BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/PB/AS/2021-22/13953]

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

Nimesh Prafulbhai Doshi

(PAN: AGRPD5020A)

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 lead 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 Nimesh Prafulbhai Doshi (PAN-AGRPD5020A) (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 SEBI 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/16754/2021 dated July 28, 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 him 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 the Noticee had executed 19 non genuine trades in 2 Stock Options contracts which resulted in artificial volume of total 4,40,000 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	EXID15FEB180.00CEW1	19.7	100000	9.37	100000	100	100	100	100
2	FEDB15FEB165.00PEW1	22.49	120000	12.4	120000	100	64.29	100	52.63

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 64.29% to 100% 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 both 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 52.63% to 100%. 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 July 29, 2021. Vide letter dated August 03, 2021, Noticee made submissions which have been summarized below:

- Instant SCN has been issued after an inordinate delay. Therefore, the SCN should be disposed of on this ground alone. In this regard, Noticee cited judgements of the Hon'ble Securities Appellate Tribunal (hereinafter referred to as **'SAT'**) in the matters of Ashok Shivlal Rupani & Anr. Vs SEBI, Mr. Rakesh Kathotia vs SEBI, Aditi Dalal vs SEBI, HB Stockholdings vs SEBI and Khandwala Securities Ltd vs SEBI and the judgement of the Hon'ble Supreme Court of India (hereinafter referred to as **'SC'**) in the matter of State of Gujarat vs Patel Raghav Natha.
- Noticee does not remember giving any order or direction to his broker to execute the impugned trades.
- Noticee denied having any connection/ relation with N M Impex Pvt Ltd, who was counterparty to trades of Noticee.
- Noticee requested for inspection of documents relied upon in the matter.

8. Vide letter and email dated August 13, 2021, Noticee's request for inspection of documents was acceded to, and an opportunity of inspection on September 03, 2021 at SEBI Bhavan-II, Mumbai was granted. Vide letter dated August 20, 2021, Noticee submitted the Authority letter, intimating appointment of Mr Prakash Shah (Advocate) and Mr Meit Shah (Adovcate) as Authorized Representatives (AR) to carry out inspection of documents in the matter. Vide email dated September 02, 2021, AR requested for rescheduling the inspection on a different time on the scheduled date i.e.

September 03, 2021. Vide email dated September 02, 2021, AR's request was acceded to and he was granted opportunity of inspection at 11:00 AM on September 03, 2021. Further, vide aforesaid email, AR was also intimated that inspection of only the documents relied upon while issuing the SCN would be provided.

9. The opportunity of inspection of documents was availed of by AR of the Noticee on September 03, 2021. The following documents were inspected by the AR:

Sr No.	Particulars
1.	Annexure A to the SCN -Communication of AO appointment
2.	Annexure B to the SCN -Integrated trade log of all trades of Noticee in Stock Option segment of BSE during I.P. i.e, 01/04/2014 to 30/09/2015
3.	Annexure C to the SCN -Integrated trade log of all non-genuine trades of Noticee in Stock Option segment of BSE during I.P. i.e, 01/04/2014 to 30/09/2015
4.	Annexure D to the SCN -Summary of dealings of Noticee in 3 Stock Options contracts in which Noticee allegedly executed reversal trades during the I.P.

A copy of the aforesaid documents was also provided to the AR. Further, it was conveyed to the AR that only the aforesaid documents had been relied upon in the SCN. AR was also advised to make post inspection submissions by September 10, 2021 in the matter. The minutes of inspection proceedings are on record.

