BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/PB/AS/2021-22/14223]

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

Niraj Prakash Khetan HUF

(PAN: AAEHN7069L)

In the matter of Trading in Illiquid Stock Options on BSE

BACKGROUND OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") observed large scale reversal of trades in stock options segment of Bombay Stock Exchange (hereinafter referred to as "**BSE**"). SEBI observed that such large scale reversal of trades in stock options led to creation of artificial volume at BSE. In view of the same, SEBI conducted an investigation into the trading activities of certain entities in illiquid stock options at BSE for the period April 1, 2014 to September 30, 2015 (hereinafter referred to as "**IP**").

2. Pursuant to investigation, it was observed that total 2,91,643 trades comprising substantial 81.38% of all the trades executed in stock options segment of BSE during the IP were non genuine trades. The aforesaid non-genuine trades resulted into creation of artificial volume to the tune of 826.21 crore units or 54.68% of the total market volume in stock options segment of BSE during the IP. It was observed that Niraj Prakash Khetan HUF (PAN-AAEHN7069L) (hereinafter referred to as the "**Noticee**") was one of the various entities who indulged in execution of reversal trades in stock options segment of BSE during the IP. Such trades were observed to be non-genuine in nature and created false or misleading appearance of trading in terms of artificial volumes in stock options and therefore were alleged to be manipulative and deceptive in nature. In view of the same, SEBI initiated adjudication proceedings against the Noticee for violation of the provisions of regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003 (hereinafter referred to as "**PFUTP Regulations, 2003**").

APPOINTMENT OF ADJUDICATING OFFICER

3. Shri K Saravanan was appointed as Adjudicating Officer in the matter, conveyed vide communique dated April 26, 2021, under section 19 read with section 15-I(1) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act, 1992**") and rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as "**Adjudication Rules**") to conduct adjudication proceedings in the manner specified under rule 4 of Adjudication Rules read with section

15-I(1) and (2) of SEBI Act, 1992, and if satisfied that penalty is liable, impose such penalty deemed fit in terms of rule 5 of Adjudication Rules and section 15HA of SEBI Act, 1992. Pursuant to transfer of Shri K Saravanan, the undersigned was appointed as Adjudicating Officer in the matter, conveyed vide communique dated July 14, 2021.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. A Show Cause Notice ref no SEBI/HO/A&E/EAD/PB/AS/18247/2021 dated August 06, 2021 (hereinafter referred to as '**SCN**') was issued to the Noticee under rule 4(1) of the Adjudication Rules to show-cause as to why an inquiry should not be initiated against it and why penalty should not be imposed under section 15HA of the SEBI Act, 1992 for the violations alleged to have been committed by Noticee.

5. It was *inter alia* alleged in the SCN that Noticee had executed 4 non genuine trades in 2 Stock Options contracts which resulted in artificial volume of total 3,76,000 units. Summary of dealings of the Noticee in 2 Stock Options contracts, in which the Noticee allegedly executed non genuine trades during the I.P, is as follows:

S. No.	Contract Name	Avg. Buy Rate (₹)	Total Buy Volume (No. of units)	Avg. Sell Rate (₹)	Total Sell Volume (No. of units)	% of Non Genuine trades of Noticee in the contract to Noticee's Total trades in the Contract	% of Non Genuine trades of Noticee in the contract to Total trades in the Contract	% of Artificial Volume generated by Noticee in the contract to Noticee's Total Volume in the Contract	% of Artificial Volume generated by Noticee in the contract to Total Volume in the Contract
1	LNTF15JAN55.00PE	0.05	88000	2.35	88000	100	16.67	100	20
2	NHPC15JAN18.00PEW4	0.05	100000	1.05	100000	100	10	100	5.45

6. From the above table, following was noted as regard to dealings of the Noticee:

   (a) The Noticee had executed non genuine trades in 2 contracts, wherein all trades of Noticee in the said 2 contracts were non genuine trades.

