**BEFORE THE ADJUDICATING OFFICER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**

**[ADJUDICATION ORDER Ref No.: Order/ VV/AS/2022-23/22590 - 22592]**

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

In respect of:

| Noticee No. | Noticee Name | PAN No. |
|---|---|---|
| 1 | Consortium Capital Private Limited | AACCC3631N |
| 2 | Pashupati Capital Services Pvt Ltd | AACCP0795J |
| 3 | Sachi Investment (Propreitor: Ms. Sarita Devi Choudhary) | AACPC7789E |

**In the matter of Trading Activities of certain entities in the derivative contract of Kotak Mahindra Bank Limited and Axis Bank Limited**

1. Kotak Mahindra Bank Limited (hereinafter referred to as "**Kotak**") and Axis Bank Limited (hereinafter referred to as "**Axis**") are the companies having their shares listed on National Stock Exchange of India Limited ("**NSE**") and Bombay Stock Exchange Ltd. ("**BSE**"). Securities and Exchange Board of India ("**SEBI**") conducted investigation with regard to the trading activities of certain entities in the derivative contracts of Kotak and Axis during the period from June 27, 2014 to February 26, 2015 (hereinafter referred to as "**investigation period**") to ascertain the violation of the provisions of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act**') and SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as '**PFUTP Regulations**'). During investigation, SEBI observed as follows:

   A. Kotak and Axis are the companies engaged in the business of financial products and related services and their scrips are traded on BSE and NSE on both equity and derivative segment.

   B. **Analysis of trades of Consortium Capital Pvt Ltd**

      a) It was observed that an entity Consortium Capital Pvt Ltd (hereinafter referred to as "**Consortium**" or "**Noticee No. 1**") had traded substantially in the call options of

Kotak and Axis and by taking short positions in the said option contracts, it almost contributed 100% of the open interest in the call options of Kotak and Axis.

b) It was further observed that Consortium trades had significantly matched with its top 5 counter parties in the shortlisted contracts, wherein, it was selling the contracts and squaring-off those contracts, just before the expiry date by reversing its position with almost the same set of counterparties.

c) Though no connections could be established between the Consortium and its top 5 counter parties, however, it was observed that two of its counter parties *viz.* Pashupati Capital Services Pvt Ltd (hereinafter referred to as "**Pashupati**" or "**Noticee No. 2**") and Sachi Investment (hereinafter referred to as "**Sachi**" or "**Noticee No. 3**") are connected to each other, as Mr. Pashupatinath Bishwanath Chaudhary, Director of Pashupati and Ms. Sarita Devi Chaudhary, Proprietor of Sachi are husband and wife and shares common address and e-mail address.

d) Consortium concentration in the top 10 liquid Axis call option contracts was in the range of 0.01% - 0.99% and in the top 10 liquid Kotak call option contracts was in the range of 0.10% - 0.99% on the basis of total traded quantity in the contract during relevant period of time.

e) In 18 contracts out of the 60 unique Axis call option contracts, Consortium concentration was more than 50% and most of these 18 contracts tend to be ranked towards the bottom in terms of liquidity among the 60 contracts. In 11 contracts out of the 55 unique Kotak call option contracts, Consortium concentration was more than 50% and these 11 contracts are ranked towards the bottom in terms of liquidity among the 55 contracts.

f) Consortium had traded in 115 call option contracts of Axis and Kotak during the investigation period. While Consortium's concentration was negligible in liquid contracts, the same was as high as 100% in illiquid contracts. Hence, all the contracts of Axis and Kotak, where Consortium's concentration was more than 50%, raised suspicion as they were the most illiquid contracts of Axis and Kotak. Therefore, it appeared that these illiquid contracts were specifically picked for trading, while avoiding the more liquid ones. Accordingly, the aforementioned 29 call option contracts (**18 Axis and 11 Kotak**) have been shortlisted for further analysis.

C. **Consortium 29 call option contracts (18 Axis and 11 Kotak) trading pattern analysis:**

a) Consortium specifically chose "*in the money*" option contracts with least liquidity and had almost 100% of the open interest in these option contracts. In the said contracts, in the first leg of transaction, Consortium sold units to its counterparties and in the second leg, just before the expiry of the respective contract, the counterparties that bought the units from Consortium in first leg reversed their position and sell the units back to Consortium. In all these cases, post the sell transaction i.e. first leg, the counterparties that bought the units had generally maintain the same position till expiry.

b) Consortium was observed to be selling the contracts and squaring-off their position, just before the expiry date by reversing position with the same set of counterparties and this pattern had been repeatedly followed in said 29 illiquid contracts.

D. **Analysis of trades of Counterparties of Consortium:**

a) Trades of top 5 counterparties of Consortium *viz.* Pashupati, Sachi, MSD Associates ("**MSD**"), Nirshilp Securities Pvt Ltd. ("**NSPL**") and Khandwala Tradelink Co. ("**KTC**") accounted for significant percentage i.e. in the range of 82% - 100% to the buy trades of Consortium and *vice versa*.

b) MSD, NSPL and KTC had not been found connected to Consortium or among themselves or with other two counterparties. Further, the contracts in which their traded quantity matched and percent of traded volume to total market volume was equal to or more than 50% were 4, 0 and 1, respectively. Also, the total trades of aforesaid 3 counterparties were scattered across contracts and no particular pattern was observed in their trades with Consortium.

c) Consortium had executed trades in 15 contracts out of shortlisted 29 contracts with Pashupati and Sachi, wherein, traded quantity matched and percent of traded volume to total market volume was equal to or more than 50%.

E. Vide e-mail dated July 16, 2019, Consortium and Pashupati were advised to provide reasons for trading in scrip of Axis and Kotak. Vide respective emails dated July 23, 2019, Consortium and Pashupati had *inter alia* stated as follows:

**Reply of Consortium**

*"The trades in Axis Bank CE & Kotak Bank CE were done with the perspective of creating Short position in both the scripts. Instead of shorting futures the tool of CE's were used to avoid daily pay in requirements and nothing else. Moreover due to sustained one way rally in Indian Stock Markets particularly banking sector, during February 2014 to February 2015 our calculations regarding that particular trade position went wrong and we lost substantial money. Moreover during that period Axis Bank & Kotak Bank also outperformed other banking stocks by huge margin creating further problems for us. Primarily we have an active proprietary desk where we trade heavily based on pair strategies in future & option, apart from good client based brokerage work. It should be also appreciated that short position in Axis Bank & Kotak Bank were also countered with long position in ICICI Bank, HDFC Bank, HDFC Ltd & YES Bank. Further both Axis Bank & Kotak Bank are frontline stocks and part of NIFTY 50 and it is impossible to influence their prices through any particular position in them. The trades in all the contracts were done at intrinsic fair value and no Malafide intention was there. All our trades were done without any malafide purpose Which can be also ascertained by fact of the longetivity of transaction, margin involved during this period and quantum of loss borne by us in this regard. Axis Bank & Kotak Bank are frontline Nifty stocks where our trades were done with bonafide intention.*

*As regards the strike price of contracts, we would like to state that initially the strike price was not much away from the underlying price of kotak and axis bank. However with passage of time prices of underlying shares i.e. axis bank and kotak bank rose substantially and we were stuck with losing position which could not be squared at appropriate time. However the contracts were rolled over for fairly long period of time as we were getting positive forwardation changes in each rollover. The fact of almost 100% of open Interest in the said contracts belongings to me was overlooked as we were hoping against hope that prices will fall and we shall recover the entire losses. In hindsight we believe it was a wrong decision and squaring it earlier or converting into future would have saved Lot of losses for us. Moreover open interest of Axis Bank CE & Kotak Bank CE should also be seen along with open interest position of their future contracts as they are frontline & NIFTY50 stocks and not small cap / penny stock when price can be influenced by positions. Copy of our self trading* *accounts is enclosed when we have earned Rs 73,15,704.50 for the whole year 2014-15. Moreover the loss during that period was financed by our own funds and not client's fund with us.*

*Apart from all this we would like to also state that our volumes in options segment is Substantial and in many case our open interest position is also substantial to total market Outstanding. However all other instances the trades get squared of regularly."*

**Reply of Pashupati**

*"As we are doing synthetic future trading and arbitrage in Cash-Future in Pro account, so there was large quantity traded in both scrips in cash & derivative. Whereas some clients are doing jobbing and some do Call-Put option & Future strategies in cash & derivative segment."*

F. Thereafter, vide e-mail dated October 11, 2021, Pashupati was advised to provide – i) reason for trading in stock options segment in the scrip of Kotak and Axis during investigation period; and ii) reason and logic used for execution of trades through algo. Vide e-mail dated October 14, 2021, Pashupati had submitted the following:

"*We are trading in options segment of almost all single stock scripts that have decent liquidity (NIFTY 100 universe) and Kotak Bank/Axis Bank fall under this category. Our trading in options segment of single stock is directly correlated to the liquidity of same.*

*We are conducting various options strategy like conversion-reversion, delta hedging, volatility spread, bull-bear spread. These strategies can only be executed using Algo."*

G. In its reply, Consortium had admitted that, it had incurred losses while dealing in option contracts in the scrip of Kotak and Axis. However, no specific reason was provided for trading and incurring loss in different contracts of the same scrip with different expiry in different months, apart from placing the blame on erroneous strategy. The argument of "*erroneous strategy*" found to be unconvincing by investigation, especially considering that it had particularly picked the most illiquid of all 115 contracts and there was no change in trading strategy even after incurring consecutive losses on previous instances. Further, Pashupati response to the queries was a generalized response and no specific reason has been provided w.r.t. their trading pattern observed during investigation. Though Pashupati had stated that it had been trading in options segment of single stock scripts that have decent liquidity (*NIFTY 100 universe*) and Kotak and Axis fall under this category. However, it was observed that, Pashupati was substantially trading in those contracts that are illiquid i.e. Kotak and Axis during investigation period. Such a trading pattern indicates that Consortium, Pashupati and Sachi were in agreement with each other while executing the trades in contracts of Kotak and Axis and they have executed impugned trades in contracts of Kotak and Axis in a predetermined manner.

H. **<u>Analysis of trades of Consortium, Pashupati and Sachi for the 15 shortlisted contracts:</u>**

a) It was observed that Consortium, Pashupati and Sachi had purchased and sold units of contracts of Kotak and Axis through multiple transactions in a day. In aforementioned 15 contracts, Consortium had sold units of contract to Pashupati or Sachi in first leg of transaction and had maintained the same position till expiry. However, just before the expiry of contract, Pashupati or Sachi reversed the position in the second leg of transaction and sold the units back to Consortium bought by them during first leg of transaction.

b) In 14 contracts out of the said 15 contracts, Consortium, Pashupati and Sachi had placed respective sell/buy orders in the contract simultaneously on same day so as to dispose of the units of contracts. Such a pattern of placing orders only on specific days and matching of orders among Consortium, Pashupati and Sachi on same day, shows that Consortium, Pashupati and Sachi had together employed a pre-meditated manipulative device and scheme to execute transactions in derivative contracts of Kotak and Axis, without having any intention of change of ownership.

c) It was observed that the total traded quantity matched between Consortium and Pashupati/ Sachi in the first leg of transaction is almost equal to the total traded quantity in the second leg of transactions, where Pashupati/ Sachi reversed their position and sold the units of contracts back to Consortium. Such reversal of position before expiry of contract reinforces that the trades were executed by Consortium and Pashupati/ Sachi without any intention of change of ownership.

d) It was further observed that, of the 15 shortlisted contracts, Consortium had incurred loss in 13 contracts and Pashupati/ Sachi have incurred loss in 2 contracts. It was noted that despite incurring losses in different contracts in different months continuously during investigation period, Consortium and Pashupati/ Sachi have repeatedly entered into similar pattern of trades without any change in their strategy. From the above observation it is apparent that Consortium and Pashupati/ Sachi were well aware of the consequences of their impugned trades in contracts of Kotak and Axis undertaken in a predetermined manner.

e) By virtue of reversal of position by Consortium and Pashupati/ Sachi just before expiry in impugned contracts of Kotak and Axis, Consortium has incurred loss of Rs. 4,30,82,200 and Pashupati/ Sachi has made profit of Rs. 4,30,82,200.