10. AR made post inspection submissions dated September 03, 2021. The main contentions made in the aforesaid submissions are summarized below:

- The rule of natural justice mandates that when an action of an authority gravely injures any individual's right and the reasonableness of the said action depends on fact findings, the evidence used to prove the case must be disclosed to the individual so that he has an opportunity to show that it is untrue.
- AR stated that it was incumbent on part of SEBI to provide complete inspection of all documents, materials etc relied upon by SEBI, and by not doing so, grave prejudice has been caused to Noticee.
- Further, AR requested inspection of following additional documents in this regard:
  - Order book with respect to the alleged trades
  - Copy of investigation report
  - Copy of correspondence exchanged by SEBI with Noticee's broker and counterparty to the impugned transactions
  - Copy of statements of all persons recorded during course of investigation
  - Details of complaints received by SEBI and stock exchange
  - Details of persons/ entities who have been induced to sell/ purchase the alleged illiquid stock options as a result of dealings of the Noticee
  - Documents establishing intention of Noticee to manipulate price of stock options

    - Details of triggers generated by stock exchange/ SEBI
    - Any other additional documents relied upon by SEBI

- In this regard, Noticee relied upon judgements of the Hon'ble SC in the matter of Price Waterhouse vs SEBI and of the Hon'ble SAT in the matters of B. Ramalinga Raju vs SEBI and Ms. Smitaben N Shah vs SEBI.

11. Vide email dated September 08, 2021, the following was conveyed to AR/ Noticee:

    In the post inspection submissions, you have interalia stated:
    ……….
    "At the inspection of documents carried out by me, SEBI had provided me inspection of only Annexures attached with the Show Cause Notice. Further, the Annexures to the SCN were provided in hard copy to me."
    ……….
    Further, you have interalia requested for inspection of certain additional documents vide aforesaid submissions.

    In this regard, it is conveyed to you that inspection of all documents relied upon in the SCN has been provided to you. Further, the said documents in soft copy were provided to the Noticee vide email dated July 29, 2021 along with SCN in the matter (attached herewith). However, soft copy of the said documents is also being provided attached with this email for your kind perusal.

    Further, vide aforesaid email, AR was granted time till September 21, 2021 to make submission with respect to the instant SCN on merits.

12. Vide email dated September 22, 2021, AR was intimated that no submission on merits had been received in the matter, and further, was granted opportunity of personal hearing on September 29, 2021. AR was

also advised to submit reply to the SCN, if any, prior to the scheduled time and date of hearing.

13. Vide letters dated September 22, 2021, Noticee made submissions as regards the matter. The main contentions made therein are summarized below:

- The Noticee reiterated its request for inspection of additional documents in the matter made vide letter dated September 03, 2021.
- SEBI has not provided any evidence to show that the impugned trades were fraudulent.
- The trades were executed on the floor of BSE in due compliance with all rules and regulations of the exchange.
- No warning was issued as regards impugned trades to the Noticee.
- The observation that the stock options contracts were illiquid is incorrect. Even if it is assumed that stocks were illiquid, any small quantity would appear significant as there were no active traders in the stock.
- For a transaction to be termed fraudulent, element of inducement should be there.
- There is no nexus of Noticee with the broker or the counterparty as regards the impugned trades.
- The impugned trades have no impact on other investors or their investment decision, which is an essential element of fraud.
- The underlying scrip of the contracts was highly liquid in nature, so the allegation that Noticee traded only in illiquid stock options is unfair.

- It appears that SEBI had held that Noticee transacted in illiquid option on the basis that his trades were in far-off strike prices and therefore, very few entities traded in such strike rates. However, in such case, it could be concluded that said trades could have no effect on other investors. Also, it could also be concluded that as the strike price was thinly traded, the market of stock options contract was illiquid with the volatility and variations in options price as regards the reversal trades.
- BSE and SEBI have themselves allowed trading in options for ‘far months’ with a strike price which are at large variance to current market price. As the regulators have permitted such trading, no adverse inference can be drawn.
- Though stock exchanges regularly come out with list of illiquid scrips in cash segment, no such list has been issued as regards dealings in stock options contracts.
- In derivatives trading, traders either make profit or loss as market does not always behave as per predictions. Based on the fact that Noticee traded in options segment cannot be a ground to initiate instant proceedings against the Noticee.
- Noticee’s trades created only miniscule volume which comprised low percentage of total market volume, so such trades could not have contributed to artificial volume as alleged.
- There was no significant price movement of the underlying scrip which proves that Noticee’s trades had no impact on market.

