

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Order Reserved On: 03.07.2023

Date of Decision : 12.07.2023

Misc. Application No. 178 of 2021

And

Appeal No. 166 of 2021

National Stock Exchange of India Limited
Exchange Plaza Block G, C 1,
Bandra Kurla Complex, G Block, BKC,
Bandra Kurla Complex,
Bandra East, Mumbai,
Maharashtra -40 005.

...Appellant

Versus

Securities and Exchange Board of India,
SEBI Bhavan,
Bandra-Kurla Complex,
Mumbai- 400 021

...Respondent

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

Mr. Rafique Dada, Senior Advocate with Mr. Manish Chhangani, Ms. Samreen Fatima, Mr. Sumit Yadav and Mr. Abhay Chauhan, Advocates i/b The Law Point for the Respondent – SEBI.

WITH

Appeal No. 167 of 2021

Mr. Ravi Narain
B-3, Diwan Shree Apartments,
30-, Firoz Shah Road,
New Delhi- 110 001

...Appellant

Versus

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

Mr. P. N. Modi, Senior Advocate with Mr. Neville Lashkari,
Advocate for the Appellant.

Mr. Rafique Dada, Senior Advocate with Mr. Manish
Chhangani, Ms. Samreen Fatima, Mr. Sumit Yadav and
Mr. Abhay Chauhan, Advocates i/b The Law Point for the
Respondent – SEBI.

**WITH
Appeal No. 168 of 2021**

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

Versus

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

Mr. Piyush Raheja, Advocate with Ms. S Priya, Advocate for
the appellant.

Mr. Rafique Dada, Senior Advocate with Mr. Manish
Chhangani, Ms. Samreen Fatima, Mr. Sumit Yadav and
Mr. Abhay Chauhan, Advocates i/b The Law Point for the
Respondent – SEBI.

AND
Appeal No. 369 of 2021

1. OPG Securities Pvt. Ltd.
First Floor, First Floor, 4/10,
Asaf Ali Road,
New Delhi- 110 002
 2. Mr. Sanjay Gupta
 3. Ms. Sangeeta Gupta
 4. Mr. Om Prakash Gupta
First Floor, 4/10,
Asaf Ali Road,
New Delhi- 110 002
- ...Appellants

Versus

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

...Respondent

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

Mr. Rafique Dada, Senior Advocate with Mr. Manish Chhangani, Ms. Samreen Fatima, Mr. Sumit Yadav and Mr. Abhay Chauhan, Advocates i/b The Law Point for the Respondent – SEBI.

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

Per: Justice Tarun Agarwala, Presiding Officer

1. Two separate orders have been passed by the Adjudicating Officer (“AO” for convenience) of the Securities and Exchange

Board of India (“SEBI” for convenience) imposing penalties upon the appellants. By an order dated February 10, 2021 the AO has imposed a penalty on National Stock Exchange of India Limited (“NSE” for convenience), Mr. Ravi Narain and Ms. Chitra Ramkrishna. Against this order three appeals have been filed namely Appeal No. 166 of 2021 by NSE, Appeal No. 167 of 2021 by Mr. Ravi Narain, Appeal No. 168 of 2021 by Ms. Chitra Ramkrishna. The AO has passed another order dated February 11, 2021 imposing a penalty upon OPG Securities Pvt. Ltd. and Ors. against which Appeal No. 369 of 2021 has been filed. Since the issue is common, all the appeal are being taken up together.

2. The background leading to the filing of the present appeal has been lucidly illustrated in the appeals filed by NSE and others in Appeal No. 333 of 2019 and other connected appeals against the order of the Whole Time Member (“WTM” for convenience) which was decided by this Tribunal on January 23, 2023 and is therefore not being repeated.

