

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: S. K. MOHANTY, WHOLE TIME MEMBER
ORDER

Under the provisions of Section 12A of the Securities Contracts (Regulation) Act, 1956 read with Sections 11 (1), 11(2)(a), 11(2)(j) and 11B of the Securities and Exchange Board of India Act, 1992.

In respect of:

Noticee no.	Name of the Noticee	PAN
1.	Sh. Ravi Narain, Former MD & CEO, NSE	AAYPN8382Q
2.	Sh. R. Nandakumar, Former Senior VP, Operations, NSE	AEJPR5959N
3.	Sh. Mayur Sindhwa, Chief Operating Officer, Trading, NSE	BQCPS9399P
4.	Sh. Sankarson Banerjee, Chief Technology Officer-Projects, NSE	AAFPB1541G
5.	Sh. G Shenoy, Chief Technology Officer-Operations, NSE	AAQPS7487R
6.	Sh. Suprabhat Lala, VP-Regulations, NSE	ABEPL5061D
7.	Sh. Ravi Apte, Former Chief Technology Officer, NSE	ADLPA5449B
8.	Sh. N. Muralidharan, Former Chief Technology Officer, NSE	ACKPN1590J
9.	Sh. Jagdish Joshi, Former COLO Head, NSE	AFDPJ3122J

(The aforesaid entities are hereinafter individually referred to by their respective names/Noticee nos. and collectively as "Noticees", unless the context specifies otherwise)

In the matter of NSE- Dark Fibre

Background:

1. The Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") received complaints dated January 08, 2015 and August 10, 2015 alleging various irregularities in respect of Co-location (hereinafter referred to as "**Colo**") facility provided by National Stock Exchange of India Ltd. (hereinafter referred to as "**NSEIL**"). To deal with the same, a Cross Functional Team

(CFT) of SEBI officials was constituted to undertake a preliminary fact finding with respect to various irregularities alleged in these complaints.

2. Subsequently, another complaint dated October 03, 2015 was received which alleged inter alia, that certain stock brokers were permitted to avail of Point to Point (hereinafter referred to as “**P2P**”) dark fibre connectivity from Sampark Infotainment Private Limited (hereinafter referred to as “**Sampark**”), a non-empanelled service provider and the P2P connectivity provided by “Sampark” conferred a latency advantage to a few brokers which resulted in substantial increase in their turnover during the period April-August, 2015.
3. Based upon the preliminary findings on the complaints mentioned above, a common Show Cause Notices (hereinafter referred to as “**2017 SCN**”) dated May 22, 2017 was issued to a number of entities including the Noticees covered in the instant proceedings, inter alia alleging that :-
 - (a) NSEIL’s system architecture allowed the Tick –by- Tick (hereinafter referred to as “TBT”) price information to be disseminated sequentially in the order in which the stock brokers were connected/logged-into the server. However, multiple TBT servers at NSEIL have experienced varied load and have started at different points of time. Further, the back-up servers were allowed to be accessed by certain stock brokers(s) as load on such servers was low.
 - (b) The above set-up enabled ‘first-to- connect’ stock brokers to receive data ahead of others and thus, they were able to react to the information earlier than the rest of the stock brokers.
 - (c) Differential access in the form of ‘dark fibre’ was given to a certain brokering firms/ members at NSEIL, especially to connect across NSEIL and BSE colocation facilities at least 4-5 months ahead of other members.
4. In the said 2017 SCN, the Noticees were called upon to explain as to why direction under Section 11(1), 11(2) (a), 11(2)(j) and 11B of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act**”) should not be issued to them for acting in breach of the code of ethics prescribed in regulations 26(2) of SEBI (Stock Exchanges and Clearing Corporations) Regulation, 2012 (hereinafter referred to as “**SECC Regulations**”). From the records, it is observed that subsequent to the issuance of the 2017 SCN, a detail investigation into the complaint was carried out by SEBI to find out possible violation of provisions of **SEBI Act**, Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as “**SCR Act**”) and/ or the Rules and the Regulations made there-under such as **SECC Regulations** and SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (herein after referred to as “**PFUTP Regulations**”).
5. Investigation so conducted by SEBI revealed various irregularities in addition to the preliminary findings cited above and accordingly another Show Cause Notice dated July 03, 2018 (hereinafter