- There is no question of transfer of beneficial ownership in options segment since at the end of settlement cycle only net profit/ loss is adjusted. Therefore, allegation of artificial trade is of no consequence in option segment of exchange.
- Noticee carried out the trades on the floor of the stock exchange and did not have any connection with counterparty to the impugned trades viz. N M Impex Pvt Ltd. In this regard, Noticee relied upon the judgement of Hon'ble SAT in the matter of Jagruti Securities vs SEBI, SPJ Stockbrokers Pvt Ltd vs SEBI and Sanjay Agrawal vs SEBI, and contended that alleged trades could not be treated as illegal unless there was some cogent connection or mischievous meeting of minds between the parties.
- Noticee's trades were not questioned by the broker, as in such a case, Noticee would have taken appropriate corrective measures.
- No cautionary warning was raised by BSE at any point of time. BSE introduced a mechanism for prevention of reversal trades only in 2016. Further, no adverse inference could be drawn in the instant matter against the Noticee because such measures did not exist at the relevant point of time.
- Besides making generic allegations against the Noticee, not a single instance or observation on specific role of the Noticee is delineated in the SCN. In this regard, Noticee relied upon the judgement of the Hon'ble SC in the matter of Commissioner of Central Excise, Bangalore vs M/s Brindavan Beverages (P) Ltd and Ors.

- No grievance has been made by any investor, broker, stock exchange or any other agency with regard to Noticee's trades.
- SEBI discontinued proceedings against the broker and intermediaries against whom similar allegations had been levelled. Same recourse must be taken against Noticee as well.
- Noticee has complied with all the procedures and requirements of capital market while dealing through SEBI registered intermediaries.
- As regards impugned trades, sell orders by Noticee were placed after the buy orders were placed by counterparties. Therefore, vide the impugned trades, sell order was matched with existing buy order at the prevalent market price available on exchange platform. Therefore, no allegation of price manipulation or synchronization can be made against Noticee.
- Noticee's buy and sell orders were executed with significant time gap, which indicates that Noticee had no intention to reverse the trades.
- Noticee was not provided market order log file for January 30, 2015, so Noticee could not ascertain no of orders which were placed between buy and sell orders placed by Noticee.
- The counterparty to the impugned trades of Noticee viz. N M Impex Pvt Ltd, executed trades in 559 contracts vide other trades, which implies that allegation of meeting of mind of counterparties in the instant matter is not sustainable.
- All trades were executed by Noticee within prescribed circuit limits and within the framework of check and balances of BSE and SEBI.

- As around 14,720 entities were involved in trading in F&O segment of BSE during the IP, it is strange that such a large number of entities who were trading within the framework of check and balances of BSE/ SEBI could execute non-genuine trades.
- BSE never considered transactions of Noticee as illegal. Further, Noticee requested to summon and enforce attendance of any person from BSE who may provide any evidence relevant to subject matter of enquiry.
- Noticee executed reversal trades in only two stock options contracts, however, no similar transactions were carried out in the IP to establish a pattern. Therefore, a few transactions of small amounts cannot establish the allegation of fraud against the Noticee.

14. Vide email dated September 27, 2021, following was *interalia* conveyed to the Noticee:

……….

S no	*Documents sought*	*Comments*
1	*Investigation Report along with all the Annexures*	*The allegations as regards the matter have been cogently spelt out in the SCN along with Annexures relied upon therein*
2	*Copy of correspondences exchanged by SEBI with broker viz. N M Impex Pvt Ltd*	*No such correspondences have been relied upon as per the record*
3	*Copy of statement of all person recorded during course of investigation conducted by SEBI in the captioned matter*	*No such statements have been relied upon as per the record*
4	*Details of complaints received by SEBI and stock exchange*	*No such complaints have been relied upon as per the record*
5	*Details of persons/ entities who have been induced to sell/ purchase the alleged illiquid stock options as a result of my dealing in said stock options*	*No such details have been relied upon as per the record*

6	*Documents/ statements showing and establishing my intention to 'manipulate' price of said stock options at BSE*	*No such documents/ statements have been relied upon as per the record*
7	*Details of alerts/ triggers generated by stock exchange/ SEBI wrt my dealings in said stock options*	*No such details of alerts/ triggers have been relied upon as per the record*
8	*Any other and additional documents referred to and relied upon by SEBI*	*Query is vague and general*
9	*Order book w r t alleged trades maintained by nroker*	*No such order book has been relied upon as per the record. The extracts of Trade Integrated Order (TIO) logs relied upon in the SCN have already been provided to you as Annexures B and C to the SCN. The same have been attached with this email as well.*

In this regard, it is conveyed to you that all the relied upon documents have been conveyed to you already.

