

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/AS/RM/2025-26/31353-31356]**

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

In respect of:

Sr. No.	Name	PAN
1.	OPG Securities Pvt. Ltd.	AAACO1081C
2.	Sanjay Gupta	AAHPG3047Q
3.	Sangeeta Gupta	AAHPG6984C
4.	Om Prakash Gupta	AAHPG3048B

In the matter of NSE Co-location

BACKGROUND OF THE CASE

1. OPG Securities Pvt. Ltd. (hereinafter referred to as “**Noticee 1**”), Shri Sanjay Gupta (hereinafter referred to as “**Noticee 2**”), Ms. Sangeeta Gupta (hereinafter referred to as “**Noticee 3**”) and Shri Om Prakash Gupta (hereinafter referred to as “**Noticee 4**”) and collectively referred to as ‘**Noticees**’; filed appeal against the Adjudication Order dated February 11, 2021 passed in the matter of NSE Co-location imposing following penalties on the Noticees:

Sl. No.	Name of the Noticee	Penalty provisions	Penalty Amount (In ₹)	Payable
1	Noticee No. 1 to 4	Section 15HA of SEBI Act	5,00,00,000 (Five Crores)	Jointly and severally
2	Noticee No. 1	Section 15HB of SEBI Act	10,00,000 (Ten Lakh)	Individually
3	Noticee No. 2		10,00,000 (Ten Lakh)	Individually

2. The Hon’ble Securities Appellate Tribunal (‘SAT’) vide its Order dated July 12, 2023 (‘**SAT Order**’) remanded matter to SEBI Adjudicating Officer with directions to

reconsider quantum of penalty. The relevant extracts of the directions of the SAT order are being reproduced herein for ready reference: -

“....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. ”

3. In the SAT order, SAT has largely referred to its earlier order dated January 23, 2023 (**‘First SAT Order’**) passed in the Appeal No. 184 of 2019 (OPG Securities Private Ltd. & Ors. Vs. SEBI) filed to challenge the SEBI WTM Order dated April 30, 2019 (**‘First WTM Order’**). The relevant part of the First SAT Order is reproduced herein below:

“266.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.

266. 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.

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

4. Pursuant to the directions of Hon'ble SAT in the First SAT Order, the SEBI WTM, re-adjudicated on the following four issues:
 - i. *To decide the quantum of disgorgement of amount, OPG Securities Private Limited ('OPG') and its directors are liable out of trades executed in violation of sub-regulation (1) of regulation 4 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").*
 - ii. *To re-consider the charge of connivance and collusion of OPG and its directors with any employee/officials of NSE.*
 - iii. *To re-consider the Issue no. 2 of First WTM Order, relating to crowding out other market participants.*
 - iv. *To decide the issue of direction/ penalty (for) concealment/destruction of vital information.*
5. SEBI WTM passed order dated September 13, 2024 (**WTM Second Order**) in the aforesaid remanded matter, and the summary of the findings in the order on the said four issues is as follows:

- a. *The quantum of disgorgement was re-calculated and the total amount was arrived at INR 8525.46 Lakh.*
 - b. *The charges of connivance and collusion of OPG and its directors with any employee/officials of NSE were not established.*
 - c. *Direction against the Noticee no. 2 for concealment/destruction of vital information.*
 - d. *The charges of crowding out other market participants were not established.*
6. Further, vide WTM Second order, certain directions were issued to the Notices, in this regard, the relevant excerpts from the said order is as follows:

“.....297. Further, I, in compliance with the orders passed by Hon’ble SAT dated January 23, 2023, June 09, 2023, December 01, 2023, March 08, 2024, March 15, 2024, May 15, 2024 and, June 24, 2024 and considering the findings at para 291, pass the following directions:

 - I. Noticees are directed to disgorge the amount of INR 8525.46 Lakh, jointly and severally along with interest at the rate of 12% per annum, calculated from May 22, 2015 till the date of payment.*
 - II. In case Noticees have deposited INR 7.5 Crore (INR 750 Lakh) with SEBI in compliance with directions of Hon’ble SAT, the total amount payable (excluding interest) by Noticees will come to INR 7775.46 Lakh (INR 8525.46 Lakh- INR 750 Lakh). In such a case, the interest shall be charged on INR 7.50 Crore from May 22, 2015 to the date of deposit made with SEBI and interest on the remaining amount of INR 7775.46 Lakh would be charged from May 22, 2015 till date of its payment.*
 - III. The Noticee no. 2 shall be prohibited from accessing the securities market and from buying, selling or otherwise dealing in the securities market, either directly or indirectly, for a period of 6 months. The aforesaid debarment shall be in addition to the debarment of 5 years, as*

directed vide the 2019 SEBI OPG Order and shall start after period of initial debarment of five years gets over.

- IV. *During the period of restraint, the existing holding of securities (including units of mutual funds) of the Noticee no.2 shall remain frozen.”*

APPOINTMENT OF ADJUDICATING OFFICER

7. Mr. Shashi Kumar Valsakumar, CGM was appointed as Adjudicating Officer vide Order dated July 21, 2023 pursuant to remanding back of the matter by Hon'ble SAT. Subsequent, to transfer of erstwhile Adjudicating Officer (AO), Mr. Shashikumar Valsakumar, vide order dated July 22, 2024, undersigned was appointed, to inquire into and adjudge upon the alleged violations by the Noticees, under Section 15HA and 15HB of the SEBI Act, 1992.