   (b) No. of non-genuine trades of the Noticee had significantly contributed to total no. of trades from the market in the above contracts, as 10% to 16.67% of the trades that happened in the two contracts were due to non-genuine trades executed by the Noticee.

   (c) The entire 100% of volume generated by Noticee in all of the above contracts was artificial volume, and further, the percentage of artificial volume generated by the Noticee in the above contracts to the total volume from the market in said contracts was in the range of 5.45% to 20%. Therefore, substantial volume generated by the Noticee in each of the above contracts were artificial volume.

   (d) Non genuine trades executed by the Noticee in above contracts had significant difference in buy rates and sell rates considering that the trades were reversed on same day.

7. The SCN was served on the Noticee via Speed Post Acknowledgement Due (SPAD) and via email dated August 06, 2021. Vide email dated August 06, 2021, Noticee stated the following:

   Congratulations,
   But why you are sending this to wrong recipient? Are you seriously getting paid for your job or just joking and fooling around?
   Also check with the Broker, why they mislead SEBI by wrongly updating anyone else's email id.
   In case you guys are fake, then carry on your great Notice Job.
   Cheers to SEBI for such an appointment

8. Vide letter dated August 20, 2021 and email dated August 21, 2021, Noticee requested *interalia* to produce and provide entire records in possession of SEBI in the matter and also, to grant an opportunity of inspection. Noticee submitted following as the indicative list of documents sought for inspection:

   - Copy of investigation report and all necessary documents indicating the action proposed and action approved by the Board
   - Date on which the findings of the investigation were put up for the information/ knowledge of the Whole Time Member (WTM)
   - Copy of the material placed before the WTM to decide that there were sufficient grounds to enquire into the alleged violations
   - Details of all the material placed before the WTM on the basis of which he decided to initiate proceedings against the Noticee.
   - Date on which investigation report was approved by WTM and the present proceedings was approved

- Copy of the file notings of WTM when he/she appointed Adjudicating Officer
- Copy of reasons recorded by the Board, Chairman, WTM or the Executive Director that there are reasonable grounds to investigate the affairs of the Noticee in the said matter
- Copy of Order of the Board authorizing investigation in the matter

9. Vide email dated October 04, 2021, following was conveyed to the Noticee:

Vide email dated August 21, 2021 you have interalia requested for inspection of additional documents relied upon in the SCN. In this regard, your request has been perused and it is conveyed to you that following are the relied upon documents in the instant proceedings and same have been provided to you along with the SCN issued in the matter:

S. No.	***Particular***	***Annexures to SCN***
1	*Details of all the trades of Noticee in Stock Option Segment of BSE during relevant period.*	*B*
2	*Details of all the alleged non-genuine trades of Noticee in Stock Option Segment of BSE during relevant period.*	*C*
3	*Summary of dealings of the Noticee in contracts wherein Noticee executed non genuine trades.*	*D*

It is noted that the aforementioned documents are the only documents relied upon in the matter.

……….

It may be noted that all relevant material relied upon in the instant proceedings have been provided to you. Therefore, I am of the opinion that your request for non-relied upon documents is not reasonable and therefore, the same is being declined.

Further, vide aforesaid email, Noticee was granted time till October 11, 2021 to file reply, if any, to the SCN, and was granted opportunity of personal hearing on October 12, 2021.

10. Vide letter dated October 05, 2021 and email dated October 08, 2021, Noticee submitted reply to the SCN which is summarized below:

- Noticee traded in stock options segment via anonymous electronic trading platform of stock exchange. Orders matched on price time priority basis, so the allegation that the trades matched with same entity by design is illogical and arbitrary. Noticee was not connected to or aware of the counterparty to impugned trades.
- Trades were executed and amount received from stock market operations were used in the ordinary course of business, and no adverse view can be taken of the same.
- No justification has been provided for selection of Investigation Period.
- Noticee dealt in two contracts in the IP and in one of the two contracts, artificial volume was less than 6%. Thus, considering trades in such contracts as non-genuine defies logic.
- There is no physical delivery of shares in stock options segment, so the alleged trading could not have created false or misleading appearance of trading.
- No alert/ warning/ caution etc was issued by BSE/ SEBI at the time of execution of impugned trades.

