage thereof to the discretion of the Trading Members, (Reference -WTM Order in the matter of NSE Colocation order).
- j) Several TMs had continuously raised complaints with NSE regarding disconnections, invariable latency and even receipt of incorrect data, even till 2014. For instance, email dated September 23, 2015 from VR Narasimhan of NSE to Vikas Komera of SEBI, (Annexure I to CFT Report) states as under:

"Point 5 - 'Details of Complaints received w.r.t. colo from members: All tickets relating to TBT"250+ (nearly every day) complaints raised by various members over 357 days period of alleged violation recorded on telephone at NSE Colo Support helpdesk related to issues with the primary infrastructure during the period of alleged violations. (Dec '12- May' 14)"
- k) Colo is a legitimate paid facility to allow faster access to data w.r.t. those who are not in Colo. Therefore, the question of preferential data cannot be applied w.r.t. any non Colo access. Besides the Colo facility was available only for Algo trading, and as such no "Investor" was accessing the Colo facility, but rather algorithmic traders. Irrespective of whether a member accessed the primary or secondary server, by virtue of being in Colo, he had faster access to data than anyone who was not in Colo (i.e. "Investors"). Thus, there cannot be case that "Investors" were put at a disadvantage on account of secondary server login, or that they suffered any loss on this count.
- l) NSE's instruction to use of secondary line in case of failure or primary line seems ambiguous. What does "failure" mean in this context? Failure to provide all the packets of data while charging a premium price for Colo also comprises failure. We have already said we logged on to the secondary server only because neither the primary nor the secondary servers by themselves provided consecutive packets of data. We could make a more accurate order book only by combining the 2 server packets. Therefore the

secondary server login was not about speed, but accuracy. After paying a premium price, we are entitled to accurate data without the same our Algo can't function and will fail.

- m) If the secondary server was indeed providing us with any edge, we would have put all our servers on the secondary server. It is seen that on any given day where we had secondary login, we also had primary login, thus proving our point that we required both for accuracy and not speed.
- n) By 2012, NSE had stopped monitoring connections and that most brokers at Colo used secondary server, which means all were on equal footing anyways Advent Stock Broking Pvt Ltd only logged in to the secondary servers by 2013, by which time login to the secondary server had become a routine practice amongst all the Colo participants. NSE had already defacto accepted the same as a regular practice, which is the reason we were never reprimanded by NSE even once.
- o) Various tests/ reports have not proved that there was any speed advantage enjoyed by anyone on secondary vs primary.
- p) Further, we would like to draw your kind attention the following findings in the similar decided matters of NSE Co-location:
- q) We submit that there are other cases too where brokers have been charged for connecting to Secondary Server and thereby committing a fraud. However, the finding and allegation in the other case was that, "repeatedly connecting to the Secondary POP Server almost on a daily basis without valid reasons and ignoring NSE's warning/advisories, for the purpose of gaining an unfair advantage over the other TMs, ...can be stated to have indulged in 'unfair trade practice' in securities, which is prohibited under Regulation 4(1) of the PFUTP Regulations 2003.". In these matters SEBI has not only alleged and has given finding of unfair advantage but has also alleged and has come to a finding of unlawful gain.
- r) Please note that in our present matter, the charge of violation of PFUTP regulation levelled by your honour states that "the noticee has connected to the secondary server, which was meant to be used in case of non-availability

of data from TBT primary source, repeatedly without valid reason, thus it has indulged in unfair trade practices". There is no dimension of unfair advantage or undue gains, without which our alleged violation cannot be considered as a fraud and hence we are not liable to be punished under PFUTP regulation. Your honour is requested to kindly appreciate that in the matter of SMC, the Hon'ble AO has concluded that mere fact of secondary connection does not necessarily mean unfair advantage or unlawful gain. This finding of the Hon'ble AO in SMC has been accepted by the Board.