HEARING NOTICE, REPLY AND HEARING

8. In compliance of Hon'ble SAT's direction in SAT order, the quantum of penalty to be imposed under Section 15 HA (Noticees 1 to 4) and Section 15 HB (Noticee 1 and 2) of SEBI Act, for the violations committed by the Noticees, while considering the factors provided under Section 15J of SEBI Act was to be decided afresh by undersigned. Therefore, in terms of the provisions of Rule 4(3) of Adjudication Rules a Hearing Notice No. SEBI/HO/EAD-8/AS/RM/2024/32615/1-4 dated October 16, 2024 (hereinafter be referred to as, the "HN") was issued to the Noticees providing an opportunity of hearing on November 12, 2024.
9. The HN was issued to the Noticees through Speed Post Acknowledgement Due (SPAD) and digitally signed email dated October 16, 2024 and was delivered on October 16, 2024. The Noticees vide letter dated November 11, 2024 sought an extension of 3 weeks from November 12, 2024 to submit response to the HN. Vide email dated November 12, 2024, Noticees were granted extension to submit reply by December 03, 2024, and the hearing was rescheduled to December 06, 2024.

Noticees submitted a representation dated December 03, 2024 in response to the HN. Vide email dated December 05, 2024 the Noticees were informed that their representation has been taken on records, and they were advised to appear for the personal hearing on December 06, 2024. Vide email dated December 06, 2024, Noticees informed unavailability on account of personal difficulties to attend the hearing and sought a short accommodation. Accordingly, the hearing was rescheduled to December 11, 2024. The authorised representatives of the Noticees attended the hearing on December 11, 2024 and reiterated the submissions made by the Noticees in their reply dated December 03, 2024. Additionally, the ARs requested that, if the matter is not kept in abeyance during the pendency of appeals before the Hon'ble SAT and the Supreme Court (as detailed in the reply), the Noticees be permitted to present the same submissions before the Adjudicating Officer (AO) as those made in the said appeals. Furthermore, the AR undertook to submit a short note on the matter by December 17, 2024. The AR of the Noticees submitted the written submissions vide email dated December 17, 2024.

10. With respect to the Hearing Notice, the submissions of the Noticees made vide representation dated December 03, 2024 and letter dated December 17, 2024 are, inter alia, as under:

Representation dated December 03, 2024

‘.....

3. *At the outset, it is submitted that the Ld. AO has failed to appreciate the underlying reasons for which the Hon'ble Tribunal had set aside the computation of unlawful gains as arrived by the Ld. WTM, vide the SAT order dated January 23, 2023 in the Appeal No. 184 of 2019. In any event, the Ld. AO also failed to appreciate that it is a settled law that the proceedings before the Ld. AO are independent from the proceedings before the Ld. WTM. The Ld. AO ought to note that the Ld. WTM has gravely erred in computing the alleged unlawful gains of OPG in the earlier proceedings leading to the SAT Order dated January 23, 2023 and once again in its present order dated September 13, 2024. Needless to add that the Noticees are not even show caused to the methodology applied by the Ld. WTM for arriving at its computation. Accordingly, the order dated*

September 13, 2024 passed by the Ld. WTM [Ref: Annexure 6 to the Notice] has been challenged by the Noticees before the Hon'ble SAT vide their Appeals No. 554 and 575 of 2024. These Appeals, and therefore, the computation arrived at by the Ld. WTM in its order dated September 13, 2024 are currently pending and sub judice before the Hon'ble SAT.

4. At the further outset and without prejudice to the submissions being made herein including that no penalty whatsoever is warranted to be imposed upon the Noticees for want of any violation of applicable law, the Ld. AO is further requested to kindly provide the Noticees the methodology of computation it intends to apply for imposition of penalty, if any, prior to passing its order. It is requested in the interest of natural justice and fair procedure that the Noticees are provided an opportunity to respond to the methodology that the Ld. AO seeks to adopt, before concluding the present proceedings.
5. This representation is being filed to put forth the preliminary submissions of the Noticees for the consideration of the Ld. AO while deciding the captioned proceedings under the Notice of Hearing. The Noticees reserve the right to file additional submissions as and when warranted in the proceedings, which may duly be considered and taken on record.

PRELIMINARY SUBMISSIONS OF THE NOTICEES

A. Pendency of the Proceedings before the Hon'ble Supreme Court

6. At the outset, it may be noted that the core issues in the matter including the question of whether at all access to Secondary Server of the National Stock Exchange of India's ("NSE") colocation platform was a banned activity, is sub judice before the Hon'ble Supreme Court in the Civil Appeals filed by the Noticees, bearing C.A. No.1961 of 2023 and C.A. No. 52165 of 2023. The question of whether at all the remand directions are appropriate and warranted is also subjudice before the Hon'ble Supreme Court.
7. Despite the pendency of the proceedings before the Hon'ble Supreme Court, the Noticees are participating in the present proceedings without prejudice to the final outcome of the Appeals filed before the Hon'ble Supreme Court. Therefore, during pendency of the proceedings on the very question of the impugned violation, no purpose would be served of making a computation of the penalty upon such violation at this stage.

8. Therefore, the Noticees request that the present proceedings ought to be kept in abeyance, and be considered only after final conclusion of the Appeals pending before the Hon'ble Supreme Court in order, in the interest of judicial economy.

