

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER: Order/AP/SK/2020-21/8744]

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

In respect of:

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

1. Securities and Exchange Board of India (hereinafter referred to as "SEBI") based on letter received from Ministry of Finance referring to a news report which referring to the Annual Report of National Stock Exchange of India Limited (hereinafter referred to as "NSE" or "the Noticee") stated that Ms. Chitra Ramkrishna, former MD and CEO of NSE, earned about Rs. 44 crore in a period of three years during which she held the aforesaid position at NSE and that she earned Rs. 23 crore as total remuneration in the last eight months of her tenure. Based on the reference, SEBI initiated examination into the said matter and sought clarification from NSE regarding the same. Upon examination, SEBI observed the following:
 - a) As per NSE policy, leave encashment of up to 360 days is permitted for an employee. However, on comparing the approved compensation and actual gross compensation paid for the period of eight months and two days to Ms. Chitra Ramkrishna, for the financial year 2016-2017, it was observed that the board of NSE (hereinafter referred to as 'NSE Board'), based on the recommendation of its Nomination and Remuneration Committee ('compensation committee' or 'CC'), permitted an additional encashment of 168 days i.e. a total of 528 days for Ms. Chitra Ramkrishna on cessation of her service with NSE.
 - b) The extra remuneration paid to Ms. Chitra Ramkrishna on account of encashment of this additional 168 days of leave was Rs. 1,54,23,781. In view of the additional compensation of Rs. 1,54,23,781 paid to Ms. Chitra Ramkrishna, vide emails dated October 10, 2017 and October 13, 2017, NSE was, *inter-alia*, advised by SEBI to provide the applicable provisions under which the additional leave encashment of 168 days was considered and approved by the NSE Board and its compensation committee.

c) In response to the aforesaid emails sent by SEBI, NSE made submissions vide its emails dated October 11, 2017 and October 17, 2017, a summary of which is given below:

- i. *The terms of compensation payable to Ms Chitra Ramkrishna as the MD & CEO of NSE, inter alia, included encashment of accumulated leave at the end of the term of MD & CEO under clause (IV) Part -B (d) of the term submitted to SEBI as Annexure to the letter dated December 13, 2012 for its approval. The same was approved by SEBI vide its letter dated March 20, 2013. The said clause also stated that 'This will however not be included in the computation of the ceiling on remuneration payable to MD & CEO.'*
- ii. *As per the staff policy, in case of the employees in the grade Sr. Vice President and above including working directors, the accumulated ordinary leave is allowed to be encashed without limit at the time of retirement.*
- iii. *As may be seen from above, Ms Chitra Ramkrishna was actually eligible for the encashment of unencashed accumulated ordinary leave of 168 days on cessation of her service at the end of her tenure / retirement. However, since this was a case of resignation, as abundant caution the matter was placed before the Nomination & Remuneration Committee and the Board of NSEIL. Both the Nomination & Remuneration Committee and the Board considered the same in the spirit of the above mentioned terms of compensation and the staff policy and also in view of her sterling contribution to the growth of the organisation over the long years that she had been associated with and being part of the team that set up the stock exchange and treating her resignation as end of the tenure and approved the encashment of the balance unencashed ordinary leave balance of 168 days.*
- iv. *The compensation committee of NSE in its meeting held on November 26, 2012, decided that in case of Senior management (i.e., Sr. Vice President and above including working directors), the accumulated ordinary leaves would be allowed to be encashed without limit, at the time of retirement.*
- v. *NSE has also informed that Mr. Ravi Narain (Ex MD & CEO of NSE) whose tenure came to an end on March 31, 2013 was paid accumulated Ordinary Leave encashment of 381 days and Mr. R Nandkumar (SVP Trade Operations) had encashed Ordinary Leave of 391 days on cessation of his service with NSE on May 31, 2014.*

d) Thereafter, SEBI vide emails dated October 27, 2017 and November 13, 2017, *inter-alia*, advised NSE to confirm whether requisite approvals were taken by NSE from SEBI prior to making the amendments to the compensation policy of senior management, as required under

the provision of regulation 27(4) of SECC Regulations, decision on which was taken in the meetings of the NSE Board and NRC, held on November 26, 2012 and also to provide the copies of such approvals.

e) In response to the aforesaid emails sent by SEBI, NSE made submissions vide its emails dated November 07, 2017 and November 29, 2017, a summary of which is given below:

- i. NSE had, inter alia, vide its letters December 13, 2012 and dated January 18, 2013 sought the approval of SEBI for the appointment of Ms. Chitra Ramkrishna as MD & CEO and the remuneration payable to her. The details of terms and conditions of her appointment and the remuneration payable to her as approved by Compensation Committee, Board & Shareholders of NSE were also covered in the note attached to our letter to SEBI. In response to the same, SEBI gave its approval vide its letter dated March 20, 2013.*
- ii. The resolution passed by the shareholders and approved by SEBI inter alia as stated above provided for (i) any other payments to MD & CEO as the Board or the Committee may decide and also provided for (ii) such other benefits to MD & CEO as are made available by the Company to other members of the staff from time to time. The encashment of leaves is pursuant to the above approval dated March 20, 2013 and hence fresh approval is not required.*
- iii. The MD & CEO immediately prior to Ms. Chitra Ramkrishna, viz, Mr. Ravi Narain, NSE had, vide its letter December 28, 2009, sought the approval of SEBI for his re-appointment as MD & CEO for a period of three years with effect from April 1, 2010 after obtaining the approval of Compensation Committee, Board & Shareholders of NSE. In response to the same, SEBI gave its approval vide its letter dated January 12, 2010. The requirement for seeking SEBI approval for compensation was introduced vide Regulation 27 of SCR (SECC) Regulations, 2012 on June 20, 2012.*
- iv. NSE submitted that his re-appointment was approved by SEBI on January 12, 2010 as per the requirements of SEBI prevalent at that point of time. Since there was no requirement for seeking SEBI approval for compensation at that point of time, any change in such compensation also does not require approval of SEBI and accordingly his compensation and other benefits would have to be governed by the terms and conditions of appointment approved by Compensation Committee, Board & Shareholders of NSE at that point of time.*

f) On perusal of the reply submitted by NSE, it is observed that the policy with regard to leave encasement for senior management was changed by NSE with the approval of NSE Board

and compensation committee on November 26, 2012, during the tenure of Mr. Ravi Narain who was MD & CEO of NSE at that time. Although, NSE had submitted that the terms and conditions of his re-appointment, as approved by NSE board / compensation committee and its shareholders, provided for "*such other benefits as are made available to other members of the staff from time to time*", such changes were, *prima facie*, required to be submitted to SEBI for approval in terms of Regulation 27(4) of Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2012 (hereinafter referred to as 'SECC Regulations') for change in compensation of MD&CEO.

- g) The policy change approved by the compensation committee /NSE Board on November 26, 2012 cannot be implemented without the prior approval of SEBI.
2. In view of the aforesaid observations, it was alleged that the policy change approved by the Compensation Committee/NSE Board of NSE on November 26, 2012 cannot be implemented without the prior approval of SEBI and thus, the encashment of accumulated Ordinary Leave by Mr. Ravi Narain and Ms. Chitra Ramkrishna over and above the limit of 360 days was granted by NSE without taking prior approval of SEBI leading to non-compliance with the provisions of regulation 27(4) of the SECC Regulations which reads as under:

Compensation and tenure of key management personnel.

27(4). The compensation payable to the managing director shall be as approved by the Board and the terms and conditions of the compensation of the managing director shall not be changed without the prior approval of the Board.

3. In view of the above, SEBI felt satisfied that there are sufficient grounds to inquire and adjudicate upon the aforesaid alleged violations by the Noticee and on February 07, 2018, appointed Shri Suresh B Menon, Chief General Manager, as Adjudicating Officer ('1st erstwhile AO') under Section 23-I of the Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as 'SCRA') read with Rule 3 of the Securities Contracts (Regulation) (Procedure for Holding Inquiry and imposing Penalties by Adjudicating Officer) Rules, 2005 (hereinafter referred to as 'SCRA Adjudication Rules') to inquire into and adjudge the aforesaid alleged violations by the Noticee under the provisions of Section 23H of the SCRA.
4. Subsequently, on transfer of the 1st erstwhile AO to another department of SEBI, this case was transferred to Shri Santosh Shukla, Chief General Manager, as Adjudicating Officer ('2nd erstwhile AO') vide a common *communication-order* dated March 25, 2019. It was noted that the 1st erstwhile

AO issued a Show Cause Notice (hereinafter referred to as 'SCN') bearing no A&E/EAD3/SBM-ASR/13842/2018 dated May 09, 2018 to the Noticee. After reply was received from the Noticee vide letter dated June 11, 2018, hearing in the matter took place before the 1st erstwhile AO on September 27, 2018 and thereafter the Noticee submitted its additional submissions vide letter dated October 12, 2018. The 1st erstwhile AO while inquiring the matter observed that :

- a) *The policy of NSE relating to leave encashment (accumulated ordinary leave allowed to be encashed at the time of leaving the organisation upto a limit of 360 days) was changed by it for senior management (i.e. Senior Vice-President and above including working directors) with the approval of NRC / NSE's Board on November 26, 2012. In this regard, it has been alleged that such change in policy of NSE cannot be implemented without the approval of SEBI and encashment of accumulated ordinary leave by Mr. Ravi Narain and Ms. Chitra Ramakrishna over and above 360 days was granted by NSE without obtaining the prior approval of SEBI leading to violation of Regulation 27 (4) of the SECC Regulations.*
- b) *Even if the policy of allowing encashment of additional leave over and above 360 days was to be applied it was possible / permitted only in case of retirement and whereas Ms. Chitra Ramakrishna had resigned from NSE on December 02, 2016. The Board of NSE in its meeting held on December 19, 2016, had passed a resolution and allowed encashment of leave to Ms. Chitra Ramakrishna over and above the permissible limit of 360 days. In this regard, it has been alleged that prior approval of SEBI was not taken by NSE for effecting the changes in terms and conditions of compensation leading to violation of Regulation 27 (4) of the SECC Regulations.*