2. In view of the observation of investigation, it was alleged that Consortium, Pashupati and Sachi (hereinafter together referred to as "**Noticees**") have traded among themselves in the impugned contracts of Kotak and Axis having least liquidity, and reversed their respective position in the impugned contracts just before the expiry date of the respective contracts. It was further alleged that, such a trading pattern of Consortium, Pashupati and Sachi in the impugned contracts of Kotak and Axis having least liquidity were undertaken in a predetermined manner and therefore, these Noticees have used and employed a manipulative device or scheme, while dealing in securities market and executed non-genuine and deceptive trades without having intention of change of ownership. Such non-genuine and deceptive trades of the Noticees falls under the definition of '*fraud*' and their dealings as discussed herein above were '*fraudulent*' as defined under Regulation 2(1)(c) of the PFUTP Regulations. Considering the above, it was alleged that the Noticees No. 1, 2 and 3 have violated the provisions of Sections 12A(a), (b) and (c) of SEBI Act read with Regulations 3(a), (b), (c), (d), 4(1), 4(2)(a) and 4(2)(g) of the PFUTP Regulations.

3. The competent authority in SEBI has *prima facie* felt satisfied that there are sufficient grounds to enquire into the alleged violations of the SEBI Act and the PFUTP Regulations. Accordingly, Shri N Hariharan was appointed as Adjudicating Officer, vide communication order dated June 16, 2022. Subsequently, the case has been transferred to the undersigned and undersigned has been appointed as the Adjudicating Officer vide a *communication-order* dated October 06, 2022 under Section 15I (1) of the SEBI Act read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as '**Adjudication Rules**') to inquire into and adjudge the alleged violations by the Noticees under Section 15HA of the SEBI Act. It has been advised that except for the change of the

Adjudicating Officer, the other terms and condition of the original orders (whereby the aforesaid Adjudicating Officers was appointed) '*shall remain unchanged and shall be in full force and effect'*. It has also been advised that '*I should proceed in accordance with the terms of reference made in the original orders*'.

4. Accordingly, in terms of Rule 4(1) of the Adjudication Rules, a notice to show cause no. EAD-9/ADJ/VKV-AKS/OW/58312/1–4/2022 dated November 18, 2022 (hereinafter referred to as '**SCN**') was issued to the Noticees calling upon them to show cause as to why an inquiry should not be held against them in terms of Rule 4 of the Adjudication Rules and why penalty, if any, be not imposed under Section 15HA of the SEBI Act, as the case may be for respective alleged violations as mentioned hereinabove. The SCN has been duly served upon the Noticees *via* Speed Post Acknowledgement Due and digitally signed e-mail. Noticees No. 2 and 3 have submitted their written reply to the SCN vide letter dated December 06, 2022 and Noticee No. 1 has submitted its written reply to the SCN vide letter dated December 09, 2022.

5. Thereafter, on considering the material available on record and in the interest of natural justice, an opportunity of personal hearing has been granted to the Noticees in terms of Rule 4(3) of the Adjudication Rules. Noticee No. 1 has availed the personal hearing on December 19, 2022, wherein, Mr. Jai Kishan Poddar and Mr. Vinod Kumar Goel, Chartered Accountant have appeared as authorized representatives of the Noticee No. 1 and made oral submissions before me on the basis of Noticee's written submission dated December 09, 2022. The authorized representatives have requested for 2 days' time for making additional written submissions and same has been allowed. Noticee No. 1 has submitted its additional written submissions vide e-mail dated December 19, 2022. Noticees No. 2 and 3 have availed the personal hearing on December 22, 2022, wherein, Mr. KRCV Seshchalam i/b Vishesha Law Services has appeared as authorized representative of the Noticees No. 2 and 3 and made oral submissions before me on the basis of Noticee's individual written submissions dated December 06, 2022. The authorized representative has requested for 3 days' time for making additional written submissions and same has been allowed. Noticee No. 2 and 3 have submitted its common additional written submissions vide e-mail dated December 26, 2022. Accordingly, the hearing has been concluded w.r.t. the Noticees in the matter.

6. The Noticees have *inter-alia* stated as follows vide their respective written submissions in the matter:

**A. Common Submissions of the Noticees**

a) SCN has been issued after 7-8 years from the impugned trades executed by the Noticees and same has caused prejudice to the Noticees. In this regard the Noticees have relied upon the judgements of the Hon'ble Securities Appellate Tribunal ("**SAT**") in the matters of *Ashok Shivlal Rupani Vs SEBI and other companion appeals* in Appeal No. 417 of 2018 decided on August 22, 2019*, Shriram Insight Share Brokers Ltd* (Misc. Application no.593 of 2020 and appeal no. 559 of 2020), *Rakesh Kathotia & Ors. v. SEBI* (Appeal No. 7 of 2016) dated May 27, 2019, *Sanjay Jethalal Soni v. SEBI* (Appeal No.102 of 2019 dated November 14, 2019) and *Parag Sarda v. SEBI* (Appeal No. 290 of 2020) dated 12th November 2020; and the judgement of the Hon'ble Supreme Court in the matter of *Government of India v. Citadel Fine Pharma* [AIR (1989) SC 1771].

b) SEBI has not provided any evidence or proof to show that impugned trades were fraudulent. None of the ingredients of the said PFTUP Regulations are attracted in the present case. Allegations in the SCN does not flow out of the factual position and are based on mere surmises and conjectures.

c) The trades were executed as per prescribed procedure of KYC, UCC etc on the on-line trading platform of the exchange with due compliance with all the rules and regulations of the exchange. At no point of time was there any warning or any observation about anything amiss in the impugned contracts in Stock Options which were executed by the Noticees in their proprietary accounts.

d) All transactions have been carried out on the online trading platform of stock exchange. Undisputedly, in case of screen-based trading, the automated system itself matches orders on a price-time priority basis and hence it is not possible for anybody to have access over identity of counter party. Since counter party identity is not displayed; one can never have any choice with whom it wants to deal or not to deal. In this regard, the Noticees has placed reliance upon the judgement of the Hon'ble Supreme Court in the matters of *Parveen vs. State of Haryana* (Criminal Appeal No. 1571 of 2020, Order dated December 07, 2021), *Jagruti Securities* (2008 SCC online SAT 184), *S.P.J Stockbroker Pvt Ltd* (2013 SCC

Online SAT 67) and upon the judgement of the Hon'ble SAT in the matter of *Sanjay Agrawal vs. SEBI* (Order dated 18.05.2012).

e) The trades in question were in the normal course of their share broking /trading activity and there is nothing amiss in the trades executed by them in their proprietary account after observing all the required KYC and margining requirements. All the receipts and payments for the trades were made through exchange clearing systems and banking channels with appropriate audit trails.

f) NSE and SEBI have themselves allowed and permitted trading in options for *'far months'* with a strike price, which are at large variance to current market price. The fact that such parameters are laid down is clearly indicative that options will always be *'in the money'* and *'out of money'* and since regulators have themselves permitted trading in same, no adverse inference be drawn against us in this regard for executing our trades.

g) The observations regarding the CALL options of KOTAK and AXIS being illiquid as per liquidity test, thereof tabled in table no.1 of the SCN is incorrect. Even assuming by any stretch of imagination the impugned stock call options were illiquid, then any small quantity or volumes would look significant as there were no active traders trading in the said call stock options.

h) For the transaction to be termed fraudulent, as per the definition of "*fraud*", there has to be an "*inducement*" and SEBI has not even alleged inducement. Further, Hon'ble Supreme Court in the matter of *Electrosteel Castings Limited vs UV Asset Reconstruction Company Limited* (Citation: LL 2021 SC 682 Case no. and Date: CA 6669 OF 2021 | 26) has held that mere allegation of "*fraud*" without any specific particulars cannot be accepted as "*fraud*". Also, none of the Noticees trades were deceptive in nature or had any impact on the investors or their investment decisions which is a *sine qua non* of "*fraud*".

i) All the trades were done at fair market value i.e. option prices were fully linked with spot prices of underlying relevant scrips at that prevalent time and no ulterior motive was there. As such no adverse inference shall be drawn for the Noticees trades in impugned call options.

j) Impugned scrips were highly liquid in nature i.e. frequently traded in market. In fact, we submit with humility that underlying stock of impugned contracts consists of companies which are part of the SENSEX30 and NIFTY 50 indices of the Stock Exchanges. Thus, to allege that it deliberately traded in only those call options which were illiquid in nature is unfair.

k) Apparently, SEBI has presumed that its transactions in '*illiquid call options*' on the basis that its trades were squared up at substantial price difference without any basis for significant change in the contract price. However, in that case, it may also be concluded that said trades could have had no effect on other investors or market at large and that such illiquidity would be reason for volatility and alleged '*reversal*' transactions since variations in option price would be dramatic, if the chosen strike price is thinly traded.

l) Derivative market is '*zero sum game*' and thus in each and every case one party will inevitably make profit and counterparty will make loss. In capital market neither NSE nor SEBI can guarantee profit or loss to any individual/ entity. In derivative trading, traders often make profit or loss over a period of time since the market does not always behave as per their prediction/ expectation. Thus, profit and loss are concomitant to trading in derivative segment. The mere fact that they traded in option segment cannot be a ground to allege that they failed in exercising diligence in executing such trades into present proceedings.

m) They trade and invest in the stock market in ordinary course, which includes their own *bona fide* trading in option segment. Thus, it is erroneous to allege that their trades created artificial volume on NSE. Going by the logic of SEBI, if these were illiquid stock call options, then any trade and transaction would look significant. In fact, the impugned trades constituted a miniscule percentage of overall trades. There was no major movement in price of underlying scrips which itself proves that their trades had no impact on market. Thus, their transactions neither distorted the equilibrium in market nor caused any loss or prejudice to investors at large.

n) Any kind of alleged fictitious/ manipulative trade in cash segment may create distorted impression in minds of investors that price of scrip is rising/falling, who may invest/ divest from said scrip. However, in case of option segment there is no such effect since each contract expires at end of contract period and for every party who makes profit, there is counterparty who makes a loss. There is no question of transfer of beneficial ownership in option segment, since at the end of settlement cycle only net loss/profit is adjusted. Therefore, allegation of creation of '*artificial*' or '*reversal*' trade is of no consequence in option segment of exchange.

**B. <u>Submissions of Noticee No. 1:</u>**

a) There is no nexus, directly or indirectly with the alleged counterparties with whom its proprietary trades got matched. It has no role at all in this regard and neither SEBI has alleged the same. It had not acted in concert or in collusion with anyone and nor was it part of any group or connected with anyone for the purpose of influencing price or for any manipulative activity as alleged or otherwise. Its trading in stock CALL option segment was independent of any other entities dealing in the same and based on its limited understanding of capital market. It state, declare and assert that it had no prior meeting of minds with other broking entities as well as their clients as mentioned in SCN, nor any contemporaneous knowledge about any alleged wrong doing. It is not guilty of conduct which is contumacious or dishonest or acted in conscious disregard of law.

b) The trading in its proprietary account in alleged call option segment was low percentage of overall volume in market. The total number of alleged non-genuine trades in AXIS were very few (*18 as against total no. of alleged non genuine trades during the i.e. numbering 60*). Similarly, in call options of KOTAK, its total number of contracts were only 11 out of alleged non genuine contracts numbering 55. Hence, it is erroneous to allege that its proprietary trades created artificial volume on NSE.

c) Allegations are made ignoring the SEBI Circular *CIR/MRD/DP/14/2014 dated 23rd April, 2014*, which made it incumbent upon the Exchanges to put in place effective mechanisms and procedures to monitor collusion and to safe guard the market integrity. Despite that, NSE failed to introduce effective preventive safeguards and mechanisms.

d) All allegations are made ignoring the fact that, at the relevant time when it executed impugned alleged objectionable trades in its proprietary account, there was no such thing as a '*reversal trade*' in existence and the fact that its such trades got matched with alleged 2 counterparties which SEBI has found to be related amongst themselves and not with it at the relevant time, clears all the doubts regarding the genuineness and legality of impugned trades.

e) As per tables in the SCN depicting the trading pattern in call options of AXIS and KOTAK confirms that the call options were carried forward by it from clearing to clearing to save its losses in the hope of recovery and it has earned carrying forward charges for the same.