B. Action taken by the Learned Adjudicating Officer ("Ld. AO") in respect of 15 other trading members, and ratification of the same by the Whole Time Member ("WTM").

9. Without prejudice to the above submission, we request SEBI to take into consideration our preliminary submission that the Noticees may be treated at par with the other trading members who are also said to have committed the same violations as OPG i.e., accessed the Secondary Server at the NSE Colocation centre without seeking prior permission of / making a complaint with NSE. It may be noted that for the exact same violations that are alleged against the Noticees, SEBI had initiated proceedings before the Ld. AO qua 15 other trading members (out of 60+ trading members identified in the Expert Reports) for imposition of penalty.
10. The findings of fact as to the existence of Secondary Server connections and the similarity in the number of Secondary Server connections made by these other trading members and the details of reprimands made by NSE against these trading members is presented in Table No. I at **Annexure A** hereto. The relevant findings in each of the AO Order are provided under Table No. II at **Annexure B** hereto.

1. It is pertinent to the note the Ld. AO's observations and conclusions made in respect of each of the 15 trading member(s) / noticees, as summarised below:

(i) that they made "**no unfair or illicit gains**" out of the Secondary Server connections.

(ii) in any case the ISB report does not form any basis of any alleged quantification as SEBI finds that the alleged unlawful/illicit gains and/or alleged unfair advantage and/or extent of loss suffered by investors **cannot be computed/quantified**.

(iii) that connecting to the Secondary Server was **not even a prohibited or banned activity**.

(iv) that connecting to the Secondary Server without information/permission of NSE on a regular basis, **cannot** be deemed to be **fraudulent**.

(v) the Investigation Report found **nothing to show any collusion** between the Noticee and NSE and it not any record a finding that noticees gained **any unfair advantage / gain** on Secondary Servers.

(vi) that connecting to Secondary / fall-back server without consent/permission of NSE repeatedly despite several reprimands/warnings/ advices is only non- adherence to the Clause A (2) of Code of Conduct for Stock Brokers as specified under SBSB Regulations.

(vii) cannot be said to have employed a device, artifice or scheme which would operate as a fraud upon investors, and therefore that the charges of violation of PFUTP Regulations fail.

(viii) there is **no alleged advantage** accrued over other trading members' by establishing Secondary Server connections and/or alleged **first/early login** to Secondary Servers.

(ix) the **EY CM segment simulation does not form evidence** in any of the above proceedings with relation to any alleged advantage from Secondary server connections including in the case of SMC Global (603 days of CM SS connections), PRB Securities (215 days of CM SS connections), Advent (238 days of CM SS connections), Master Capital (263 days of CM SS connections) Share India (475 days of CM SS connections), Shaastra/Tower Research (605 days of CM SS connections). Therefore, the incorrect findings pertaining to EY CM segment simulation cannot be in any manner be considered evidence in the matter of OPG and that too for any alleged advantage in the FO segment.

(x) that **connecting early on Secondary Server** or connecting to secondary server before the start of market hours without connecting to Primary Server is of no significance and does not result in any advantage to the trading member and is **not considered a violation** [Ref: orders passed in respect of Master Capital, Shaastra/Tower Research, Yug, Parwati, and Advent].

(xi) that **connecting to the Secondary Server without at all connecting to the Primary Server** or only connecting to Secondary Server does not constitute any unfair or fraudulent act in terms of the PFUTP Regulations, and at best, can only be a violation of provisions of the Code of Conduct for Stock Brokers as specified under SBSB Regulations.

11. **Violations attributed:** Each of these 15 orders state that at best, violations can be of the Brokers Code of Conduct under the SBSB Regulations. These orders contain categorical findings that the question of violation of PFUTP Regulations does not arise or is not proved. In some orders, though a violation of 'unfair trade practice' under Regulation 4(1) of the PFUTP Regulations is concluded, there is a categorical finding of the absence of 'fraud' –

(i) In matters against 2 trading members i.e., SMC Global (146 days of F&O SS connections) and Crosseas Capital (66 days of CM SS connections) – the allegations of violation of PFUTP Regulations are not even made.

(ii) In matters against 6 trading members i.e. IKM Investors (105 days of F&O SS connections), Master Capital (273 days of F&O SS connections), Yug (273 days of F&O SS connections), Share India (466 days of CM SS and 63 days of F&O SS connections), Tower Research (372 days of F&O SS connections), Excel (133 days of CD SS connections) – the allegations of violation of Regulation 3 and 4 of the PFUTP Regulations were made, but however, dropped as not applicable. Only violations under the Code of Conduct for Stock Brokers as specified under SBSB Regulations are concluded.

(iii) In matters against 7 trading members i.e. Advent (17 days of F&O SS connections), PRB Securities (46 days of F&O SS connections), CPR Capital (234 days of F&O SS connections), Parwati (203 days of F&O SS connections), Silver Stream (257 days of F&O SS connections), Adroit (320 days of CD; 70 days of CM and 74 days of F&O SS connections), PACE (365 days of F&O SS connections) - after consideration of violation of PFUTP Regulations, after due consideration, allegations of fraud are dropped, and only allegations of violation of the Brokers Code of Conduct under the SBSB Regulations, and violation of 'unfair trade practice' under Regulation 4(1) of the PFUTP Regulations are concluded.