5. In view of the above, the 1st erstwhile AO proposed for issuance of supplementary show cause notice to the Noticee and obtained necessary approvals of the competent authority for issuance of Supplementary Show Cause Notice ('SSCN') on January 22, 2019. Accordingly, on receipt of records of the instant proceedings pursuant to transfer of the matter, the 2nd erstwhile AO issued a SSCN no. EAD-2/SS-SKS/OW/13638/1/2019 dated May 30, 2019 to the Noticee in terms of Rule 4(1) of the SCRA Adjudication Rules read with Section 23I of the SCRA, covering the issues as in para 4(a) & (b) above.
6. As the hearing in respect of the SCN dated May 09, 2018 was held on September 27, 2018 and the SSCN was subsequently issued, the 2nd erstwhile AO provided the Noticee another opportunity of hearing with regard to the SCN as well the SSCN along with the opportunity to file reply to the allegations / charges levelled in the SSCN. The Advocates of the Noticee vide letter dated June 06, 2019 and June 12, 2019, requested for inspection of the documents/records

relevant to or supporting or adverse to the charges levelled against the Noticee in the SSCN in the matter. In response to the same, vide letter dated July 03, 2019, it was clarified by the 2nd erstwhile AO that there are no documents other than those relied upon and already provided to the Noticee along with original SCN dated May 09, 2018. Since, all the available documents relied upon by SEBI has already been provided along with the Original SCN and no other additional documents are relied upon, the request of the Noticee was not acceded to. Subsequently, the Noticee filed its reply vide letter dated July 15, 2019 and availed the opportunity of hearing granted to it on July 16, 2019, in terms of Rule 4 (3) of the SCRA Adjudication Rules. It was also noted that during the hearing, the issue of request made by the Noticee to allow inspection of certain documents that are neither relied upon by SEBI nor are relevant to the proceedings was again explained to the ARs of the Noticee when they conceded not to contest in this regard.

7. Thereafter, on a careful examination of the matter, the Competent Authority felt satisfied that in view of the allegations attracting Regulation 27 (4) of the SECC Regulations, vide approval dated February 10, 2020, decided to amend the charging monetary penalty provisions under Chapter VI A of SEBI Act, 1992 (hereinafter referred to as 'SEBI Act') to Section 15HB of the SEBI Act in place of Section 23-H of the SCRA, as was earlier conveyed to the Noticee vide SCN dated May 09, 2018 and SSCN dated May 30, 2019.
8. Subsequently, on transfer of the 2nd erstwhile AO to another department of SEBI, this case has been transferred to the undersigned vide a *communication-order* dated March 03, 2020. Accordingly, on receipt of records of the instant proceedings, the undersigned issued a Modified Show Cause Notice ('MSCN') no. EAD-2/AP-SKS/OW/11135/1/2020 dated June 30, 2020, in terms of Rule 4 (1) of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as 'the Adjudication Rules'). The MSCN stated that the SCN dated May 09, 2018 and SSCN dated May 30, 2019 shall stand modified to the above extent of change in the charging penalty provision i.e. from Section 23-H of the SCRA to Section 15HB of the SEBI Act and that the rest of the contents of the said SCN and SSCN shall remain unchanged for the purpose of this adjudication proceeding.
9. The Noticee was given an opportunity of hearing on July 24, 2020 with regard to the SCN, SSCN as well the MSCN along with the opportunity to file reply with respect to the change in penal provisions as per the MSCN. Subsequently, after seeking further time, the Noticee filed its reply vide letter dated August 03, 2020 and availed the opportunity of hearing granted to it on August 10, 2020, through the Webex platform, when Mr. Somasekhar Sundaresan, Advocate supported by Mr. Rohan Banerjee, Advocate, Authorized Representative ('ARs') of the Noticee

appeared on its behalf. The ARs made oral submissions on the lines of their replies dated June 11, 2018, October 12, 2018 & August 03, 2020, and explained the contents thereof. Subsequently, the Noticee filed its post-hearing written submissions vide letter dated August 13, 2020.

10. The replies/submissions of the Noticee are *inter-alia* as follows:

Reply dated June 11, 2018:

- a) The re-appointment of Mr. Ravi Narain as MD of NSE in 2010 was specifically approved by SEBI pursuant to an application made by it on December 28, 2009. At all times relevant for Mr. Ravi Narain's terms of remuneration, there was no requirement for approval under Regulation 27(4) of the SECC Regulations from SEBI in respect of the compensation payable to Mr. Ravi Narain and the terms and conditions thereto.
- b) The requirement to obtain SEBI approval for compensation payable to an MD was introduced only on June 20, 2012, when the SECC Regulation (specifically, Regulation 27(4)) came into effect. Regulation 27(4) of the SECC Regulations contemplates SEBI approval being required in the following two instances, *viz.*, (i) for the compensation payable to an MD of a stock exchange or clearing corporation, and (ii) in the event that any change is made to the terms and conditions of the compensation.
- c) The requirement to seek SEBI approval for any change in the terms and conditions of compensation payable to an MD would operate only in an instance where the original compensation has been approved by SEBI under Regulation 27(4). Regulation 27(4) of the SECC Regulations does not have retrospective effect and did not apply in any manner to Mr. Ravi Narain's tenure as the MD of NSE. No change to the applicable and existing terms of remuneration of Mr. Ravi Narain had been effected after the SECC Regulations came into force. Therefore, the allegation that the change in leave encashment policy during Mr. Ravi Narain's tenure required SEBI approval and that the Noticee failed to communicate to SEBI about such change, is misplaced and erroneous.
- d) Any alternate reading of this provision would lead to the inconsistent consequence of SEBI approval being sought for alteration in the terms and conditions of compensation when the original compensation itself had not been reviewed or approved by SEBI. It is an established principle of law that the interpretation of any statutory provision must eschew manifestly incongruous and unjust results in favour of a rational construction. In the matter of *K. P. Varghese v. Income Tax Officer, Ernakulam*, the Hon'ble Supreme Court had held as follows:

“It is now a well settled rule of construction that where the plain literal interpretation of a statutory provision produces a manifestly absurd and unjust result which could never have been intended by the legislature, the court may modify the language used by the legislature or even 'do some violence' to it, so as to achieve the obvious intention of the legislature and produce a rational construction, Vide: Luke v. Inland Revenue Commissioner [1963] AC 557. The Court may also in such a case read into the statutory provision a condition which, though not expressed, is implicit as constituting the basic assumption underlying the statutory provision.” (emphasis supplied)

- e) Further, Regulation 27(4) also uses the term “and” to join the two conditions, i.e. the requirement to seek approval for: (i) “*compensation payable to the managing director*” **and** (ii) any change in “*the terms and conditions of the compensation of the managing director*”. In other words, under this provision, SEBI approval is required for the compensation payable, and to any changes thereto even after approval. In this regard, as a general rule, the term “and” has to be used in a cumulative sense, requiring fulfilment of all conditions that it joins together. In this regard, the Noticee placed reliance on the judgement of *Ishwar Singh Bindra and Ors. v. State of U P, AIR 1968 SC 1450*.
- f) Applying the above principles in the present case, the requirement to seek SEBI approval for any change in the terms and conditions of compensation of an MD does not stand in isolation and is subject to the implicit condition that the original compensation should have been approved by SEBI as well.
- g) Regulation 27(4) of the SECC Regulations does not purport to operate retrospectively and therefore, cannot be made applicable, in any manner, to the re-appointment of Mr. Ravi Narain in 2010. It is a cardinal principle of construction that every statute is *prima facie* prospective unless it is expressly or by necessary implication made to have retrospective operations. From the reading of Regulation 27(4), it is clear that there is no express language to suggest that the said provision would operate retrospectively.
- h) In cases where SEBI intends entities operating under an existing regulatory framework to obtain approval/registration under a newly introduced regulation, the same is categorically specified in such new regulations. For instance, the SEBI (Foreign Portfolio Investors) Regulations, 2014 (“FPI Regulations”), had specified the timeframe within which existing foreign institutional investors (licensed under the erstwhile SEBI (Foreign Institutional Investors) Regulations, 1995) were required to obtain registration in terms of the new FPI Regulations.

i) SECC Regulations took care to ensure that wherever any new stipulation would impact an existing state of activity, transition time was provided for alignment with the new requirements. For example, Regulation 23 of the SECC Regulations, pertaining to composition of the governing board of a recognised stock exchange, had clearly specified (in Regulation 23 (10)) that *"Every recognised stock exchange shall ensure compliance with the provisions of this regulation within three months from the date of commencement of these regulations"*. Therefore, it is clear that where SEBI intended stock exchanges to act upon a newly introduced stipulation in the SECC Regulations, the same was specifically spelt out, and time was given for compliance. Since Regulation 27(4) of the SECC Regulations did not include similar language, it is evident that the said provision was not envisaged to be applicable to the MDs of stock exchanges who were already holding office (such as, Mr. Ravi Narain) at the time the SECC Regulations came into effect

j) The incongruity in any contrary reading would arise in the fact that if retrospectively applied, the existing terms of service would become subject to SEBI approval even while service of the individuals was already underway. In this scenario, if the approval is not granted, it would mean that disruptive and inconsistent consequences would follow. On the other hand, any fresh appointment or re-appointment for a fresh tenure after the SECC Regulations came into effect would be logical and not otherwise. In this regard, it placed reliance on the ruling of the Hon'ble Securities Appellate Tribunal ("SAT") in the matter of *SMS Holdings Pvt. Ltd. vs. Securities and Exchange Board of India and Ors*, wherein it had observed as follows:

"Shri Setalvad in this context had rightly pointed out that the SEBI Regulations cannot be retrospectively applied, as SEBI has not been empowered to make regulations with retrospective effect and in the absence of clear specific power empowering to make regulations with retrospective effect, regulations cannot be brought in to force with retrospective effect. It is not the date on which SEBI passed the order that matters. It is the date of the cause of action that decides the applicability of the Regulation." (emphasis supplied)

k) Further, the fact that the regulations formulated by SEBI would not operate retrospectively unless specified, was reiterated in a recent decision of SEBI in respect of *Smt. Kokila Dhirubhai Ambani* wherein it had been held as follows:

"I note that Regulation 13(4A) of the PIT Regulations and consequential amendment to Regulation 13(5) of the PIT Regulations were notified vide SEBI (Prohibition of Insider Trading) (Amendment) Regulations, 2011 and have come into effect from August 16, 2011. Thus, the amended regulations did not exist on the

date of alleged transactions or the alleged due dates for compliance. I also do not find any provision in the said amendment for the retrospective effect of the said amended provisions." (emphasis supplied)

l) Therefore, in view of the judicial precedents cited above as well as the wording of the SECC Regulations themselves, it is submitted that since:

- i) there did not exist any requirement for the Noticee to obtain approval of or inform SEBI regarding the compensation payable to Mr. Ravi Narain as the MD of NSE at the time of his re-appointment in 2010, and
- ii) per a rational and cogent reading of Regulation 27(4) of the SECC Regulation, the requirement to seek SEBI approval for a change in terms and condition of compensation of an MD is conditional and would be applicable only in a situation where SEBI had approved the original terms and conditions of such compensation.

Thus, Regulation 27(4) is entirely inapplicable to Mr. Ravi Narain's tenure as the MD of the Noticee during the period April 01, 2010 to March 31, 2013.

- m) As such, the allegation made in Paragraph 8 of the SCN that *"the policy with regard to leave encasement (sic) for senior management was changed by NSE with the approval of NSE board and compensation committee on November 26, 2012, during the tenure of Mr. Ravi Narain who was MD & CEO of NSE at that time. It is alleged that.....such changes were, prima facie, required to be submitted to SEBI for approval in terms of regulation 27(4) of SECC Regulations, 2012 for change in compensation of MD & CEO"*, is misplaced and based on an incorrect reading of Regulation 27(4) of the SECC Regulations insofar as it relates to Mr. Ravi Narain, since the question of obtaining SEBI approval or communicating to SEBI in respect of any change in terms and conditions of compensation paid to Mr. Ravi Narain is non est.
- n) It is relevant to mention that no payment was ever made to Mr. Ravi Narain that was an outcome of a change to the terms and conditions of compensation payable to him. All payments made to Mr. Ravi Narain, at the time of his retirement in 2013, were in accordance with the terms and conditions of his compensation which had been formulated and approved in line with the applicable laws and regulations. The terms of remuneration payable to Mr. Ravi Narain at the time of his re-appointment as MD of NSE in 2010 (as approved by the CC and the Board of NSE, as well as the shareholders of NSE at an Annual General Meeting) categorically included the following as part of the perquisites

“Encashment of accumulated leave at the end of the tenure. This will however not be included in the computation of the ceiling on remuneration payable to Managing Director.”

- o) The aforementioned terms and conditions also stated the following, under the heading “Other Benefits”:

“(a) Leave

Ordinary Leave with full pay and allowances as per the Rules of the Company. Such leave will be permitted to be accumulated in accordance with the company’s rules and procedures in force from time to time. Casual and sick leave will be admissible as per the Rules of the Company.

(b) Any ex-gratia or other payments which the Board or Compensation Committee may decide to pay to the employees including working directors in such manner and for such purpose as may be decided by the Board or the Compensation Committee provided that such ex-gratia or other payments payable to Managing Director together with salary and other emoluments shall not exceed the limits prescribed under the Companies Act, 1956.

(c) General

Such other benefits as are made available by the Company to other members of the staff from time to time.”
(emphasis supplied).

A certified copy of the relevant extracts of the minutes of the CC of NSE which include the detailed terms and conditions of compensation payable to Mr. Ravi Narain on his re-appointment as MD of NSE in 2010 was provided.

- p) As regards Mr. Ravi Narain’s successor *viz.* Ms. Chitra Ramkrishna, since her appointment as MD & CEO of the Noticee was subject to Regulation 27(4) of the SECC Regulations, the Noticee had vide a letter dated December 13, 2012, made an application to SEBI seeking its approval for appointment of Ms. Chitra Ramkrishna as the MD & CEO as well as the terms of her compensation. It is relevant to note that the Amended Leave Policy was already in place (i.e. the decision of the CC dated November 26, 2012) at the time when the aforementioned application was made to SEBI. In fact, the details of compensation proposed to be paid to Ms. Ramkrishna (including, the encashment of accumulated leaves) was placed before SEBI as part of the application process. As part of such application, SEBI was apprised with all relevant information in connection with the compensation structure proposed for the MD & CEO (“Compensation T&Cs”), and the information submitted to SEBI vide letter dated December 13, 2012 included the following details:

“(d) Encashment of accumulated leave at the end of tenure of MD&CEO. This will however not be included in the computation of the ceiling on remuneration payable to MD&CEO.

.....

(a) Leave

Ordinary Leave with full pay and allowances as per the Rules of the Company. Such leave will be permitted to be accumulated in accordance with the Company’s Rules and Procedures in force from time to time. Casual and Sick leave will be admissible as per the Rules of the Company.

(b) Any other payments which the Board or Compensation Committee may decide to pay to the employees including working directors in such manner and for such purpose as may be decided by the Board or the Compensation Committee provided that such other payments payable to MD&CEO together with salary and other emoluments or its structure shall not exceed the limits prescribed under the Companies Act, 1956 or under SEBI Regulations.

(c) General

Such other benefits as are made available by the Company to other members of the staff from time to time. Further, the Board or Compensation Committee may restructure the compensation payable to MD & CEO from time to time in accordance with prevailing SEBI Regulations subject to the overall total compensation provided above.” (emphasis supplied)

- q) The Compensation Committee at the relevant time comprised of reputed individuals with extensive experience in the corporate governance, namely, Mr. Deepak Satwalekar, Dr. KRS Murthy, Mrs. Pratima Umarji, Mr. SB Mathur and Mr. YH Malegam, and they had recommended a compensation package, which they deemed suitable for the MD & CEO. Subsequently, after exchanging a series of correspondence with SEBI and engaging in discussions, the Noticee had submitted a letter dated January 18, 2013 to SEBI, along with other documents, wherein the same compensation structure was submitted for SEBI’s review again. The compensation terms in both the letters specifically included the encashment of accumulated leave for the MD & CEO at the end of the tenure. Pursuant to the abovementioned details submitted by the Noticee, SEBI had accorded its approval vide letter dated March 20, 2013 ("SEBI Approval") in the following terms:

“This is with reference to your letter December 13, 2012 seeking approval of SEBI for appointment of Ms. Chitra Ramkrishna, as the Managing Director & Chief Executive Officer (CEO) of the exchange and compensation payable to her, for a period of five years w.e.f. April 1, 2013. In this regard, we have no objection to the said appointment of Ms. Chitra Ramkrishna and compensation payable to her, as proposed by you.”

- r) Thus, it was submitted that SEBI was well aware of the details of the compensation payable to Ms. Chitra Ramkrishna and had specifically granted approval to such compensation, after reviewing all relevant information. In this regard, it was emphatically reiterated that since the date of filing the application dated December 13, 2012 for SEBI's approval and up until the day when Ms. Ramkrishna's tenure ended, there was no change in the compensation policy vis-à-vis Ms. Chitra Ramkrishna. Accordingly, there was no requirement for the Noticee to seek SEBI approval under Regulation 27(4) of the SECC Regulations, since:
- i) there had, in fact, been no change in the compensation payable to Ms. Chitra Ramkrishna so as to trigger Regulation 27(4) in any manner, and
 - ii) the leave encashment by Ms. Chitra Ramkrishna was wholly in line with the compensation terms which had been approved by SEBI vide letter dated March 20, 2013.
- s) Therefore, based on a plain reading of the SEBI Approval, it is submitted that the discretion of the Board of NSE and the CC in granting any payments to the MD & CEO as well as the ability of the MD & CEO to encash accumulated leaves, was reviewed and sanctioned by SEBI, without any conditionalities.
- t) The second limb of Regulation 27(4) of the SECC Regulations states that the terms and conditions of the compensation approved by SEBI shall not be changed without prior approval of SEBI. It is submitted that in the present case, subsequent to receipt of SEBI Approval, the Noticee has not changed or modified the Compensation T&Cs in any manner, whatsoever. In fact, a bare perusal of the facts as set out in the SCN also clearly demonstrates that, post receipt of the SEBI Approval, the Noticee has not undertaken any change in the Compensation T&Cs which could trigger the requirement to seek approval from SEBI under Regulation 27(4) of the SECC Regulations.
- u) Thus, the allegation of SEBI that the Noticee was required to obtain SEBI approval for a change in policy in compensation of MD is erroneous, since SEBI Approval for the Compensation T&Cs (which included reference to encashment of accumulated leaves by Ms. Chitra Ramkrishna as the MD & CEO) had already been obtained at the time of appointment of Ms. Chitra Ramkrishna.
- v) In this regard, it placed reliance to the matter of *Khunno Lal v. Union of India* ("Khunno Lal Case") wherein the Hon'ble Allahabad High Court had examined a situation where the petitioner who had been granted a license to import certain goods, was subsequently barred

from importing the same. In this context, the Hon'ble Allahabad High Court had observed as follows:

“The Supreme Court while dealing with a similar question under the Imports and Exports Control Act, 1947 in the case of the Union of India v. Anglo Afghan Agencies (AIR 1968 SC 718) held that even assuming that the provisions relating to the issue of trade notices offering inducement to the prospective exporters are in character executive, the Union Government and its officers are, on the authorities of this Court, not entitled at their mere whim to ignore the promises made by the Government. It further held that where a person has acted upon the representations made in an Export Promotion Scheme, that import licence upto the value of the goods exported would be issued and had imported goods, his claim for import licence for the maximum value permissible by the Scheme could not be arbitrarily rejected. This view has recently been affirmed by the Supreme Court in Century Spg. and Mfg. Co. Ltd. v. The Uthasnagar Municipal Council, where it was held in paragraph 11: “Public bodies are as much bound as private individuals to carry out representations of facts and promises made by them relying on which other persons have altered their positions to their prejudice...A public body is in our judgment, not exempt from liability to carry out its obligations arising out of representations made by it relying upon which a citizen has altered his position to his prejudice.”

...

12. That apart, it is not disputed that the petitioner did submit an application for importing "open type of condensing units run by 1 H.P., 2 H.P. 3 H.P., 4 H.P. and 5 H.P. without motor." This description remained unchanged and it is not the case of the opposite parties that any amended application was filed giving a different description of the goods sought to be imported.... In these circumstances it cannot be accepted that the Deputy Chief Controller granted the licence on some other representation” (emphasis supplied).

- w) The ratio and findings of the abovementioned Khunno Lal Case are squarely applicable to the present matter. As stated earlier, the Noticee had submitted the Compensation T&Cs (including, reference to leave encashment by the MD & CEO) to SEBI, and had subsequently paid compensation to Ms. Chitra Ramkrishna in accordance with and by placing reliance on the SEBI Approval. Therefore, SEBI is bound by the SEBI Approval granted in 2013, and is estopped from alleging a violation of Regulation 27(4) of the SECC Regulations, since the Compensation T&Cs have remained unchanged since 2013.
- x) Further, applying the principles of legitimate expectation, it is a settled position in law that a party is legitimately expected to being accorded certain treatment based on previous approval from governmental authority. The Noticee had no reason to believe, exercising any standard of reasonable and professional judgement, that there was any violative conduct involved in

payment of what was due. The Hon'ble Supreme Court in the matter of *National Buildings Construction Corporation v. S. Raghunathan & Ors.* ("NBCC Case"), has held that:

"The doctrine of "Legitimate Expectation" has its genesis in the field of administrative law. The Government and its departments, in administering the affairs of the country are expected to honour their statements of policy or intention and treat the citizens with full personal consideration without any iota of abuse of discretion. The policy statements cannot be disregarded unfairly or applied selectively. Unfairness in the form of unreasonableness is akin to violation of natural justice. It was in this context that the doctrine of "Legitimate Expectation" was evolved which has today become a source of substantive as well as procedural rights. But claims based on "Legitimate Expectation" have been held to require reliance on representations and resulting detriment to the claimant in the same way as claims based on promissory estoppel.

19. Lord Scarman in R. v. Inland Revenue Commissioners ex p. Preston, (1985) AC 835 laid down emphatically that unfairness in the purported exercise of power can amount to an abuse or excess of power. Thus the doctrine of "Legitimate Expectation" has been developed, both in the context of reasonableness and in the context of natural justice."

- y) It had also been held in the NBCC Case that a decision by a governmental authority, which deprives a person of some benefit or advantage which either he had in the past been permitted by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do, cannot be taken until the withdrawal of such permission (on rational grounds) has been communicated to the person and an opportunity to comment has been provided to him as well. In fact, the standard for such expectation is also required to be higher than mere anticipation, even as it falls short of a right. The Hon'ble Supreme Court in the matter of *Union of India v. Lieutenant Colonel PK Choudhary* held that:

"41. Legitimate expectation as a concept has engaged the attention of this Court in several earlier decisions to which we shall presently refer. But before we do so we need only to say that the concept arises out of what may be described as a reasonable expectation of being treated in a certain way by an administrative authority even though the person who has such an expectation has no right in law to receive the benefit expected by him. Any such expectation can arise from an "express promise" or a "consistent course of practice or procedure" which the person claiming the benefit may reasonably expect to continue. The question of redress which the person in whom the legitimate expectation arises can seek and the approach to be adopted while resolving a conflict between any such expectation, on the one hand, and a public policy in general public interest on the other, present distinct dimensions every time the plea of legitimate expectation is raised in a case."

- z) Applying these principles in the present case and given the facts and background set out above, it is clear that once the SEBI Approval was accorded, the Noticee proceeded to administer remuneration and compensation in line with the approved Compensation T&Cs. It submitted that it is within its rights to expect that the previous treatment would not lead to adverse implication, having been done under the express approval accorded to it by SEBI.
- aa) In light of the judicial precedents cited above, it submitted that it has not violated Regulation 27(4) of the SECC Regulations, and therefore, the SCN is liable to be set aside.
- bb) On January 17, 2018, SEBI had addressed a letter to the Noticee, *inter alia*, advising the Noticee to recover the 'additional compensation' (i.e., the amount of leave encashment paid in excess of 360 days) from Mr. Narain and Ms. Ramkrishna. Pursuant to the same, the Noticee had written to Mr. Narain and Ms. Ramkrishna requesting for refund of the said amounts and confirmed receipt of the refund to SEBI vide email dated February 2, 2018. Thus, with a view to follow regulatory directive, it has complied with the SEBI Directions issued by SEBI vide its letter dated January 17, 2018 and called upon the two individuals to refund the amounts in question and vide its email to SEBI dated February 2, 2018, it intimated SEBI that these directions have been complied with. Thus, it had implemented the SEBI Directions.
- cc) Therefore, it would follow that even if it is argued that its submissions are not accepted, there is no case for imposition of monetary penalty in the instant case since without prejudice to contentions about there being no violation, to assuage SEBI's concerns, the amounts were recalled and recovered. Its conduct demonstrates the *bona fide* intentions to be in compliance with SEBI laws at all times. While the Noticee had the right to challenge the aforementioned SEBI advisory, it decided to comply with the same in order to bring a swift closure to this matter and co-operate with the regulator's directive. Consequently, the Noticee's decision to recover the monies from Mr. Narain and Ms. Ramkrishna and not pursue any other legal recourse available to it cannot be construed as an acknowledgement that it had acted in violation of Regulation 27(4) of the SECC Regulations, and the Noticee's choice to not challenge the SEBI advisory, cannot be held against it.
- dd) Therefore, even applying the principles of penalty under Section 15J of the SEBI Act, it is clear that no gain was made by anyone, no loss was suffered by anyone and there is no question of any repetitive nature of any default, whether as alleged or otherwise. In view of the above and without prejudice to the submissions of the Noticee that it has not

contravened Regulation 27(4) of the SECC Regulations, it submitted that no penalty deserves to be imposed in the instant case.

Reply dated October 12, 2018:

- ee) Mr. Ravi Narain had held the position of MD of the Noticee since 2000 and in 2009, the Noticee had decided to re-appoint him as the MD for a three year term ("Re - Appointment"). The Noticee, vide letter dated December 28, 2009, had sought approval from SEBI prior to the aforesaid Re - Appointment. Vide letter dated January 12, 2010, SEBI had expressly provided its no objection to the said Re - Appointment.
- ff) SECC Regulations were introduced for the first time on June 20, 2012, which under Regulation 27 addressed the compensation payable to KMP of stock exchanges. Prior to this notification of the new regulations, the Securities Contracts (Regulation) (Manner of Increasing and Maintaining Public Shareholding in Recognized Stock Exchanges) Regulations, 2006 ("MIMPS Regulations"), dealt with the regulatory framework for stock exchanges. The Noticee was always a demutualised stock exchange where membership of the Noticee was divorced from ownership of the Noticee. The MIMPS Regulations as well as the extant regulatory framework, did not require an approval to be sought from SEBI in relation to the compensation payable to the MD of a stock exchange. Accordingly, SEBI's approval had been taken for Mr. Ravi Narain's Re - Appointment, in compliance with the regulatory framework applicable at such time.
- gg) On November 26, 2012, two events occurred. Mr. Ravi Narain's retirement with effect from March 31, 2013, and his replacement by Ms. Chitra Ramkrishna was proposed (subject to obtaining relevant approvals, including from SEBI). As part of a larger policy change applicable to all its employees in grade Senior Vice President and above, the Noticee modified the 'Ordinary Leave/ Privilege Leave Policy' of the Noticee dated June 1, 2009 ("Original Leave Policy"), *inter alia*, removing the cap of 360 days on encashment of leaves per calendar year, for these grades ("Amended Leave Policy"). This modification was carried out given the difficulty faced by the senior employees in availing leaves due to their responsibilities. In this regard, reference was made to the Original Leave Policy which permitted employees to encash up to 360 days of leave in a calendar year, with a minimum of 30 days balance. Attention is drawn by it to the following clause in the Original Leave Policy and a copy of the same was provided:

"An Employee can accumulate their OL with no limit. In case they need to avail of encashment facility they can encash maximum 360 days during the calendar year but with a minimum of 30 days balance."