- s) We have been alleged to have violated the PFUTP Regulations, but it may kindly be noted that there is no charge against us of getting undue advantage or unlawful gain or of avoiding any loss unlawfully. This is in contrast to other matters decided by SEBI. In addition to the same, we were not reprimanded for the secondary server connections by NSE.
- t) Further in reference to the Adjudication Order bearing no.: ORDER/ SS/ SK/ 2019-20/4608 dated September 25, 2019, in the matter Of SMC Global Securities Ltd, the Noticee wherein had connected to the secondary server / fall-back server on 146 days in F&O segment and 603 days in cash segment during the review period. They have been charged only for not following the Guidelines dated April 16, 2012 of NSE thereby violating Clause A(2) of the Code of Conduct as specified in Schedule II of Regulation 9 read with Regulation 26 (xvi) of the SEBI (Stock-Brokers and Sub-Brokers) Regulations, 1992. Further, SMC Global was reprimanded by NSE on 4 occasions. Whereas, we received no reprimands from NSE in respect of the Secondary Server connections. SMC Global was not charged for "Fraud", however we have been charged for "Fraud" without any evidence suggesting that our case was different or is more serious than that of SMC in any manner.
- u) Although, the facts of the above matter are significantly similar to ours, despite the same we have been alleged to have violated the PFUTP Regulations. Whereas, SMC Global had made several more connections to the Secondary POP server, SEBI has not charged them for violation of

PFUTP Regulations. Notably, we have connected to the secondary server only on 17 days in F&O segment and 238 days in CM segment, which proportionately is less than that of SMC Global. It may kindly be noted that, the AO has supported this decision in SMC by stating that "any quantifiable gain or unfair advantage accrued to the Noticee or the extent of loss suffered by the investors as a result of the default in this case cannot be computed. There are no investor/s complaints on record arising out of such defaults."

- v) We submit that, there is no allegation of unfair advantage accrued/ loss suffered by investors, in our instant matter. Also, there are no investor complaints against us. Moreover, this order of Hon'ble Shri Santosh Shukla has been accepted and has not been reviewed by SEBI. Therefore, it becomes a binding judgement.
- w) We had requested your kind office vide our letter dated August 11, 2020, to furnish us the relevant material/ documents which distinguish our matter from that of SMC Global Securities Ltd. The same has not been furnished to us, which is sufficient to say that SEBI has no evidence against us for the alleged violation of PFUTP regulation. If there is any proof that substantiates the alleged PFUTP violation against us, we again request you to provide us with the same before taking a personal hearing in the matter, which is also a requisite of free and fair proceeding. Therefore, in consideration of the above facts, we humbly request your Honour to drop the said charge levied on us.

32. Hearing on August 26, 2020 was attended by Noticee's Authorised Representative (AR) – Mr. Farooqui Mohammed Khalid. AR of the Noticee reiterated the submissions made in the reply dated August 25, 2020 and submitted that it will be filing Report by IIT Madras Professor Shri Ramakrishna Pasumarthi by September 2, 2020. Accordingly, vide email dated August 28, 2020, Noticee filed the said report.

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

CONSIDERATION OF ISSUES AND FINDINGS

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

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

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

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

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

35. The charge against the Noticee is based on the fact that it frequently connected to the secondary server in the CM segment, during calendar years 2013 and 2014. Noticee connected on to the secondary server for 238 trading days in CM and 17 trading days in FO segment. On 202 trading days, Noticee connected only to secondary server, in CM segment during the review period. Noticee connected first to either ports of secondary server on 72 trading days in CM segment.
36. During 2013 and 2014 (till November 09, 2014) Noticee had connected to the secondary server in the CM segment before 9:00 a.m. on 210 days whereas in its submission Noticee had stated that "*connection to secondary server happened post market opening i.e. after market opening.*"
37. The Noticee has not disputed the aforesaid facts and has admitted that it connected to the secondary server on 17 days in F&O segment and 238 days in CM segment.
38. The relevant colocation guidelines issued by NSE (Document no SEIL/ITSM/INT/072, revised on April 16, 2012) provides that: "*Member's should always check the secondary TBT parameters are working fine with their application in case of non-availability of data from TBT primary source they can move to secondary source.*" The guidelines indicate that secondary source for TBT data is to be used in the event of non-availability of TBT primary source and that Trading Members should not routinely connect to the secondary server. The facts show that over a two year period, comprising roughly of around 500 trading days, the Noticee connected to the secondary server on 238 days in CM segment and 17 days in F&O segment. In other words, the Noticee connected to secondary server in violation of the NSE colocation guidelines almost 50% of the time during the period reviewed, thereby also failing to exercise due skill care and diligence in conducting its trading operations.

39. Noticee has made a contention that such guidelines were not available in public domain due to which Noticee was unaware of the same. This contention cannot be accepted as operational guidelines are addressed to all trading members of NSE and being unaware of guidelines cannot be accepted as an excuse for not following them.

40. Point 2(a) of Chapter V of the Exchange's Byelaws, *inter alia* provides that
“Trading member shall adhere to the Bye Laws, Rules and Regulations of the Exchange and shall comply with such operational parameters, rulings, notices, guidelines and instructions of the relevant authority as may be applicable.”