12. **Similarity of findings:** Below are some findings made / directions issued against OPG, which are not found in any of cases against the remaining 15 trading members, despite the fact that their actions are the same –

(i) Connecting only to the Secondary Server – 4 other trading members were also connecting only to the Secondary Server on many days – CPR Capital (44 days of only connecting to the CD SS), IKM Investors (280 days of only connecting to the CD SS),

Yug (263 days of only connecting to the CD SS), Share India (489 days of only connecting to the SS).

(ii) Connecting first to the Secondary Server - 4 other trading members were also connecting first to the Secondary Server on many days – Advent (72 days of first connections to the CM SS), SMC Global (188 days of first connections to the CM SS), IKM Investors (104 days of first connections to the CM SS), Adroit (23 days of first connections to the CM SS; 209 days of first connections to the CD SS).

(iii) Connecting to Secondary Server without connecting to Primary Server early in the morning amounts to a deliberate act for gain / advantage – no such findings are made in respect of the above 4 trading members, despite them connecting first to the Secondary Server on many days.

(iv) Connecting to Secondary Server even after allegedly being reprimanded by NSE – 6 other trading members were also continuing to connect to the Secondary Server after being reprimanded by the NSE – SMC Global, Parwati (continued connecting for 532 days after reprimand), Silver Stream (continued connecting for 188 days after reprimand), Adroit (continued connecting for 296 days after reprimand), Share India (continued connecting for 403 days after reprimand).

(v) Allegation of unfair advantage – in respect of all other trading members, it is categorically stated that there are no unfair gains made or unfair advantage availed or loss caused to investors by the trading members as a result of repeated Secondary Server connections despite the alleged reprimands–Advent (Ref: Para 43 and 48), Crosseas (Ref: Para 21), PRB (Ref: Sub para C), CPR (Ref: Sub para h & c), IKM Investors (Ref: Para 19), Excel (Ref: Para 40), Parwati (Ref: Para 25), Master Capital (Ref: Para 35), Adroit (Ref: Sub para c), Silver Stream (Ref: Sub para i& c), Share India (Ref: Para 36 and 43), Pace (Ref: Para 36), Tower Research (Ref: Para 24).

13. Despite such similar findings, each of the AO Orders qua these trading members finds that such a practice is not a banned / prohibited activity and that such practice does not lead to any gain to the said trading member or loss to any investor. No WTM proceedings are initiated, and no disgorgement orders are passed.

14. *What is pertinent is that the findings of the Ld. AO in the said 15 orders, have not been reviewed/ enhanced by the Ld. WTM under Section 15(1)(3) of the SEBI Act, 1992. These findings are not even challenged by SEBI before the Hon'ble SAT. On the contrary appeals are only filed by some of the respective trading members, which appeals are currently pending before the Hon'ble SAT.*
15. *Therefore, considering that the Ld. AO took a varied approach from the Ld. WTM in each of these 15 AO orders, the Ld. AO therefore ought to follow its own approach in the case of Noticees as well and treat the Noticees at par with the other trading members before it.*

C. Pendency of proceedings before the Hon'ble SAT, under challenge to the order dated September 13, 2024 passed by the Ld. WTM.

16. *Without prejudice to submissions made above, if the Ld. AO with appropriate justification finds it fit to apply a methodology of computation which is not in parity with its findings in the other 15 AO orders, and apply the computation undertaken in the WTM Order dated September 13, 2024, then it must be considered that the said computation is currently sub judice before the Hon'ble SAT vide the Appeal filed by the Noticee No. 1 (Appeal No. 575 of 2024) and Noticee Nos. 2 to 4 (Appeal No. 554 of 2024).*
17. *If the Ld. AO intends to follow the findings of the Ld. WTM, then it ought to consider the outcome of the proceedings before the Hon'ble SAT, especially considering that the Noticees have not even been show caused on the computation methodology on which basis the WTM Order has been passed.*
18. *In any event, even the ISB Report, 2023 basis which the WTM had issued its show cause notice, is replete with fundamental fallacies which have been demonstrated in detail in our Written Submissions read with the report prepared by Grant Thornton Bharat ("GT Reports") filed before the Ld. WTM. A copy of the Written Submissions and GT Reports are enclosed herewith as **Annexure C** and **Annexure D** hereto. It is requested that each of these submissions made on the computation ought to be independently considered by the Ld. AO.*

D. Prayer

19. In view of all submissions made hereinabove, we humbly pray and request that the present proceedings be kept in abeyance till the conclusion of the proceedings before the Hon'ble Supreme Court and the Hon'ble SAT, as the outcome of these proceedings will bear a direct impact over the outcome of the present proceedings.

.....'