referred to “2018 SCN”) was issued to different entities/ persons for violations of different provisions of SEBI Act, SECC Regulations and PFUTP Regulations by them as alleged in the 2018 SCN. It is observed that the allegations made in the 2017 SCN were repeated *qua* some of the entities in the 2018 SCN, who are common Noticees in both the SCNs and the proceedings arose out of 2018 SCN were disposed of by SEBI vide orders dated April 30, 2019. However, while disposing of the allegations made in the 2017 and 2018 SCN, it was noticed that some of the allegations made against few other Noticees in the 2017 SCN remained outstanding for disposal. Therefore, the scope of the instant proceedings is confined to the disposal of those allegations made at Para no. 10 H of the 2017 SCN, which had not been dealt with or disposed of in any of the orders passed by SEBI so far. The said allegations are reproduced below:

- I. *NSEIL allowed Sampark Infotainment Private Limited to lay down a line from NSE’s COLO building to BSE’s Rotunda Building.*
- II. *NSEIL Circular Ref. no. NSE/MEM/12985 dated August 31, 2009 On “Co location Services at NSEIL premises’ also requires to take one or more leased line to the colocation facility from any of the following four service providers for the purpose of setting up or modifying parameters, trading related activities and hardware, software, network related access, software download / upload and monitoring and data downloads:*
 - A. MTNL
 - B. TATA.
 - C. Bharti or
 - D. Reliance
- III. *It is observed that NSEIL allowed Sampark Infotainment Private Limited to provide lease lines in NSEs colocation facility despite not being on authorized service provider of NSEIL.*
- IV. *By allowing an unauthorized service provider to lay dark fibre/ lease line NSEIL has acted in contradiction to its own policy*

6. In view of the aforesaid, it has been alleged in the 2017 SCN that the Noticees covered in the present proceedings who were Directors/KMPs for discharging various functions at NSE, failed to act in a manner to ensure fairness, openness, transparency and to provide fair, equal, unrestricted and transparent access to its colocation facilities and trade data etc., to all market participants in conformity with the SECC Regulations. Consequently, in the said 2017 SCN, it was alleged that the Noticees have not complied with the Code of conduct specified under Regulation 26(2), of the SECC Regulations read with SEBI Master Circular Dated December 31, 2010.

Replies and Personal Hearing

7. Personal hearing was granted to all the Noticees on July 23, 2019. Authorized representatives appeared on behalf of all the nine Noticees and made their submissions. Subsequent to the hearing, vide letter dated July 31, 2019, a written reply was received on behalf of Shri Nandakumar and also

vide another common letter dated July 31, 2019, written replies were received on behalf of all other Noticees. The highlights of the submissions made by the Noticees vide the above stated two letters dated July 31, 2019, are summarized as under:

- i. As far as Shri Nandakumar is concerned, it is stated that the SCN dated 22.5.2017 was issued to him in his capacity / post of a "Former Senior VP Operations". All the allegations relating to "Dark Fibre" pertains to the period of April - July 2015, by which time, he had ceased to be an employee of NSEIL i.e with effect from May 31, 2014. Hence, in no way he was involved in allocation or permission granted to "Sampark" for providing P2P connectivity.
- ii. All the Noticees have contended that pursuant to a detailed investigation conducted by SEBI after issuing the said 2017 SCN dated 22.05.2017, the second notice i.e. 2018 SCN dated July 03, 2018, was issued by SEBI on the said issue of P2P connectivity provided by "Sampark"/"Dark Fibre" to 17 other entities who were alleged to be responsible for the said violations. However, none of the Noticees being dealt with in this proceedings was made a Noticee in the said SCN of 2018.
- iii. The allegations made in the said 2018 SCN relating to "Sampark" / "Dark Fibre" were heard at length and were disposed of by SEBI vide an order dated April 30, 2019.
- iv. A bare perusal of the allegations made in the 2017 SCN, which was issued to the Noticees covered in the instant proceedings, show that the entire foundation of the SCN was based on the allegations that the NSEIL's circular dated August 31, 2009 was not followed by the Noticees. However, while issuing the said 2017 SCN, SEBI had overlooked the fact that the said Circular had been subsequently amended. This fact was admitted by SEBI in the 2018 SCN while dealing with the issue pertaining to "Sampark"/"Dark Fibre". In the said SCN of 2018, it was recorded that by a subsequent amendment to the said circular, members were permitted to avail the services of any telecom service provider for P2P connectivity, and not just the 4 service providers as was mentioned in the said Circular of 2009. Hence, the allegations in the 2017 SCN would no longer survive as the same have been subsumed in the 2018 SCN pertaining to "Sampark"/Dark Fibre.
- v. The aforesaid SCN of 2017 appears to have been issued to them on the incorrect assumption that they had some role to play with respect to the allegations relating to "Sampark" being permitted to lay down Dark Fibre/ lease lines in the premises of NSEIL during April - July 2015. This is factually incorrect as they were in no manner involved or concerned with the same. It is therefore submitted that no question arises to find any fault with them in respect of P2P connectivity of "Sampark" /Dark Fibre lease line as alleged in the SCN. In fact, as is evident from the allegations in the said post investigation SCN of 2018, and the Order dated April 30, 2019 passed by SEBI, that the allegation of permitting

“Sampark” to lay Dark Fibre during April - July 2015, was subsequent to the resignation of several of Noticees from the services of the NSEIL. It is therefore submitted that no question arises for any fault on their part in respect of the allegations relating to “Sampark”/ “Dark Fibre”/” P2P”.

- vi. It is denied that they have committed any non-compliance with the Code of Ethics or any other provision of the SECC Regulations or SEBI's Master Circular dated December 31, 2010. There is no justification or reason for SEBI taking any action against them or issuing any directions against them as stated in the SCN in respect of the issues/allegations relating to “Sampark”/” Dark Fibre”/ “P2P”.
- vii. In the circumstances it has been submitted that the present proceedings are misconceived and ought to be dropped.

Consideration:

- 8. The replies and submissions of the Noticees as have been summarised above, have been carefully perused and their explanations and arguments have been considered. As stated in the beginning, the issue, pertaining to the alleged breach in the present proceedings are confined to facilitating P2P Dark Fibre connectivity installed by a few brokers of NSE between the Colo facility of NSE and the Colo centre at BSE during the month of April-May 2015, by engaging an unauthorized service provider viz; “Sampark”. A dark fibre or unlit fibre, with respect to a network connectivity, refers to an already laid but unused/ passive optical fibre, which is not connected to any active electronics/equipment's and does not have other data flowing through it and is available for use in fibre-optic communication. Department of Telecommunications (hereinafter referred to as **“DoT”**) recognizes ‘Dark Fibre’ as part of the telecommunication infrastructure and categorizes it as ‘passive’ infrastructure or ‘inactive elements’ of the telecom network. As per DoT, companies which have Infrastructure Provider Category – I (IP-I) registration, can provide assets such as Dark Fibres, etc. on lease / rent / sale basis to the licensed providers of Telecom Services having license under Section 4 of Indian Telegraph Act, 1885, on a mutually agreed terms and conditions. P2P relates to the point-to-point connectivity between two points i.e. in the instant case, connectivity between a stock broker's rack at NSE colocation facility and the same stock broker's rack at BSE colocation centre. The objective of having a P2P connectivity for a stock broker is to receive live market data feed disseminated by the two exchanges, viz: NSE & BSE simultaneously as fast as the latency of the connectivity would permit, so as to process the data, and accordingly, place their trade orders to either or both the exchanges, as per their trading strategy.
- 9. In this regard, I note that that, providing equal, fair and transparent access to trade data by the stock exchanges to persons in the securities market is one of the underlying unassailable principles, which is embodied in the SCRA as well as in the regulations framed thereunder, more particularly

