BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/PB/AE/2021-22/14897]

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

Nirikshan Consultancy Pvt Ltd

(PAN: AAACN8465H)

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 2,91,744 trades comprising substantial 81.40% of all the trades executed in stock options segment of BSE during the IP were non genuine trades. It was observed that Nirikshan Consultancy Pvt Ltd (PAN: AAACN8465H) (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 Trading Practices related to Securities Market) Regulations, 2003 (hereinafter referred to as "**PFUTP Regulations, 2003**").

APPOINTMENT OF ADJUDICATING OFFICER

3. The undersigned was appointed as Adjudicating Officer in the matter, conveyed vide communique dated September 30, 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.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. A Show Cause Notice ref no SEBI/HO/A&E/EAD/PB/AE/35215/2021 dated December 01, 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 the Noticee had executed 4 non genuine trades in 1 Stock Options contract which resulted in artificial volume of total 1,10,000 units. Summary of dealings of the Noticee in 1 Stock Options contract, 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	ARVI15MAR300.00PEW1	9.9	55000	1.5	71000	57.14	33.33	51.4	18.09

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

   (a) The Noticee has executed non genuine trades in 1 contract, wherein 4 trades of the Noticee in the said contract were non genuine trades.

   (b) The percentage of non-genuine trades of the Noticee in stock options contract to total trades in the contract was 33.33%. The non-genuine trades of the Noticee have significantly contributed to total trades in the market in the above contract.

   (c) The percentage of artificial volume generated by the Noticee in the contract to the total volume in the contract was 18.09%. Therefore, substantial volume generated by the Noticee in the above contract was artificial volume.

   (d) Non genuine trades executed by the Noticee in the above contract 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. Vide letter dated December 08, 2021, Noticee submitted reply to the SCN, wherein it inter alia requested to be provided the Investigation Report and the Price Volume Data relied in the SCN. Noticeee further requested to be provided the prima facie reasons recorded by the Ld. Whole Time Member for holding enquiry against the Noticee. Further, the Noticee informed that they have authorized Mr. Vikas Bengani, Advocate in the matter and provided his email id for further communication.

8. In reply, vide email dated January 06, 2022, it was clarified to the Noticee as follows –

"*1. This has reference to your letter dated December 08, 2021 in response to the Show Cause Notice (SCN) dated December 01, 2021 issued to the you (Nirikshan Consultancy Pvt Ltd). Vide your said letter, you have inter alia requested for additional documents in the matter. 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*

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

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

Vide the aforesaid email, the Noticee was granted an opportunity of personal hearing on January 17, 2022 and further, Noticee was also granted opportunity to submit reply to the SCN on or before the date of hearing.

9. Vide letter dated January 08, 2022 (also received through email dated January 15, 2022), reply of the Noticee was received. In the aforesaid reply Noticee has contended as follows:

- The Noticee was not furnished with the copy of the investigation report, Original Trade and Order Log and Price and Volume Data.
- As per Regulation 9 of the PFUTP Regulations, the investigation authority is to submit report to the appointing authority on the completion of investigation. It is urged that the Investigation Report under Regulation 9 is the foundation of the action which is initiated under Regulation 10 and hence, a copy of the investigation report must be supplied.
- The Trades of the Noticee in the option segment of BSE during the Investigation Period comprising 18 months was restricted to 1 day only.
- In couple of Notices issued to various entities by SEBI, SEBI mentioned the total alleged trades were 2,91,643 (81.38%). Please clarify which figure is correct.
- The Noticee has also not been provided Trade and Order Log for total 2,91,744 Trades comprising 81.40% of all trades executed in Stock Market Segment of BSE during the Investigation Period.
- Trades of the Noticee in option segment of BSE were only in well-known Company.
- All the Trades in option segment of BSE were executed by the Noticee on the anonymous screen based trading platform provided by BSE wherein identity of the counterparties remain undisclosed.
- The counterparty is completely unknown to the Noticee.