3. However, in brief, with regard to the colocation scam, a show cause notice dated 22.05.2017 was issued by the WTM

against 15 noticees. The show cause notice mainly contained the allegations regarding:

4. (i). the issue of preferential access given to certain TMs while disseminating the TBT data feed; (ii) the issue of access to Non-ISPs for laying of Dark fiber within the exchange premises; (iii) non-cooperation by NSE and its Officers; (iv) not acting on complaints forwarded to the exchange; (v) NSE failed to ensure trading in a transparent, fair and open manner and, consequently, failed to fulfil the objects envisaged in its MoA and the conditions of recognition.

5. Supplementary show cause notice was issued on July 31, 2018 and, in this way, notices initially issued to 15 noticees increased to 17 noticees.

6. Summary of allegations contained in 2017 show cause notice, 2018 show cause notice and supplementary show cause notice are as under:

- a. TCP/IP based TBT architecture was allegedly prone to manipulation which compromised market fairness and integrity. NSE did not consider the principles of fair and equitable access while taking a decision regarding the system architecture;

- b.* NSE allegedly failed to implement a 'randomizer' in its TBT architecture. Although, NSE had developed a randomizer in 2011 and implemented it for the Bucket POP servers, this was not implemented on TBT servers;
- c.* NSE allegedly failed to implement a load balancer and did not adhere to its policy for allocation of IPs, and more than 30 IPs were allocated on some ports in breach of the NSE's policies. This put members who were on more crowded ports at a disadvantage and provided an unfair advantage to members on less crowded ports;
- d.* NSE allegedly did not have defined policies and procedures with regard to Secondary Server access, and the guidelines were not issued as a circular. By selectively reprimanding some brokers connecting to the Secondary Servers (and not others), and allowing some brokers to continue connecting regularly to the Secondary Servers, NSE allegedly showed differential treatment to brokers;
- e.* NSE allegedly failed to maintain backups or records for:
- (i) The configuration file (which captured parameters like IP address, Port number and vendor file, and

sequence in which ports would receive TBT data); or

(ii) Requests for change of the configuration file by members.

f. There were allegedly no policies and procedures for allocation/mapping of the IPs of members to the dissemination servers, nor was there a Standard Operating Procedure (“SOP”) to deal with requests for change in IP mapping to a particular server. Such requests were left to the discretion of the NSE's Project Support and Management (“PSM”) Team, which has shown differential treatment / responses to members for such requests;

g. The Noticee has allegedly violated the provisions of Section 4 of the Securities Contracts (Regulation), Act 1956 (“SCRA”), by failing to fulfil its main object of ensuring fair dealing;

h. The Noticee has allegedly failed to comply with Regulation 48 of the Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations)

Regulations, 2012 (“SECC Regulations”) in view of its alleged failure to cooperate with SEBI, the SEBI External Committee appointed by SEBI, and the forensic auditor appointed by the Noticee on SEBI's direction, and to provide requisite information as sought by SEBI; and

- i.* The Noticee has allegedly failed to comply with Regulation 41(2) of the SECC Regulations by giving preferential access to certain trading members.
7. In addition to the above, 2018 show cause notice alleged:
- a.* NSE failed to comply with Regulation 42(2) of the SECC Regulations and Clause 3 of SEBI circular CIR/MRD/DP/07/2015 dated May 13, 2015 by failing to ensure fair, transparent and equitable access to all trading members in respect of the co-location facility;
 - b.* NSE failed to comply with clause 4(i) of SEBI circular CIR/MRD/DP/09/2012 dated March 30, 2012 by failing to have adequate controls and policies in respect of the Co-location facility, thereby making the system prone to manipulation; and

- c.* NSE and its employees allegedly violated Section 12A(a), (b) and (c) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “SEBI Act”), Regulations 3(a), 3(b), 3(c), 3(d) and 4(1) of the 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”) by colluding with OPG to provide preferential access to OPG, and thereby indulged in fraudulent and unfair trade practices.
- d.* It was alleged that OPG was constantly logging in across servers and OPG was aware of the weakness of the system architecture and the advantage of having first access in terms of trade. Further, OPG had designed the software in such a way that OPG could connect first and gain advantage.
- e.* It was also alleged that by assigning multiple IPs to OPG to a single Port by NSE allowed crowding by OPG enabling OPG to establish first, second, third and even fourth connection to the server and thereby in this regard OPG gained advantage over other stock brokers and, therefore, alleged NSE has acted in a fraudulent manner

and had indulged in fraud and unfair trade practices in the securities market.