Letter dated December 17, 2024

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3. At the further outset, as submitted during the personal hearing, it is reiterated that the present proceedings ought to be kept in abeyance till the conclusion of the proceedings before the Hon'ble Supreme Court under Civil Appeals No. 1961 of 2023 and 52165 of 2023 ("SC Appeals"); and the proceedings before the Hon'ble Securities Appellate Tribunal ("SAT") under Appeals No. 695 & 696 of 2024 ("SAT Appeals").
4. As requested by the Ld. AO during the personal hearing, all the orders passed by the Hon'ble Supreme Court in the said SC Appeals 1961 of 2023 and 52165 of 2023 are being enclosed herewith as **Annexure A, colly**. Further, copies of the SAT Appeals No. 695 & 696 of 2024 are being enclosed as **Annexure B, colly**. The submissions made and the status of these proceedings may be taken note of. In the event the Ld. AO requires any further clarifications / information as regards these proceedings before the Hon'ble Supreme Court and the Hon'ble Tribunal, the Noticees will be happy to provide the same.
5. Below presented are the preliminary submissions made on behalf of the Noticees during the personal hearing –

Independent proceedings before the Ld. AO

6. While the AO Notice makes reference to the order dated September 13, 2024 ("**WTM Order**"), it is submitted and urged that the Ld. AO applies its own independent mind to the proceedings before it and takes an independent view while deciding the present Notice. It is a settled law that the proceedings under Section 11-B before the Ld. WTM and adjudication proceedings are independent and require independent application of mind, as can be seen from the below judgements –

(a.) *The Hon'ble Securities Appellate Tribunal, in the case of **Dilip S. Pendse vs. Securities and Exchange Board of India**. [Appeal no. 90 of 2007 dated November 20, 2008] states:*

"8. ...Every finding of the adjudicating officer must be passed on an independent appraisal of evidence on record and cannot be allowed to be influenced by extraneous factors. For the same reason, we do not appreciate the adjudicating officer's reference to the appellant being penalized for the same alleged mischief in an enquiry under section 11 of the Act..."

(b.) *In the case of **Dushyant N. Dalal vs. Securities and Exchange Board of India** [Appeal No. 184 of 2011 dated October 4, 2012] the Hon'ble Tribunal has held as under:*

"19. The Board has been authorized to conduct multiple proceedings in respect of a wrong doing in a parallel manner. But each proceeding is independent by itself and a competent authority has to come to a well reasoned out conclusion after proper application of mind to the facts and legal issues. It cannot be held that the consequences in one of the proceedings can be automatically followed in other proceedings without observing the statutory requirements laid down in respect of the separate proceedings."

(c.) *In view of the aforesaid principle of independency, the Hon'ble Tribunal in the case of **Karvy Stock Broking Ltd. vs. Securities and Exchange Board of India** [Appeal No. 92 of 2006 dated January 8, 2007] has ruled as under:*

"... in order to allay the fears in the mind of the appellant we direct the enquiry officer to record his findings without being influenced by any observation made in the impugned order"

7. *The Noticees submit that the findings of the Ld. WTM in the WTM Order ought not have any bearing on the present adjudication proceedings as the present proceedings are independent and de hors the findings of the Ld. WTM.*

Appeals pending before the Hon'ble SAT

8. *Without prejudice to the above, the Noticees submit that the WTM Order is replete with errors and contradictions in view of which, the Noticees have approached the Hon'ble SAT, and the SAT Appeals are pending therebefore. Therefore, the Noticees are*

requesting that the present proceedings be kept in abeyance till the conclusion of the proceedings before the Hon'ble SAT.

- 9. However, in the event the Ld. AO is desirous of taking a final decision in the present proceedings, then as has been even recorded in the Proceedings Sheet dated December 11, 2024, the Noticees be given an opportunity to present their submissions on the fallacies in the computation arrived at in the WTM Order as are being taken before the Hon'ble SAT for the consideration of Ld. AO.*
- 10. It is also requested that the Noticees are firstly show caused on the computation methodology that SEBI intends to apply for the purpose of computing the penalty under Section 15JB of the SEBI Act, if any.*

Fundamental fallacies in the WTM Order leading to the challenge before the Hon'ble SAT

- 11. Additionally, it may also be noted that one of the primary challenges to the WTM Order under the SAT Appeals is that the Ld. WTM has proceeded to compute the alleged unlawful gain made by the Noticee No. 1 on its own methodology without first show causing the Noticees on its methodology so applied. Therefore, the WTM Order is passed overlooking the basic principles of natural justice. Interestingly, the Ld. WTM has also upheld the methodology of computation of unlawful gains under the SEBI's ISB Report, 2023 but has proceeded to reject the computation made under the ISB Report, 2023.*
- 12. On the other hand, without prejudice, the Noticees have submitted adequate data and direct evidence to show that at the most, the profits, if any, that could accrue to Noticee No. 1 from its alleged Secondary Server access during the relevant period. The Noticees even obtained an external expert report prepared by Grant Thornton Bharat ("GT") and submitted its Report ("GT Report") with the Ld. WTM [Ref: Annexure-D to the Noticees' Representation dated December 3, 2024]. The WTM Order is passed without considering the findings of the GT Report, and therefore, on its very face becomes perverse.*
- 13. The GT Report has been prepared on the same data and documents available with SEBI and used in the preparation of the ISB Report, 2023. The GT Report has demonstrated that the profits, if any, made by the Noticee No. 1 from the alleged Secondary Server access could only be Rs. 5,15,000/- (Rupees Five Lakhs Fifteen Thousand only), if the*

admitted flaws in the ISB Report, 2023 were rectified and correctly/ reasonably computed [Page No. 234 of the Noticees' Representation dated December 3, 2024].

