

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA**CORAM: S. K. MOHANTY, WHOLE TIME MEMBER****ORDER****Under Sections 11, 11(4) and 11B (1) of the Securities and Exchange Board of India Act, 1992****In respect of:**

Sr. No.	Name of Noticee	PAN
1.	Rahul Raghav / Nitus Solution Pvt. Ltd.	ANEPR7929L / AAFCN4328J
2.	Bhanu Pratap Singh	BTKPS5831F

(The entities mentioned above are individually known by their respective name or Noticee No. and collectively referred to as "Noticees")

In the matter of Complaint by Ms. Neerja Ahluwalia and Others**Background**

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") received emails even dated February 15 and 16, 2018 from Ms. Neerja Ahluwalia and her six family members (Mr. Anmol Maria, Ms. Arti Maria, Dr. Jyoti Kiran Mahajan, Ms. Poonam Verma, Ms. Puneeta Mahajan and Mr. Sanjeev Verma) against Master Capital Services Ltd. (hereinafter referred to as "**MCSL**"), Mr. Rahul Raghav (hereinafter referred to as "**Noticee No. 1**"), Mr. Bhanu Pratap (hereinafter referred to as "**Noticee No. 2**") wherein the complainants had *inter alia* stated about unauthorized trades, overcharging of brokerage and transaction matching.

Findings of Examination, Show Cause Notice, Reply and Hearing

2. Based on the facts stated in the above mentioned complaints, SEBI conducted an examination in the matter with regard to the issues raised by the complainants. The relevant findings of the said examination that are relevant necessary for the adjudication of the issues involved in the instant proceedings are narrated in brief hereunder:

- 2.1. MCSL is a registered stock broker having SEBI Registration No. INZ000210539. Its registered office is at A - 852 - A, Basement, Sushant Lok, Phase - 1, Gurugram, Haryana-122002
- 2.2. *Noticee No. 2* had joined MCSL in September 2015 and had worked only for 20-25 days as VP - HNI Sales. His email id with master trust domain name was created by MCSL during this time. In 2015, *Noticee No. 1* joined MCSL as Authorised Person (hereinafter referred to as “AP”) in the name of Rahul Raghav. He worked as AP of MCSL till January 2017.
- 2.3. Thereafter, a company called Nitus Solution was incorporated and *Noticee No. 1* was the initial Promoter and Director in the said company. In January 2017, after Nitus Solution was incorporated, *Noticee No. 1* surrendered his AP registration with MCSL in his individual capacity and Nitus Solution was registered as AP with MCSL through which Mr. Rahul Raghav operated.
- 2.4. Ms. Neerja Ahluwalia had opened her trading account with MCSL in September 2015 while the other complainants had opened their account subsequently.
- 2.5. MCSL has though submitted that the authorized representatives of the complainants i.e. *Noticee No. 2* and one Mr. Milan Sharma used to place orders in their accounts, however, no document was furnished in support thereof. Materials gathered in the course of examination show that *Noticees No. 1* and *2* and one Mr. Milan Sharma were closely associated as they were common Directors in different companies.
- 2.6. It was claimed that though they (complainants) had incurred significant losses in their accounts in the derivatives segment, despite that, high volume trading in their accounts were continued by *Noticees No. 1* and *2* and Mr. Milan Sharma. Further, significant brokerage amounts aggregating to INR 1.75 crore were also charged from them which were shared between MCSL and *Noticee No. 1* in the ratio 20:80 and MCSL and Nitus Solution in the ratio 25:75.
- 2.7. MCSL vide letter dated July 30, 2018 informed that from the family of the complainants it has charged a brokerage of INR 1.75 crore and from other clients of the AP (*Noticee No. 1* and Nitus Solution) it has charged INR 40.98 lakh. Out of

this, total brokerage of INR 2.16 crore, it has paid INR 1.69 crore to the AP (*Noticee No. 1* and Nitus Solution).