in regulation 41(2) of SECC Regulations. The said regulations provide that “the recognised Clearing Corporation and recognised Stock Exchange shall ensure equal, unrestricted, transparent and fair access to all persons without any bias towards its associates and related entities.” I note that as a fundamental principle of corporate law, the obligation to comply with the abovementioned principle of equality and fair access as enshrined in the SECC Regulations rigorously applies to the Directors, management and Key Managerial Persons (hereinafter referred to as “KMP”) of the stock exchanges. Further, regulation 26 (1) of SECC specifically casts such onus on the Directors of the stock exchange by requiring them to abide by the Code of Conduct specified under Part-A of Schedule-II of SECC Regulations. Regulation 26(2) additionally requires the Directors and KMPs to abide by the Code of Ethics specified under Part-B of Schedule-II of SECC Regulations. I also find that the provisions contained in clause V (b) of the Code of Conduct, warrant that every Director shall endeavour to analyse and administer the stock exchange with professional competence, fairness, impartiality, efficiency and effectiveness. As seen above, a comprehensive understanding of the SECC Regulations and the Code of Conduct and Code of Ethics prescribed thereunder for Directors and KMPs explicitly makes it imperative to *“establish a minimum level of business/ professional ethics to be followed by these Directors and KMPs, toward establishing a fair and transparent market place.”*

10. In the instant proceedings, the Noticees have been alleged to have displayed/ followed unfair conduct while allowing an unauthorized service provider i.e. “Sampark” to provide the P2P connectivity to only a few selective registered stock brokers so as to help them gain undue advantage of latency vis- a- vis other stock brokers. It has been alleged that by permitting an unauthorized service provider i.e. “Sampark”, to provide the dark fiber connectivity for certain stock brokers, the Noticees allowed these stock brokers to gain more bandwidth and lower latency for their data transmission and again by allowing “Sampark” to continue the service even after it was found that “Sampark” did not possess the necessary license from the DoT to provide the required P2P connectivity to the brokers of NSE, the Noticees have allegedly acted in violation of NSEIL's own circular of 2009 in which, NSEIL had authorized only four (04) specific Telecom Service Providers (hereinafter referred to as “TSP”) from whom its brokers could avail the P2P connectivity. Thus, the SCN issued to the Noticees in the present proceedings broadly cover the following points/issues:

- A) *NSEIL allowed Sampark to lay down a P2P connectivity,*
- B) *By allowing Sampark to provide the P2P connectivity to stock broker, despite not having the authorised licence for the same, NSEIL has acted in violation of its own circular no. NSEIL/MEM/12985 dated August 31, 2009.*

C) Preferential treatment granted to certain stock brokers by NSEIL in accessing its Colo facility to install P2P connectivity while refusing the request of some others,

11. As stated earlier, the scope of the present proceeding is limited to determine whether in the facts of the matter, the Noticees allegedly being the Director and/or KMP of NSEIL can be held liable under regulation 26 of SECC Regulations read with the Code of conduct and Code of Ethics as provided under part A and Par B respectively of Schedule –II of the said Regulations, for allowing “Sampark” to lay down the Dark Fibre line to provide the P2P connectivity to certain stock brokers, despite knowing that “Sampark” was not possessing the required DoT license to provide the desired telecom services to the stock brokers. Before proceeding further in the matter, it would be proper to visit the relevant provisions of SECC Regulations for ease of reference, which are extracted as under:

“Regulation 26(1) & 26(2) of SECC Regulations, 2012: Code of Conduct for Directors and KMP.

26. (1) Every director of a recognised stock exchange and a recognised clearing corporation shall abide by the Code of Conduct specified under Part– A of Schedule– II of these regulations.

(2) Every director and key management personnel of a recognised stock exchange and a recognised clearing corporation shall abide by the Code of Ethics specified under Part– B of Schedule– II of these regulations.”