f) Its trades in call options by any stretch of imagination cannot be categorised as reversal trades. As, in reversal trades one leg had unrealistic/abnormal prices, which was not justified with prevalent underlying prices and were squared off at an interval of miniscule period of time, whereas, its call options trades were basically carry forward of short positions through options for long duration. It squared off the particular position before expiry and carried forward the same in next expiry and both the legs of transactions were done at fair market prices.

g) When the alleged trades were available in the system and open to universe at large to accept, no adverse inference can be drawn, if these trades coincidentally got matched with the alleged 2 counterparties Pashupati and Sachi, who are rank strangers to it and not remotely connected to itself or its directors or promoters or their relatives at all.

h) The proposed allegations and consequent threat to levy penalty on it violates Article 20(1) of the Constitution of India, as it proposes to penalise it for violation of a law, which was not in force at the time of the alleged transaction. In this regard, the Noticee has placed reliance upon the judgement of Hon'ble Supreme Court in the matter of *Ritesh Agarwal and Another. vs SEBI* [(2008) 8 SCC 205].

i) SCN has been issued ignoring the fact that trading in CALL options in Stock options was illiquid i.e. same party in the first leg of transaction (buy) was likely to be a counterparty in the second leg (sale) and premium is bound to be outcome when wide margin between buy - sell rate for intra-day trading was permitted by the Exchange. Further, the SCN has been issued ignoring the fact that the so-called reversal of trades executed by it in the stock options at NSE were in fact permissible trades given the speculative element built in the first trade (*or first leg of trade*). Also, every trade is a separate contract. In the very nature of intra-day trading, there has to be two orders / trades. Hence there was nothing wrong in intra-day trading at prices of the choice of buyers /sellers, one of them being put in adverse condition (i.e. loss suffered by one party and gain received by another party).

j) In previous such cases, while deciding the matter, respective Adjudicating Officer has relied upon the order of Hon'ble Supreme Court in the matter of *SEBI vs Rakhi Trading* (Civil Appeal Nos. 1969, 3174-3177) and order of Hon'ble SAT in the matter of *Ketan Parekh vs SEBI* (Appeal No. 2 of 2004). However, the aforesaid orders are distinguishable in the facts of circumstances of the instant case, such as – derivative segment, no repetitive pattern, etc.

k) Allegations in the SCN are untenable in law, as it fails to consider the ratio laid down by the Hon'ble SAT in the matters of *Indivar Traders Pvt. Ltd. vs SEBI* (Hon'ble SAT order dated 05.10.2020 in Appeal No. 253 of 2020) and *Vasudev Ramchandra Kamat vs SEBI* (Hon'ble SAT order dated 05.10.2020 in Appeal No. 253 of 2020), wherein the Hon'ble SAT categorically laid down that miniscule trades do not translate into manipulative trading pattern as the term *pattern* requires multiplicity of objectionable trades, which is not the case in the present SCN. It also relied upon the Hon'ble SAT judgement in the matter of *Ramod Kumar Agarwal (HUF) vs Adjudicating Officer* [2009] 95 SCL, 274 (SAT).

l) Its call options trades were executed at fair market prices and remained outstanding in the system for a stretch of long period of time involving lot of margins and money, unlike reversal trades, wherein, transactions were done at unrealistic prices and squared up within miniscule interval of time.

m) It suffered heavy losses because prices of underlying security kept rising, which in its case are AXIS and KOTAK, both of which are highly liquid and part of NIFTY and SENSEX. It would have made profits/ or remained at par had the scrip prices fallen as expected by it while executing the impugned call options trades.

n) SEBI has discontinued proceedings against other brokers and intermediaries against whom similar allegations of dealing in illiquid stock options while executing proprietary trades/ on behalf of clients have been levelled. It humbly submits that the same recourse ought to be adopted on an entity like it. It had followed and complied with all the procedures and requirements of capital market while executing its trades.

o) Consequent to disruption in economy due to COVID 19 for last 2 years, its financial position is precarious and any monetary penalty will cause irreparable hardship to it.

p) Hon'ble Supreme Court in the matter of DigambarVaishnav v/s State of Chattisgarh (2019CriLJ 1901: 2019 AIR (SC) 1367:2019 (4) SCC 522 2019 (107) ACrC 619: 2019(2) CCSC 1048) in the context of evidence held that the burden of proof lies squarely on prosecutor and that even strongest conjecture or surmise has no evidentiary value. With regard to considering the judgements cited by the Noticee, it has placed reliance upon the judgement of Hon'ble SAT in the matter of *Yatan Pandya HUF vs SEBI* (decision dt. 24.03.2022).

q) Hon'ble Supreme Court in Civil Appeal No. 3260/2017 (judgement dated July 2nd, 2019) in the matter of *Prrsaar vs. NSE* has restricted penalties and suspension of Brokers and decided in favour of Broker and held that: "*penalty on brokers cannot be unreasonable. Moreover, brokers can be suspended only when brokers indulge in misconduct against Exchange and not for various compliance violations and had asked the Securities Appellate Tribunal to reconsider the issue of quantum of punishment in this light*".

r) It begs to be pardoned and exonerated of the charges with a '*reprimand*'.

**C. Common Submissions of Noticees No. 2 and 3:**

a) They are nowhere related to and/or connected to the Consortium. They are related and connected to each other pursuant to relationship between the Mr. Pashupatinath, Director of Noticee No. 2 and Ms. Sarita, proprietor of Noticee No. 3 as stated in the SCN. Since they are not related to their counterparty no allegation of manipulation can be made against them. Further, they are not counter parties to each other in impugned trades. In the absence of allegation of collusion with the counterparty, it cannot be said that they are indulged in fraudulent and unfair trade practices.

b) Entire investigation has been conducted from the perspective of Noticee No. 1 trading in the illiquid derivative contracts in the scrip of Kotak and Axis and impugned trades executed by Noticee No. 2 were part of its proprietary multi legged algo trading strategies, which were pre-approved by the stock exchange.

c) SEBI has failed to appreciate that the trades executed by them are independent of and without collusion with Noticee No. 1. The said trades were executed without any involvement in any design or suspected manipulation that was alleged against the counterparty to the trades of Noticee No. 1. They further submits that the entire investigation has been conducted without properly appreciating the futures market and SEBI has failed to make any attempt to understand the rationale of the trades and the method and manner in which these trades were executed by them.

d) Their trades were executed through algorithmic trading, which uses a computer program that follows a pre-defined set of instructions (*i.e. an algorithm*) to place trade/order. They have deployed a strategy wherein, "*In the —money*" (ITM) order entry, order price is derived based on the current market "*future price*" of the underlying and strike price of the option. In ITM order based entry, the price is calculated using strike price, underlying future price and the difference of that is set in the algorithm. For instance, if they buy an ITM call option, they would hedge by selling the future of the same underlying, at the same given time for the same quantity. Similarly, if they sell an ITM call option, it would hedge it buying the future at the same time. They have employed this strategy in the present case too. For example, on 25.11.2014, Noticee No. 2 had bought 250 quantity of Kotak at strike price of Rs. 960 @ 207.50 and at the same time it sold the same quantity of the future EF KOTAKBANK24DEC2014 (*same underlying at 1172.65*). Below is an explanation of how it made a profit by doing the above trades. Simultaneously, it has hedged its option purchase by selling the future stock of KOTAKBANK24DEC2014 at Rs. 1172.65/-. Hence it has made a profit of Rs. 5.15 (Rs. 1172.65 – Rs. 1167.50) per share which equals to Rs. 1287.50 i.e. (Rs. 5.15 x (250 Qty) shares).

e) The Noticee No. 3 had employed this strategy in the present case too. For example, on 22.08.2014 the Noticee No. 3 had bought a 1250 quantity of EO CE AXISBANK 25Sep2014 at a strike price of Rs. 300 @ 101 and at the same time it sold the same quantity of the future EF AXISBANK 25Sep2014 (*same underlying at 402.90*). Below is an explanation of how the Noticee No.3 made a profit by doing the above trades. Simultaneously, it has hedged its option purchase by selling the future stock of AXISBANK 25Sep2014 at Rs. 402.90. Hence it has made a profit of Rs. 1.90 (Rs. 402.905 – Rs. 401) per share which equals to Rs. 2,375 i.e. (Rs. 1.90 x (1250 Qty) shares).

f) Using aforementioned strategy, they define the difference amount between the strike price and the future price. In the case above, their profit was defined. If there is any mis-pricing, sell order of the call option that appears in the system, which has a difference from the future price of more than Rs. 1, the algorithm will automatically detect it and will execute the trade immediately of both the legs (*future and call option*) of the strategy at the same time. They have paid margin and premium on the above transactions and by using the said algorithm i.e. IV-ITM order entry, they squared off the trades that have been executed at breakeven price, to release the margin and the premium used, which is evident from their respective trades dated November 26, 2014 and September 22, 2014.

g) As can be seen from the trade dated November 26, 2014, Noticee No. 2 had sold the same contract KOTAKBANK24DEC2014CE of strike price 960 @206 and at the same time it had bought the same quantity of the future KOTAKBANK24DEC2014 (*same underlying*) at Rs. 1166. By selling an ITM call option of KOTAKBANK24DEC2014CE of strike price 960 at 206 means that it had sold the future of KOTAKBANK24DEC2014 at the price Rs.1166 (960+206). Simultaneously, it had hedged by buying the future stock of KOTAKBANK24DEC2014 at Rs. 1166. Hence it had made no profit on this transaction and successfully reversed its earlier trade and released its margin and premium.

h) Similarly, Noticee No. 3 had sold the same contract EO CE AXISBANK 25Sep2014 of strike price 300 @109.95 and at the same time it had bought the same quantity of the future AXISBANK 25Sep2014 (*same underlying*) at 409.95. By selling an ITM call option of EO CE AXISBANK 25Sep2014 of strike price 300 @109.95 means that it had sold the future of AXISBANK 25Sep2014 at the price Rs.409.95 (300+109.95). Simultaneously, it had hedged by buying the future stock of AXISBANK 25Sep2014 at the price Rs.409.95. Hence it had made no profit on this transaction and successfully reversed its earlier trade and released its margin and premium.

i) Noticee No. 2 had employed the algo strategy in many other scrips and indices besides the derivatives contract of Kotak Mahindra Bank Ltd and Axis Bank Ltd as alleged under the SCN during the investigation period. Similarly, Noticee No. 3 had employed the algo strategy through its broker Noticee No. 2 in many other scrips and indices.

j) Algo trading strategy employed by them automatically places orders without human intervention, that meet pre-defined yield based parameters. Orders are entered by the algo system to achieve a minimum fixed return on investment ("**ROI**") and once it is determined, particular ROI can be mostly achieved. The system enters the order and which happens regardless of the scrip or strike price or liquidity and the counterparty. In any event, the counterparty will not be known to them, as these trades are purely executed without any human intervention through the screen based trading system. Even the computer running the Algo strategy also is not aware of the counterparty in any case. For any multi legged order, the order number is identical for each leg of the order and if each leg of the order were placed as a separate individual trade, the order number for call, put and future, would all be separate and this proves beyond all doubt that the orders were part of a multi legged algo strategy, and not part of any design with which counterparty may have been infected.

k) Since all orders placed by it were system driven, it is evident that there is no human intervention or *'meeting of minds'* that may result in price/ volume manipulation. Since all orders were multi-legged transactions, such that even if 1 leg of the transaction does not match, it could not have artificially matched the impugned trades with Noticee No. 1 for one leg of the order not knowing, whether the other legs of the orders have been executed.

l) Algo trading usually results in large number of orders being executed at a rapid pace (*within milliseconds*) to achieve a fixed ROI. The orders are placed within a matter of milliseconds on the basis of the data/ feed received from the stock exchange. These orders are meant for immediate execution or cancellation. On the basis of the data/ feed received from the exchange, the algo-software places multiple multi-legged orders that satisfy the predetermined yield based parameters. If the desired ROI cannot be achieved, the system would not place such an order. It would not be possible to manually place such orders within the given time frames to achieve the desired ROI Besides, the volumes and speed with which the algorithm places orders would show that there could not have been any meeting of minds with the other Noticees. It is therefore submitted that the selective reliance on few trades that get matched with Noticee No. 1 cannot form the basis of allegation of fraud. Furthermore, it is submitted that in illiquid contracts possibility of matching of trades cannot be ruled out.