14. *The Noticees have submitted their balance sheets for the period between 2010- 2014, which shows that the consolidated revenue was Rs. 155.2 crore and the profit after tax and consideration of the statutory and regulatory charges is only Rs. 10.88 Crores. The CA certificate submitted by the Noticees shows that the total intraday loss of the Noticee No.1 on Secondary Days was Rs. 672.36 Lakhs. Hence, it can be seen that the Noticee No.1 had in fact made losses from its Secondary Server access during the relevant period [Ref: Page No. 154 of the Representation], which is also a fact that is ignored by the WTM Order.*

Appeals pending before the Hon'ble Supreme Court

15. *It is more pertinent to note that the core allegation of whether at all access to Secondary Server at the NSE colocation center ("**Secondary Server**") without seek prior permission of/making a complaint with NSE, was a banned activity or not is pending adjudication and is sub judice before the Hon'ble Supreme Court in the SC Appeals challenging the Order dated January 23, 2023 of the Hon'ble SAT that was passed in the earlier Appeal 184 of 2019.*
16. *The outcome of the SC Appeals will have a direct bearing over the very question of whether at all the present proceedings ought to be initiated qua the Noticees. Even if the Ld. AO decides the AO Notice before it, its final decision would still be subject to the outcome of the proceedings before the Hon'ble Supreme Court. Therefore, it is urged that the present proceedings be kept in abeyance until conclusion of the SC Appeals.*

Views taken by the Ld. AO in 15 other matters

17. *Without prejudice to the prayer of the Noticees for keeping the proceedings in abeyance until conclusion of the proceedings before the Hon'ble SAT as well as the Hon'ble Supreme Court, in the event the Ld. AO is desirous of taking a final decision in the present proceedings, then it is urged that the Ld. AO takes into consideration the findings and decisions taken by the coordinate AOs in 15 other orders having similar facts, as presented by the Noticees [Ref: paragraphs 9-15 of the Noticees Representation dated December 3, 2024]. It may be noted that these findings of the Ld. AO including, on the very fundamental aspect that 'connecting to Secondary Server was not even a prohibited*

or banned activity,' has attained finality. These findings of the Ld. AO are not challenged by the Ld. WTM neither through exercise of its powers under Section 15-I(3) of the SEBI Act, nor by filing any appeal before the Hon'ble SAT challenging such findings.

18. In this regard, the Noticees make reference to the findings of the Hon'ble SAT in case of **Alliance Mutual Fund and Ors vs. SEBI (decision dated November 11, 2007 in Appeal No. 404 of 2004)**, wherein it has been observed that the co-ordinate benches of the same authority ought not arrive at contrary findings on the same set of facts.

"We are also in agreement with the learned senior counsel for the appellants that judicial discipline requires that **we as a coordinate Bench of the same Tribunal should not take a contra view on the same set of facts.** In Sub-Inspector Rooplal & Anr. vs. Lt. Governor & ors. (2000) 1 SCC 644 the learned judges of the Apex court had this to say:

"At the outset, we must express our serious dissatisfaction in regard to the manner in which a Coordinate Bench of the Tribunal has overruled, in effect, an earlier judgment of another Coordinate Bench of the same Tribunal. This is opposed to all principles of judicial discipline. If at all, the subsequent Bench of the Tribunal was of the opinion that the earlier view taken by the Coordinate Bench of the same Tribunal was incorrect, it ought to have referred the matter to a larger Bench so that the difference of opinion between the two Coordinate Benches on the same point could have been avoided. It is not as if the latter Bench was unaware of the judgment of the earlier Bench but knowingly it proceeded to disagree with the said judgment against all known rules of precedents. **Precedents which enunciate rules of law form the foundation of administration of justice under our system. This is a fundamental principle which every presiding officer of a judicial forum ought to know, for consistency in interpretation of law alone can lead to public confidence in our judicial system. This Court has laid downtime and again that precedent law must be followed by all concerned; deviation from the same should be only on a procedure known to law. "**
[Emphasis Supplied]

19. Pertinently, this issue of parity between the Noticees and other trading members is also pending before the Hon'ble SAT as well as the Hon'ble Supreme Court, and the decision on this issue will also have a direct bearing on the proceedings now pending before the Ld. AO.

Prayer

20. In view of the above, it is the humble request of the Noticees to keep the present proceedings in abeyance till the conclusion of the proceedings before the Hon'ble Supreme Court and the Hon'ble SAT, as the outcome of the SC Appeals and the SAT Appeals will bear a direct impact over the outcome of the present proceedings.

21. It is reiterated and as is recorded in the Proceedings Sheet dated December 11, 2024, that in the event the Ld. AO intends to continue the proceedings under the captioned AO Notice, then the Noticees be given an opportunity to present their submissions on the fallacies in the computation arrived at in the ISB Report, 2023 as well as the WTM Order as are being taken before the Hon'ble SAT, for the consideration of Ld. AO. The Noticees also reserve the right to file additional submissions as and when warranted in the proceedings, which may duly be considered and taken on record.

.....'

CONSIDERATION OF ISSUES

11. The issue for consideration pertains to fresh determination of the quantum of penalty to be imposed under Section 15 HA (for Noticees 1 to 4) and Section 15 HB (for Noticee 1 and 2) of the SEBI Act for the violations committed by the Noticees, in terms of directions issued by the Hon'ble SAT. Based on the perusal of the replies of the Noticees, the material / documents available on record and giving regard to factors provided under Section 15J of SEBI Act, I record my findings hereunder:

12. As noted from the records, in the Adjudication Order dated February 11, 2021, following was established:

- a) OPG Securities (Noticee 1) gained an unfair access and advantage by consistently logging into the Secondary POP Server for large number of days, and made unlawful gains. Further, it also failed to abide by standards of integrity, due skill, care and diligence in the conduct of its business and ensure compliance with statutory requirements. Noticee no. 2 to 4, being directors of Noticee 1 were responsible for its day to day affairs, during the relevant period of violation, hence vicariously liable.