12. From the above, it is observed that the SECC Regulations cast an omnibus duty on the stock exchange, its Directors and/or KMPs to abide by the fundamental principle of providing equal, fair and transparent access to all the market participants and not to resort to granting favour to any select market participants at the cost of interest of other participants or to indulge in any acts of discrimination while dealing with market participants. In my view, these provisions however, cannot be interpreted to have such overarching ambit so as to implicate *ipso facto* all the Directors and KMPs, whoever were present and were occupying any post at the relevant point of time, for a breach committed by the Stock Exchange. The liability for such breaches, if any, ought to be determined by taking into consideration, the specific functions/ job profile entrusted to such Directors or KMPs by virtue of their position or designation, which would be relevant to examine the allegations qua such Directors and/or KMPs as contained in the SCN.
13. From the materials on record, it is observed that NSEIL’s Circular no. 963 dated August 31, 2009 provided that the registered members of NSE may avail from MTNL, TATA, Bharti or Reliance, one or more leased line connectivity to the Colo facility of the Exchange. The said Circular of 2009 has been modified over the years and it has been observed that each time the stock exchange modified the earlier circular, a reference has been made to the Circular 693 of 2009. However, in October 2013, NSE amended the said Circular of 2009, so as to permit its members to take one

or more leased line connectivity to the Colo facility of NSE from other telecom service providers as was, in addition to the earlier empaneled four (04) service providers, for the purpose of setting up or modifying parameters, trading related activities and hardware, software, network related access, software download / upload and monitoring and data downloads etc. However, while communicating the amendment made in the said Circular, strangely enough, no such reference was made to the existing Circular No 693 of 2009 which was in force for the last four years. Further, the modification made in the year 2013 was communicated to the stock brokers by posting the same on NSEIL website. The said website communication did not provide any reference to the earlier Circular of 2009 issued in this respect, nor did it mention that the instructions are being issued by way of modification/amendment of the earlier instructions issued in the respect. Thus, the Stock Exchange has brought the modification/ amendment to its existing circular and has issued a new instruction in supersession of the existing circular by way of an opaque and non-transparent communication through its website without substituting its existing circular with another circular, for the sake of clarity, transparency and wider circulation among the market participants of the Securities Market. It has also been noticed that majority of the market participants were not even aware of the new instructions communicated through the website by NSEIL, hence, were under the bonafide belief that the Circular of 2009 continued to be in force without any change/modification/amendment.

14. It has also been noted that while granting permission to the stock brokers for the purpose of establishing P2P connectivity from its Colo facility with the help of “Sampark”, NSEIL has adopted a discriminatory approach towards large number of other stock brokers, by allowing “Sampark” services to be availed by only a few selected stock brokers. Services of “Sampark” P2P connectivity was evidently advantageous to such stock brokers in obtaining latency advantage for the purpose of receipt of trade data from NSEIL Colo and consequently, it enabled these chosen few stock brokers in placing their trade order faster than other stock brokers, by virtue of the higher latency gained by them through the “Sampark” P2P Dark Fibre connectivity.
15. Under the circumstances, it has been alleged that NSEIL has not acted in a fair and equitable manner while dealing with its members. Further, by not following a uniform and transparent practice in bringing changes to its Circular of 2009 and communicating the same in a transparent manner for wider circulations amongst all its registered stock brokers and also by allowing a selected few market participants to avail the dark fiber services of “Sampark”, NSEIL has indulged in a practice of differential and discriminatory treatment vis- a- vis its stock brokers and has promoted preferential treatment to some of the members, at the cost of large number of other stock brokers.
16. In the context of the afore-stated facts under which the allegations have been made against the Noticees for violations of provisions of SECC Regulations, when I examine the evidences available

on record, replies and submissions made on behalf of the Noticees and the provisions of law under which the Noticees have been alleged to be liable, I find that the charges levelled against the Noticees in the SCN of 2017 are not sustainable for the reasons as discussed in the following paragraphs.