- hh) On March 31, 2013, when Mr. Narain's tenure as the MD ended and he encashed all the 381 days leaves accumulated by him over a period of service extending to more than 20 years. No amendment was specially effected for Mr. Ravi Narain's compensation – since he was one of many employees who were covered by the revision to the policy for leave encashment by its senior management, undertaken by the Compensation Committee on November 26, 2012.
- ii) SEBI's approval would be required only in instances where there existed a tangible or evident change in the compensation terms of the MD of a stock exchange, such as, revision of basic salary of the MD. Conversely, a modification to the general policy of an organization should not trigger the approval requirement under Regulation 27(4), unless it resulted in a bespoke and actual impact on the compensation terms of the MD of a stock exchange. Any other reading of Regulation 27 of the SECC Regulations, would result in an onerous interpretation, in that every Market Infrastructure Institution would then be required to seek SEBI's approval for every small modification in their generic compensation policy, which would be a significant drain on SEBI's time and resources.
- jj) In the present case, assuming that the Original Leave Policy had not been amended in November, 2012, Mr. Narain could have encashed his accumulated ordinary leave of 381 days in two tranches, viz., (i) by encashing up to, say, 350 days by the end of year 2012, and (ii) by encashing the residual amount in the year 2013 (i.e. before end of his tenure). In such an event, the leave encashment by Mr Narain would not have been impacted by the Amended Leave Policy at all. In other words, the Amended Leave Policy did not incrementally benefit Mr Narain, in any manner, given that it did not result in any change to the terms of compensation of Mr. Narain and hence did not increase his entitlements in any manner whatsoever. Thus, no SEBI approval was required under Regulation 27(4) of the SECC Regulations.
- kk) The Amended Leave Policy did not entitle Mr. Narain to earn any additional compensation and was not introduced as a contrivance to benefit Mr. Narain in any manner. The leave to which he was entitled to, represented the days on which he had actually worked for the Noticee without taking leave, which led to the accumulation. The policy change was merely a removal of the cap of number of days of leave that could be encashed within a year. Mr. Ravi Narain could have availed of the same in the truncated manner, as explained above.

Therefore, it is abundantly clear that the Noticee did not do anything especially for the benefit of Mr. Ravi Narain. It is also not the case of SEBI that Mr. Narain profited due to change in policy. By exercising his right to leave encashment, Mr. Narain only earned the amount of compensation which was rightfully due to him. In fact, the leaves accrued over his long tenure of two decades, and not just during the period from June 20, 2012 to March 31, 2013 (which was his tenure after SECC Regulations were notified). Since Regulation 27(4) of the SECC Regulation came into effect subsequent to the Re – Appointment and does not have retrospective effect, it would not apply in any manner to Mr. Narain's tenure as the MD of the Noticee

ll) Thus, it was submitted that there was no actual violation of Regulation 27(4) of the SECC Regulations, in the present instance. The change in policy in November 2012 for senior management had no impact on Mr. Narain's overall compensation and also did not assist Mr. Narain in circumventing the law. In effect, Mr. Narain did not earn more than what was already due to him and could have encashed his entire accumulated ordinary leave in the manner explained above, even if the Original Leave Policy had remained unchanged.

mm) In any event, the pay-outs made to Mr. Narain, as a result of leave encashment of 21 days (being in addition to the limit of 360 days set out in the Original Leave Policy), was also recovered pursuant to SEBI's letter dated January 10, 2018. Therefore, it was submitted that no harm or loss has been caused to the securities market or, for that matter, any person, on account of the leave encashment by Mr. Narain. The alleged violation pertains to encashment of 21 leave days only (amounting to approximately INR 12.77 lakhs), which has, in any case, been refunded to the Noticee.

nn) It is a well settled principle of law that a penalty should not be imposed for the sake of it and should be utilised to achieve a specific purpose, rather than as an end in itself. The Hon'ble Supreme Court in the matter of *M/s Hindustan Steel Ltd. V. State of Orissa* has held as under:

"8. Under the Act penalty may be imposed for failure to register as a dealer - Section 9(1) read with Section 25(1)(a) of the Act. But the liability to pay penalty does not arise merely upon proof of default in registering as a dealer. An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised

judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute. Those in charge of the affairs of the Company in failing to register the Company as a dealer acted in the honest and genuine belief that the Company was not a dealer. Granting that they erred, no case for imposing penalty was made out." (emphasis supplied)

- oo) The Noticee also placed reliance on the following observations made by the Hon'ble SAT in the recent matter of *Piramal Enterprises Limited v. SEBI*:

"...we are of the opinion that the object of the Act is not only to protect the investors but also the securities market. The appellant is part of the securities market and its existence is required for the healthy growth of the securities market. SEBI is the watchdog and not a bulldog. If there is an infraction of a rule, remedial measures should be taken in the first instance and not punitive measures. In the absence of any direct or clinching evidence of insider trading or misuse of UPSI, a reasonable benefit of doubt should be extended to the PEL, instead of mechanically imposing a penalty." (emphasis supplied)

- pp) Ms. Chitra Ramkrishna had, on November 16, 2016, encashed 360 days of accumulated leaves, which were accumulated over a period of around 22 years of her services during executive employment with the Noticee. Ms. Ramkrishna had thereafter resigned as the MD & CEO of the Noticee on December 2, 2016. In fact, given that the terms 'resignation' and 'retirement' are used interchangeably, the matter was specifically considered by the nomination and remuneration committee and the Board of the Noticee on December 19, 2016 as well, as is evident from a perusal of the minutes of these aforementioned Board meeting and they had approved the encashment of balance of 168 accumulated leave days by Ms. Ramkrishna, in view of her long standing association with the Noticee since its inception.

- qq) While the Amended Leave Policy allows encashment of accumulated leave by senior management without limit at the time of retirement, it is submitted that the same dispensation was also applicable to Ms. Ramkrishna at the time of cessation of her service, since she retired by resigning. Further, the "encashment of accumulated leaves at the end of tenure" was part of the compensation terms submitted by the Noticee for SEBI approval, vide letters dated December 13, 2012 and January 18, 2013.

- rr) It is relevant to note that in the matter of *CIT v. DP Malhotra*, the Hon'ble Bombay High Court had considered whether termination of employment by resignation amounts to

“retirement” in the context of the income tax exemption on encashment of accumulated leaves, and noted as follows:

“6. The question that arises for our consideration, therefore, is whether termination of employment by resignation amounts to “retirement” within the meaning of this clause or not. If it amounts to “retirement”, the case of an employee who has resigned from service would fall under this clause, otherwise not. “Retirement” is a word of wide import. In the context of employment, it means conclusion of a career. According to Legal Thesaurus by William C. Burton, the word “retire” in the context of employment means “conclude a career”. It has the following other meanings: “abdicate, demit, drop out....

One of the meaning of the word “retire” is “resign”. Similarly, in the same Thesaurus, the following meaning appear of the word “resign”: “abandon, abdicate, abire,...

Thus, both “retirement” and “resignation” result in the conclusion of the service career. In fact resignation from service is also one of the modes of retirement from service. Resignation is a voluntary act of the employee to retire from service. Once an employee resigns, his service stands terminated from the date on which his letter of resignation is accepted by the appropriate authority, unless there is any law or statutory Rule governing the conditions of service to the contrary. In other words, on acceptance of resignation, the employee stands retired from service.” (emphasis supplied)

- ss) Thus, it is submitted that the encashment of the residual 168 leave days (being in addition to the 360 accumulated leaves encashed by her earlier) by Ms. Chitra Ramkrishna at the time of her resignation, was in line with the SEBI approved compensation structure, since the same was tantamount to the end of her tenure with the Noticee.
- tt) Finally, it was posited that the formulation of a policy or a change to a policy was not at all subjected by the SECC Regulations to approval by SEBI. In fact, there is no specific provision in the SECC Regulations that envisages an approval process for a policy change. If such approval was required, then any tweak in every perquisite would need to be brought to SEBI for approval. Instead, the scope and architecture of Regulation 27 as explained above, demonstrates that the compensation committee was the agency that had the jurisdiction to make remuneration policy, which policy ought to be in accordance with norms stipulated by SEBI.

Reply dated July 15, 2019:

- uu) Since the allegations forming part of the SSCN as well as the attendant facts and circumstances surrounding the same, are almost entirely identical to the Original SCN, all submissions, statements and averments made vide the Noticee’s 2018 Response and 2018

Written Submissions, including the submission made during the hearing held on September 27, 2018, stand incorporated by reference in this letter.