- No evidence has been adduced in the SCN regarding large scale reversal of trades or the impugned trades leading to creation of artificial volume. Further, Noticee has not been provided copy of investigation report.
- Noticee's trades were carried out at price ranges permitted by the exchange and SEBI, and the obligations arising out of it were settled through clearing mechanism of BSE.
- Following mitigating factors must be taken into consideration:
    - Introduction of Reversal Trade Prevention Check for stock options segment of BSE with effect from March 14, 2016.
    - Introduction of Price Reasonability Check (PRC) functionality in stock options segment of BSE in January 2016.
    - Discontinuation of weekly stock options contracts with effect from March 03, 2016.
    - Reduction in number of strikes in stock options segment to curb trading in far out of money contracts.
- No penalty under section 15HA of the SEBI Act, 1992 is warranted. Following factors must be taken into consideration:
    - Price in the stock options or cash segment was not influenced.
    - Impugned trades were executed through stock exchange and settled in cash through its mechanism, so the impugned trades cannot be said to be artificial.
    - There was no market manipulation.
    - Violations were not deliberate.

    - No loss has been caused to any investor and there are no investor complaints.
    - No unfair gain has been made.

- Noticee was not part of any scheme, plan, device or artifice employed.
- Noticee relied on judgements of the Hon'ble Securities Appellate Tribunal (hereinafter referred to as **SAT**") in the matters of Jagruti Securities vs SEBI, SPJ Stock Brokers Pvt Ltd vs SEBI, claiming that connection/ collusion between counterparties is required for establishing allegation of artificial volume and/ or price manipulations. Noticee also relied on the judgement of the Hon'ble SAT in the matter of HB Stockholding Ltd vs SEBI claiming *interalia* that synchronization of trades is not *per se* illegal.

Further, vide aforesaid email, Noticee requested for adjournment of personal hearing in the matter.

11. Vide email dated October 11, 2021, Noticee's request for adjournment of personal hearing was acceded to and final opportunity of personal hearing was granted on October 26, 2021. Vide email dated October 21, 2021, Noticee intimated appointment of Shri Gautam Agarwal (Chartered Accountant) as Authorized Representative (AR).
12. Personal hearing in the matter was held on October 26, 2021 via video conference mode. During the course of hearing, AR reiterated submissions made vide letter dated October 05, 2021. AR also sought additional time for making post hearing submissions. Acceding to the request, time till October 29, 2021 was granted to make post hearing submissions.

13. Vide email dated October 28, 2021, Noticee made additional submission in the matter. The unique submissions made therein are summarize below:

- The execution of 4[1] reversal trades was due to sheer luck and coincidence, and cannot be said to be manipulative. In this regard, Noticee relied upon the judgement of the Hon'ble SAT in the matter of Dhvani Darshan Kothari & Anr. Vs SEBI.
- Two instances[2] of reversal cannot be alleged to be creating artificial volume of trading in the market.
- No penalty must be imposed on the Noticee taking into consideration mitigating circumstances and factors under section 15J of the SEBI Act, 1992. In this regard, Noticee relied upon the judgement of the Hon'ble Bombay High Court in the matter of SEBI vs Cabot International Capital Corporation, and the judgements of the Hon'ble SAT in the matters of Yogi Sungwon (I) Ltd vs SEBI and NHAI vs SEBI.
- SEBI initiated Adjudication Proceedings against the Noticee only in the last stage, after passing Interim Order dated August 20, 2015 and Final Order dated April 05, 2018. Therefore, lenient view must be taken in the matter. In this regard, Noticee relied upon the judgement of the Hon'ble Supreme Court in the matter of SEBI vs Bhavesh Pabari. Further, Noticee prayed that penalty lesser than minimum prescribed penalty must be imposed, and cited Adjudication Order dated February 26, 2021 in the matter of Octant Interactive Technologies Ltd and

[1] Mentioned as 2 in the additional submissions dated October 26, 2021
[2] Mentioned as one instance in additional submissions dated October 26, 2021

Adjudication Order dated March 29, 2019 in the matter of Sangam Advisors Ltd in this regard.