- f.* It was further alleged that the manner in which OPG gained preferential access day after day on select servers indicate complete laxity and dereliction of duty on the part of NSE officials and employees and failed to prevent manipulation of the system and failed to ensure equal, fair and transparent access. It was alleged that by not taking preventive as well as curative measures proactively Mr. Ravi Narain and Ms. Chitra Ramkrishna facilitated fraud and manipulation by OPG.

8. The supplementary show cause notice further alleged:
- a.* that NSE gave inconsistent replies to Deloitte with respect to the identification of Primary and Secondary Servers and the data relating to the same; and
 - b.* that in view of absence of proper documentation and recording, NSE and its officials had given varied response.

9. Based on the above, the WTM framed the following issues:

“Issues on Merit:

Issue I: Whether the TCP-IP architecture for TBT data feed provided fair and equitable access to all the TMs;

Issue II: Whether access to Secondary Server had advantage of receiving information early and what was the mechanism in NSE to monitor the Secondary Server misuse?

Issue III: Whether NSE can be held liable for PFUTP violation under PFUTP Regulations, in the given circumstances?

Issue IV: If yes, (i) whether there was any role of employees of NSE in the violation and (ii) whether there was any non-cooperation on the part of NSE and its employees?

Issue No.1

10. Whether TCP-IP architecture for TBT data feed provided a fair and equitable access to all TM. This issue has been further sub-divided into:

- a. First connect/Early login
- b. Absence of randomiser
- c. IP allocation and load balancer”

11. The WTM after considering the material evidence on record found that most of the charges levelled against the

appellants were proved. The WTM accordingly by its order dated April 30, 2019 discharged 14 of 17 noticees and issued directions against three noticees, namely, NSE, Mr. Ravi Narain and Ms. Chitra Ramkrishna as under:-

- “a. National Stock Exchange of India Ltd. (hereinafter referred to as “NSE”), noticee no.1 to disgorge an amount of Rs.624.89 crores alongwith interest at the rate of 12% per annum with effect from 1st April, 2014 onwards to the Investor Protection and Education Fund (“IPEF” for short).*
- b. NSE is prohibited from accessing the securities market directly or indirectly for a period of 6 months from the date of the impugned order.*
- c. NSE to carry out System Audit at frequent intervals, after taking into consideration the changes in the technology.*
- d. NSE to reconstitute its Standing Committee on Technology at regular intervals.*
- e. NSE to frame a clear policy on administering whistle blower complaints.*

f. Mr. Ravi Narain, noticee no.2 to disgorge 25% of the salary drawn for Financial Years 2010-11 to 2012-13 to the IPEF.

g. Mr. Ravi Narain shall not associate with any listed company or a Market Infrastructure Institution or any other market intermediary for a period of five years.

h. Ms. Chitra Ramkrishna, noticee no.3 to disgorge 25% of the salary for Financial Year 2013-14.

i. Ms. Chitra Ramkrishna shall not associate with any listed company or a Market Infrastructure Institution or any other market intermediary for a period of five years.

j. NSE shall initiate an enquiry under its Employees Regulations against Mr. Mahesh Soparkar (Noticee No. 10) and Mr. Deviprasad Singh (Noticee No. 11) with respect to the findings contained in paragraph 8.4.7.6 of the impugned order and submit a report within 6 months.

k. Mr. Anand Subramanian (noticee no.4), Mr. Ravi Apte (noticee no.8), Mr. Umesh Jain (noticee no.9), Mr. R. Nandakumar (noticee no.5), Mr.