- vv) As part of a larger policy change, the Noticee's Compensation Committee on November 26, 2012 decided to remove the cap of 360 days on encashment of leaves per calendar year for employees in grade Senior Vice President and above ("Amended Leave Policy"). This modification was carried out in view of the difficulty faced by the senior employees in availing leaves due to their responsibilities.
- ww) The Amended Leave policy was a modification to the general policy of an organization and was not specifically undertaken for the benefit of Mr. Ravi Narain. An approval for change in general compensation policy of an organization was not required under Regulation 27(4) of the SECC Regulations and such approval would only be required in case of major change in the specific compensation terms of the MD of a stock exchange. Approval requirement for every minor change in compensation policy would result in market infrastructure institutions continually knocking on SEBI's doors for its approval.
- xx) Further, there is no in spirit violation of the SECC Regulations either, given that the change in the compensation policy was merely a removal of the cap of number of days of leave that could be encashed by senior employees within a year. This has not resulted in any benefit being accrued to Mr. Narain, and in fact, Mr. Narain only received compensation that was due to him as a result of his long association (over two decades) with the Noticee.
- yy) Additionally, the compensation payable to Mr. Narain was approved by the board of the Noticee as well as its shareholders. Thus, Mr. Narain only received payment which was in line with the approval of the stakeholders, the Noticee's internal policy as well as regulatory framework time being force.
- zz) The allegation that the terms and conditions of the compensation of Ms. Chitra Ramkrishna (as the MD & CEO of NSE) were modified without prior approval of SEBI is misplaced. While making an application by it to seek approval of SEBI for appointment and compensation payable to Ms. Ramkrishna, it had fully disclosed the compensation terms to SEBI in December 2012. SEBI had granted approval in March 2013, for the compensation payable to her on the basis of its application. It has not modified the compensation terms for Ms. Chitra Ramkrishna after SEBI's approval. In fact, the Noticee had only made payment of the compensation to Ms. Chitra Ramkrishna within the contours of the unchanged

compensation policy which was duly approved by SEBI. Given that SEBI had specifically approved the terms of Ms. Chitra Ramakrishna's compensation, the Noticee had no reason to believe that there was any violation of Regulation 27(4), when payments were made to her in line with the SEBI approved compensation terms. Thus, it has not violated Regulation 27(4) of SECC Regulations as alleged by SEBI.

aaa) Paragraph 2 (b) of the SSCN observes that: *"Encashment of additional leave over and above 360 days was possible/ permitted only in case of retirement and whereas Ms. Chitra Ramakrishna had resigned from NSE on December 02, 2016."* In this regard, it is pertinent to mention that Ms. Chitra Ramakrishna had, on November 16, 2016, encashed 360 days of accumulated leaves, which were accumulated over a period of around 22 years of her services during executive employment with the Noticee. Ms. Ramakrishna had thereafter resigned as the MD & CEO of the Noticee on December 2, 2016. Given that the terms 'resignation' and 'retirement' are used interchangeably, the matter was specifically considered by the nomination and remuneration committee and the Board of the Noticee on December 19, 2016 as well, as is evident from a perusal of the minutes of these aforementioned Board meeting and they had approved the encashment of balance of 168 accumulated leave days by Ms. Ramakrishna, in view of her long standing association with the Noticee since its inception.

bbb) While the Amended Leave Policy allows encashment of accumulated leave by senior management without limit at the time of retirement, it is submitted that the same dispensation was also applicable to Ms. Ramakrishna at the time of cessation of her service, since she retired by resigning. Further, the *"encashment of accumulated leaves at the end of tenure"* was part of the compensation terms submitted by the Noticee for SEBI approval, vide letters dated December 13, 2012 and January 18, 2013.

ccc) In view of the above, upon tendering of resignation by Ms. Ramakrishna and the Noticee accepting the same, Ms. Ramakrishna stood retired as the MD&CEO of the Noticee. It is submitted that the encashment of the residual 168 leave days (being in addition to the 360 accumulated leaves encashed by her earlier) by Ms. Chitra Ramakrishna at the time of her resignation, was in line with the SEBI approved compensation structure, since the same was tantamount to the end of her tenure with the Noticee.

Reply dated August 03, 2020:

ddd) It is pertinent to note that the SCN was issued by SEBI only on May 9, 2018. Subsequently, a response dated June 11, 2018 was submitted and personal hearing was provided to the Noticee and written submissions were obtained from the Noticee on September 27, and October 12, 2018, respectively. This was followed by the issuance of the SSCN in May 2019. 9. Pursuant to the SSCN, the Noticee provided its response on July 15, 2019, through the 2019 Response, and also appeared for the Second Hearing, which took place on July 16, 2019. The MSCN has now been issued after a period of: (a) nearly 21 months since the date of the First Hearing; and (b) nearly 12 months since the date of the Second Hearing.

eee) The protracted and delayed nature of these proceedings, including by issuance of the MSCN, is in violation of the well – established principles of natural justice, and accordingly, these proceedings are liable to be set aside on this ground alone.

Reply dated August 13, 2020:

fff) Ms. Chitra Ramkrishna had tendered her resignation as MD & CEO of the Noticee on November 29, 2016 and the board of directors of the Noticee had accepted her resignation on December 2, 2016. Such fact of resignation remains unchanged and there is no subsequent development, event or circumstance that has altered the position that Ms. Ramakrishna's resignation was accepted by the Board of the Noticee on December 2, 2016.

ggg) The Noticee is not involved in any legal proceedings in relation to the subject matter of leave encashment either with Mr. Ravi Narain or Ms. Ramkrishna, and there is no scope for any inconsistency between what the Noticee has submitted on the merits in these proceedings and any pleadings elsewhere.

hhh) It is reiterated that the demand from, and recovery of the amounts from Mr. Ravi Narain and Ms. Chitra Ramkrishna were purely in deference to directions from SEBI received on January 17, 2018, and does not constitute an admission or estoppel in relation to the submissions on merits, i.e., that Regulation 27(4) of the SECC Regulations was not at all violated, for the detailed reasons set out in the earlier replies and submissions.

iii) More recently, SEBI had directed that an enquiry be held against the individuals in relation to some facts unconnected with leave encashment; however, there is no change to the factual

position that Ms. Ramakrishna's resignation was accepted by the Board on December 2, 2016, by reason of these enquiries.

11. I have carefully considered the allegations levelled in the terms of reference, the reply/submissions of the Noticee and the relevant material available on record. The Noticee has contended that the protracted and delayed nature of these proceedings, including by issuance of the MSCN, is in violation of the well – established principles of natural justice. In this regard, it is relevant to mention that the instant proceedings are mandated pursuant to decision of the competent authority to enquire whether the policy change approved by the Compensation Committee/NSE Board of NSE on November 26, 2012 can be implemented without the prior approval of SEBI which may lead to non-compliance with the provisions of regulation 27(4) of the SECC Regulations. The said decision is taken subsequent to the detailed examination carried out in the matter by the concerned department in SEBI based on a letter dated July 19, 2017 received from Ministry of Finance referring to a news report, which relied upon the annual report of NSE, stating that former MD and CEO of the Noticee, earned about Rs. 44 crore in a period of three years during which she held the aforesaid position at NSE. The SCN issued on May 09, 2018 contained the details of the allegations and the basis thereof and the provisions of Regulations viz. SECC Regulations alleged to have been violated by the Noticee had also been clearly mentioned and reproduced therein. Subsequently, pursuant to the hearing that took place before the 1st erstwhile AO on September 27, 2018, the 1st erstwhile AO felt that there is an apparent defect in the SCN issued to the Noticee. In order to cure the defect in the SCN, the 1st erstwhile AO proposed for issuance of SSCN to the Noticee and the competent authority considering the merit of the issues raised by the 1st erstwhile AO felt satisfied that SSCN should be issued in the matter and accorded his approval to the same on January 22, 2019. Pursuant to the above, SSCN was issued by the 2nd erstwhile AO on May 30, 2019 and hearing took place before him on July 16, 2019. Thereafter, in the interest of upholding the spirit of regulatory framework and cure another defect in the SCN which has been missed out earlier, competent authority felt satisfied that in view of the allegations attracting violation of Regulation 27 (4) of the SECC Regulations, has on February 10, 2020, approved to amend the charging penalty provisions to Section 15HB of the SEBI Act in place of Section 23-H of the SCRA. Subsequent to the above events, the undersigned was appointed as Adjudicating Officer in this matter and the same was communicated vide a *communication-order* dated March 03, 2020. Adding to all the events above, due to the extraordinary situation of covid pandemic, the matter could not be proceeded further during the intermittent period i.e. from the date of *communication-order* dated March 03, 2020 till the date of issuance of MSCN by the undersigned on June 30, 2020. I, therefore, hold

that there is no protracted delay as contended and hence, the contention of the Noticee in this regard is rejected.

12. In this case, it is relevant to mention that instant proceedings have been initiated based on the policy approved by the Compensation Committee/NSE Board of NSE on November 26, 2012 which changed the compensation structure applicable to Senior Management (i.e. Sr. Vice President and above and including working directors) and the same could not have been implemented without the prior approval of SEBI. The said change resulted in the encashment of accumulated Ordinary Leave to Mr. Ravi Narain and Ms. Chitra Ramkrishna over and above the limit of 360 days and which was granted by NSE without taking prior approval of SEBI leading to non-compliance with the provisions of regulation 27(4) of the SECC Regulations. In this regard, the matter was initially referred for adjudication under section 23H of the SCRA. The provisions of section 23H of the SCRA read as under:

SCRA

Penalty for contravention where no separate penalty has been provided.