m) In Algo trading, illiquidity and liquidity of a particular underlying is not a factor which is considered by the system when the order is placed, as long as the pre-determined set of parameters are being met. It is therefore submitted that the allegation that they were placing orders in far month illiquid contracts has no basis. Moreover, NSPL and KTC, whose trades were also under question are not part of the SCN, this shows that mere trading in far month contract is not illegal. Since the order were system driven and complies with anonymous trading mechanism of the exchange, no adverse inference can be drawn against them.

n) The loss/ profit (*in the instant case loss*) incurred by the Noticee No. 1 during the investigation period cannot be sole ground to drag them into the adjudication proceedings, when all the trades were system driven and without any human intervention.

o) Connection between the Noticee No. 2 with the Noticee No. 3 alone cannot be sole criteria for initiating the adjudication proceedings and terming them as a '*fraud*'. In the SCN it is held that no relation/ connection could be established between Noticee No. 1 and it, therefore, it cannot now be alleged that there was collusion or '*meeting of minds*'.

p) Trading in illiquid contracts cannot be termed as illegal; the exchanges allow the brokers/ clients to trade in such contracts. Furthermore, it is submitted that since the impugned trades were executed through the Algo software, the matching of trades between Noticee No.1 and Noticee No. 2 and Noticee No.1 and Noticee No. 3 cannot be termed to be in agreement with each other. All the trades on the exchange mechanism take place through the order matching mechanism and the orders gets matched only when they are in agreement with time and price.

q) It is not a case of repetitive nature of violations. There are no unlawful gains and there is no loss caused to any investor in the impugned trades. It has not violated any provisions of the SEBI Act and the PFUTP Regulations as alleged in the SCN, therefore, it requests to be discharged from the allegations in the SCN.

r) It was alleged that they have traded in the derivative contracts of Axis and Kotak and made a profit to the tune of Rs. 4,30,82,200. The said allegation against them is baseless as is evident from profit sheet maintained in the '*MS Excel*' by the Noticees. The Total profit earned during the alleged period of investigation through algorithmic trading is depicted in the chart below:

**Table 1**

| Sr. No. | Noticee | Traded Contracts | Profit |
|---|---|---|---|
| 1 | Pashupati Capital | Axis Bank Ltd | 18,29,625.00 |
| 2 | Pashupati Capital | Kotak Bank Ltd | 4,69,762.50 |
| 3 | Sachi Investment | Axis Bank Ltd | 16,57687.50 |
| **Total** | | | **39,57,075.00** |

s) They have deployed the same strategy to execute its trades *via 'Algo'* and have successfully earning the profits at the range of 18% per annum in the derivatives of other scrips. They have enlisted such trades executed by it in the *'Annexure A'* of its reply dated December 06, 2022 to the SCN.

t) In similar matter of trading in the derivative contracts of Bank of Baroda, Adjudicating Officer of SEBI vide her order dated October 21, 2022 has considered the Noticee No. 2 arguments and extended benefit of doubt to it.

**D. Submissions of Noticee No. 2:**

a) It is a diversified financial services firm offering a wide range of financial products and services such as wealth management, retail broking and distribution, institutional broking and commodity broking. It is SEBI registered having Registration No. INZ000210436 since year 2000 and also a member of NSE, BSE and CDSL. It has been into business of securities market for more than 2 decades and it trades in almost all the segments and employs algorithmic trades through "*Alt-Q*" and "*Alt-S*" algorithmic trading software. It has also subscribed co-location facility of NSE and its algo strategy was pre-approved by the Exchange.

b) It does synthetic future trading and arbitrage in Cash-Future across the scrips in cash and derivative. It also does trading in options segments of almost all single stock scripts that have decent liquidity. Trading in options is directly co-related to the liquidity of the same. The trading is done through the Algo trading with various options strategies like conversion- reversion, delta hedging, volatility spread and bull- bear spread as approved by the Exchanges.

c) Extract of the investigation report annexed to the SCN refers to certain enforcement actions against it initiated earlier. Though there is no allegation in the SCN regarding earlier proceedings, it is submitted that these proceedings have no bearing on the present proceedings.

7. I have considered the allegation levelled in the terms of reference, the relevant material brought on record, common reply/ submissions of the Noticees submitted/ made during the instant proceedings before the undersigned. Before dealing the case, it would be appropriate to provide reference to the provisions alleged to be violated by the Noticees at the relevant times and same read as under: -

***SEBI Act***

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

**12A.** *No person shall directly or indirectly—*

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

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

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

***PFUTP Regulations***

***3. Prohibition of certain dealings in securities***

*No person shall directly or indirectly—*

*(a) buy, sell or otherwise deal in securities in a fraudulent manner;*

*(b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;*

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

*(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be*

*listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.*

***4. Prohibition of manipulative, fraudulent and unfair trade practices***

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

*(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:—*

*(a) indulging in an act which creates false or misleading appearance of trading in the securities market;*

*(g) entering into a transaction in securities without intention of performing it or without intention of change of ownership of such security;*

8. The Noticees in this case has raised technical objection that the SCN in the instant matter has been issued after a delay of 7-8 years from the date of impugned transactions and the aforesaid inordinate delay has severely prejudiced the Noticees. In this regard, I note that on the basis of alert generated by NSE, an analysis of the trading activities of certain entities in the derivative contract of Kotak and Axis was carried out by NSE for trades executed during the period June 27, 2014 to February 26, 2015. NSE observed that Consortium had a concentration in faraway option contracts coupled with consistency in executing buy and sell trades with same set of clients resulting in loss of 8.52 crores. Subsequently, NSE referred the matter to SEBI. Based on the said report, examination was carried out by Surveillance department of SBEI and had forwarded the matter to Investigation department of SEBI for investigation. Thereafter, a detailed investigation was carried out which included - calling for information from stock exchange and multiple entities; analysis of trade and order data of the multiple entities; analysis of the information received from stock exchange; identifying connections among traders and their counterparties, etc. Subsequently, after extensive investigation, the final investigation report was presented on March 30, 2022 and the action was approved on March 31, 2022. Thereafter, Shri N. Hariharan (erstwhile Adjudicating Officer) was appointed as Adjudicating Officer vide communication order dated June 09, 2022 and subsequently, undersigned has been appointed as the Adjudicating Officer on October 06, 2022. On receipt of records, the SCN to the Noticees have been issued on November 18, 2022 in this matter. In this regard, I would like to highlight the pertaining remark made by the Hon'ble SAT in the matter of *Hemant Madhusudan Sheth and Ors. vs. SEBI* (Appeal No. 06 of 2020; Date of Decision: 24.06.2021) – "*We find that the show cause notice was*

*issued within a period of four years after analysing the facts given in the investigation report. Since a large number of trades were examined we are satisfied that in the given case there was no laches on the part of the respondent in initiating the proceedings*". I, therefore, find that there was no delay in issuance of SCN and no prejudice has been caused to the Noticee due to extensive procedure followed for completion of investigation.

9. The Noticees have placed reliance upon various judgements of Hon'ble SAT and Hon'ble Supreme Court on the question of delay. In this regard, I note that there is no provision in the SEBI Act which lays down any limitation period for initiating any proceedings/ action under the SEBI Act. For establishing the delay, if any, in the matter, the date when the violation came to the notice of the SEBI would be the relevant point and not the date of violation. Whether a delay in a particular case is justified or not depends on the facts and circumstances of each case. I further note that, initiating a proceeding under the appropriate provisions of SEBI Act is a regulatory prerogative of SEBI depending upon the outcome of the fact finding exercise, which is the investigation done in this case, and just because the alleged violation was committed in a distant past cannot be a ground to vitiate initiation of these proceedings. Also, it is a settled principle that a delay in a particular case depends on the facts and circumstances of each case. These Noticees have placed reliance upon the following judgements of the Hon'ble SAT in the matter of *Shriram Insight Share Brokers Ltd* (*Supra*)*, Rakesh Kathotia & Ors.* (*Supra*)*, Parag Sarda* (*Supra*), *Ashok Shivlal Rupani and Ors* (*Supra*) and *Sanjay Jethalal Soni* (*Supra*) and the Hon'ble Supreme Court in the matter of *Government of India v. Citadel Fine Pharma (Supra)*. In this regard, I note that, in the judgement in the matter of *Ashlesh Gunvantbhai Shah vs SEBI*, the Hon'ble SAT has made the following pertinent remarks:

> *"It is no doubt true that no period of limitation is prescribed in the Act or the Regulations for issuance of a show cause notice or for completion of the adjudication proceedings. The Supreme Court in Government of India vs, Citedal Fine Pharmaceuticals, Madras and Others, [AIR (1989) SC 1771] held that in the absence of any period of limitation, the authority is required to exercise its powers within a reasonable period. <u>What would be the reasonable period would depend on the facts of each case and that no hard and fast rule can be laid down in this regard as the determination of this question would depend on the facts of each case.</u> This proposition of law has been consistently reiterated by the Supreme Court [..]. (emphasis applied)*

10. I further note that in *Pooja Vinay Jain vs. SEBI* (Appeal No. 152 of 2019) decided on March 17, 2020, the Hon'ble SAT *inter alia* held the following:

> *"On the issue of delay, in the case of Ashok Rupani (supra), this Tribunal, inter-alia, noted the ratio in the case of Mr. Rakesh Kathotia and Ors. vs. SEBI [Appeal No 7 of 2016 decided on May 27, 2019]. Paragraph No. 7 of the case of Ashok Rupani Judgment is as under….*
>
> *The decision would show that the power to initiate the proceedings must be exercised by the authorities within a reasonable time. This would depend upon the facts and circumstances of the case, nature of the default / statute and prejudice caused to the noticee.*
>
> *……It was simply stated that since the proceedings were launched by respondent SEBI after a period seven years, the same should be quashed on the ground of delay. The record would show that all the documents concerning the defense of the appellant were filed by her before the AO. Therefore, for want of any prejudice the proceedings cannot be quashed simply on the ground of delay in launching the same."*

11. I also note that, Hon'ble Supreme Court recently in the case of Adjudicating Officer, *SEBI vs. Bhavesh Pabari (2019) SCC Online SC 294* held:

> *"There are judgments which hold that when the period of limitation is not prescribed, such power must be exercised within a reasonable time. What would be reasonable time, would depend upon the facts and circumstances of the case, nature of the default/statute, prejudice caused, whether the third-party rights had been created etc."*

12. In this regard, I note that Hon'ble SAT has qualified through aforesaid rulings by saying that the reasonable period would depend on the facts and circumstances of each case and that no hard and fast rule can be laid down in this regard. I am of the view that present proceedings do not suffer from any infirmity on the ground of delay. I am also of the opinion that, even if there is any delay as alleged, same cannot be the sole ground to exonerate these Noticees from liability of penalty under SEBI Act, if the charges and allegations are established on desired preponderance of probability.

13. Coming to the merit of the case, I note that, it has been alleged in the SCN that – a) Consortium, Pashupati and Sachi have traded among themselves in the impugned contracts of Kotak and Axis having least liquidity; and b) reversed their respective position in the

impugned contracts just before the expiry date of the respective contracts. Allegedly, such a trading pattern of Consortium, Pashupati and Sachi in the impugned contracts of Kotak and Axis having least liquidity were undertaken in a predetermined manner and therefore, these Noticees have used and employed a manipulative device or scheme, while dealing in securities market and executed non-genuine and deceptive trades without having intention of change of ownership. Therefore, there are three facets of the aforesaid charges i.e. connections among the traded entities, trading pattern (*trading in the least liquid contracts of Kotak and Axis*) and reversal of respective positions in the impugned contracts by the Noticees.