……….

Further, vide aforesaid email, Noticee's request for adjournment of personal hearing was acceded to, and he was granted another opportunity of personal hearing on October 08, 2021. Vide email dated October 07, 2021, Noticee requested for adjournment of personal hearing scheduled on October 08, 2021. Vide email dated October 08, 2021, Noticee's request was acceded to, and he was granted final opportunity of personal hearing on October 21, 2021.

15. The personal hearing in the matter was held on October 21, 2021 via video conferencing over Webex platform. During the course of hearing, Authorized Representative of the Noticee reiterated the submissions made

vide letters dated August 03, 2021, September 03, 2021 and September 22, 2021. Hearing Minutes are on record.

CONSIDERATION OF ISSUES AND FINDINGS

16. I have carefully perused the charges levelled against the Noticee, his 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?

17. 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;

18. I note that allegation against the Noticee is that, while dealing in the stock option contracts at BSE during the IP, he had executed reversal trades which were allegedly non-genuine trades 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 and manipulative.

19. Noticee has *interalia* contended that SCN in the matter was issued after an inordinate delay, and that the SCN must be disposed of on this ground alone. In this regard, Noticee cited judgements of the Hon'ble SAT in the matters of Ashok Shivlal Rupani & Anr. Vs SEBI, Mr. Rakesh Kathotia vs SEBI, Aditi Dalal vs SEBI, HB Stockholdings vs SEBI and Khandwala Securities Ltd vs SEBI and the judgement of the Hon'ble SC in the matter of State of Gujarat vs Patel Raghav Natha. I note that there are no timelines prescribed in the SEBI Act, 1992 for initiating the adjudication proceedings. Further, I note that the Hon'ble SAT in the matter of Pooja Vinay Jain vs SEBI (Appeal No. 152 of 2019) decided on March 17, 2020 held that,

"*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*"

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.

20. Further, Noticee has contended that inspection of all the documents relied upon in the matter had not been provided to him, which has caused grave prejudice as regards submitting reply to the allegations made out in the SCN. In this regard, I note that inspection of documents relied upon in the matter was provided to AR of the Noticee duly in the premises of SEBI Bhavan-II on September 03, 2021, and further, copies of aforesaid documents were also provided. Further, vide email dated September 08, 2021, it was conveyed to AR that inspection of all documents relied upon in the SCN had been provided and also, soft copy of the relied upon documents, which was provided along with the SCN, was also provided vide aforesaid email.

21. Vide email dated September 27, 2021, AR's request for inspection of additional documents was further considered, and the following was *interalia* conveyed:

S no	Documents sought	Comments
1	*Investigation Report along with all the Annexures*	*The allegations as regards the matter have been cogently spelt out in the SCN along with Annexures relied upon therein*
2	*Copy of correspondences exchanged by SEBI with broker viz. N M Impex Pvt Ltd*	*No such correspondences have been relied upon as per the record*
3	*Copy of statement of all person recorded during course of investigation conducted by SEBI in the captioned matter*	*No such statements have been relied upon as per the record*
4	*Details of complaints received by SEBI and stock exchange*	*No such complaints have been relied upon as per the record*
5	*Details of persons/ entities who have been induced to sell/ purchase the alleged illiquid stock options as a result of my dealing in said stock options*	*No such details have been relied upon as per the record*
6	*Documents/ statements showing and establishing my intention to 'manipulate' price of said stock options at BSE*	*No such documents/ statements have been relied upon as per the record*
7	*Details of alerts/ triggers generated by stock exchange/ SEBI wrt my dealings in said stock options*	*No such details of alerts/ triggers have been relied upon as per the record*
8	*Any other and additional documents referred to and relied upon by SEBI*	*Query is vague and general*
9	*Order book w r t alleged trades maintained by nroker*	*No such order book has been relied upon as per the record. The extracts of Trade Integrated Order (TIO) logs relied upon in the SCN have already been provided to you as Annexures B and C to the SCN. The same have been attached with this email as well.*

Further, vide aforesaid email, it was also conveyed that all relied upon documents had already been provided to the AR. 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...."