- The Noticee has not received any warning or caution letter from BSE for any of the trades executed by the Noticee in its option segment during the period of investigation.
- Noticee has a meticulous track record of trading in the securities market and except the captioned SCN the Noticee has not received any warning letter prior to the issue of the captioned SCN.
- It is a matter of common knowledge that the option trading platform of the BSE has not been as vibrant as NSE. In such a situation it is just coincidence that the Orders placed by the Noticee might have been matched.
- Nowhere in the entire SCN it is alleged that the Noticee had any connection / association / relationship with the counter party.
- Vide letter dated 08-12-2021 the Noticee has requested to provide prima facie reason recorded by the Competent Authority. However, the request of the Noticee has been totally overlooked.
- It is not made clear as to what constitutes a reversal trade or what the definition of reversal trade is.
- Noticee’s trades were in the normal course of business devoid of any fraudulent intentions.
- Since the Noticee had traded in the Options of very well-known Company which has tradeable position in the market, there was no reason to doubt credibility of the platform provided by the Exchange as approved by SEBI.
- The Noticee says and submits that it is beyond the comprehension of the Noticee that how an allegation of fraud can be alleged against the

Noticee for execution of mere 2 buy and 2 sell trades. It is very pertinent to state that the said trades were matched with 2 different entities. In this connection, the Noticee would like to place reliance on the Adjudication Order dated 24-12-2019 in the matter of Richa Industries Limited.

- In the present case, the Noticee is not facing allegation of price manipulation, synchronized trade, self trade. The Noticee had no connection of whatsoever nature with the counterparties to the alleged 2 buy and 2 sell trades of the Noticee. According to the SCN, total artificial volume generated due to alleged 2 buy and 2 sell trades were 1,10,000 units only. Thus, the ratio laid down by Ld. AO in the aforesaid Order squarely applies in the case of the Noticee
- It is further submitted that like synchronized trades or self-trades, reversal trades are also per se not illegal. In catena of cases, SEBI itself exonerated several entities wherein the quantum of purported reversal trades were lesser. The Noticee relies on the judgement in the matter of Mr. Narendra Vallabhji Bahuva v/s SEBI (Order dated 14-07-2021, Appeal No. 516 of 2019) and the Order dated 22-06-2016 in Appeal No. 390 of 2015 (Dhvani Darshan Kothari v/s SEBI).
- The Noticee further submits that Noticee had executed total 7 trades in 1 unique contract during the period of investigation which generated volume of 2, 14,000 units. Out of the said 7 trades and volume of 2, 14,000 units, allegation has been made against 4 buy/sell trades only which created artificial volume of 1, 10,000. Thus, no allegation has been made against 3 trades which generated volume of 1,04,000 units. This shows that the Noticee had no meeting of mind with the

counterparties for execution of the alleged trades and matching of 4 trades with 2 counterparties was just a coincidence. The Noticee has placed reliance on the observations of Hon'ble Supreme Court of India in the matter of SEBI v. Kishore P. Ajmera (Order dated February 23, 2016). In the present case, no circumstances have been brought out in the SCN to suggest that the Noticee and counterparty to Noticee's trades had a prior meeting of mind.

- It is alleged in para 10 of the SCN by referring Annexure D enclosed with the SCN that the Noticee had generated 18.09% of the volume in 1 Unique Contract. On allegation, it is submitted that these allegations are merely an eyewash as it does not take into consideration the number of trades and volumes generated in complete Option Segment in BSE in a particular Scrip on a particular day.
- None of the acts or trades executed by the Noticee fall under the definition of fraud as provided in regulation 2(1) (c) of PFUTP Regulations, 2003.
- The Noticee relies on the judgements of the Hon’ble SAT in the matter of KSL & Industries Ltd. vs. SEBI (Appeal No. 9 of 2003, Date of decision 30th September, 2003), Vintel Securities Pvt. Ltd. vs. SEBI (Appeal No. 219 of 2009, Date of decision 23rd November, 2009), and Dhvani Darshan Kothari & Anr. (Appeal No. 276 of 2020, Order dated 21-01-2021).
- SCN is bad in law as the same has been issued more than 6 years later from the date of execution of trades by the Noticee.
- The Noticee further denies that the Noticee has violated the regulations 3(a), (b), (c), (d) and 4 (l), 4 (2) (a) of the PFUTP Regulations, 2003.

- Without prejudice to whatever stated hereinabove, the Noticee further wishes to make submissions on the quantum of penalty. The Noticee says and submits that it is the discretion of the Adjudicating Officer to decide the quantum of penalty which is needed to be imposed in a case where charges are proved. The Noticee places reliance on the Judgement of Hon'ble Supreme Court dated 2802-2019 in Civil Appeal No. 11311 of 2013 in the matter of Adjudicating Officer, SEBI v/s Bhavesh Pabari.
- Another Ld. AO while passing the Adjudication Order dated 30-11-2018 against Mr. Jai Prakash Agarwal (Please see Para 5(b) of the said Order), has imposed a penalty of Rs. 5,00,000/- for generation of artificial volume of 3,94,91,500 shares / units by execution of 56 reversal trades in 25 Unique Contracts. The Noticee has provided examples of Adjudication Orders wherein a penalty of Rs. 5,00,000/- has been imposed for execution of voluminous trades in comparison of the Noticee herein.
- The Noticee further places reliance on the Order dated 22-06-2016 in Appeal No. 390 of 2015 (Dhvani Darshan Kothari v/s SEBI).