14. With regard to the questions of connection among the Noticees, it is an admitted fact that the Noticees No. 2 and 3 are connected with each other by virtue of husband-wife relationship between the director of Pashupati and proprietor of Sachi. Further, Noticees No. 2 and 3 are the counterparties to the impugned trades of the Noticee No. 1. However, during investigation no connections could be established between the Noticee No. 1 and Noticees No. 2 or 3. Therefore, it is evident that there is no direct connection has been found between the trading entity (Noticee No. 1) and its counterparties (Noticees No. 2 and 3). I note that, in the cases where no direct evidence is available regarding connection or meeting of minds or collusion of the Noticee with other entities, as found in this case, the genuineness of trading has to be determined based upon circumstantial evidence involving multiple factors such as trading pattern, liquidity and volatility in the scrip /contract, pricing, etc. In this context, the Hon'ble SAT vide its order dated July 14, 2006, in the case of Ketan Parekh vs. SEBI (Appeal no. 2/2004) observed that- *"The nature of transactions executed, the frequency with which such transactions are undertaken, the value of the transactions, the conditions then prevailing in the market are some of the factors which go to show the intention of the parties. This list of factors, in the very nature of things, cannot be exhaustive. Any one factor may or may not be decisive and it is from the cumulative effect of these that an inference will have to be drawn."*

15. Further, in *SEBI v Kishore R Ajmera (AIR 2016 SC 1079)*, Hon'ble Supreme Court held that - *"…in the absence of direct proof of meeting of minds elsewhere in synchronized transactions, the test should be one of preponderance of probabilities as far as adjudication of civil liability arising out of the violation of the Act or provision of the Regulations is concerned. The conclusion has to be gathered from various circumstances like that volume of the trade effected; the period of persistence in trading in the particular scrip; the particulars of the buy and sell orders, namely, the volume thereof; the proximity of time between the two and such other relevant factors. The illustrations are not exhaustive..."*. The Hon'ble Supreme Court further observed

that – "*It is a fundamental principle of law that proof of an allegation levelled against a person may be in the form of direct substantive evidence or, as in many cases, such proof may have to be inferred by a logical process of reasoning from the totality of the attending facts and circumstances surrounding the allegations/charges made and levelled. While direct evidence is a more certain basis to come to a conclusion, yet, in the absence thereof the Courts cannot be helpless. It is the judicial duty to take note of the immediate and proximate facts and circumstances surrounding the events on which the charges/allegations are founded and to reach what would appear to the Court to be a reasonable conclusion therefrom. The test would always be that what inferential process that a reasonable/prudent man would adopt to arrive at a conclusion.*"

16. In terms of trading pattern followed among the Noticees while trading in the impugned derivative contracts of Axis and Kotak, I note that Noticee No. 1 had traded in following option contracts of Kotak and Axis during the inspection period:

**Table 2**

| Sl No | Contract Name | Gross Buy Volume of N-1 | Gross Sell Volume of N-1 | Gross Traded Volume of N-1 | Total Market Volume in the contract | Gross Buy Volume of SE as percentage of total market volume in contract | Gross Sell Volume of SE as percentage of total market volume in contract | Gross Traded Volume of SE as percentage of total market volume in the contract |
|---|---|---|---|---|---|---|---|---|
| | | A | B | C | D | E=A*100/D | F=B*100/D | G=C*100/D |
| **Trades in AXIS BANK Options** | | | | | | | | |
| 1 | AXISBANK14DEC500CE | 68750 | 58750 | 127500 | 32228750 | 0.21 | 0.18 | 0.40 |
| 2 | AXISBANK14NOV480CE | 77500 | 33750 | 111250 | 27210000 | 0.28 | 0.12 | 0.41 |
| 3 | AXISBANK15FEB600CE | 62000 | 52000 | 114000 | 23119000 | 0.27 | 0.22 | 0.49 |
| 4 | AXISBANK14OCT400CE | 1250 | 1250 | 2500 | 21178750 | 0.01 | 0.01 | 0.01 |
| 5 | AXISBANK14SEP420CE | 11250 | 11250 | 22500 | 19920000 | 0.06 | 0.06 | 0.11 |
| 6 | AXISBANK14SEP410CE | 17500 | 2500 | 20000 | 17527500 | 0.10 | 0.01 | 0.11 |
| 7 | AXISBANK14NOV470CE | 103750 | 65000 | 168750 | 17087500 | 0.61 | 0.38 | 0.99 |
| 8 | AXISBANK15JAN520CE | 47000 | 47000 | 94000 | 16623000 | 0.28 | 0.28 | 0.57 |
| 9 | AXISBANK15FEB580CE | 29500 | 26000 | 55500 | 15967500 | 0.18 | 0.16 | 0.35 |
| 10 | AXISBANK14DEC490CE | 68750 | 68750 | 137500 | 15795000 | 0.44 | 0.44 | 0.87 |
| 11 | AXISBANK15FEB570CE | 15500 | 15500 | 31000 | 14360000 | 0.11 | 0.11 | 0.22 |
| 12 | AXISBANK14OCT420CE | 28750 | 28750 | 57500 | 14053750 | 0.20 | 0.20 | 0.41 |
| 13 | AXISBANK14SEP400CE | 16250 | 15000 | 31250 | 13522500 | 0.12 | 0.11 | 0.23 |
| 14 | AXISBANK15FEB560CE | 102000 | 98500 | 200500 | 12933000 | 0.79 | 0.76 | 1.55 |
| 15 | AXISBANK14DEC510CE | 22500 | 22500 | 45000 | 12327500 | 0.18 | 0.18 | 0.37 |
| 16 | AXISBANK14OCT430CE | 16250 | 16250 | 32500 | 11572500 | 0.14 | 0.14 | 0.28 |
| 17 | AXISBANK15FEB590CE | 81000 | 81000 | 162000 | 11334500 | 0.71 | 0.71 | 1.43 |
| 18 | AXISBANK14OCT410CE | 5000 | 5000 | 10000 | 11040000 | 0.05 | 0.05 | 0.09 |

| Sl No | Contract Name | Gross Buy Volume of N-1 | Gross Sell Volume of N-1 | Gross Traded Volume of N-1 | Total Market Volume in the contract | Gross Buy Volume of SE as percentage of total market volume in contract | Gross Sell Volume of SE as percentage of total market volume in contract | Gross Traded Volume of SE as percentage of total market volume in the contract |
|---|---|---|---|---|---|---|---|---|
| 19 | AXISBANK15JAN510CE | 50000 | 50000 | 100000 | 10653500 | 0.47 | 0.47 | 0.94 |
| 20 | AXISBANK15JAN500CE | 20500 | 20500 | 41000 | 10645000 | 0.19 | 0.19 | 0.39 |
| 21 | AXISBANK14NOV490CE | 20000 | 20000 | 40000 | 10526250 | 0.19 | 0.19 | 0.38 |
| 22 | AXISBANK15JAN530CE | 26000 | 26000 | 52000 | 10006000 | 0.26 | 0.26 | 0.52 |
| 23 | AXISBANK14DEC480CE | 8750 | 8750 | 17500 | 9803750 | 0.09 | 0.09 | 0.18 |
| 24 | AXISBANK15FEB620CE | 15000 | 15000 | 30000 | 9108500 | 0.16 | 0.16 | 0.33 |
| 25 | AXISBANK14DEC520CE | 10000 | 10000 | 20000 | 9082500 | 0.11 | 0.11 | 0.22 |
| 26 | AXISBANK14NOV500CE | 7500 | 7500 | 15000 | 8823750 | 0.08 | 0.08 | 0.17 |
| 27 | AXISBANK15JAN540CE | 28000 | 28000 | 56000 | 8675000 | 0.32 | 0.32 | 0.65 |
| 28 | AXISBANK15JAN550CE | 52000 | 52000 | 104000 | 8162500 | 0.64 | 0.64 | 1.27 |
| 29 | AXISBANK15JAN570CE | 93500 | 93500 | 187000 | 8079500 | 1.16 | 1.16 | 2.31 |
| 30 | AXISBANK15JAN560CE | 105000 | 105000 | 210000 | 7940000 | 1.32 | 1.32 | 2.64 |
| 31 | AXISBANK15JAN600CE | 3500 | 0 | 3500 | 7674000 | 0.05 | 0.00 | 0.05 |
| 32 | AXISBANK15JAN580CE | 52000 | 49000 | 101000 | 7199000 | 0.72 | 0.68 | 1.40 |
| 33 | AXISBANK15JAN590CE | 56500 | 49500 | 106000 | 6530500 | 0.87 | 0.76 | 1.62 |
| 34 | AXISBANK15FEB610CE | 9000 | 4000 | 13000 | 6336000 | 0.14 | 0.06 | 0.21 |
| 35 | AXISBANK14OCT380CE | 5000 | 5000 | 10000 | 6083750 | 0.08 | 0.08 | 0.16 |
| 36 | AXISBANK14NOV460CE | 16250 | 16250 | 32500 | 5100000 | 0.32 | 0.32 | 0.64 |
| 37 | AXISBANK15FEB550CE | 2000 | 2000 | 4000 | 4622500 | 0.04 | 0.04 | 0.09 |
| 38 | AXISBANK14NOV450CE | 8750 | 8750 | 17500 | 3653750 | 0.24 | 0.24 | 0.48 |
| 39 | AXISBANK14DEC470CE | 18750 | 18750 | 37500 | 2972500 | 0.63 | 0.63 | 1.26 |
| 40 | AXISBANK14SEP390CE | 85000 | 30000 | 115000 | 2251250 | 3.78 | 1.33 | 5.11 |
| 41 | AXISBANK15JAN490CE | 40000 | 40000 | 80000 | 1345500 | 2.97 | 2.97 | 5.95 |
| 42 | AXISBANK14SEP300CE | 271250 | 271250 | 542500 | 851250 | 31.86 | 31.86 | 63.73 |
| 43 | AXISBANK15FEB540CE | 500 | 500 | 1000 | 810000 | 0.06 | 0.06 | 0.12 |
| 44 | AXISBANK14OCT300CE | 360000 | 360000 | 720000 | 782500 | 46.01 | 46.01 | 92.01 |
| 45 | AXISBANK14NOV300CE | 335000 | 335000 | 670000 | 673750 | 49.72 | 49.72 | 99.44 |
| 46 | AXISBANK14DEC300CE | 303750 | 303750 | 607500 | 608750 | 49.90 | 49.90 | 99.79 |
| 47 | AXISBANK15FEB300CE | 245500 | 245500 | 491000 | 501000 | 49.00 | 49.00 | 98.00 |
| 48 | AXISBANK15JAN300CE | 243500 | 243500 | 487000 | 490500 | 49.64 | 49.64 | 99.29 |
| 49 | AXISBANK14NOV340CE | 100000 | 100000 | 200000 | 202500 | 49.38 | 49.38 | 98.77 |
| 50 | AXISBANK14DEC340CE | 90000 | 90000 | 180000 | 182500 | 49.32 | 49.32 | 98.63 |
| 51 | AXISBANK14SEP340CE | 90000 | 90000 | 180000 | 180000 | 50.00 | 50.00 | 100.00 |
| 52 | AXISBANK14OCT340CE | 90000 | 90000 | 180000 | 180000 | 50.00 | 50.00 | 100.00 |
| 53 | AXISBANK15JAN340CE | 85000 | 90000 | 175000 | 175000 | 48.57 | 51.43 | 100.00 |
| 54 | AXISBANK15FEB340CE | 74500 | 74500 | 149000 | 149000 | 50.00 | 50.00 | 100.00 |
| 55 | AXISBANK14SEP320CE | 27500 | 27500 | 55000 | 105000 | 26.19 | 26.19 | 52.38 |