Mayur Sindhwad (noticee no.6), Mr. Ravi Varanasi (noticee no.7), Mr. Sankarson Banerjee (noticee no.12), Mr. G. Shenoy (noticee no.13), Mr. Suprabhat Lala (noticee no.14), Mr. Nagendra Kumar SRVS (noticee no.15), Mr. N. Murlidaran (noticee no.16) and Mr. Jagdish Joshi (noticee no.17) are discharged.

12. In addition to the above, the WTM has passed another order dated 30th April, 2019 prohibiting OPG Securities Pvt. Ltd. (hereinafter referred to as “OPG”) and other noticees from accessing the securities market for a period of five years and restraining OPG from taking any new clients for a period of one year. The WTM further directed OPG and its Directors to disgorge jointly and severally a sum of Rs.15.57 crores alongwith interest at the rate of 12% p.a. w.e.f. 7th April, 2014 onwards. Against the order of 30th April, 2019, OPG has filed Appeal no.184 of 2019.

13. Against the aforesaid two orders of the WTM five appeals were filed which were heard and decided together by a common order of this Tribunal dated January 23, 2023. This Tribunal found that most of the charges were not proved and accordingly allowed the appeals in part by issuing the following directions:-

“266. In view of the reasons given in the preceding paragraph:

- a. We set aside the order of the WTM directing disgorgement of an amount of Rs.624.89 cores alongwith interest at the rate of 12% p.a. against NSE.
- b. Directions given by the WTM prohibiting NSE from accessing the securities market, directly or indirectly, for a period of six months and, further, directing NSE to carry out system audit at frequent interval after thorough appraisal of the technological changes introduced from time to time is affirmed.
- c. We direct NSE to deposit a sum of Rs.100 crores to the Investor Protection and Education Fund created by SEBI. This amount will be adjusted by SEBI pursuant to the deposit already made by NSE vide our interim orders dated 22nd May, 2019 and 17th May, 2021. The excess amount alongwith interest accrued shall be refunded by SEBI within six weeks. The appeal of NSE is partly allowed.
- d. The direction to disgorge 25% of the salary from Mr. Ravi Narain and Ms. Chitra Ramkrishna is set aside.

e. The direction prohibiting Mr. Ravi Narain and Ms. Chitra Ramkrishna from associating with any listed Company or a market infrastructure institution or any other market intermediary for a period of five years is set aside and substituted for the period undergone by them. The appeals for Mr. Ravi Narain and Ms. Chitra Ramkrishna are allowed.

f. The direction of the WTM directing NSE to initiate enquiry against its employees is affirmed.

g. The violations committed by OPG as found by WTM is affirmed. However, the direction of the WTM directing OPG and its Directors to disgorge Rs.15.57 crores alongwith interest at the rate of 12% p.a. from 7th April, 2014 onwards is set aside. The matter is remitted to the WTM to decide the quantum of disgorgement afresh in the light of the observation made above within four months from today.

h. In addition to the above, we direct the WTM to consider the charge of connivance and collusion of OPG and its

Directors with any employee/officials of NSE. Further, the WTM will decide the issuance of direction/penalty concealment/destruction of vital information and will further reconsider Issue No.2 relating to crowding out other market participants.

i. All other directions issued against OPG and its Directors are affirmed. The appeal is partly allowed.

j. The intervention applications as well as the appeal of Mr. A. Kumar are rejected.”

14. On the same issue and on the same cause of action, the AO has issued a show cause notice dated January 04, 2019 against NSE, Mr. Ravi Narain and Ms. Chitra Ramkrishna and another show cause notice dated January 28, 2019 was issued against OPG Securities Pvt. Ltd. & Ors. The AO, after considering the material evidence on record passed the impugned order dated February 10, 2021 against NSE, Mr. Ravi Narain and Ms. Chitra Ramkrishna and another order dated February 11, 2021 against OPG Securities Pvt. Ltd. and Ors. imposing penalties.

15. We have heard Shri Somasekhar Sundaresan, the learned counsel, Shri P. N. Modi, the learned senior counsel, Shri Piyush Raheja, the learned counsel and Shri Ravichandra S. Hegde, the learned counsel for the appellants and Shri Rafique Dada, the learned senior counsel for the respondent.