23H. *Whoever fails to comply with any provision of this Act, the rules or articles or byelaws or the regulations of the recognised stock exchange or directions issued by the Securities and Exchange Board of India for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees.*

13. It is pertinent to mention that Section 23H of the SCRA does not envisage any penalty being levied for violation of the SECC Regulations and given that Section 23H of the SCRA is a penal provision, it is to be construed strictly. Therefore, it becomes necessary to examine whether Section 23H would apply with regard to alleged violation of regulation 27(4) of the SECC Regulations. Section 23H applies only when there is failure to comply with - (i) a provision of the Act i.e. SCRA; (ii) a rules or articles or bye-laws of the recognised stock exchange i.e. NSE; and (iii) a direction issued by SEBI under Section 12A of the SCRA. It is noted that the SECC Regulations referred in the instant proceedings were made by SEBI in exercise of powers conferred under Sections 4, 8A and 31 of the SCRA read with Sections 11 and 30 of the SEBI Act. It is further noted that violation of SECC Regulations do not fall within the contours of Section 23H quoted above and rather fall only under the contours of section 15HB of the SEBI Act. Hence, it is deemed appropriate to examine the scope of charging provisions and consequential penalty provisions of section 15HB of the SEBI Act which reads as under:

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.*

14. From the scheme of the above section, it is clear that Section 15HB of the SEBI Act is a residual provision which applies when other penalty provisions of Chapter VIA of the SEBI Act are not applicable with regard to failures of compliance obligations cast under the SEBI Act, the rules or the regulations made thereunder or directions issued under the SEBI Act. Thus, the charge with regard to alleged violation of the provisions of the SECC Regulations i.e. a regulation made by the Board are well within the scope of this section and the same was rightly amended by the competent authority in SEBI on February 10, 2020 in view of the allegations in this matter which attracts regulation 27 (4) of the SECC Regulations.
15. In order to deal with arguments of the Noticee with regard to compliance of regulation 27(4) of the SECC Regulations in the instant case, it is deemed necessary to deal with the scope and ambit of said regulation 27(4). It is noted that in terms of said regulation 27(4), it is a mandatory command directing a recognised stock exchange to obtain approval of the Board before paying compensation to its managing director as well as before carrying out any changes in the terms and conditions of the managing director's compensation. Meaning thereby, as a general rule, the recognized stock exchange should get approval of SEBI before paying compensation to the managing director as well as before undertaking any changes in the terms and conditions of the managing director's compensation. Thus, it is a settled position that in order to avail any relaxation/exemption/exception from the obligation under the rule / regulation, the attendant conditions therefor must be complied with. Further, the conditions of exemption, if any, are subjected to strict interpretation.
16. It is amply clear that in order to pay compensation to the managing director as well as carrying out any changes in the terms and conditions of the managing director's compensation, the condition prescribed must be fulfilled by the recognized stock exchange. Thus, the permission of the Board is mandatory in nature and is a direct command to the recognized stock exchange to comply with this requirement without any exemption or relaxation. It is generally accepted rule of interpretation of statutes that if the words used are capable of one construction then it would not be open to adopt any other construction; and if plain meaning is not possible then the construction will be in accordance with the legislative purpose. Since the provisions of Regulation 27(4) above are not possible to be construed to give any other meaning and purport than those

mentioned above, it is not necessary to find out legislative intent or purpose of said Regulation 27(4). Nonetheless, I have considered the recommendations of the Bimal Jalan Committee Report and I note therefrom that the Committee had recommended that compensation related incentive structures encouraged excessive risk taking, particularly those of senior management, without adequate regard to the resultant longer-term risks on the institutions. This incentive structure had the effect of privatizing profits while socializing losses. Further, I note that the compensation of key management personnel, including the MD/CEO/ED and others as may be identified by the Board, should also be ensured that the remuneration is determined after giving due regard to the industry standards for the same. The remuneration of such executives, including the annual increment indexed for inflation, should be a fixed sum without any variable component linked to the commercial performance of the Market Infrastructure Institutions. Regulation 27(4) of the SECC Regulations has incorporated the said recommended principle more stringently by obligating the stock exchange to obtain the approval of the Board before paying compensation to its managing director as well as before carrying out any changes in the terms and conditions of the managing director's compensation as a binding rule. It is also relevant to mention here that the SECC Regulations which have been framed by the Board in exercise of the powers conferred by sections 4, 8A and 31 of the SCRA read with sections 11 and 30 of the SEBI Act to regulate recognition, ownership and governance in stock exchanges and clearing corporations and matters connected therewith or incidental thereto. Therefore, in my view, the language of regulation 27(4) of the SECC Regulations is very clear with regard to its scope, ambit and applicability and provisions thereof conveying negative command/direction which are binding in nature.

17. As regards to the submissions about transition requirement in other Regulations as cited by the Noticee, I note that the SECC Regulations came into effect from June 20, 2012, and from its inception they apply with respect to the affairs of Noticee. In this regard, I refer to the first proviso to regulation 3 of the SECC Regulations which *inter-alia* provides as under:

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

From the plain reading of the above provisions, it is clear that all the provisions of SECC Regulations as existed on the date of its notification i.e. on June 20, 2012 shall apply to an existing recognized stock exchange. At the same time, wherever required, transition provisions were also

specified such as for meeting net worth, 3 years period was provided vide proviso to regulation 14 of the SECC Regulations.

18. The allegations in this matter are two fold. One, policy change approved by the Compensation Committee/NSE Board of NSE on November 26, 2012 which was implemented upto the level of MD without the prior approval of SEBI and second, the encashment of accumulated Ordinary Leaves to Noticee's MD & CEO Mr. Ravi Narain and Ms. Chitra Ramkrishna over and above the limit of 360 days without taking prior approval of SEBI. As regards the first limb of allegation, from the policy manual of NSE on Ordinary leave / Privilege Leave dated October 01, 2012, I note that – *"An employee can accumulate their OL with no limit. In case they need to avail of encashment facility they can encash maximum 300 days during the calendar but with a minimum of 30 days balance.....In case of resigned employees, they are entitled to encash only a maximum of 360 days with their basic salary."* In simple terms, it implies that in case of resignation **employee is entitled to encash only a maximum of 360 days of ordinary leave with their basic salary.** Here, it is relevant to peruse the extract of the Minutes of the meeting of the Compensation Committee of NSE held on November 26, 2012. The said minutes, *inter-alia*, mentions that – *"...as per the staff policy, accumulated ordinary leave is allowed to be encashed at the time of leaving the organisation subject to a limit of 360 days. The Committee discussed the matter and decided that in case of senior management (i.e. Senior Vice-President and above including working directors), the accumulated ordinary leave be allowed to be encashed without limit at the time of retirement."* This change in policy dated November 26, 2012, with respect to encashment of accumulated ordinary without any limit for senior management at the time of retirement is in sharp contrast to the policy on October 01, 2012, which prescribed that a resigned employee is entitled to encash only a maximum of 360 days. I am, therefore, of the view that the argument of the Noticee that the change in policy for encashment of accumulated leave without any limit for senior management including MD by the Compensation Committee of NSE on November 26, 2012, is within the blanket term – *"such other benefits to MD & CEO as are made available by the Company to other members of the staff from time to time"* is devoid of any merit and rejected hereby.
19. I also reject the contention of the Noticee that SEBI's approval would be required only in instances where there existed a tangible or evident change in compensation terms of the MD of a stock exchange, such as revision of basic salary of the MD. By this argument, the Noticee is trying to down play the importance of enforcement of the provisions of regulation 27(4) of the SECC Regulations which mandates the prior approval in case of change in terms and conditions of compensation of MD. In all common senses, change in limit to encashment of ordinary leaves

which are dependent on the basic salary of the MD is no doubt a tangible and evident change in the compensation.

20. Another argument which is taken by the Noticee is regarding the construction of regulation 27(4) of the SECC Regulations and in this regard, they have relied upon a ruling of Hon'ble Supreme Court in *Ishwar Singh Vs. St. of UP* (AIR 1968 SC 1450). It is argued that regulation 27(4) of the SECC Regulations also uses the term "and" to join two conditions, i.e., the requirement to seek approval for: (i) 'compensation payable to MD', and (ii) any change in "the terms and conditions of the compensation of the MD". The Noticee submits that as a general rule, the term "and" has to be used in a cumulative sense, requiring fulfilment of all conditions that it joins together. The argument of Noticee is not acceptable because from the plain reading of regulation 27(4) of the SECC Regulations, it is observed that after the word "and" there is a clear and independent mandate that "*the terms and conditions of compensation of the managing director shall not be changed without the prior approval of the Board*".
21. In view of aforementioned findings, I am of the view that the terms and conditions of the MD's compensation has been changed by way of the decision dated November 26, 2012 of the Compensation Committee without obtaining prior approval of SEBI under regulation 27(4) of the SECC Regulations. Further, there is no material to prove that the said changes in the terms and conditions of the compensation structure which benefitted its senior management including its MD was communicated to SEBI for its approval. It has also not been brought to my notice by Noticee that they have even applied for *post facto* approval of SEBI under regulation 27(4) of the SECC Regulations about the said change. Thus, the allegation against the Noticee to such extent stands established and therefore, the Noticee violated regulation 27(4) of the SECC Regulations.
22. The second limb of the allegation is with regard to the encashment of accumulated Ordinary Leave by Mr. Ravi Narain and Ms. Chitra Ramkrishna over and above the limit of 360 days which was granted by NSE without taking prior approval of SEBI. Here, it is pertinent to mention that this second allegation is the byproduct of the first allegation i.e. policy change approved by the Compensation Committee/NSE Board of NSE on November 26, 2012 was implemented without the prior approval of SEBI. In other words, this second set of allegations is a proposition that follows from the first allegation which one already stands proved. In this regard, the Noticee contended that Regulation 27(4) of the SECC Regulations does not purport to operate retrospectively and therefore, cannot be made applicable, in any manner, to the re-appointment of Mr. Ravi Narain in 2010. Further, the Noticee contended that the requirement to seek SEBI approval for any change in the terms and conditions of compensation of a MD does

not stand in isolation and is subject to the implicit condition that the original compensation should have been approved by SEBI. In this regard, I note that the charge is not relating to re-appointment of Mr. Ravi Narain in 2010 and hence, I do not deem it necessary to dwell upon in detail with regard to this issue. Having said that, even if re-appointment of Mr. Ravi Narain as MD of NSE in 2010 was approved by SEBI pursuant to an application made by the Noticee on December 28, 2009, and continues to draw compensation from the Noticee envisaged in regulation 27(4) of the SECC Regulations before its commencement and continued to do so after such commencement, it is obligated to seek permission of SEBI whenever there is a change in the terms and conditions of compensation pertaining to him as MD and thus, cannot be seen in isolation. I find support in the SECC Regulations itself which has an explicit provision i.e. first proviso to regulation 3 which in clear terms provides that all the provisions of these regulations as they apply to a recognized stock exchange shall apply to existing stock exchanges. It is also to be noted that regulation 27(4) of the SECC Regulations has a prospective application and not retrospective. So if any change is to be made to compensation of MD of a stock exchange post coming into force of SECC Regulations, it should have pre clearance from SEBI and definitely the Compensation Committee's approval dated November 26, 2012, which is post coming in force of SECC Regulations, should have approval of SEBI. The Noticee has also relied upon the principle of legitimate expectation as was discussed by the Hon'ble Supreme Court in the matter of *Union of India v. Lieutenant Colonel PK Choudhary*. In my view, the question is not of withdrawal of any licence / permission by SEBI. The question was to seek approval of SEBI for any change in terms and conditions of the compensation policy of MD which took place subsequent to coming in force of the SECC Regulations. Hence, the said ruling will not have any application in the facts and circumstances of this matter. I, therefore, do not agree with the claim of the Noticee in this regard and conclude that approval of SEBI is required under regulation 27(4) of the SECC Regulations whenever an event culminates into changing the terms and conditions of compensation of MD as happened in the case of Mr. Ravi Narain.