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

    "Reliance was also made of a decision of the Supreme Court in Union of India and Others vs E. Bashyan (1988) 2 SCC 196 which has no bearing to the controversy involved in the present context, in as much as, the said decision relates to a disciplinary proceedings wherein the Supreme Court observed that the inquiry report was required to be made available to the delinquent. An inquiry report is totally distinct and different from an investigation report. The inquiry report considers all the materials in the inquiry proceedings which form the basis of the final order and therefore the said report is required to be made available to the delinquent. In the instant case, the show cause notice relies upon certain documents which have been made available. Thus the investigation report is not required to be supplied".

    "The learned counsel has also placed reliance upon a minority view of this Tribunal in Price Waterhouse vs Securities and Exchange Board of India decided by this Tribunal in Appeal No. 8 of 2011 on June 1, 2011 wherein it was observed that fairness demands that the entire material collected

during the course of investigation should be made available for inspection to the person whose conduct was in question and that said material should also be supplied. In our opinion, the said minority view is directly against the decision of the Supreme Court in Natwar Singh case (supra)".

"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."

23. 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 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 July 28, 2021 in the matter and further, the same were inspected by AR on September 03, 2021, so that principles of natural justice have been complied with and the contentions of AR in this regard are without merits. Noticee has also contended that the evidences to show that the impugned trades were fraudulent were not provided to him. I note that the evidences relied upon in the instant matter were provided as Annexures to the SCN, and further during the course of inspection of documents availed of by Noticee on September 03, 2021. Therefore, I note that the preliminary contentions raised by Noticee above are liable to be rejected, and I now proceed to consider the matter on merits.

24. I note from trade log of the Noticee that he had traded in 2 unique contracts in the stock options segment of BSE during the IP. It is observed that the Noticee has allegedly executed 19 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 4,40,000 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	EXID15FEB180.00CEW1	19.7	100000	9.37	100000	100	100	100	100
2	FEDB15FEB165.00PEW1	22.49	120000	12.4	120000	100	64.29	100	52.63

25. 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 64.29% to 100% in the aforesaid contracts. Further, artificial volume generated by Noticee in the contracts amounted to the entire 100% of total volume generated by him in both the contracts. It is also noted that artificial volume generated by the Noticee contributed significantly viz. 52.63% to 100% 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.

26. 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 his counterparties. To illustrate, the Noticee on January 30, 2015 at 11:22:48.47 hrs entered into 1 buy trade with counterparty viz. N M Impex Pvt Ltd for 1,00,000 units at the rate of ₹19.7 per unit in the contract EXID15FEB180.00CEW1. Thereafter, on the same day, Noticee entered into 9 sell trades with same counterparty for 1,00,000 units at the average rate of ₹9.37 as per the following details:

S No	Trade time	Traded quantity	Trade rate(₹)
1	11:35:25.510160	2000	17.1
2	11:35:32.710473	2000	13.1
3	11:36:22.412474	16000	9.1
4	11:35:39.210720	2000	11.4
5	11:35:42.410805	2000	10.5
6	11:35:52.952357	30000	8.8
7	11:36:14.012112	24000	9

8	11:35:29.310480	2000	15.8
9	11:36:02.053920	20000	8.8

27. It is noted that while dealing in the said contract during the I.P., the Noticee executed reversal trades with same counterparty viz. N M Impex Pvt ltd on the same day and with significant price difference in buy and sell rate. Thus, the Noticee, through his dealing in the contract viz. "EXID15FEB180.00CEW1" during the I.P., executed non genuine trades which was 100% of the total trades from the market in the said contract during the I.P., and thereby, Noticee generated artificial volume of 2,00,000 units which was 100% of the volume traded in the said contract from the market during the I.P.