16. The learned counsel for the appellants contended that the findings given by the AO is virtually the same as given by the WTM in its order which findings have been dealt with in detail by this Tribunal in its judgement dated January 23, 2023. It was urged, that the controversy involved in the present appeals is squarely covered by the decision of this Tribunal dated January 23, 2023 and, therefore, the appeals could be decided on the basis of the findings given by this Tribunal in its order of January 23, 2023. In this regard, the learned senior counsel Shri Dada, fairly conceded that the findings given by the AO in the impugned orders is virtually the same as given by the WTM in its orders and that the decision of this Tribunal squarely covers the issue.

17. It was urged that two findings against the NSE have been upheld by this Tribunal, namely, the finding relating to absence of randomizer and the finding relating to IP allocation and load

balancer and also the finding that there was no defined policy and procedure regarding access to secondary server.

18. It was urged, by the learned counsel for NSE that this Tribunal had imposed a penalty of Rs. 100 crores while considering the violations committed by the NSE and, therefore, contended that the penalty imposed by this Tribunal would cover the violation found by the AO. It was urged, that the penalty of Rs. 1 crore imposed by the AO should be set aside in view of the imposition of penalty by this Tribunal in its order of January 23, 2023.

19. On the other hand, it was urged by the learned senior counsel for the respondent that the proceedings initiated by the WTM under Chapter IV of the SEBI Act whereas the AO initiated proceedings for violation committed by the appellants under VI-A of the SEBI Act. Since two separate proceedings were validly initiated the penalty imposed was appropriate.

20. Having considered the submissions made by the learned counsel for the parties, we find that this Tribunal while setting aside the disgorgement held:-

“265...The SCRA Act confers a large responsibility upon the exchange to ensure that

undesirable transactions do not take place. Being a first level regulator it has a front line responsibility for regulation of the market and has a mandate to ensure compliance by the TMs of its own norms, guidelines and circulars. NSE has a duty to ensure transparency and fair access to all the TMs. For lapses committed by NSE directions under Sections 11 and 11B could be passed and some of the directions of the WTM were rightly passed. However, the direction for disgorgement was unwarranted but the appellant NSE cannot be allowed go scot free and is required to pay a price for the lack of due diligence on account of human failure to comply with the circular in letter and spirit. Though there are no parameters to quantify the lapse committed by NSE but taking into consideration all facts and circumstances of the case and the factors contemplated under Section 15J of the SEBI Act read with 23J of the SCRA Act and in exercise of the powers confirmed upon this Tribunal under Rules 21 of the Securities Appellate Tribunal (Procedure) Rules, 2000, we are of the opinion that NSE should pay a sum of Rs.100 crores for this lapse which is not expected from a first level regulator and which would act as a deterrent.”

21. The directions issued by the WTM under Section 11 & 11B was set aside by this Tribunal but the Tribunal held that he

NSE cannot go scot-free and taking into the factors contemplated under Section 15J which is under Chapter VI-A of the SEBI Act and in exercise of the powers conferred upon this Tribunal under Rules 21 of the Securities Appellate Tribunal (Procedure) Rules, 2000, the Tribunal imposed a penalty of Rs. 100 crores upon the appellant NSE for the lapse committed by them.

22. In our opinion, two penalties for the same violation cannot be imposed. Since we had already imposed a penalty of Rs. 100 crores upon NSE in our order dated January 23, 2023 which in our opinion is more than sufficient. The impugned order of the AO imposing a penalty of Rs. 1 crore against the appellant, thus, cannot be sustained and is quashed. The appeal of NSE is allowed.

23. Mr. Ravi Narain and Ms. Chitra Ramkrishna have been penalized Rs. 25 lakhs each by the AO. For the same violations the WTM had directed Mr. Ravi Narain and Ms. Chitra Ramkrishna to disgorge 25% of their salary and were also restrained from being associated with any listed company or a market infrastructure institution or any other market intermediary for a period of five years.