23. As regards Ms. Chitra Ramkrishna, the Noticee raised a legal objection that termination of employment by way of "resignation" amounts to "retirement" and in support of its claim, it placed reliance on the judgement of Hon'ble Bombay High Court which was passed in context of the income tax exemption on encashment of accumulated leaves. In this regard, it is pertinent to mention that the words "*resignation*" and "*retirement*" carry different meanings in common parlance. An employee can resign at any point of time, even on the second day of his appointment but in the case of retirement he/she retires only after attaining the age of superannuation or in the case of voluntary retirement on completion of qualifying service. The effect of resignation and

retirement to the extent that there is severance of employment but in service jurisprudence both the expressions are understood differently. In this regard, it is a settled position of law that the words "resignation" and "retirement" carry different meanings and the same position has been upheld by the Hon'ble Supreme Court in the case of *Jaipal Singh vs Smt. Sumitra Mahajan And Anr* decided on April 01, 2004, where it was *inter-alia* held that "...in the case of 'resignation', the relationship of employer and employee terminates on acceptance of resignation whereas in the case of 'retirement', voluntary or on superannuation, the relationship continues for the purposes of payment of retiral benefits. In the case of retirement, there is a nexus between such retirement and retiral benefits. For the aforesaid reasons, we do not find any merit in the arguments advanced on behalf of the appellant." Further, in the case of *Uco Bank And Ors vs Sanwar Mal* decided on 11 March, 2004, the Hon'ble Supreme Court *inter-alia* held that "...Under the Regulations, the expressions "resignation" and "retirement" have been employed for different purpose and carry different meanings. The pension scheme herein is based on actuarial calculation; it is a self-financing scheme, which does not depend upon budgetary support and consequently it constitutes a complete code by itself. The scheme essentially covers retirees as the credit balance to their provident fund account is larger as compared to employees who resigned from service. Moreover, resignation brings about complete cessation of master and servant relationship whereas voluntary retirement maintains the relationship for the purposes of grant of retiral benefits, in view of the past service. Similarly, acceptance of resignation is dependent upon discretion of the employer whereas retirement is completion of service in terms of regulations/ rules framed by the bank. Resignation can be tendered irrespective of the length of service whereas in the case of voluntary retirement, the employee has to complete qualifying service for retiral benefits. Further, there are different yardsticks and criteria for submitting resignation vis-a-vis voluntary retirement and acceptance thereof. Since the pension regulations disqualify an employee, who has resigned, from claiming pension the respondent cannot claim membership of the fund. In our view, regulation 22 provides for disqualification of employees who have resigned from service and for those who have been dismissed or removed from service. Hence, we do not find any merit in the arguments advanced on behalf of the respondent that regulation 22 makes an arbitrary and unreasonable classification repugnant to Article 14 of the Constitution by keeping out such class of employees." Further, Noticee's reliance on rulings in this regard is out of place and in other context and is not applicable in the circumstances of this case. I, therefore, hold that the contentions of the Noticee in this regard are not acceptable. The Noticee has also placed reliance on an application dated December 13, 2012, vide which SEBI's approval was sought on the appointment of Ms. Chitra Ramkrishna and SEBI was apprised with all relevant information in connection with compensation structure for MD & CEO. The said information included details of accumulation and encashment of Ordinary Leaves in accordance with Company's Rules and Procedures in force from time to time. The Noticee submitted that the said proposal was approved by SEBI vide letter dated March 20, 2013. Relying on the said letter by SEBI, the Noticee submitted that SEBI was well aware of the details of compensation payable to Ms. Chitra

Ramkrishna and had specifically granted approval for the same. In this regard, I find a flaw in the argument of Noticee that policy dated November 26, 2012 which allowed encashment of leave without limits was applicable to Ms. Chitra Ramkrishna. At the first instance, the said change of policy which changed the compensation structure was without preclearance by SEBI as mandated under regulation 27(4) of the SECC Regulations and therefore, the same cannot be applied to the case of Ms. Chitra Ramkrishna. I, therefore, conclude that the charge with respect to encashment of accumulated Ordinary Leave by Ms. Chitra Ramkrishna over and above the limit of 360 days without taking prior approval of SEBI under regulation 27(4) of the SECC Regulations stands established.

24. The Noticee has submitted that it had recovered amount paid to Mr. Ravi Narain and Ms. Chitra Ramkrishna with a view to follow regulatory directive of SEBI and ensured that the directions of SEBI have been complied with. Although the said contentions of the Noticee may act as a mitigating factor, but nothing prevents the Noticee from taking prior approval from SEBI before making a change in its policy which was approved by the Compensation Committee/NSE Board of NSE on November 26, 2012, and such post corrective measures taken may be a mitigating factor for adjudging the quantum of penalty. However, in my view, the allowance can be given in this case only if the performance was impossible and no allowance can be made for non-serious and casual approach on the part of the Noticee as found in this case. Considering the nature of violation and conduct of the Noticee, I am of the view that the violation of regulation 27(4) of the SECC Regulations as found in this case attracts consequential penalty provisions of section 15HB of the SEBI Act.
25. For the purpose of adjudication of quantum of penalty it is relevant to mention that under section 15I of the SEBI Act imposition of penalty is linked to the subjective satisfaction of the Adjudicating Officer. The words in the section that "*he may impose such penalty*" are of considerable significance, especially in view of the guidelines provided by the legislature in section 15J. Further, while adjudging the quantum of penalty the adjudicating officer has discretion and such discretion should be exercised having due regard to the factors specified in section 15J. The factors stipulated in Section 15J of the SEBI Act, which reads as follows:-

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

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

- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*

(b) the amount of loss caused to an investor or group of investor/ +s as a result of the default;

(c) the repetitive nature of the default.

Explanation-

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

26. Having regard to the factors listed in section 15J and the guidelines issued by Hon'ble Supreme Court of India in *SEBI Vs Bhavesh Pabari Civil Appeal No(S).11311 of 2013* vide judgement dated February 28, 2019, it is noted that from the material available on record, any quantifiable gain or unfair advantage accrued to the Noticee or the extent of loss suffered by the investors as a result of the default in this case cannot be computed. Though there are no investor complaints on record arising out of such lapses, the violation observed in this case are serious in nature. I also note that the Noticee has failed to take corrective steps and they have not furnished any material to suggest that they now have applied for *post facto* approval of SEBI under regulation 27(4) of the SECC Regulations about the said change. The Noticee, being the leading regulated stock exchange in India, should have set higher standards of compliance which is found missing in the present case. Further, the material brought on record shows that the failure of taking prior approval from SEBI before making a change in its policy which was approved by the Compensation Committee/NSE Board of NSE on November 26, 2012 may be a single instance but, it has led to violation on repeated instances i.e. encashment of accumulated Ordinary Leave by Mr. Ravi Narain and Ms. Chitra Ramkrishna over and above the limit of 360 days at the time of his retirement and her resignation, respectively. Such nature of default with regard to non-adherence to the laid down obligations under the SECC Regulations as observed in this case would compromise the regulatory framework and should be dealt with by imposing monetary penalty so as to send an effective message to the market participants as a whole.
27. Taking into consideration all the facts and circumstances of the case including the aforesaid 15J factors and exercising the powers conferred upon me under section 15I of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose a monetary penalty of ₹ 50,00,000/- (Rupees Fifty Lakh Only) on the Noticee under section 15HB of the SEBI Act. In my view, the said penalty is commensurate with the violation of regulation 27(4) of the SECC Regulations as committed by the Noticee in this case.
28. The Noticee shall remit / pay the said total amount of penalty within 45 days of receipt of this order in either of the way of demand draft in favour of "SEBI - Penalties Remittable to

Government of India”, payable at Mumbai, or by following the path at SEBI website www.sebi.gov.in, ENFORCEMENT > Orders > Orders of AO > PAY NOW; OR by using the web link <https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html>. In case of any difficulties in payment of penalties, the Noticee may contact the support at portalhelp@sebi.gov.in

29. The Demand Draft or details and confirmation of e-payment made in the format as given in table below should be sent to "The Division Chief, EFD-DRA-III, Securities and Exchange Board of India, SEBI Bhavan, Plot no. C- 4A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051" and also to e-mail id:- tad@sebi.gov.in.

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

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

Date: August 25, 2020

Place: Mumbai

Amit Pradhan

Adjudicating Officer