10. A personal hearing in respect of the Noticee was held on January 17, 2022 through videoconference on the webex platform. During the course of hearing, Mr. Vikas Bengani, the authorised representative (AR) of the Noticee reiterated the written submissions already made in the Noticee’s reply dated January 08, 2022. Vide email dated January 21, 2022, the AR acknowledged the minutes of the hearing and submitted that he places reliance on the adjudication order dated 20-01-2022 passed in favour of Ms.

Neha Sethi wherein the Ld. AO found that one reversal trade does not amounts to any violation of PFUTP Regulations, 2003.

CONSIDERATION OF ISSUES AND FINDINGS

11. 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?

12. 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;

13. Before proceeding in the matter on merits, I would like to deal with one of the preliminary objections of the Noticee. The Noticee has contended that the SCN is bad in law as the same has been issued more than 6 years later from the date of the execution of trades by the Noticee which prejudices the case of the Noticee. In this regard, I note that pursuant to a preliminary examination conducted in the Illiquid Stock Options matter, Interim order was passed by SEBI on August 20, 2015 which was confirmed vide Orders dated July 30, 2016 and August 22, 2016. Meanwhile, SEBI initiated a detailed investigation relating to stock options segment of BSE which was completed in the year 2018. The investigation revealed that 14,720 entities

were involved in executing non-genuine trades in BSE's stock option segment during the investigation period. The proceedings initiated vide the aforementioned Interim Order were disposed of vide Final Order dated April 05, 2018 also considering that appropriate action was initiated against the said 14, 720 entities in a phased manner.

14. Further, I note that during the course of hearing in the case of *R. S. Ispat Ltd Vs SEBI*, the Hon'ble Securities Appellate Tribunal (SAT), vide its Order dated October 14, 2019, *inter alia* observed that "*SEBI may consider holding a Lok Adalat or adopting any other alternative dispute resolution process with regard to the Illiquid Stock Options*".

15. A Settlement Scheme was framed under the SEBI (Settlement Proceedings) Regulations, 2018, which provided one-time opportunity for settlement of proceedings in the Illiquid Stock Options matter. The said scheme was kept open from August 01, 2020 till December 31, 2020. Adjudication proceedings were initiated against those entities who had not availed of the opportunity of settlement.

16. As can be seen from the narration of facts in the foregoing paragraphs, pursuant to appointment of AO vide conmmunique dated September 30, 2021, SCN was issued on December 01, 2021. In compliance with principles of natural justice, after receipt of reply on January 08, 2022, an opportunity of personal hearing was conducted on January 17, 2022 and

upon conclusion of hearing, the present matter is being proceeded upon. Thus, I note that there is no delay in the matter and I find no merits in the aforesaid contentions of the Noticee in this regard.

17. Further, I note that there was another preliminary contention of the Noticee with regards to the supply of documents in the matter. The Noticee has contended that it has not been provided with the investigation report, price volume data and the prima facie grounds/reasons of the Whole Time Member of SEBI for holding inquiry against the Noticee, as requested by it in its letter dated December 08, 2021. 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..."

18. I note that the Hon'ble SAT in its order dated February 12, 2020, in the matter of *Shruti Vora vs. SEBI* held that:

"…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… Thus the investigation report is not

required to 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."

19. Further, the Hon'ble SAT in the matter of *Anant R Sathe Vs SEBI* (Appeal No. 150 of 2020) vide Order dated July 17, 2020 has reaffirmed the principle elucidated in the judgment of Shruti Vora's case, which has been reproduced herein above and ruled 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".*

20. I note that the only documents, the relevant trade logs, relied upon in the matter were duly provided to the Noticee along with SCN dated December 01, 2021, and the same are as follows:

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 contract wherein Noticee executed non genuine trades.*	*D*

Therefore, the contentions of the Noticee in this regard are without merits.

21. I note that the allegation against the Noticee is that, while dealing in the stock option contract at BSE during the IP, it had executed reversal trades which were allegedly non-genuine trades and the same had resulted in generation of artificial volume in stock option contract 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.