- There is a delay in the issuance of SCN in the matter by more than 6 years.

CONSIDERATION OF ISSUES AND FINDINGS

14. I have carefully perused the charges levelled against the Noticee, its reply and the documents / material available on record. The issues that arise for consideration in the present case are:
    (a) Whether the Noticee has violated provisions of regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of PFUTP Regulations, 2003?
    (b) Does the violation, if any, attract monetary penalty under section 15HA of the SEBI Act, 1992?
    (c) If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in section 15J of the SEBI Act, 1992?

15. Before proceeding further, I would like to refer to the relevant provisions of the PFUTP Regulations, 2003 as below:

    PFUTP Regulations, 2003

    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;

16. I note that allegation against the Noticee is that, while dealing in the stock option contracts at BSE during the IP, it had executed reversal trades which were allegedly non-genuine and the same had resulted in generation of artificial volume in stock option contracts at BSE. Reversal trades are considered to be those trades in which an entity reverses its buy or sell positions in a contract with subsequent sell or buy positions with the same counterparty during the same day. The said reversal trades are alleged to

be non-genuine trades as they are not executed in the normal course of trading, lack basic trading rationale, lead to false or misleading appearance of trading in terms of generation of artificial volumes and hence are deceptive & manipulative.

17. Noticee has *interalia* contended that SCN suffers from delay, as it has been issued after an inordinate delay of 6 years. In this regard, I note that no timelines as regards the issuance of SCN pertaining to Adjudication Proceedings have been prescribed in the SEBI Act, 1992. I also note that the Hon'ble SAT in the matter of Bipin R Vora vs SEBI decided on March 22, 2006 held that,

    "*As regards the plea of delay and latches and submission that the show cause notice is barred by limitation, I do not find any merit in these contentions as the time and efforts involved in an investigation though may vary from case to case, generally investigations per-se is a time consuming process which invariably involve collection, scrutiny and careful examination of voluminous records/ order-trade details of all the concerned including the exchanges/recording of statements etc. and therefore no time limit can be fixed in this regard to enable a regulator to take appropriate disciplinary action for the safeguard and improvement of the system/market*".

    Therefore, I note that contentions of Noticee in this regard are without merits.

18. Further, Noticee had requested to provide entire records in possession of SEBI in the matter *interalia* including copy of investigation report, date on which the findings of the investigation were put up for the information of the WTM, copy of the material placed before the WTM to decide that there were sufficient grounds to enquire into the alleged violations etc, and also, to grant an opportunity of inspection. Noticee has also contended vide its submissions that no evidence had been adduced in the SCN regarding large scale reversal of trades or the impugned trades leading to creation of artificial volume, and that Noticee had not been provided copy of investigation report. I note that all the documents relied upon in the matter had been provided to Noticee as Annexures to the SCN. Further, vide email dated October 04, 2021, the following was conveyed *interalia* to AR:

Vide email dated August 21, 2021 you have interalia requested for inspection of additional documents relied upon in the SCN. In this regard, your request has been perused and it is conveyed to you that following are the relied upon documents in the instant proceedings and same have been provided to you along with the SCN issued in the matter:

S. No.	***Particular***	***Annexures to SCN***
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2	*Details of all the alleged non-genuine trades of Noticee in Stock Option Segment of BSE during relevant period.*	*C*
3	*Summary of dealings of the Noticee in contracts wherein Noticee executed non genuine trades.*	*D*

It is noted that the aforementioned documents are the only documents relied upon in the matter.

………

It may be noted that all relevant material relied upon in the instant proceedings have been provided to you. Therefore, I am of the opinion that your request for non-relied upon documents is not reasonable and therefore, the same is being declined.