24. This Tribunal in its order of January 23, 2023 had set aside the directions for disgorgement and reduced the debarment from five years to the period undergone. This Tribunal noted in paragraph nos. 209, 210 and 211 as under:-

“209. Insofar as Mr. Ravi Narain and Ms. Chitra Ramkrishna are concerned, the show cause notice alleged that Mr. Ravi Narain being the Managing Director and Chief Executive Officer („MD and CEO”) of NSE from 2000 to March, 2013 and Ms. Chitra Ramkrishna, being the Deputy Managing Director from 2008 to 2010; Joint Managing Director („JMD”) from 2010 to 2013 and Chief Executive Officer („CEO”) from April, 2013 to December, 2016 and during the relevant period failed to take any steps to ensure proper systems, checks and balances so as to provide fair and equitable access to all. The show cause notice alleged that adherence to the principle of fair and equitable access was left to the technology team without any specific guidance and, thus, failed to perform their role in establishing adequate systems which led to the scenario whereby certain brokers were allowed to breach the norms of fair and equitable access. It was also alleged in the show cause notice that it was the duty of Mr. Ravi Narain and Ms. Chitra

Ramkrishna to prevent manipulation of the system architecture and ensure fair, transparent and equitable access and by not taking preventive as well as curative measures proactively, they facilitated fraud and manipulation by OPG. It was, thus, alleged that Mr. Ravi Narain and Ms. Chitra Ramkrishna violated Section 12A(a), (b) and (c) of the SEBI Act read with Regulations 3 and 4 of the PFUTP Regulations and SECC Regulations.

210. The appellants Mr. Ravi Narain and Ms. Chitra Ramkrishna sought to make out a case that they were utterly unaware of the TBT Architecture. It was contended that they had no technical/computer knowledge and, for that purpose, had employed experts and took decision on the basis of the advice given by the experts. It was also contended that Mr. Ravi Apte and Mr. N. Murlidharan who were the Chief Technology Officer („CTO“) were involved in choosing the technology and that Dr. V.A. Sastry who was a technology expert with a Ph.D. in computer applications gave his expert opinion and, consequently, are not responsible for the alleged violations.

211. The WTM found that Mr. Ravi Narain and Ms. Chitra Ramkrishna were holding the position of MD and CEO during the relevant

point of time and having held the senior most management position in NSE and, being in charge of the affairs of the conduct of the stock exchange business, could not abdicate their responsibility by citing limited knowledge on technology issues. The WTM held that being vested with general and overall responsibility of ensuring the implementation of the principle of equal, fair and transparent access, as mandated under Regulation 41 of the SECC Regulations Mr. Ravi Narain and Ms. Chitra Ramkrishna being the MDs during the relevant period are liable for breach of the provisions of the SECC Regulations. The WTM consequently directed Mr. Ravi Narain to disgorge 25% of the salary drawn for the financial years 2010-2011, 2012-13 and prohibited Mr. Ravi Narain from associating with any listed company or a market infrastructure institution or any other market intermediary for a period of five years. The WTM further directed Ms. Chitra Ramkrishna to disgorge 25% of the salary drawn for the financial year 2013-14 prohibited her from associating with any listed company or a market infrastructure institution or any other market intermediary for a period of five years.

25. This Tribunal also held:-

“215. We also find that being the head of the institution it is not necessary that the person should have intricate knowledge in technical matters and for such purposes even the head of the institution is required to take guidance from experts. In this regard, we find that experts were appointed and decisions were taken based on the expert advice and policies were implemented. In this regard, we find that Dr. V.A. Sastry was a technical expert with Ph.D. in computer applications and had 30 years of experience in the software industry including with Infosys Ltd. The Board of NSE used to rely on his technical expertise. This fact has not been disputed in the impugned order. Further, we find that NSE had Chief Technology Officers, Mr. Ravi Apte and Mr. N. Murlidharan who as technical experts were involved in the choosing of the technology, namely, the TBT architecture for the Colo facility. These persons were also noticees in those proceedings and their submissions have been recorded in detail which upon a perusal we find that these noticees have given detailed reasons justifying the choice of the TBT architecture. We also find that these two noticees have been expressly exonerated of the charges leveled against them with regard to the choice of the TBT architecture and facilitating fraud and manipulation by OPG, etc.