22. I note from the trade log of the Noticee that it had traded in 1 unique contract in the stock options segment of BSE during the IP. It is observed that the Noticee has allegedly executed 4 non genuine trades in 1 Stock Options contract. I further note that the above mentioned trades of the Noticee had resulted in the creation of artificial volume of total 1,10,000 units. 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	ARVI15MAR300.00PEW1	9.9	55000	1.5	71000	57.14	33.33	51.4	18.09

23. It is noted that the Noticee had executed non-genuine trades in 1 contract, wherein the percentage of non-genuine trades of the Noticee in stock options contract to total trades in the contract was 33.33% in the aforesaid contract. Further, artificial volume generated by Noticee in the contract amounted to 51.40% of total volume generated by it in the contract. It is also noted that the percentage of artificial volume generated by the Noticee in the contract to the total volume of the market in the said contract was 18.09%. Therefore, substantial volume generated by the Noticee in the above contract was artificial volume. Non-genuine trades executed by the Noticee in the above contract had significant difference in buy rates and sell rates considering that the trades were reversed on the same day.

24. 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 February 26, 2015 at 10:10:32 hrs entered into 2 sell trades with following counter parties viz, Cellour Commercial Private Limited for 48000 units at rate of ₹ 1.50 per unit, and S K Bajoria & Others HUF for 23000 units at rate of ₹ 1.50 per unit in the contract

"ARVI15MAR300.00PEW1". Thereafter, on the same day, Noticee at 10:47:28.852272 hrs entered into 1 buy trade with the counterparty - Cellour Commercial Private Limited for 48000 units at the rate of ₹ 9.90 per unit, and at 10:55:21.902382 hrs entered into 1 buy trade with the counterparty - S K Bajoria & Others HUF for 7000 units at rate of ₹ 9.90 per unit in the same contract. It is noted that while dealing in the said contract during the I.P., Noticee executed reversal trades with same counterparties viz, Cellour Commercial Private Limited and S K Bajoria & Others HUF on the same day and with significant price difference in the buy and sell rate. Thus, the Noticee, through its dealing in the contract viz. "ARVI15MAR300.00PEW1" during the I.P., executed non genuine trades which constituted 33.33% of the total trades from the market in the said contract during the I.P., and thereby, Noticee generated artificial volume of 1,10,000 units which was 18.09% of the volume traded in the said contract from the market during the I.P.

25. 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 difference. I note from the trade log of the Noticee that the time taken by the Noticee for reversing the non-genuine trades was approx. 37 minutes to 45 minutes on the same day. I note that the 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 counterparty 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 an illiquid option contract, there was no significant trading in the said contract and hence, there was no price discovery in the strictest terms. There was no significant change in the price of the underlying scrip to justify the wide variation in prices of the said stock options contract. The wide variation in prices of the said contract, within such a short span of time, 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 its counterparties in the stock options segment of BSE and the same were non-genuine trades.

26. I note that the allegations against the Noticee pertain to the reversal trades executed by it, on the same day with same counterparty with substantial price difference between buy and sell rates. So the contention made by the Noticee, *inter alia,* that the trades made by the Noticee were in the normal course of business are not relevant as regards instant allegations. I note that even though the exchange mechanism for option contracts allows wider range in prices, Noticee's buy and sell trades were executed with a substantial price difference within a short period of time, without any change in the price of underlying scrips, on the same day with the same counterparty. In the instant case, the facts as regards reversal trades have

been considered in totality to allege violation of provisions of PFUTP Regulations, 2003.

27. Noticee has contended that it had no knowledge of counterparty to the trades and that the trades were executed on the anonymous screen based trading platform provided by BSE wherein identity of the counterparties remain undisclosed. I note that it is not mere coincidence that it could match its trades with the same counterparties with whom it 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 manner. In matters concerning PFUTP Regulations, 2003, the reason as regards execution of non-genuine trades might not be immediately 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 the standard of proof was laid down in relation to PFUTP Regulations, 2003 and 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..."*

28. 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.”*

29. 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."

30. 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…."*

31. 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.*"

32. Noticee has contended that its trades were very infrequent and was restricted only on 1 day during the IP. I note that Noticee executed reversal trades which defy market rationality when looked along with attending circumstances *in toto.* Therefore, Noticee's trades, irrespective of the quantum of such trades, were manipulative and intended to create misleading appearance of trading, so that contentions of Noticee in this regard are liable to be rejected.

33. The Noticee has contended that it had executed total 7 trades, and no allegation been made against 3 trades which generated volume of 1,04,000 units. The Noticee has further submitted that the same shows that the Noticee had no meeting of mind with the counterparties for execution of the alleged trades and matching of 4 trades with 2 counterparties was just a coincidence. In this regard, I note that the allegation against the Noticee is qua the 4 reversal trades wherein both the legs of the trades (Buy and sell) was executed with the same counterparties and the circumstances of such non genuine trades have been narrated in the previous paragraphs. I note that the SCN does not make any allegation qua the 3 trades of the Noticee which amounted to 1,04,000 units, hence the contentions of the Noticee in this regard are liable to be rejected.