- 2.8. Further, it was noticed that *Noticee No. 1* used to give trade details of Ms. Neerja Ahluwalia to *Noticee No. 2*, who used to provide the same to Ms. Neerja Ahluwalia. From the client registration documents of Ms. Neerja Ahluwalia, it was noted that *Noticee No. 2* was her introducer and while introducing the client, he was declared as an AP in the KYC. From the information furnished by MCSL, it was observed that *Noticee No. 2* was neither AP/sub-broker/client of MCSL nor an employee of MCSL.
- 2.9. It was noted that Ms. Neerja Ahluwalia and Ms. Poonam Verma had not made any fund pay-in to the stock broker while the other complainants viz: Mr. Anmol Maria, Ms. Arti Maria, Dr. Jyoti K. Mahajan and Ms. Puneeta Mahajan had made fund pay-in only 1-2 times. The debit balances in their accounts were settled through sale of their securities or squaring off their positions in derivatives.
- 2.10. The complainants were regularly receiving contract notes, bills, quarterly financial statements, SMS regarding transactions in their accounts from MCSL. Further, the Depositories have also confirmed that regular CAS statements were being sent to the complainants. The complainants have not denied receipt of these statements and messages except for Ms. Neerja Ahluwalia who stated that she did not receive the quarterly financial statements and received the same in physical mode through *Noticee No. 1* which were manipulated in a manner to hide penal charges.
- 2.11. MCSL/its AP failed to inform or bring to the notice of the complainants, the significant losses and regular debit balances in their accounts. Further, it was observed that incomplete/partial information regarding profit and losses in the account of the complainants were provided by the AP/MCSL and on certain instances incorrect information was also provided to the complainants.
3. Based on the afore stated findings brought out during examination, a common show cause notice dated June 30, 2021 (hereinafter referred to as “SCN”) was issued to the *Noticees* alleging that their acts tantamount to serious threat to market participants and their conduct is highly objectionable and unbecoming of

market participant. The actions of the *Noticees* were alleged to be in violation of regulations 4(1) and 4(2)(m) and (o) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as “**PFUTP Regulations**”).

7. In view of the above, *Noticees* were called upon to show cause as to why suitable directions under Sections 11(4) and 11B (1) of SEBI Act should not be issued against them for the violations alleged against them in the SCN.
8. In response to the SCN, a common Authorised Representative (hereinafter referred to as “**AR**”) of the *Noticees*, Mr. Manish Batra, Advocate, vide his email dated August 13, 2021 first requested for a copy of Annexure – 5 to the SCN and additional two weeks’ time to submit a reply to the SCN. Vide an email dated August 24, 2021, *Noticees* were provided with a copy of Annexure – 5 to the SCN and were also granted time till August 27, 2021 to submit their responses to the SCN. However, the AR of the *Noticees* vide his emails dated August 24 and 26, 2021 requested time beyond August 27, 2021 to submit a reply to the SCN.
9. Subsequently the *Noticees* vide their common letter dated August 26, 2021, while denying the allegations made in the SCN, *inter alia* have submitted as follows:
 - 9.1. That the complainants have been trading in derivatives running into thousands of crores of Rupees as evident from their trading with the Broker, Trustline Securities Ltd. which shows that the complainants were not conservative traders but were savvy traders with good risk appetite. *Noticees* have submitted a copy of trading ledger from Trustline Securities Ltd. to substantiate their submission that trading in derivatives, that too in high volumes was not new to the complainants and that they were dealing in the derivatives segment of securities market over a substantial period of time.
 - 9.2. Complainants are educated and have experience in trading and had signed after reading it carefully and not as blank documents.
 - 9.3. The mapping of client to an AP has no bearing, as the client deals directly with the stock broker and all the KYC is done by the stock broker.