28. Noticee has contended that as regards impugned trades, sell orders by Noticee were placed after the buy orders were placed by counterparties, so that, vide the impugned trades, sell order was matched with existing buy order at the prevalent market price available on exchange platform, and therefore, no allegation of price manipulation or synchronization can be made against Noticee. Also that, buy and sell orders were executed with significant time gap, which indicates that Noticee had no intention to reverse the trades. 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 his counterparty with significant price difference. I note from the trade log of the Noticee that the time taken by the Noticee

for reversing the non-genuine trades ranged from 13 minutes 14 seconds to 13 minutes 34 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 contracts, 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 his counterparty in the stock options segment of BSE and the same were non-genuine trades.

29. Noticee has contended that in derivatives trading, traders either make profit or loss as market does not always behave as per predictions, and the fact that Noticee traded in options segment cannot be a ground to initiate instant proceedings against the Noticee. Noticee has further contended that, due to the illiquidity in options contracts, the reversal trades with wide variation in premium would be more probable. In this regard, I note that all the trades executed by Noticee in the two impugned contracts were in the form of reversal trades, 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 in *toto* along with attending circumstances, it is discernible that the aforesaid reversal trades were non-genuine, and were executed without the intention of mere change in rights to exercise the impugned contracts. Therefore, I note that aforesaid contentions are liable to be set aside on the above grounds.

30. Noticee has *interalia* contended that he had no connection/ relation with the counterparty i.e. N M Impex Pvt Ltd. In this regard, Noticee relied upon the judgements of the Hon'ble SAT in the matters of Jagruti Securities vs SEBI, SPJ Stockbrokers Pvt Ltd vs SEBI and Sanjay Agrawal vs SEBI, and contended that alleged trades could not be treated as illegal unless there was some cogent connection or mischievous meeting of minds between the parties. Noticee has also contended that the counterparty to the impugned trades of Noticee viz. N M Impex Pvt Ltd, executed trades in 559 contracts vide other trades, which implied that allegation of meeting of mind of counterparties in the instant matter was not sustainable. In this regard, I note that it is not mere coincidence that Noticee could match his trades with the same counterparty with whom he had undertaken first leg of the respective trades. This is the outcome of meeting of minds elsewhere and it was a deliberate attempt to deal in such a fashion. I note 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..."*

31. 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."*

32. Noticee has *interalia* contended that there was no nexus between Noticee and the counterparty, and that trades were carried out on the floor of BSE.

In this regard, Noticee relied upon judgement of Hon'ble SAT in the matters of Jagruti Securities vs SEBI, SPJ Stockbrokers Pvt Ltd vs SEBI and Sanjay Agrawal vs SEBI. 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."*

33. I place my reliance on the judgment of Hon'ble Supreme Court in the matter in respect 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…..”

34. 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.*”

35. Noticee has *interalia* contended that the trades were executed on the floor of BSE in due compliance of all rules and regulations of Exchange, and further, within the framework of check and balances of BSE and SEBI. I note that instant allegations pertain to the pattern exhibited by trades carried out by Noticee on the F&O segment of BSE, and non-compliance of Noticee with rules and regulations of BSE *per se* has not been alleged.

36. Noticee has also contended that no warning was issued as regards the impugned trades by BSE or the stock broker and that the mechanism for

prevention of reversal trades, introduced by BSE in 2016, was not in operation during the IP. Noticee has also contended that BSE had not issued any list of illiquid stock option contracts during the IP. Further, Noticee has contended that BSE and SEBI have themselves allowed trading in options for 'far months' with a strike price which are at large variance to current market price, and that as the regulators have permitted such trading, no adverse inference could be drawn. I note that Noticee was obligated to ensure genuineness of the trades executed by him on the exchange platform. The aforesaid obligation was mandatory not withstanding any warning or list of illiquid contracts issued by BSE.