In this regard, I rely on the judgement of the Hon'ble SAT in the matter of Mayrose Capfin Private Limited Vs. SEBI (decided on 30.03.2012) wherein it was held that:

".....................the principles of natural justice require that the inquiry officer should make available such document and material to the delinquent on which reliance is being placed in the inquiry. It is not necessary for the inquiry officer to make available all the material that might have been collected during the course of investigation but has not been relied upon for proving charge against the delinquent. No prejudice can, therefore, be said to have been caused to the appellant on this count...."

19. Further, the Hon'ble SAT, in its order dated February 12, 2020, in the matter of Shruti Vora vs. SEBI held that:

"A bare reading of the provisions of the Act and the Rules as referred to above do not provide supply of documents upon which no reliance has been placed by the AO, nor even the principles of natural justice require supply of such documents which has not been relied upon by the AO. We are of the opinion that we cannot compel the AO to deviate from the prescribed procedure and supply of such documents, which is not

warranted in law. In our view, on a reading of the Act and the Rules we find that there is no duty cast upon the AO to disclose or provide all the documents in his possession especially when such documents are not being relied upon."

20. I also note that the Hon'ble SAT in the matter of Anant R Sathe Vs SEBI (Appeal No. 150 of 2020) vide Order dated July 17, 2020 reaffirmed the principle elucidated in the judgment of Shruti Vora's case, which has been reproduced herein above and held that:

    "the Authority is required to supply the documents that they rely upon while serving the show cause notice which in the instant case has been done and which is sufficient for the purpose of filing an efficacious reply in his defence".

    Therefore, I note that documents relied upon in the matter were duly provided to the Noticee along with SCN dated August 06, 2021 in the matter, so that principles of natural justice have been complied with and the contentions in this regard are without merits.

21. I note from trade log of the Noticee that it had traded in 2 unique contracts in the stock options segment of BSE during the IP. It is observed that the Noticee had executed 4 non-genuine trades in the said 2 contracts. I further note that the above mentioned trades of the Noticee had resulted in the creation of artificial volume of 3,76,000 units in the said 2 contracts. Summary of non-genuine trades of the Noticee is as follows:

S. No.	Contract Name	Avg. Buy Rate (₹)	Total Buy Volume (No. of units)	Avg. Sell Rate (₹)	Total Sell Volume (No. of units)	% of Non Genuine trades of Noticee in the contract to Noticee's Total trades in the Contract	% of Non Genuine trades of Noticee in the contract to Total trades in the Contract	% of Artificial Volume generated by Noticee in the contract to Noticee's Total Volume in the Contract	% of Artificial Volume generated by Noticee in the contract to Total Volume in the Contract
1	LNTF15JAN55.00PE	0.05	88000	2.35	88000	100	16.67	100	20
2	NHPC15JAN18.00PEW4	0.05	100000	1.05	100000	100	10	100	5.45

22. It is noted that the Noticee had executed non-genuine trades in 2 contracts, wherein the percentage of non-genuine trades of the Noticee in stock options contracts to total trades in the contracts was in the range of 10% to 16.67% in the aforesaid contracts. Further, artificial volume generated by Noticee in the contracts amounted to the entire 100% of total volume generated by it in both the impugned contracts. It is also noted that artificial volume generated by the Noticee contributed significantly viz. 5.45% to 20% of the total volume from the market in the said contracts. Non-genuine trades executed by the Noticee in the above contracts had significant difference in buy rates and sell rates considering that the trades were reversed on the same day.

23. I note from the trade log that the trades executed by the Noticee in a contract were squared up within a short span of time with its counterparties. To illustrate, the Noticee on January 20, 2015 at 09:36:55.68 hrs entered into 1 sell trade with counterparty viz. Shri Sarvasarai Balaji Steels Ltd for 88,000 units at the rate of ₹2.35 per unit in the contract LNTF15JAN55.00PE. Thereafter, on the same day at 10:04:32.70 hrs,

Noticee entered into 1 buy trade with same counterparty for 88,000 units at the rate of ₹0.05 per unit in the same contract. It is noted that while dealing in the said contract during the I.P., the Noticee executed reversal trades with same counterparty viz. Shri Sarvasarai Balaji Steels Ltd on the same day and with significant price difference in buy and sell rate. Thus, the Noticee, through its dealing in the contract viz. “LNTF15JAN55.00PE” during the I.P., executed non genuine trades which was 16.67% of the total trades from the market in the said contract during the I.P., and thereby, Noticee generated artificial volume of 1,76,000 units which was 20% of the volume traded in the said contract from the market during the I.P.