216. *At the same time, we cannot ignore the fact that Mr. Ravi Narain and Ms. Chitra Ramkrishna being the MD and CEO of the stock exchange at the relevant movement of time cannot abdicate their responsibility by citing limited knowledge in certain spheres of the business activities. In the changing scenario in the corporate world the functions are delegated to professionals who become responsible for their acts and conduct. While functions may be delegated, duty of care, due diligence, verification by the top management cannot be abdicated. The MD and CEO are responsible for the day to day affairs in the running of the exchange and cannot pass on the responsibility of non-implementation of the load balancer or non-monitoring of the secondary server. The responsibility at the end of the day falls squarely upon the MD and CEO. The implementation of the Colocation technology was carried out under the overall supervision of Mr. Ravi Narain and Ms. Chitra Ramkrishna and, therefore, they cannot abdicate their responsibility for the lapse that has been incurred in the monitoring of certain areas.*

217. *We, however, find that there is no finding to the fact that Mr. Ravi Narain or Ms. Chitra Ramkrishna has made profit or wrongful gain which is a prerequisite for issuance of a direction under Sections 11 and 11B for disgorgement. In*

the absence of any finding of wrongful gain being made by Mr. Ravi Narain and Ms. Chitra Ramkrishna, we are of the opinion that no direction for disgorgement can be made especially when there is no finding of fraud, unfair trade practice or collusion with any TM.”

26. In view of the aforesaid finding Mr. Ravi Narain and Ms. Chitra Ramkrishna cannot abdicate their responsibility for the lapse and while functions may be delegated, duty of care, due diligence could not be abdicated and, consequently, the direction of this Tribunal reducing the period of debarment was passed.

27. For the same lapse a penalty of Rs. 25 lakhs has been imposed by the AO. We find that one of the directions given by the WTM was that an enquiry against the employees to whom the powers were delegated should be initiated. We also find that the AO initiated separate proceedings against the employees of NSE who were computer/technical experts, namely, the Chief Technical Officers Mr. Ravi Apte and Mr. Umesh Jain and head of the Project Support and Management Team (“PSMT”), namely, Mr. Mahesh Soparkar and Mr. Deviprasad Singh, who were managing the colocation

operations. The AO by a separate order dated August 29, 2019 did not impose any penalty against the employees.

28. In view of the aforesaid, we are of the view that for the aforesaid lapse committed by Mr. Ravi Narain and Ms. Chitra Ramkrishna a limited debarment order had been passed by this Tribunal. We find that no further directions are required to be issued and the imposition of penalty in the circumstances is unwarranted. The impugned order in so far as it relates to the appellants Mr. Ravi Narain and Ms. Chitra Ramkrishna is set aside. The appeals are allowed.

29. The Charge levelled against OPG Securities Pvt. Ltd. and Ors. by the WTM is as under:-

- i. “First Connect/Early Login to POP Servers – OPG was alleged to have consistently logged in first across POP Servers as it was aware of the weakness of the TCP/IP TBT System architecture and the advantage of having first login across various POP Servers in terms of trades. OPG was also alleged to have designed its trading software in such a way that it could manage to connect first on the POP Servers and gain advantage.