37. Noticee has further contended that there is no question of transfer of beneficial ownership in stock options segment since at the end of settlement cycle only net profit/ loss is adjusted, so the allegation of artificial trade is of no consequence in option segment of exchange. I note that in the F&O segment, execution of a trade results in change of rights over the contract, so that the impugned reversal trades, which were executed without intention of actual change in rights over such contracts are non-genuine. I note that the Hon'ble SC in the matter of SEBI vs Rakhi Trading Pvt Ltd (supra) 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…………………From the facts before us, it is clear that the traders *in question did not intend to transfer beneficial ownership and therefore these trades are non-genuine*

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

38. Noticee has contended that the SCN makes generic allegations against the Noticee, and that specific role of the Noticee has not been delineated in the SCN. In this regard, Noticee relied upon judgement of the Hon'ble SC in the matter of Commissioner of Central Excise, Bangalore vs M/s Brindavan Beverages (P) Ltd and Ors. I note that the allegations against the Noticee have been cogently spelt out in the SCN, wherein it has been alleged that he executed non-genuine reversal trades in two stock options contracts. Also, the evidences relied upon as regards aforesaid allegations have been provided as annexures to the SCN. Therefore, I note that the role of Noticee qua execution of reversal trades has been clearly laid out in the SCN, so that contentions of Noticee in this regard are without merits.

39. Noticee has *interalia* contended that for transaction to be fraudulent, element of inducement should be there. Noticee has also contended that he had traded in far off strike prices, which implied that said trades could have no effect on investors' decisions. I rely on the judgement of the Hon'ble SC in the matter of SEBI vs Rakhi Trading (supra) in this regard, wherein it was held that,

Respondent-Rakhi Trading and Kasam Holding on facts are found to have been engaged in non-genuine transactions creating appearance of trading.

If the factum of manipulation is established, it will necessarily follow that the investors in the market have been induced to buy or sell and that no further proof in this regard is required. The market, as already observed, is so widespread that it may not be humanly possible for the Board to track the persons who were actually induced to buy or sell securities as a result of manipulation and the Board cannot be imposed with a burden which is impossible to be discharged.

I note that the case facts in the aforesaid matter were similar, and that in the instant matter, the execution of manipulative reversal trades has been established already. Therefore, the contentions of Noticee in this regard are without merits.

40. Noticee has contended that his trades created only miniscule volume which comprised low percentage of total market volume and were not sufficient to contribute artificial volume to the market. Noticee also contended that the observation that the impugned contracts were illiquid is incorrect. Also that, trades were executed in only two stock option contracts, which were insufficient to establish existence of trading pattern indicating execution of non-genuine trades. I note that Noticee's trades in the impugned contracts viz. EXID15FEB180.00CEW1 and FEDB15FEB165.00PEW1 contributed 100% and 52.63% respectively to the total market volume generated during the IP in said contracts. I note that Noticee's trades contributed substantially to the volume generate in both the contracts, which indicates that the impugned contracts were thinly traded and that Noticee contributed substantially to artificial volume in such contracts. Noticee has also

contended that the impugned trades did not result in significant price movement of the underlying scrip, and thereby, had no impact on the market. I note that allegations against Noticee pertain to his trades in stock options segment of BSE, so that aforesaid observations as regards price-movement of the underlying scrip are not relevant as regards instant considerations. Noticee has also contended that no grievance has been made by any investor, broker, stock exchange or any other agency with regard to Noticee's trades. I note that the allegation levelled against the Noticee as regards alleged non-genuine trades are not contingent upon any grievance made by investors, so that contentions of Noticee in this regard are without merits.

41. 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…".

42. 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:

[1]*[**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 [2]*[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].*

43. 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.

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

[2] 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

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

44. 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 19 non-genuine trades in 2 stock option contracts which demonstrates the repetitive nature of default on his part.

45. 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

46. 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
Nimesh Prafulbhai Doshi PAN:AGRPD5020A	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.

47. 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

48. 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

49. 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.

50. In terms of the provisions of rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticee viz. Nimesh Prafulbhai Doshi and also to the Securities and Exchange Board of India.

Date: October 28, 2021	**PARAG BASU**
Place: Mumbai	**ADJUDICATING OFFICER**