- b) Mr. Sanjay Gupta (Noticee 2) failed to ensure co-operation with SEBI and hampered investigations.
- c) Accordingly, for violations by Noticees, penalties were imposed of the Noticees as follows:

S. No.	Noticee	Provisions violated	Penalty provisions	Penalty
1	Noticee No. 1 to 4	Regulation 4(1) of the PFUTP Regulations	Section 15HA of SEBI Act	5,00,00,000 (Five Crores) Jointly and severally
2	Noticee 1	Regulation 9(f) read with Clause A (1), (2) and (5) of the Code of Conduct as specified in Schedule II of the SBSB Regulations	Section 15HB of SEBI Act	10,00,000 (Ten Lakh) Individually
2	Noticee No. 2	Section 11C (2) of SEBI Act	Section 15HB of SEBI Act	10,00,000 (Ten Lakh) Individually

13. The Hon'ble SAT also affirmed the aforesaid violations by the Noticees in SAT order. I note that the SAT has solely remanded the matter for reconsideration of the quantum of penalty, without disturbing the findings of violations. Therefore, the limited mandate of these proceedings is to determine the appropriate penalty on the Noticees under Section 15HA and 15HB of SEBI Act for the already established violations.
14. The text of the above referred Section 15HA, 15HB and 15 J of SEBI Act is reproduced herein below:

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.

Factors to be taken into account while adjudging quantum of penalty.

15J. While adjudging quantum of penalty under 15-I or section 11 or section 11B, the Board or the adjudicating officer shall have due regard to the following factors, namely :—

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

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

15. I note that the main contentions of the Noticees are as follows:

- a) The present adjudication proceedings should be kept in abeyance as issues related to the NSE Co-Location matter and the Noticees, are pending before the Hon'ble Supreme Court (Civil Appeals No. 1961 & 52165 of 2023) and Hon'ble SAT (SAT Appeals No. 695 & 696 of 2024).
- b) The AO should not be influenced by the WTM Order (dated September 13, 2024). SEBI's WTM proceedings under Section 11B of SEBI Act, and SEBI's adjudication proceedings under Section 15HA and 15 HB of SEBI Act are independent, as held in multiple SAT rulings, and reference may be drawn from various judgments in cases like *Dilip S. Pendse vs. SEBI*, *Dushyant N. Dalal vs. SEBI*, *Karvy Stock Broking vs. SEBI*.
- c) The WTM Order contains computational errors and contradictions in the profit calculation methodology. The Noticees have appealed against the WTM order, and SAT is examining the issue, hence any penalty determination by the AO should consider SAT's final ruling.

- d) The ISB Report, 2023 (relied on by SEBI) was rejected in part, and the Ld. WTM devised its own flawed methodology without issuing a prior show cause notice disclosing methodology. An independent Grant Thornton Report shows actual profit from alleged Secondary Server access to be only Rs. 5.15 lakh, contradicting SEBI's claim. The Balance sheets & CA certificate submitted by Noticees confirm that Noticee No. 1 suffered an intraday trading loss of Rs. 672.36 lakh, proving no unlawful gains.
- e) The fundamental question, whether accessing the Secondary Server was prohibited, is pending before the Supreme Court. The AO should not preemptively penalize the Noticees before this legal question is settled.
- f) In 15 similar cases, SEBI's adjudication officers held that "connecting to the Secondary Server was not a prohibited activity." SEBI has not challenged those decisions, and the principle of judicial consistency (Alliance Mutual Fund & Sub-Inspector Rooplal cases) must apply.
- g) If the AO intends to determine a penalty, the Noticees should first be show caused on the exact computation methodology under Section 15JB of the SEBI Act.
- h) Further, the Noticees have prayed following:
 - i. keep present adjudication proceedings in abeyance till the Hon'ble Supreme Court and Hon'ble SAT decide the pending appeals.
 - ii. If the AO proceeds, the AO should first issue a show cause notice on penalty computation methodology.
 - iii. AO should apply independent judgment and do not be influenced by the WTM Order.
 - iv. AO should ensure judicial consistency with prior SEBI AO rulings.

16. In this regard, I note that the aforesaid contentions raised by Noticees are not relevant for the present proceedings because of the following:

- a) Limited Scope of Proceedings – The present proceedings are confined to determining the quantum of penalty afresh, as directed by the remand order, and do not involve a fresh adjudication of violations which have been already

affirmed by the Hon'ble SAT. The legality of the WTM's findings, including the alleged errors in computation, and other issues have been challenged by Noticees before Hon'ble SAT and Hon'ble Supreme Court, and are pending. However, I note that no relief to Noticees, in terms of stay on the present proceedings, or any other direction has been issued by the Hon'ble Supreme Court or Hon'ble SAT which could have redefined the scope of the present proceedings.