| Sl No | Contract Name | Gross Buy Volume of N-1 | Gross Sell Volume of N-1 | Gross Traded Volume of N-1 | Total Market Volume in the contract | Gross Buy Volume of SE as percentage of total market volume in contract | Gross Sell Volume of SE as percentage of total market volume in contract | Gross Traded Volume of SE as percentage of total market volume in the contract |
|---|---|---|---|---|---|---|---|---|
| 56 | AXISBANK14OCT320CE | 27500 | 27500 | 55000 | 100000 | 27.50 | 27.50 | 55.00 |
| 57 | AXISBANK14DEC320CE | 27500 | 27500 | 55000 | 68750 | 40.00 | 40.00 | 80.00 |
| 58 | AXISBANK14NOV320CE | 27500 | 27500 | 55000 | 67500 | 40.74 | 40.74 | 81.48 |
| 59 | AXISBANK15JAN320CE | 27500 | 27500 | 55000 | 65000 | 42.31 | 42.31 | 84.62 |
| 60 | AXISBANK15FEB320CE | 25000 | 25000 | 50000 | 60000 | 41.67 | 41.67 | 83.33 |
| **Trades in KOTAK BANK Options** | | | | | | | | |
| 1 | KOTAKBANK15JAN1400CE | 35500 | 31750 | 67250 | 2950500 | 1.20 | 1.08 | 2.28 |
| 2 | KOTAKBANK15JAN1420CE | 15250 | 13250 | 28500 | 1529000 | 1.00 | 0.87 | 1.86 |
| 3 | KOTAKBANK14DEC1300CE | 7000 | 6000 | 13000 | 1147750 | 0.61 | 0.52 | 1.13 |
| 4 | KOTAKBANK14NOV1160CE | 7500 | 3750 | 11250 | 1122000 | 0.67 | 0.33 | 1.00 |
| 5 | KOTAKBANK14NOV1200CE | 2500 | 750 | 3250 | 1075250 | 0.23 | 0.07 | 0.30 |
| 6 | KOTAKBANK14DEC1260CE | 11250 | 8750 | 20000 | 1060000 | 1.06 | 0.83 | 1.89 |
| 7 | KOTAKBANK14NOV1140CE | 15000 | 7750 | 22750 | 1007000 | 1.49 | 0.77 | 2.26 |
| 8 | KOTAKBANK14NOV1220CE | 3250 | 2750 | 6000 | 1003750 | 0.32 | 0.27 | 0.60 |
| 9 | KOTAKBANK15JAN1450CE | 500 | 500 | 1000 | 977500 | 0.05 | 0.05 | 0.10 |
| 10 | KOTAKBANK15FEB1300CE | 10750 | 10750 | 21500 | 950500 | 1.13 | 1.13 | 2.26 |
| 11 | KOTAKBANK14NOV1240CE | 2500 | 2500 | 5000 | 941500 | 0.27 | 0.27 | 0.53 |
| 12 | KOTAKBANK14OCT1060CE | 1500 | 500 | 2000 | 933500 | 0.16 | 0.05 | 0.21 |
| 13 | KOTAKBANK14OCT1040CE | 7500 | 7500 | 15000 | 926500 | 0.81 | 0.81 | 1.62 |
| 14 | KOTAKBANK15JAN1300CE | 21500 | 21500 | 43000 | 827000 | 2.60 | 2.60 | 5.20 |
| 15 | KOTAKBANK14DEC1240CE | 500 | 500 | 1000 | 817250 | 0.06 | 0.06 | 0.12 |
| 16 | KOTAKBANK14NOV1180CE | 3000 | 1750 | 4750 | 791000 | 0.38 | 0.22 | 0.60 |
| 17 | KOTAKBANK14NOV1120CE | 11500 | 11500 | 23000 | 782250 | 1.47 | 1.47 | 2.94 |
| 18 | KOTAKBANK15JAN1440CE | 7000 | 7000 | 14000 | 737250 | 0.95 | 0.95 | 1.90 |
| 19 | KOTAKBANK14NOV1100CE | 1500 | 1500 | 3000 | 684250 | 0.22 | 0.22 | 0.44 |
| 20 | KOTAKBANK15FEB1320CE | 3750 | 3750 | 7500 | 664750 | 0.56 | 0.56 | 1.13 |
| 21 | KOTAKBANK15FEB1350CE | 6500 | 1500 | 8000 | 647500 | 1.00 | 0.23 | 1.24 |
| 22 | KOTAKBANK14OCT1100CE | 1000 | 1000 | 2000 | 630500 | 0.16 | 0.16 | 0.32 |
| 23 | KOTAKBANK14OCT1080CE | 1000 | 0 | 1000 | 630500 | 0.16 | 0.00 | 0.16 |
| 24 | KOTAKBANK14OCT1020CE | 2500 | 2500 | 5000 | 625500 | 0.40 | 0.40 | 0.80 |
| 25 | KOTAKBANK15FEB1400CE | 2000 | 2000 | 4000 | 614750 | 0.33 | 0.33 | 0.65 |
| 26 | KOTAKBANK14SEP1060CE | 12500 | 7000 | 19500 | 612500 | 2.04 | 1.14 | 3.18 |
| 27 | KOTAKBANK14DEC1280CE | 9500 | 5750 | 15250 | 525750 | 1.81 | 1.09 | 2.90 |
| 28 | KOTAKBANK15JAN1380CE | 9250 | 8750 | 18000 | 472250 | 1.96 | 1.85 | 3.81 |
| 29 | KOTAKBANK15JAN1340CE | 5250 | 5250 | 10500 | 440000 | 1.19 | 1.19 | 2.39 |
| 30 | KOTAKBANK15FEB1340CE | 3250 | 3250 | 6500 | 401750 | 0.81 | 0.81 | 1.62 |
| 31 | KOTAKBANK14DEC1220CE | 21000 | 21000 | 42000 | 387750 | 5.42 | 5.42 | 10.83 |

| Sl No | Contract Name | Gross Buy Volume of N-1 | Gross Sell Volume of N-1 | Gross Traded Volume of N-1 | Total Market Volume in the contract | Gross Buy Volume of SE as percentage of total market volume in contract | Gross Sell Volume of SE as percentage of total market volume in contract | Gross Traded Volume of SE as percentage of total market volume in the contract |
|---|---|---|---|---|---|---|---|---|
| 32 | KOTAKBANK14SEP1040CE | 2000 | 0 | 2000 | 365500 | 0.55 | 0.00 | 0.55 |
| 33 | KOTAKBANK15JAN1280CE | 11500 | 11500 | 23000 | 357750 | 3.21 | 3.21 | 6.43 |
| 34 | KOTAKBANK14SEP1080CE | 2500 | 2500 | 5000 | 355500 | 0.70 | 0.70 | 1.41 |
| 35 | KOTAKBANK15JAN1260CE | 9000 | 9000 | 18000 | 323500 | 2.78 | 2.78 | 5.56 |
| 36 | KOTAKBANK15JAN1360CE | 5750 | 3250 | 9000 | 318500 | 1.81 | 1.02 | 2.83 |
| 37 | KOTAKBANK15FEB1360CE | 1500 | 0 | 1500 | 295750 | 0.51 | 0.00 | 0.51 |
| 38 | KOTAKBANK14OCT960CE | 127500 | 127500 | 255000 | 277500 | 45.95 | 45.95 | 91.89 |
| 39 | KOTAKBANK14NOV1260CE | 750 | 750 | 1500 | 273500 | 0.27 | 0.27 | 0.55 |
| 40 | KOTAKBANK14SEP960CE | 132500 | 132500 | 265000 | 271000 | 48.89 | 48.89 | 97.79 |
| 41 | KOTAKBANK15JAN1320CE | 5500 | 5500 | 11000 | 248750 | 2.21 | 2.21 | 4.42 |
| 42 | KOTAKBANK15JAN1350CE | 13250 | 9750 | 23000 | 241000 | 5.50 | 4.05 | 9.54 |
| 43 | KOTAKBANK14NOV960CE | 74500 | 74500 | 149000 | 163250 | 45.64 | 45.64 | 91.27 |
| 44 | KOTAKBANK14DEC960CE | 74500 | 74500 | 149000 | 163250 | 45.64 | 45.64 | 91.27 |
| 45 | KOTAKBANK15JAN960CE | 74500 | 74500 | 149000 | 152500 | 48.85 | 48.85 | 97.70 |
| 46 | KOTAKBANK14DEC1340CE | 2500 | 2500 | 5000 | 125500 | 1.99 | 1.99 | 3.98 |
| 47 | KOTAKBANK15FEB960CE | 60000 | 60000 | 120000 | 122750 | 48.88 | 48.88 | 97.76 |
| 48 | KOTAKBANK15FEB1380CE | 1000 | 1000 | 2000 | 112250 | 0.89 | 0.89 | 1.78 |
| 49 | KOTAKBANK15FEB1280CE | 5250 | 5250 | 10500 | 95000 | 5.53 | 5.53 | 11.05 |
| 50 | KOTAKBANK14SEP1000CE | 25000 | 25000 | 50000 | 64000 | 39.06 | 39.06 | 78.13 |
| 51 | KOTAKBANK14SEP1020CE | 2500 | 2500 | 5000 | 54500 | 4.59 | 4.59 | 9.17 |
| 52 | KOTAKBANK14OCT840CE | 18000 | 18000 | 36000 | 40000 | 45.00 | 45.00 | 90.00 |
| 53 | KOTAKBANK14SEP840CE | 18000 | 18000 | 36000 | 36000 | 50.00 | 50.00 | 100.00 |
| 54 | KOTAKBANK14NOV840CE | 18000 | 18000 | 36000 | 36000 | 50.00 | 50.00 | 100.00 |
| 55 | KOTAKBANK15FEB1250CE | 10000 | 10000 | 20000 | 28000 | 35.71 | 35.71 | 71.43 |

**Note:** N-1 stands for Noticee No. 1 in the table.

17. I note from Table No. 2 that, Noticee No. 1 concentration in 18 contracts out of the 60 unique Axis call option contracts was more than 50% and most of these 18 contracts tend to be ranked towards the bottom in terms of liquidity among the 60 contracts. Similarly, Noticee No. 1 concentration in 11 contracts out of the 55 unique Kotak call option contracts was more than 50% and these 11 contracts are ranked towards the bottom in terms of liquidity among the 55 contracts. I further note that, Noticee No. 1 concentration in the top 10 liquid Axis call option contracts and top 10 liquid Kotak call option contracts is in the range of 0.01% - 0.99% on the basis of total traded quantity in the contract during relevant period of time. I found

that, Noticee No. 1 concentration is negligible in liquid contracts and the same is as high as 100% in illiquid contracts.

18. Accordingly, the aforementioned 29 call option contracts (18 Axis and 11 Kotak) have been further analysed for assessing the trading pattern followed by the Noticee No. 1. On examining these 29 call option contracts, I found that Noticee No. 1 has specifically choosen "*in the money*" option contracts with least liquidity and has almost 100% of the open interest in these option contracts. In the said contracts, in the first leg of transaction, Noticee No. 1 sold units to its counterparties (including Noticees No. 2 and 3) and in the second leg, just before the expiry of the respective contract, the counterparties (including Noticees No. 2 and 3) that bought the units from Noticee No. 1 in first leg reversed their position and sell the units back to Noticee No. 1. In all these cases, post the sell transaction i.e. first leg, the counterparties that bought the units had generally maintain the same position till expiry. I further found that Noticee No. 1 selling the contracts and squaring-off its position, just before the expiry date by reversing position with the same set of counterparties had been repeatedly followed in said 29 least liquid contracts of Axis and Kotak.

19. Noticee No. 1 has executed trades in 15 contracts out of shortlisted 29 contracts with Noticees No. 2 and 3, wherein, traded quantity matched and percent of traded volume to total market volume was equal to or more than 50%. During investigation, the explanation provided by the Noticees for executing impugned contracts has not been found plausible, as no specific reason was provided by the Noticee No. 1 for trading and incurring loss in different contracts of the same scrip with different expiry in different months, apart from placing the blame on erroneous strategy. Further, Noticee No. 2 explanation to the queries has been found to be a generalized response, as no specific reason has been provided w.r.t. their trading pattern observed during investigation. An analysis of trades of Noticee No. 1 executed in the aforesaid 15 contracts with Noticee No. 2 and 3 is as follows:

**Table 3**

| **Sl No** | **Contract** | **Trade date** | **Expiry date** | **Buy client name** | **Sell client name** | **Trade Qty** | **No of trades** | **Average trading price of contract** | **Theoretical price = Closing price – strike price as on trade date** |
|---|---|---|---|---|---|---|---|---|---|
| 1 | AXISBANK14 DEC300CE | 25/11/2014 | 24/12/2014 | Pashupati | Consortium | 215000 | 34 | 170.52 | 170.75 |
| | | 09/12/2014 | 24/12/2014 | Consortium | Pashupati | 5000 | 2 | 190.98 | 188.80 |

| Sl No | Contract | Trade date | Expiry date | Buy client name | Sell client name | Trade Qty | No of trades | Average trading price of contract | Theoretical price = Closing price – strike price as on trade date |
|---|---|---|---|---|---|---|---|---|---|
| | | 15/12/2014 | 24/12/2014 | Consortium | Pashupati | 20000 | 6 | 179.00 | 176.75 |
| | | 16/12/2014 | 24/12/2014 | Consortium | Pashupati | 20000 | 4 | 173.91 | 172.00 |
| | | 19/12/2014 | 24/12/2014 | Consortium | Pashupati | 25000 | 14 | 190.62 | 190.25 |
| | | 22/12/2014 | 24/12/2014 | Consortium | Pashupati | 147500 | 59 | 190.22 | 198.30 |
| 2 | AXISBANK14 DEC320CE | 24/11/2014 | 24/12/2014 | Pashupati | Consortium | 16250 | 6 | 159.51 | 158.15 |
| | | 19/12/2014 | 24/12/2014 | Consortium | Pashupati | 23750 | 18 | 171.18 | 170.25 |
| 3 | AXISBANK14 DEC340CE | 24/11/2014 | 24/12/2014 | Pashupati | Consortium | 57500 | 16 | 141.25 | 138.15 |
| | | 24/11/2014 | 24/12/2014 | Sachi | Consortium | 2500 | 1 | 141.50 | 138.15 |
| | | 19/12/2014 | 24/12/2014 | Consortium | Pashupati | 60000 | 34 | 151.39 | 150.25 |
| 4 | AXISBANK14 SEP340CE | 26/08/2014 | 25/09/2014 | Sachi | Consortium | 73750 | 11 | 59.46 | 57.60 |
| | | 22/09/2014 | 25/09/2014 | Consortium | Sachi | 73750 | 16 | 71.41 | 68.2 |
| 5 | AXISBANK15 FEB320CE | 28/01/2015 | 26/02/2015 | Pashupati | Consortium | 5000 | 2 | 271.00 | 270.6 |
| | | 29/01/2015 | 26/02/2015 | Pashupati | Consortium | 13500 | 6 | 268.00 | 279.50 |
| | | 24/02/2015 | 26/02/2015 | Consortium | Pashupati | 19000 | 38 | 230.53 | 231.80 |
| 6 | AXISBANK14 NOV300CE | 28/10/2014 | 27/11/2014 | Sachi | Consortium | 6250 | 2 | 124.75 | 124.20 |
| | | 29/10/2014 | 27/11/2014 | Sachi | Consortium | 162500 | 24 | 125.16 | 125.55 |
| | | 30/10/2014 | 27/11/2014 | Sachi | Consortium | 16250 | 5 | 124.00 | 130.20 |
| | | 13/11/2014 | 27/11/2014 | Consortium | Sachi | 10000 | 4 | 178.99 | 173.60 |
| | | 17/11/2014 | 27/11/2014 | Consortium | Sachi | 10000 | 4 | 174.23 | 175.90 |
| | | 19/11/2014 | 27/11/2014 | Consortium | Sachi | 8750 | 2 | 172.00 | 170.20 |
| | | 24/11/2014 | 27/11/2014 | Consortium | Sachi | 1250 | 1 | 179.00 | 178.15 |
| | | 25/11/2014 | 27/11/2014 | Consortium | Sachi | 155000 | 29 | 170.10 | 170.75 |
| 7 | AXISBANK14 NOV320CE | 28/10/2014 | 27/11/2014 | Sachi | Consortium | 27500 | 7 | 105.00 | 104.20 |
| | | 24/11/2014 | 27/11/2014 | Consortium | Sachi | 27500 | 22 | 159.11 | 158.15 |
| 8 | AXISBANK14 NOV340CE | 28/10/2014 | 27/11/2014 | Sachi | Consortium | 82500 | 16 | 85.00 | 84.20 |
| | | 24/11/2014 | 27/11/2014 | Consortium | Pashupati | 8750 | 1 | 140.00 | 138.15 |
| | | 24/11/2014 | 27/11/2014 | Consortium | Sachi | 83750 | 37 | 140.40 | 138.15 |
| | | 24/11/2014 | 27/11/2014 | Pashupati | Consortium | 8750 | 4 | 139.13 | 138.15 |
| | | 24/11/2014 | 27/11/2014 | Sachi | Consortium | 1250 | 1 | 139.00 | 138.15 |
| 9 | AXISBANK15J AN320CE | 19/12/2014 | 29/01/2015 | Pashupati | Consortium | 23000 | 11 | 172.27 | 170.25 |
| | | 28/01/2015 | 29/01/2015 | Consortium | Pashupati | 4500 | 9 | 270.00 | 270.60 |
| | | 29/01/2015 | 29/01/2015 | Consortium | Pashupati | 16500 | 33 | 268.88 | 279.50 |
| 10 | AXISBANK15J AN340CE | 19/12/2014 | 29/01/2015 | Pashupati | Consortium | 86000 | 31 | 152.56 | 150.25 |
| | | 28/01/2015 | 29/01/2015 | Consortium | Pashupati | 6500 | 11 | 249.73 | 250.60 |
| | | 29/01/2015 | 29/01/2015 | Consortium | Pashupati | 74500 | 149 | 255.57 | 259.50 |
| 11 | AXISBANK14 OCT300CE | 22/09/2014 | 30/10/2014 | Sachi | Consortium | 160000 | 22 | 110.91 | 108.20 |
| | | 24/09/2014 | 30/10/2014 | Sachi | Consortium | 67500 | 10 | 94.48 | 97.00 |
| | | 24/09/2014 | 30/10/2014 | Sachi | Consortium | 10000 | 1 | 95.45 | 97.00 |
| | | 27/10/2014 | 30/10/2014 | Consortium | Sachi | 1250 | 1 | 128.00 | 126.80 |
| | | 28/10/2014 | 30/10/2014 | Consortium | Sachi | 17500 | 5 | 129.39 | 124.20 |
| | | 29/10/2014 | 30/10/2014 | Consortium | Sachi | 203750 | 24 | 125.17 | 125.55 |
| 12 | AXISBANK14 OCT340CE | 22/09/2014 | 30/10/2014 | Sachi | Consortium | 82500 | 20 | 72.08 | 68.20 |
| | | 28/10/2014 | 30/10/2014 | Consortium | Sachi | 81250 | 17 | 84.57 | 84.20 |
| 13 | KOTAKBAN K14DEC960C E | 25/11/2014 | 24/12/2014 | Pashupati | Consortium | 33750 | 25 | 207.17 | 200.70 |
| | | 26/11/2014 | 24/12/2014 | Pashupati | Consortium | 5750 | 4 | 204.39 | 199.90 |
| | | 23/12/2014 | 24/12/2014 | Consortium | Pashupati | 50500 | 195 | 297.44 | 286.10 |
| 14 | KOTAKBAN K15FEB960CE | 28/01/2015 | 26/02/2015 | Pashupati | Consortium | 35500 | 24 | 408.78 | 290.60 |
| | | 16/02/2015 | 26/02/2015 | Consortium | Pashupati | 500 | 2 | 348.00 | 270.30 |
| | | 18/02/2015 | 26/02/2015 | Consortium | Pashupati | 750 | 3 | 334.33 | 269.50 |
| | | 19/02/2015 | 26/02/2015 | Consortium | Pashupati | 13250 | 38 | 342.57 | 265.25 |
| | | 25/02/2015 | 26/02/2015 | Consortium | Pashupati | 27000 | 69 | 388.39 | 253.00 |

| Sl No | Contract | Trade date | Expiry date | Buy client name | Sell client name | Trade Qty | No of trades | Average trading price of contract | Theoretical price = Closing price – strike price as on trade date |
|---|---|---|---|---|---|---|---|---|---|
| 15 | KOTAKBANK15JAN960CE | 23/12/2014 | 29/01/2015 | Pashupati | Consortium | 55750 | 22 | 302.70 | 286.10 |
| | | 28/01/2015 | 29/01/2015 | Consortium | Pashupati | 49250 | 116 | 403.57 | 391.50 |

20. I note from Table No. 3 and available records that, the Noticees have purchased and sold units of contracts of Kotak and Axis through multiple transactions in a day. In aforementioned contracts Noticee No. 1 had sold units of contract to Noticee No. 2 or 3 in first leg of transaction and had maintained the same position till expiry. However, just before the expiry of contract, Noticee No. 2 or 3 had reversed the position in the second leg of transaction and sold the units back to Noticee No. 1 bought by them during first leg of transaction. I further note that, in 14 contracts out of the said 15 contracts, the Noticees had placed respective sell/buy orders in the contract simultaneously on same day so as to dispose of the units of contracts. Details of Profit or loss incurred by the Noticees in said 15 contracts is as follows:

**Table 4**

| Sl No | Contract | Particulars | Matched quantity between Consortium and Pashupati in the contract | Quantity in which Consortium and Pashupati reversed their position | Total Value of Quantity in which Consortium and Pashupati reversed their position | Profit/Loss to Pashupati | Profit/Loss to Consortium |
|---|---|---|---|---|---|---|---|
| 1 | AXISBANK14DEC300CE | Consortium as seller and Pashupati as buyer | 215000 | 215000 | 36599938 | 3768438 | -3768438 |
| | | Pashupati as seller and Consortium as buyer | 217500 | 215000 | 40368375 | | |
| 2 | AXISBANK14DEC320CE | Consortium as seller and Pashupati as buyer | 16250 | 16250 | 2592000 | 191125 | -191125 |
| | | Pashupati as seller and Consortium as buyer | 23750 | 16250 | 2783125 | | |
| 3 | AXISBANK14DEC340CE | Consortium as seller and Pashupati as buyer | 60000 | 60000 | 8474750 | 611375 | -611375 |
| | | Pashupati as seller and Consortium as buyer | 60000 | 60000 | 9086125 | | |
| 4 | AXISBANK14SEP340CE | Consortium as seller and Pashupati as buyer | 73750 | 73750 | 4386875 | 879125 | -879125 |
| | | Pashupati as seller and Consortium as buyer | 73750 | 73750 | 5266000 | | |
| 5 | AXISBANK15FEB320CE | Consortium as seller and Pashupati as buyer | 18500 | 18500 | 4968500 | -704000 | 704000 |
| | | Pashupati as seller and Consortium as buyer | 19000 | 18500 | 4264500 | | |

| Sl No | Contract | Particulars | Matched quantity between Consortium and Pashupati in the contract | Quantity in which Consortium and Pashupati reversed their position | Total Value of Quantity in which Consortium and Pashupati reversed their position | Profit/Loss to Pashupati | Profit/Loss to Consortium |
|---|---|---|---|---|---|---|---|
| 6 | AXISBANK14NOV300CE | Consortium as seller and Pashupati as buyer | 185000 | 185000 | 23166500 | 8397438 | -8397438 |
| | | Pashupati as seller and Consortium as buyer | 185000 | 185000 | 31563938 | | |
| 7 | AXISBANK14NOV320CE | Consortium as seller and Pashupati as buyer | 27500 | 27500 | 2887500 | 1488125 | -1488125 |
| | | Pashupati as seller and Consortium as buyer | 27500 | 27500 | 4375625 | | |
| 8 | AXISBANK14NOV340CE | Consortium as seller and Pashupati as buyer | 92500 | 92500 | 8403750 | 4578750 | -4578750 |
| | | Pashupati as seller and Consortium as buyer | 92500 | 92500 | 12982500 | | |
| 9 | AXISBANK15JAN320CE | Consortium as seller and Pashupati as buyer | 23000 | 21000 | 3619000 | 2032500 | -2032500 |
| | | Pashupati as seller and Consortium as buyer | 21000 | 21000 | 5651500 | | |
| 10 | AXISBANK15JAN340CE | Consortium as seller and Pashupati as buyer | 86000 | 81000 | 12359400 | 8303350 | -8303350 |
| | | Pashupati as seller and Consortium as buyer | 81000 | 81000 | 20662750 | | |
| 11 | AXISBANK14OCT300CE | Consortium as seller and Pashupati as buyer | 227500 | 222500 | 23679875 | 5194250 | -5194250 |
| | | Pashupati as seller and Consortium as buyer | 222500 | 222500 | 28874125 | | |
| 12 | AXISBANK14OCT340CE | Consortium as seller and Pashupati as buyer | 82500 | 81250 | 5872000 | 999625 | -999625 |
| | | Pashupati as seller and Consortium as buyer | 81250 | 81250 | 6871625 | | |
| 13 | KOTAKBANK14DEC960CE | Consortium as seller and Pashupati as buyer | 39500 | 39500 | 8165600 | 3598650 | -3598650 |
| | | Pashupati as seller and Consortium as buyer | 50500 | 39500 | 11764250 | | |
| 14 | AXISBANK14DEC300CE | Consortium as seller and Pashupati as buyer | 35500 | 35500 | 14458875 | -1347250 | 1347250 |
| | | Pashupati as seller and Consortium as buyer | 41500 | 35500 | 13111625 | | |
| 15 | KOTAKBANK15JAN960CE | Consortium as seller and Pashupati as buyer | 55750 | 49250 | 14920550 | 5090700 | -5090700 |
| | | Pashupati as seller and Consortium as buyer | 49250 | 49250 | 20011250 | | |
| **Total** | | | | | | **43082200** | **-43082200** |

**NOTE:** Pashupati in table stands for both Pashupati and Sachi i.e. Noticees No. 2 and 3 together.

21. I note from Table No. 4 that, the total traded quantity matched between Noticee No. 1 and Noticee No. 2 / 3 in the first leg of transaction is almost equal to the total traded quantity in the second leg of transactions, where Noticee No. 2 or 3 reversed their position and sold the units of contracts back to Noticee No. 1. I further note that, Noticee No. 1 had incurred loss in 13 contracts and Noticee No. 2 / 3 have incurred loss in 2 contracts. I also found that

despite incurring losses in different contracts in different months continuously during investigation period, Noticee No. 1 has repeatedly entered into similar pattern of trades without any change in its strategy. By virtue of impugned trades in impugned contracts of Kotak and Axis, Noticee No. 1 has incurred loss of Rs. 4,30,82,200 and Noticee No. 2 / 3 has made profit of Rs. 4,30,82,200.