17. The Noticees have stated that the Dark fibre team was not reporting to them at any point of time during their tenure as employees or consultants of NSEIL and there is nothing on record or in the SCN to substantiate such attribution. Therefore, the Noticees did not have any role in relation to either allowing the “Sampark” to lay down the dark fibre line so as to provide P2P connectivity between Colo facility of NSEIL and Colo center of BSE or in facilitating brokers to avail the service of “Sampark”. I note that the 2017 SCN was issued based on the complaints received and some preliminary observation thereon by SEBI. There is no specific evidence available on record pointing out the liability of the Noticees. There is no independent evidence available which could indicate the involvement of Noticees in allowing “Sampark” to establish P2P connectivity from Colo facility of NSEIL to Colo center of BSE.
18. It has further been submitted that the functional reporting of the Colo team was with the business development team and none of the Noticees was part of the business development team at the relevant point of time. The technology team headed by Mr. Ravi Varanasi was in charge of business development as well as for the operational activities relating to Colo, at the relevant time. As per the Noticees, during the relevant period of time, none of them was in-charge of the Colo facility at NSEIL. They have also not participated in any discussions, verbal or written, relating to laying of the dark fibre by “Sampark”.
19. On perusal of the SCN, the materials available on record and the submissions made by the Noticees, I observe that the allegations pertaining to the involvement of the Noticees have been made only because of their association in some capacities with NSEIL during the relevant period of time. As observed earlier, even as per regulation 26 of SECC Regulation, the liability of a Director and/or KMP for breaches, if any, ought to be determined by taking into consideration, the specific functions entrusted to such Directors or KMPs by virtue of their position or designation in the organisation, which are materially relevant to the allegations contained in the SCN. It is an admitted position that none of the Noticees was occupying the position of a Director in NSEIL, more particularly during the relevant period, when “Sampark” was allowed to lay down dark fibre lines to establish P2P connectivity between the two stock exchanges for a few selected stock brokers. As regards the position of Director and/or KMP allegedly occupied by the Noticees, the issue was raised during the course of personal hearing and the Noticees were asked to provide the details of the positions/designations occupied by them at NSEIL during the relevant period. Details of the positions/designations held by them as furnished by the Noticees vide letter dated July 31, 2019, are as follows:

Sl. No.	Name of the Noticee	SCN issued to the Noticee in the capacity as	Whether a KMP during the period of the issue (i.e. April 2015 to July 2015) along with Reasons
1	Ravi Naraian	Former MD and CEO of NSEIL	No. Resigned as MD and CEO on March 31, 2013
2	Mr. Ravindra Apte	Former Chief Technology Officer (CTO) of NSEIL	No. He was never the CTO of NSEIL and he was never an employee of NSEIL. He was only a consultant and was paid consultancy fees and not salary. His tenure ended in Sept. 2012.
3	N Muralidharan	Former Chief Technology Officer (CTO) of NSEIL	No. He was never the CTO of NSEIL. He joined NSEIL as the Chief Projects officer on April 1, 2013. He resigned from NSEIL on April 1, 2015 and was appointed as MD and CEO of NSEIL IT, which is a separate subsidiary of NSEIL.
4	G Shenoy	Chief Technology Officer –Operations of NSEIL	No. He was appointed Chief Technology Officer –Operations on April 01, 2016.
5	Sankarsan Banerjee	Chief Technology Officer –Projects of NSEIL	No. He joined NSE as Deputy Chief Officer on April 15, 2015. He was appointed as Chief Technology Officer – Projects on April 01, 2016.
6	R Nandakumar	Former VP Operations of NSEIL	No. He left services of and ceased to be an employee of NSE since May 2014
7	Jagdish Joshi	Former COLO head of NSE	No. He was never the COLO head. From 2009 to May 2014, he was COLO help Desk Support manager In May 2014, he left the services and ceased to be an employee
8	Suprabhat Lala	VP Regulations of NSEIL	No.
9	Mayur Sindhwad	Chief Operating officer Trading NSEIL	No.