- b) Comparability with SEBI orders w.r.t. other Stock Brokers – The reliance on other cases where trading members were not penalized under PFUTP Regulations is misplaced. The findings in separate AO orders are independent determinations based on case-specific facts and may differ from the present case, hence cannot be used as a defense in the present proceedings. However, there is no requirement to go in these details, since the violations which have already been affirmed by Hon'ble SAT are not open for reconsideration before undersigned given the limited scope of the proceedings.
- c) Penalty Computation and Disclosure of Methodology – The AO has the discretion to determine the appropriate penalty based on the material on record and the statutory framework. The quantification of unlawful gains is not a prerequisite for imposing penalty under Sections 15HA and 15HB of SEBI Act. The adjudicating officer formulates its opinion regarding an appropriate penalty which is commensurate with the violations established, within statutory limits, while guided by factors under Section 15J of SEBI Act. Such process of arriving at a penalty amount, do not require a strict quantification methodology, and thereby request for its disclosure is flawed.
- d) Grand Thornton Report and ISB Report – The Noticees' contention that the Grand Thornton Report should be independently considered does not alter the scope of the present proceedings. The ISB Report's role in other proceedings is not directly relevant here, as the penalty determination is based on the violations already established.

- e) Issues are sub judice before Hon'ble Supreme Court – The pending issue before the Hon'ble Supreme Court regarding whether access to the secondary server constituted a banned activity does not impact the current proceedings, as in present proceedings, undersigned is not adjudicating violations but merely determining the penalty quantum afresh for the violations already established. The argument that the Supreme Court's decision could have retrospective implications remains speculative and does not warrant keeping the proceedings in abeyance.
- f) Request to keep proceedings in abeyance – The argument that proceedings should be kept in abeyance until SAT decides on the WTM order is misplaced, as there is no legal impediment to proceed with the penalty determination. The SAT has not stayed these proceedings. Further, the AO is not precluded from reconsidering the penalty merely because the WTM order has been challenged. In fact, the present proceedings are in compliance of the Hon'ble SAT's directions.
- g) Opportunity to make further submissions – The request for an additional opportunity to challenge the computation methodology used in the WTM Order is outside the scope of these proceedings. The AO is not bound by the WTM's methodology and is independently considering the penalty within the statutory framework of adjudication. The Noticees have already had sufficient opportunity to make submissions, and their arguments have been duly considered.
- h) Judicial consistency argument – The claim that SEBI has not challenged prior AO rulings and should maintain judicial consistency is not a binding constraint on the AO. Adjudication is a fact-specific exercise, and each case is decided on its own merits. The principle of consistency does not override the statutory discretion of the AO to determine penalties based on prevailing facts and applicable legal provisions.

17. The contentions raised by the Noticees primarily challenge the findings in earlier WTM orders and seek to reopen issues already decided. However, given the remit of

these proceedings is limited to determining the penalty quantum afresh, the arguments concerning violations, computation methodologies, and the comparability of cases do not hold relevance. Hence, these contentions cannot form a basis for putting in abeyance the penalty determination process.

ORDER

18. I note that SAT has affirmed in its order that Noticee 1 gained unfair advantage by repeatedly accessing the Secondary POP Server, thereby making unlawful gain. Regardless of the quantum of such unlawful gain, it is evident that the manner in which Noticee 1 connected to the secondary server constituted an unfair practice, which was recurrent in nature. This amounts to a serious violation.
19. Furthermore, Noticee 1 failed to adhere to the standards of integrity, due skill, care and diligence in the conduct of its business and in ensuring compliance with statutory requirements. Noticee 2 to 4 were directors of Noticee 1, during the relevant period of violations and were responsible for its day to day affairs, hence they are vicariously liable for the acts of omissions and commissions by Noticee 1. Additionally, Noticee 2 was obligated to ensure that correct information was provided promptly to SEBI, however, he failed to ensure co-operation with SEBI and hampered investigations in the instant proceedings.
20. I further note that the material on record does not provide an exact quantification of the loss incurred by investors. However, it is also recognised that precise quantification is not a prerequisite, as unfair market access undermines investor confidence and consequently, market integrity. Further, the violations were not isolated but occurred over an extended period, demonstrating a pattern of misconduct that warrants deterrent action.

21. Considering all the facts and circumstances of the case, submissions of the Noticees, and the factors under Section 15J of SEBI Act; I, in exercise of the powers conferred upon me under section 15-I of SEBI Act read with Rule 5 of the SEBI Adjudication Rules, I hereby impose the following monetary penalty under section 15HA and 15HB of the SEBI Act on the Noticees:

Sl. No.	Name of the Noticee	Penalty provisions	Penalty Amount (In ₹)
1	Noticee No. 1 to 4	Section 15HA of SEBI Act	5,00,00,000 (Five Crores)
2	Noticee No. 1	Section 15HB of SEBI Act	10,00,000 (Ten Lakh)
3	Noticee No. 2		10,00,000 (Ten Lakh)

In my view, the said penalty is commensurate with the violations committed by the Noticees in this case.

22. The Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link:

ENFORCEMENT → ORDERS → ORDERS OF AO → PAY NOW

23. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under section 28A of the SEBI Act for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.
24. In terms of Rule 6 of the SEBI Adjudication Rules, 1995, copy of this order is sent to the Noticees and also to the SEBI.

Place: Mumbai
Date: April 02, 2025

ASHA SHETTY
ADJUDICATING OFFICER