24. I note that the non-genuineness of these transactions executed by the Noticee is evident from the fact that there was no commercial basis as to why, within a short span of time, the Noticee reversed the position with its counterparties with significant price differences. I note from the trade log of the Noticee that the time taken by the Noticee for reversing the non-genuine trades ranged from 24 minutes 27 seconds to 27 minutes 37 seconds, on the same day. Such a short span of time taken for reversing the trades in an illiquid stock option contract suggests the non-genuineness of these trades executed by the Noticee. The fact that the transactions in a particular contract were reversed with the same counterparties indicates a prior meeting of minds with a view to execute the reversal trades at a pre-determined price. Since these trades were done in illiquid option contracts, there was no trading in the said contract and hence, there was no price discovery in the strictest terms. There was wide variation in prices of the

said contract, within a short span of time, without substantial variation in the price of the underlying scrip to justify the aforesaid variation. It is a clear indication that there was pre-determination in the prices by the counterparties while executing the trades. Thus, it is observed that Noticee had indulged in reversal trades with her counterparties in the stock options segment of BSE and the same were non-genuine trades.

25. Noticee has *interalia* contended that it had traded in stock options segment on anonymous electronic trading platform of stock exchange, and that buy and sell orders had matched on price time priority basis, so the allegation that the trades matched with same entity by design is illogical and arbitrary. Noticee has also contended that it was not connected to or aware of the counterparty to impugned trades. In this regard, Noticee has relied upon the judgements of the Hon'ble SAT in the matters of Jagruti Securities vs SEBI and SPJ Stockbrokers Pvt Ltd vs SEBI. I note that it is not mere coincidence that Noticee could match its trades with the same counterparty with whom first leg of respective trades had been undertaken. This is the outcome of meeting of minds elsewhere and it was a deliberate attempt to deal in such a fashion. I note that in matters dealing with violation of PFUTP Regulations, 2003, the reason as regards execution of non-genuine trades might not be forthcoming. However, the correct test instead, is one of preponderance of probabilities. Here I would like to rely on the judgment of Hon'ble Supreme Court in SEBI v Kishore R Ajmera (AIR 2016 SC 1079) decided on February 23, 2016, wherein it was 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..."

26. The Hon'ble Supreme Court further held in the same matter 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."*

27. I note that direct evidence is not forthcoming in the present matter as regards to meeting of minds or collusion of the Noticee with other entities. However, I note that the trading behaviour of the Noticee makes it clear that aforesaid non-genuine trades could not have been possible without

meeting of minds at some level. In this context, I deem it appropriate to refer to the Hon'ble SAT order dated July 14, 2006, in the case of Ketan Parekh vs. SEBI (Appeal no. 2/2004), wherein the Hon'ble SAT has held 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."*

28. I place my reliance on the judgment of Hon'ble Supreme Court in the matter of SEBI v Rakhi Trading Private Limited (Civil Appeal Nos. 1969, 3174-3177 and 3180 of 2011 decided on February 8, 2018), in which the Hon'ble Supreme Court held that - *"Considering the reversal transactions, quantity, price and time and sale, parties being persistent in number of such trade transactions with huge price variations, it will be too naive to hold that the transactions are through screen-based trading and hence anonymous. Such conclusion would be over-looking the prior meeting of minds involving synchronization of buy and sell order and not negotiated deals as per the board's circular. The impugned transactions are manipulative/deceptive device to create a desired loss and/or profit. Such synchronized trading is violative of transparent norms of trading in securities….."*