20. Thus, from the afore stated details as furnished by the Noticees, it is evident that during the relevant period i.e. April – July 2015, none of the Noticees was occupying a post of Director and/or a KMP at NSEIL. I find that entities appearing at sl no 1, 2, 6 & 7 had resigned before 2015, whereas entities appearing at 4 & 6 had joined NSEIL in the year 2016. It is also observed that entities mentioned at sl no 8 & 9 were not occupying the post of either of a Director or of a KMP during the relevant point of time. The person appearing at sl no 3 was also not occupying the post of a KMP. It has been submitted by Noticee no. 3 that he was never the CTO of NSEIL. He joined NSEIL as the Chief Projects officer on April 1, 2013. He resigned from NSEIL on April 1, 2015 and was appointed as MD and CEO of NSEIL IT, which is a separate subsidiary company of NSEIL. Thus, from the records, I don't find any evidence or any material that establishes or even remotely indicates any role played by any of the Noticees as far as establishment of P2P connectivity by "Sampark" is concerned. There is nothing on record which could even suggest that any of the entities was occupying a post of Director/KMP and on account of holding of such post, the respective Noticee could be fastened with the accountability for the lapses, breaches and discriminatory treatment meted out to the market participants by permitting a selected few stock brokers to avail dark fibre connectivity from "Sampark". The allegations have been made on the presumption that the Noticees were holding the post of KMP, however, as observed above, none of the Noticees was holding any post of a Director or of a KMP during the relevant period of time. Therefore, I have to hold that during the relevant period when "Sampark" was allowed to install dark fibre connectivity in the Colo facility of NSEIL, the Noticees were not working /employed with NSEIL either in the capacity of a Director or as a KMP. Further, the materials available on record also don't indicate even remotely, the role of any of the Noticees as an employee of NSEIL in facilitating "Sampark" to establish the P2P connectivity at NSEIL.
21. As regards the allegations pertaining to the amendment made in the Circular of 2009 in an opaque manner and allowing "Sampark" to continue to provide the services, in spite of fact that it did not possess the requisite DoT license to provide the desired telecom services, I find that there are no evidences worthwhile to proceed against the Noticees, as the materials available before me don't indicate/suggest that Noticees were responsible either directly or indirectly for the modification made in the said Circular of 2009, in the year 2013 or for the non-transparent dissemination of such amended communication through the stock exchange website for the consumption of its members. It is further observed that, the available records do not indicate any role played by the Noticees in permitting "Sampark" to either lay down the dark fibre optical lines or to continue with the services despite the fact that "Sampark" was not possessing the desired eligibility to provide such services.
22. As observed in the beginning that subsequent to the issuance of 2017 SCN, a detailed investigation was undertaken by SEBI in the matter, and based on the finding from the investigation and

evidences gathered during the examination into the complaints, a separate SCN was issued on July 03, 2018 wherein, the Noticees in this proceedings on whom the 2017 was served, have not been named as Noticees for any violation in the matter of allowing “Sampark” to lay down dark fibre to establish P2P connectivity or for resorting to the unfair and differential treatment of members of the stock exchange or even for the above noted non-transparent mode of communication of the modification made in the Circular of 2009. Hence, the Noticees herein were not found to be *prima facie* guilty to be named as Noticees in the 2018 SCN.

23. In my view, based on the evidences available on record and after having considered the same, it can't be held that the Noticees herein were involved in facilitating “Sampark” to lay down the Dark fibre line to provide P2P connectivity. There is also no evidence to suggest that Noticees had any role in modifying the Circular of 2009 in the year 2013. Consequently, they were also not responsible for the non-transparent dissemination of the modification so made in the above mentioned Circular of 2009 and therefore, the Noticees cannot be held responsible for any misconduct or non-compliance as far as laying of P2P connectivity using dark fibre is concerned. Under the circumstances, I am constrained to conclude that based on the materials available on record, the charges against the Noticees that they have acted in violation of the provisions of Regulation 26(2) of SECC Regulations read with Part B of schedule II of SECC Regulations and SEBI Master circular, are not established.
24. In view of the above, considering the facts and circumstances of the case, submissions made by the Noticee and the material available on record, I hereby dispose of the instant proceedings initiated against the Noticee by exonerating them from the allegations charged against the above named Noticees.
25. Accordingly, in exercise of the powers conferred upon me under Section 11 (1), 11(2)(a), 11(2)(j) and 11B read with Section 19 of the SEBI Act, 1992 the charges leveled at para 10 H of the SCNs dated May 22, 2017 is disposed of qua the Noticees without issuing any directions.

Date:- January 16, 2020.
Place: Mumbai

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S.K. MOHANTY
WHOLE TIME MEMBER