22. In view of above paras 16 to 21 and Table No. 2 to 4, I found that the trading pattern of the Noticees i.e. substantial part of their trading in least liquid contracts of Axis and Kotak appears to be suspicious at first look, especially considering the loss occurred by the Noticee No. 1 in 13 contracts out of said 15 contracts pursuant to "*erroneous strategy*" and placing of orders only on specific days and matching of orders among the respective Noticees on same day. While noting so, I also found that the third facet i.e. reversal of the respective positions in the impugned contracts by the Noticees holds importance in the trading pattern discussed so far. In this case, while trading in impugned least liquid contracts, firstly, Noticee No. 1 has sold units to Noticee No. 2 / 3 and thereafter, just before the expiry of the respective contract, Noticee No. 2 / 3 has sold back said units to Noticee No. 1 and reversed their position. For illustration, in contract "**AXISBANK14SEP340CE**" expiring on September 25, 2014, on August 26, 2014, Noticee No. 1 had sold 73,750 units to Noticee No. 3 in 11 trades at average trading price of Rs 59.46/- and on September 22, 2014, 3 days before expiry, Noticee No. 1 had bought back 73,750 units from Noticee No. 3 in 16 trades at average trading price of Rs 71.41/-. Therefore, it is apparent that the position in the aforesaid contract has been reversed 3 days before the expiry of contract by the Noticee No. 1 and 3. However, in this regard, it would be appropriate to refer to the decision of Hon'ble SAT in the matter of *Global Earth Properties and Developers Pvt. Ltd. Vs SEBI* (Appeal No. 212 of 2020) dated September 14, 2020, wherein Hon'ble SAT explored into the question of reversal of trades to be considered as non-genuine trades and *inter alia* held as follows:

> " *….. we find that the reversal of trades are considered to be non-genuine trades if it involves an entity reversing its buy or sell positions in a contract with substantial buy or sell position with the same counter party during the same day….*"

23. In terms of aforesaid judgement of Hon'ble SAT, reversal trades are considered to be non-genuine, if they involve an entity reversing its buy or sell positions in a contract with subsequent sell or buy positions with the same counterparty during the same day. However,

in this case the impugned contracts have been reversed near to expiry dates i.e. almost less than a month period. Considering the aforementioned principle set out by the Hon'ble Tribunal, I found that the impugned contracts cannot be considered as "*reversal*" trades.

24. I further note that, during the personal hearing counsel of Noticee No. 2 and 3 has orally submitted that – "*squaring off the contract trades before the expiry of the contract is an accepted derivative market practice to avoid delivery obligations arising from the said contract and subsequent payment of the brokerage and other charges*". In this regard, I found that, stock futures and options were settled in cash until October, 2019 and thereafter, compulsory physical delivery on expiry of the contract was introduced. So, post October, 2019, if a person holds a stock future or a stock option contract that expires in the money on expiry day, he/she is required to give or take delivery of the entire contract value worth of the underlying stock. Since, the impugned trades in question are prior to the October, 2019, therefore, the reasons provided by the Noticees No. 2 and 3 are found to be devoid of any merit.

25. The Noticee No. 1 in its reply has stated that its trades in call options by any stretch of imagination cannot be categorised as reversal trades, as, in reversal trades one leg had unrealistic/abnormal prices, which was not justified with prevalent underlying prices and were squared off at an interval of miniscule period of time, whereas, its call options trades were basically carry forward of short positions through options for long duration. It squared off the particular position before expiry and carried forward the same in next expiry and both the legs of transactions were done at fair market prices. In this regard, I note that, in the SCN there is no charge related to the manipulation of the price of the scrip on the Noticees. Further, neither during the investigation nor in the SCN, it has been alleged that the impugned contracts were reversed at abnormal price or at price having substantial difference. In this regard, Hon'ble Supreme Court while deciding the matter of *SEBI vs. Rakhi Trading Private Ltd.*, in Civil appeals no., 1969 of 2011 with Civil Appeal Nos., 31743177 of 2011 and Civil Appeal No., 3180 of 2011 decided on February 8, 2018 had *inter alia* observed that: "*….I am of the considered view that the scheme, plan, device and artifice employed by the Noticee in this case of executing reversal trades in illiquid stock options contracts at irrational, unrealistic and unreasonable prices, tantamount to fraud on the securities market in as much as it involves non-genuine/ manipulative transactions in securities and misuse of the securities market…*". In absence of any adverse finding with respect to the price at which the impugned contracts have been reversed, in my opinion, it cannot be said that

the impugned contracts of Axis and Kotak were reversed by the Noticees at abnormal price or at the price having substantial difference.

26. During the instant proceedings, Noticee No. 2 and 3 have vehemently thrust upon the fact that their impugned trades were executed through algorithmic trading, which uses a computer program that follows a pre-defined set of instructions (*i.e. an algorithm*) to place trade/order. They have deployed a strategy wherein, "*In the —money*" (ITM) order entry, order price is derived based on the current market "*future price*" of the underlying and strike price of the option. They further stated that their trades in impugned contracts are hedged *via* subsequent future contract. In this regard, I note that during the instant proceedings, Noticees No. 2 and 3 have produce the details of the subsequent "*future contract*" before me. For illustration, on November 24, 2014, Noticee No. 2 has bought 5000 units (2500 units each) of call option of "**EO CE AXISBANK 27Nov2014 340**" in two trades at average price of Rs 139.25/-. On same day, Noticee No. 2 has also sold 5000 units (1250 units each) of future contract of "**EF AXISBANK 27Nov2014**" in four trades at average price of Rs 480.1125/-. The details of same is as follows:

**Table 5**

<table>
<tr><th>Option Contract</th><th>Order Time</th><th>Buy Quantity</th><th>Rate (Rs.)</th><th>Strike Price + Rate (Rs.)</th><th>Future Contract</th><th>Order Time</th><th>Sale Quantity</th><th>Rate (Rs.)</th></tr>
<tr><td rowspan="4">EO CE AXISBANK 27Nov2014 340</td><td rowspan="2">14:47:30</td><td rowspan="2">2500</td><td rowspan="2">139</td><td rowspan="2">479</td><td rowspan="4">EF AXISBANK 27Nov2014</td><td>14:47:38</td><td>1250</td><td>480.15</td></tr>
<tr><td>14:47:38</td><td>1250</td><td>480.15</td></tr>
<tr><td rowspan="2">14:47:48</td><td rowspan="2">2500</td><td rowspan="2">139.50</td><td rowspan="2">479.50</td><td>14:47:51</td><td>1250</td><td>480.05</td></tr>
<tr><td>14:47:51</td><td>1250</td><td>480.10</td></tr>
</table>

27. I note from the details supplied by the Noticees No. 2 and 3 that for impugned contracts, they have sold subsequent future contracts as a part of the hedging strategy. Therefore, it is evident that the Noticees No. 2 and 3 has employed a particular strategy, under which they were simultaneously buying options contracts and selling future contracts of Axis and Kotak and thus, hedging their exposures in impugned contracts. I further note from the available records that, the investigation has not explored the above scenario, wherein, the alleged counterparties (Noticees No. 2 and 3) were placing simultaneously buying options contracts and selling future contracts of Axis and Kotak during the relevant period of time.

28. I note that, under algo trading the orders are placed automatically based on a pre-defined strategy and pre-defined yield based parameters, which are pre-approved from the exchanges.

I further note that, there is nothing on the record, which may state or indicate that the algo strategy employed by the Noticee No. 2 was not approved by the concerned stock exchange. It is also found that the impugned trades in impugned contracts were part of the multi-legged algo strategy and therefore, in my opinion the trades of Noticees No. 2 and 3 in impugned contracts cannot be looked as a separate trade, instead same need to be looked and analysed conjointly with the other orders embedded together in these multi-legged transactions. Since, only a part of these multi-legged transactions of Noticees No. 2 and 3 has been investigated, therefore, it would not be appropriate to pass any judgement or comment on genuinely/ non-genuinely of such transactions.

29. In view of the discussion so far, it has been found that the trader (Noticee No. 1) and counterparties (Noticees No. 2/3) are not connected to each other. Further, their impugned trades in impugned contracts of Axis and Kotak does not fulfill the criteria of "*reversal*" trade as specified by the Hon'ble SAT in the judgement *Global Earth Properties and Developers Pvt. Ltd. (Supra)*. Also, being the trades of the Noticees in least liquid contracts, there is high possibility of matching of the trades among the few counterparties, who are trading in those trades. It is further found that the trades of Noticees No. 2 and 3 are part of the algo trading and therefore, those trades are placed automatically based on a pre-defined strategy and pre-defined yield based parameters. Also, the trades of the Noticees No. 2 and 3 in the impugned contracts are multi-legged, wherein, hedging strategy has been followed via simultaneously buying and selling of option contracts and future contracts of Axis and Kotak has taken place. Therefore, despite the trading pattern of the Noticees being found to be suspicious, other facts and circumstances stated above does not support the allegations made out in the SCN.

30. In such circumstances, wherein execution of impugned trades in the impugned contracts by the Noticees No. 2 and 3 has taken place as per the pre-defined multi-legged algo strategy automatically, it cannot be ascertained with conviction that, whether the Noticee No. 1 has prior meeting of mind or collusion with the counterparties to its impugned trades. Therefore, there exists doubts and uncertainties regarding the Noticees being a part of device/ scheme employed to gain undue advantage from the reversal of impugned trades in alleged least liquid stock option contracts. Thus, in totality of the peculiar facts and circumstances, I am of the view that in the instant case the evidence before me are not sufficient enough to pass the muster of the principle of preponderance of probabilities and to lead to a conclusion that

these Noticees have employed any manipulative and deceptive device in contravention of the PFUTP Regulations.

31. I also note that, in the terms of particular facts and circumstances of the instant case, until and unless multi-legged transactions of the Noticees No. 2 and 3 investigated in detail, the allegations made out in the SCN against the Noticees will remain doubtful. On a careful consideration of the attendant circumstances of this case, I observe that the test of preponderance is not tilted towards probability of the Noticees being guilty of the charges made out in the SCN.

32. It is trite of law to state that the desideratum of clarity represents one of the most essential ingredients of legality. Therefore, I am of the view that, in this case the materials on record are not sufficient enough to establish the charges made against the Noticees in the SCN with clarity and conviction, and accordingly the SCN is disposed of *qua* the Noticees, *viz.*, Consortium Capital Private Limited, Pashupati Capital Services Pvt Ltd and Sachi Investment (Proprietor: Ms. Sarita Devi Choudhary).

33. In terms of Rule 6 of the Adjudication Rules, copies of this order are sent to the Noticees and also to SEBI.

| | |
|---|---|
| **Date: December 29, 2022** | **Vijayant Kumar Verma** |
| **Place: Mumbai** | **Adjudicating Officer** |