29. Further, the Hon’ble SAT in its judgement dated September 14, 2020 in the matter of Global Earth Properties and Developers Pvt Ltd relied upon the aforesaid judgement of Hon’ble Supreme Court and held that,

“*It is not a mere coincidence that the Appellants could match the trades with the counter party with whom he had undertaken the first leg of respective trade. In our opinion, the trades were non-genuine trades and even though direct evidence is not available in the instant case but in the peculiar facts and circumstances of the present case there is an irresistible inference that can be drawn that there was meeting of minds between the Appellants and the counter parties, and collusion with a view to trade at a predetermined price.*”

30. Noticee has also contended that physical delivery of shares does not happen in stock options segment, so the alleged trading could not have created false or misleading appearance of trading. I note that the impugned trades, even though did not amount to physical delivery of assets, resulted in change of rights in the contract between the counterparties, and the same is borne out by judgement of the Hon’ble Supreme Court in the matter of SEBI v Rakhi Trading Private Limited (supra), wherein it was held that,

“……….No doubt, as in the case of trade in a scrip in the cash segment, there is no physical delivery of the asset. However, even in the derivative segment there is a change of rights in a contract. In the instant case, through reverse trades, there was no genuine change of rights in the contract. ……….. Even in derivatives, the ownership of the right is restored to the first party when the reverse trade occurs”

31. Noticee has contended that the impugned trades were executed and amount received from stock market operations were used in the ordinary course of business. Notice has also contended that it was not part of any scheme, plan or device employed. Further that execution of 4 reversal trades was due to sheer luck and coincidence, and cannot be said to be manipulative. In this regard, Noticee relied upon the judgement of the Hon'ble SAT in the matter of Dhvani Darshan Kothari & Anr. Vs SEBI. Noticee has also contended that two instances of reversal cannot be alleged to be creating artificial volume of trading in the market. In this regard, I note that all the trades executed by Noticee in the impugned contracts were in the form of reversal trades executed on the same day, in which the buy and sell rates had substantial difference without any trading strategy or changes in price of underlying scrip to justify the same as per the records. I note that considering the nature of trades along with attending circumstances, it is discernible that the aforesaid reversal trades were non-genuine, and were executed without the intention of change in rights to exercise the impugned contracts. I also note that case facts in the matter of Dhavni Darshan Kothari & Anr vs SEBI are distinguishable from that in the instant proceedings. Therefore, I note that aforesaid contentions are liable to be set aside on the above grounds.

32. Noticee has *interalia* contended that its trades were carried out at price ranges permitted by BSE and SEBI, and the obligations arising out of it were settled through clearing mechanism of the exchange. Noticee has

further contended that impugned trades were executed through stock exchange and settled in cash through its mechanism. Noticee has also contended that price in the stock options or cash segment was not influenced. I note that the aforesaid facts have not been relied upon in framing instant allegations. Noticee has further relied upon the judgement of the Hon'ble SAT in the matter of HB Stockholding Ltd vs SEBI and contended that that synchronization of trades is not *per se* illegal. I note that execution of synchronized trades has not been alleged in the instant SCN.

33. Noticee has also contended that no alert/ warning/ caution etc was issued by BSE/ SEBI at the time of execution of impugned trades. I note that as trading was done in Noticee's trading account, it was obligated to ensure genuineness of the trades executed on the exchange platform. The aforesaid obligation was mandatory not withstanding any warning issued by BSE

34. Noticee has also contended that no justification has been provided for selection of the IP. Further that, Noticee dealt in two contracts in the IP and in one of the two contracts, artificial volume was less than 6%, so considering trades in such contracts as non-genuine defies logic. I note that Noticee's trades in the two impugned contracts contributed 5.45% and 20% to the total market volume generated during the IP in said contracts, so that Noticee contributed substantially to artificial volume in such contracts. I also note that 100% of total volume generated by Noticee in both the contracts

amounted to artificial volume. Therefore, I note that aforesaid contention of the Noticee is without merits.