- ii. Crowding out other market participants – OPG was assigned multiple TBT IPs to single Ports of certain POP Servers which enabled it to consistently be 1st, 2nd, 3rd and even 4th connection to the POP Servers. Thus, it tried to crowd out other TMs from the TBT platform.
- iii. Connection to Secondary/Fall-back Server for TBT data – Since TMs were permitted to Secondary POP Server only in case of disconnections to primary POP Server, the load on Secondary POP Server was generally very low. Therefore, OPG, by connecting to Secondary POP Server almost on a daily basis without valid reasons, gained unfair advantage over other TMs.
- iv. Connivance/Collusion with NSE-OPG displayed disregard to the norms of NSE and yet NSE continued to permit OPG to connect to the Secondary POP Server. The reluctance on the part of NSE to prevent OPG from accessing the Secondary POP Server to gain unfair advantage could only have been possible through active connivance/collusion of NSE and OPG.
- v. Unlawful gains– OPG gained materially by being the first logger as well as by connecting to the Secondary POP Server.

- vi. Conduct of OPG and its Director, Sanjay Gupta, during SEBI Investigation—OPG acting through its Director, Sanjay Gupta, had concealed/ destroyed vital information which could have been helpful in providing better insight and evidence in arriving at more conclusive findings in the instant proceedings.

30. Based on the aforesaid charges, only four issues were framed namely:

- i. **Issue 1:** Whether OPG consistently logged in first across POP Servers on account of being aware of the weakness of the TCP/IP TBT System architecture and thereby, gained an advantage?
- ii. **Issue 2:** Whether OPG tried to crowd out other TMs from the TCP/IP TBT System platform?
- iii. **Issue 3:** Whether OPG Securities gained an unfair access and advantage by consistently logging into the Secondary POP Server for large number of days?
- iv. **Issue 4:** Unlawful gains made by OPG.

31. The WTM exonerated OPG and its Directors on issue nos.1 and 2 and found OPG and its Directors guilty of unfair access and advantage by consistently logging into the secondary POP servers, and on that basis, made unfair gain of Rs.15.57 crores.

32. The WTM accordingly prohibited OPG from accessing the securities market and from buying, selling or otherwise dealing in securities for a period of five years. The Directors were also restrained from accessing the securities market for a period of five years. Further, OPG in its capacity as a stock broker was directed not to take any new clients for a period of one year and further directed OPG and its Directors to disgorge an amount of ₹15.57 crores along with interest at the rate of 12% per annum from April 7, 2014 onwards, till the date of payment.”

33. This Tribunal in paragraph 263 held as under:-

“263. We also found that the WTM exonerated OPG and its Directors on issue of first login and crowding out other TMs. We, however, affirm the findings of the WTM that OPG gained an unfair access and advantage by consistently log in to the secondary server and made unlawful gains.”

34. In the operative portion this Tribunal affirmed the violations committed by OPG but set aside the directions to disgorge an amount of Rs.15.57 crores and remitted the matter to the WTM to decide the quantum of disgorgement afresh in the light of the observation made by this Tribunal in its order. The AO imposed a penalty of Rs. 5.2 crores after finding that the appellant had committed the violations levelled against it and its Directors. Since, we have already upheld the violations as given in the WTM's order, we also affirm the violations committed by the OPG as found in the AO's order. However, the AO while calculating the penalty and while considering the factors provided under Section 15J also took into consideration the direction of WTM to disgorge an amount of Rs. 15.57 crores. Considering the fact that the penalty imposed by the AO takes into consideration the computation of unlawful gains as arrived by the WTM in its order which portion of the order has been set aside by this Tribunal, we are of the opinion, that the AO is required to reconsider the quantum of penalty. We accordingly, affirm the violation committed by OPG and its Directors but set aside the order in so far as it relates to the quantum of penalty and remit the matter to the AO to decide the quantum of penalty afresh.

35. In view of the aforesaid Appeal No. 166 of 2021, Appeal No. 167 of 2021 and 168 of 2021 are allowed and Appeal No. 369 of 2021 is partly allowed. In the circumstances of the case, parties shall bear their own costs. The misc. application is disposed of accordingly.

36. This order will be digitally signed by the Private Secretary on behalf of the bench and all concerned parties are directed to act on the digitally signed copy of this order. Certified copy of this order is also available from the Registry on payment of usual charges.

Justice Tarun Agarwala
Presiding Officer

Ms. Meera Swarup
Technical Member

12.07.2023
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