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

42. Noticee is also alleged to have indulged in unfair trade practice by repeatedly connecting to the secondary server. In this regard, Noticee has placed reliance to the Adjudication Order bearing no. ORDER/ SS/ SK/ 2019-20/4608 dated September 25, 2019, in the matter of SMC Global Securities Ltd (SMC). Noticee has contended that the facts of the SMC case is significantly similar to it, despite the same it has been charged for "Fraud" without any additional evidence. Noticee has also stated that there is no allegation of unfair advantage accrued/ loss suffered by investors nor any investor complaints against it.

43. In this regard, I note that the material on record does not establish any unfair gain or advantage which may have accrued to the Noticee as a result of connecting first to the secondary server. I also note that the Noticee was not reprimanded by NSE for the secondary server connections unlike some other

brokers. The material on record establishes that Noticee connected to secondary server, but does not state whether these were early connections vis-à-vis other brokers. While it is stated that Noticee had connected to the secondary server in the CM segment before 9:00 a.m. on 210 days, this does not bring out how early the connections were or early compared to which other brokers. There is also no material to say that the early connection could have benefitted the Noticee in any manner.

44. In view of the above, it cannot be said that the Noticee employed a device, artifice or scheme which would operate as a fraud upon investors. Thus it cannot be held that the Noticee violated provisions of Regulations 3(b), 3(c), and 3(d) of PFUTP Regulations read with Sections 12A(a), 12A (b) and 12 A(c) of SEBI Act.

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

in unfair trade practice in violation of Regulation 4(1) of the PFUTP Regulations.

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

&

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

46. As it is established that Noticee is in violation of Point 2(a) of Chapter V of NSE bye-laws read with Clause A(5) of the Code of Conduct specified under Schedule II read with regulation 9(f) of the Stock Broker Regulations, Clause A(2) of the Code of Conduct specified under Schedule II read with regulation 9(f) of the Stock Broker Regulations, and Regulation 4(1) of the PFUTP Regulations, I am of the view that it warrants imposition of monetary penalty under Section 15HB and 15HA of the SEBI Act on the Noticee, text of which is reproduced as under:

SEBI Act:

Penalty for contravention where no separate penalty has been provided.

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

Penalty for fraudulent and unfair trade practices.

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

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

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

48. I note that the material on record does not bring out any gains made or unfair advantage availed or loss caused to investors by the Noticee due to the aforesaid violation. The Noticee has connected to the secondary server connection roughly on 50% or 238 days out of total around 500 trading days in the CM segment during the period 2013 and 2014. The secondary server connections in the F&O segment are only on 17 days, which is not significant. I also note that the Noticee was not reprimanded or warned by NSE for the violations, unlike some other brokers who had more frequent secondary server connections.

49. Therefore, taking into account the facts and circumstances of this matter, I am of the view that a penalty of `5,00,000/- (Rupees Five Lakh only) under section 15HA and `1,00,000 under Section 15HB of SEBI Act will be commensurate with the violations committed by the Noticee.

ORDER

50. After taking into consideration all the facts and circumstances of the case, in exercise of powers conferred upon me under Section 15I(2) of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose a penalty of `5,00,000/- (Rupees Five Lakh only) under section 15HA and `1,00,000/- (Rupees One Lakh only) under section 15HB of the SEBI Act upon the Noticee i.e. Advent Stock Broking Pvt. Ltd. Total Penalty of `6,00,000/- (Rupees Six Lakh only).

51. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of "SEBI - Penalties

Remittable to Government of India”, payable at Mumbai, OR through online payment facility available on the SEBI website www.sebi.gov.in on the following path, by clicking on the payment link

ENFORCEMENT → Orders → Orders of AO → PAY NOW

52. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to the Enforcement Department – Division of Regulatory Action – III of SEBI. The Noticee shall provide the following details while forwarding DD/ payment information:

- a) Name and PAN of the entity (Noticee)
- b) Name of the case / matter
- c) Purpose of Payment – Payment of penalty under AO proceedings
- d) Bank Name and Account Number
- e) Transaction Number

53. Copy of this Adjudication Order is being sent to the Noticee and also to SEBI in terms of Rule 6 of the Adjudication Rules.

DATE: SEPTEMBER 22, 2020

PLACE: MUMBAI

MANINDER CHEEMA

ADJUDICATING OFFICER