35. Noticee has also contended that there have been no investor complaints, and that no loss has been caused to any investor and no gain has been made by the Noticee. I note that the allegation levelled against the Noticee as regards alleged non-genuine trades are not contingent upon any grievance or loss made by investors, or any gain made by the Noticee, so that contentions of Noticee in this regard are without merits.

36. Therefore, the trading behaviour of the Noticee confirms that such trades were not normal and wide variation in prices of the trades in the same contract in a short time without any basis for such wide variation, all indicate that the trades executed by the Noticee were not genuine trades and being non-genuine, created an appearance of artificial trading volumes in respective contracts. In view of the above, I find that the allegation of violation of regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of PFUTP Regulations, 2003 by the Noticee stands established. The Hon'ble Supreme Court of India in the matter of SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC) decided on May 23, 2006 held that - *"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant…".*

37. In view of the same, I am convinced that it is a fit case for imposition of monetary penalty on the Noticee under the provisions of section 15HA of the SEBI Act, 1992 which read as under:

[3]*[**Penalty for fraudulent and unfair trade practices.***

15HA. If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty [4]*[which shall not be less than five lakh rupees but which may extend to twenty - five crore rupees or three times the amount of profits made out of such practices, whichever is higher].*

38. While determining the quantum of penalty under section 15HA of the SEBI Act, it is important to consider the factors relevantly as stipulated in section 15J of the SEBI Act which reads as under:-

Factors to be taken into account by the adjudicating officer.

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

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

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

(c) the repetitive nature of the default.

Explanation.—For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 15A to

[3] Inserted by the SEBI (Amendment) Act, 2002, w.e.f.29-10-2002.

[4] Substituted for the words ―twenty-five crore rupees or three times the amount of profits made out of such failure, whichever is higher‖ by the Securities Laws (Amendment) Act, 2014, w.e.f. 08-09-2014

15E,clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.

39. I observe, that the material available on record does not quantify any disproportionate gains or unfair advantage, if any, made by the Noticee and the losses, if any, suffered by the investors due to such violations on part of the said Noticee. However, Noticee has entered into 4 non-genuine trades in 2 stock option contracts which demonstrates the repetitive nature of default on its part.

40. Therefore, I note that Noticee indulged in execution of reversal trades in stock options contracts in the IP which were non-genuine and created false and misleading appearance of trading in terms of artificial volumes in stock options, leading to violation of regulations 3(a),(b),(c),(d) and 4(1),(2)(a) of the PFUTP Regulations, 2003.

ORDER

41. Having considered all the facts and circumstances of the case, the material available on record, the factors mentioned in section 15J of the SEBI Act, 1992 and in exercise of power conferred upon me under section 15-I of the SEBI Act, 1992 read with rule 5 of the Adjudication Rules, 1995, I hereby impose following penalty under section 15HA of the SEBI Act, 1992 on the Noticee:

Name of the Noticee	Violation provisions	Penalty
Niraj Prakash Khetan HUF PAN:AAEHN7069L	regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of PFUTP Regulations, 2003	₹5,00,000/- (Rupees Five Lakh only)

I am of the view that the said penalty is commensurate with the lapse/omission on the part of the Noticee.

42. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, OR through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link:

ENFORCEMENT → Orders → Orders of AO → PAY NOW

43. The aforesaid Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to "The Division Chief (Enforcement Department 1 DRA-2), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C – 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.". The Noticee shall also provide the following details while forwarding DD / payment information:

- Name and PAN of the Noticee
- Name of the case / matter
- Purpose of Payment – Payment of penalty under AO proceedings
- Bank Name and Account Number
- Transaction Number

44. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, SEBI may initiate consequential actions including but not limited to recovery proceedings under section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties.

45. In terms of the provisions of rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticee viz. Niraj Prakash Khetan HUF and also to the Securities and Exchange Board of India.

Date: November 22, 2021 **PARAG BASU**

Place: Mumbai **ADJUDICATING OFFICER**