34. The Noticee has contended that none of the acts or trades executed by the Noticee fall under the definition of fraud as provided in regulation 2(1) (c) of PFUTP Regulations, 2003. Further, with regard to the allegation of fraudulent trades, Noticee has relied on the judgements of KSL & Industries Ltd. vs. SEBI (Appeal No. 9 of 2003, Date of decision 30th September, 2003), Vintel Securities Pvt. Ltd. vs. SEBI (Appeal No. 219 of 2009, Date of decision 23rd November, 2009), and Dhvani Darshan Kothari & Anr. (Appeal No. 276 of 2020, Order dated 21-01-2021). In this regard, I note that in the instant case, the Noticee has indulged in execution of reversal of trades in Stock Options with same entities on the same day. Such trades are non-genuine in nature and have created false or misleading appearance of trading in terms of artificial volumes in stock options and therefore are manipulative and deceptive in nature. Thus, I find no merits in the above contentions of the Noticee.

35. The Noticee has placed reliance on the adjudication order dated 20-01-2022 passed in favour of Ms. Neha Sethi and contended that one reversal trade does not amount to violation of PFUTP Regulations. In this regard, I note that Hon'ble SAT in the matter of Radha Malani vs SEBI (Appeal No. 698 of 2021) vide Order dated November 24, 2021 has upheld the Adjudication Order dated September 06, 2021 wherein the case facts involved one reversal trade in one contract. Thus, I find no merit in the above contention of the Noticee. Further, I note from the facts of the instant

case that the Noticee has indulged in multiple reversal trades in a single contract.

36. Noticee has contended that it executed its trades on the platform of stock exchange and its trades were cleared by the stock exchange without Noticee receiving any warning or caution letter from BSE. Further, the Noticee has contended that since the Noticee had traded in the Options of very well-known Company which has tradeable position in the market, there was no reason to doubt credibility of the platform provided by the Exchange as approved by SEBI. In this regard, I note that the Noticee was trading in the illiquid stock options rather than the liquid stock options of the particular scrip. I note that stock exchange merely provides a platform for carrying out the trades, while the obligation to ensure genuineness of trades as regards instant considerations primarily lies on the Noticee.

37. Noticee has *interalia* contended that what has been considered in the SCN is only an option with a particular strike price and not the total trading on Option Segment in a particular scrip at the relevant point of time. In this regard, I note that contracts with different strike prices but of the same scrip will have different movement and volatility, and the same cannot be clubbed for the purpose of analysis. Further, I note that as regards instant considerations, the market value i.e. premium, being the rate at which contracts were bought and sold on exchange platform are relevant. So, I reject the above contentions of Noticee. Further, I note that the Adjudication Order dated 24.12.2019 passed in the matter of Richa Industries Ltd which

has been relied upon by the Noticee is irrelevant as regards the instant case because allegations made in the SCN pertain to misleading appearance of trading and generation of artificial volume and no charge of price manipulation has been made against the Noticee.

38. Further, the Noticee has submitted that like synchronized trades or self-trades, reversal trades are also per se not illegal. Further, the Noticee has relied on the judgement in the matter of Mr. Narendra Vallabhji Bahuva v/s SEBI (Order dated 14-07-2021, Appeal No. 516 of 2019) and the Order dated 22-06-2016 in Appeal No. 390 of 2015 (Dhvani Darshan Kothari v/s SEBI). I note that the case facts of the instant matter are different from that of the above referred matters, and that multiple reversal trades (4 non-genuine trades) with 2 different counterparties along with attending circumstances have been relied upon to allege manipulative trades in the present considerations. Thus, I find no merits in the above contentions of the Noticee.

39. 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 the contract. 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…".*

40. 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].

41. 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:-

[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

(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 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.

42. 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 1 Stock Options contract with 2 different counterparties which demonstrates the violation of PFUTP Regulations, 2003 .

43. Therefore, I note that Noticee indulged in execution of reversal trades in stock options contract 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

44. 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**
Nirikshan Consultancy Pvt Ltd PAN: AAACN8465H	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.

45. 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

46. 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

47. 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.

48. In terms of the provisions of rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticee viz. Nirikshan Consultancy Pvt Ltd and also to the Securities and Exchange Board of India.

Date: January 31, 2022 **PARAG BASU**

Place: Mumbai **ADJUDICATING OFFICER**