- 9.4. To the allegation that *Noticee No. 2* was not an employee of the MCSL, *Noticee No. 2* has submitted his visiting card and email along with his offer letter and employee code given to him by MCSL.
- 9.5. Ms. Neerja Ahluwalia was in complete control of her account and has coordinated instructions for buying and selling on behalf of the other accounts of her family. *Noticees* have also cited the following facts to their defense: -
- 9.5.1. *Noticees* have submitted transcripts between her and the dealer, to substantiate her understanding of derivative trading.
- 9.5.2. Transcripts showing Ms. Neerja Ahluwalia knew that her positions were rolled over.
- 9.5.3. SMSs showing that she was aware of derivatives transaction taking place in her account.
- 9.5.4. Neerja has filed her income tax for the FY 2016-17 showing a loss of INR 14 lakh.
- 9.5.5. Email sent to *Noticee No. 2* inquiring as to why no trades were executed from her account.
- 9.6. That no complaints were raised for many months when the complainants had first started trading with MCSL. If the person trading on day one and also subsequently was the same person, the question regarding unauthorized trading would not sustain more particularly when the same is alleged qua a specific segment of the market only.
- 9.7. The ratio of brokerage charged is in consonance with the market custom and usages and has no direct bearing with the allegations made in the SCN relating to unauthorised trading. In any event, it is a matter between broker and the *Noticee* and the brokerage charged are not alleged to be abnormal and contrary to the market norms.
- 9.8. That the allegation of providing wrong information is baseless as back office user id and passwords were provided directly to the complainants. Further, they had 24x7 direct access to customer care.

- 9.9. The limited inspection carried out by NSE for SEBI states that various information related to funds and securities were shared with the complainants.
- 9.10. There were no guidelines to record pre-trade confirmations.
10. Subsequently, a personal hearing in the instant matter was scheduled on April 19, 2022 vide hearing notice dated March 2, 2022. On the day of the scheduled hearing, another AR, Mr. Anang Shandilya appeared for hearing on behalf of the *Noticees* and *inter alia* made the following submissions:
- 10.1. The arbitral award dated July 20, 2018 has made good, the losses suffered by Ms. Neerja Ahluwalia.
- 10.2. With respect to incomplete/partial information regarding profit and losses in the accounts of the complainants or incorrect information furnished to the complainants, the AR submitted that the liability for furnishing complete and correct financial statements is that of the intermediary and not that of an AP.
- 10.3. *Noticee No. 2* who was the VP of HNI Operations at MCSL, only introduced the complainants but did not execute any trades on behalf of the complainants. Similarly, *Noticee No. 1*, who was the AP of MCSL, did not execute any trades on behalf of the complainants.
- 10.4. Complainants used to place orders directly with the Dealers of MCSL.
- 10.5. *Notices No. 1 and 2*, have never received any brokerage from MCSL for the trades executed on behalf of the complainants.
- 10.6. Certain queries were raised at the time of the personal hearing, for which the *Notices* were granted additional 2 weeks' time to submit their response.
11. *Notices No. 1 and 2* vide their common letter dated May 4, 2022 once again emphasised that the complaint filed by the complainants is false, frivolous and was made to harass the *Notices* and have *inter alia* submitted the following:
- 11.1. *Notices* are not intermediaries within the meaning of SEBI Act. Moreover, they had no control over supply of information with respect to the trades executed in the demat / trading account of the complainant. However, all the information has been supplied to the complainant by MCSL.

- 11.2. *Noticee No. 2* did not know Ms. Neerja Ahluwalia prior to his working at MCSL. He was assisting her in her trading activities on the request of Mr. Anmol Maria, brother-in-law of Ms. Neerja Ahluwalia, whom he knew. Further, Ms. Neerja Ahluwalia was one of the client of Trustline Securities Ltd. having a demat account mapped with Noida branch which was under the supervision of *Noticee No. 2*.
- 11.3. *Noticee No. 2* did not receive any remuneration from MCSL for his two months' stint with MCSL. He has also not received any brokerage from MCSL.
- 11.4. The trades of the complainant had never been executed by *Noticee No. 1* as he was not eligible to execute trades on account of his not having the "NCFM Certificate". It was Mr. Rakesh Jha as an Authorised Dealer of MCSL who was in regular touch with the complainant and was having daily conversations with the complainant with respect to her trades. *Noticees* have attached transcripts of the conversation between the dealer and the complainant along with an email from the Compliance Officer of MCSL to Mr. Rakesh Jha, to support their submission.

Consideration of Issues and Findings

12. I have carefully perused the findings of the examination, the common SCN issued to the *Noticees*, written and oral submissions made by the *Noticees* and other materials available before me including the limited purpose inspection of MCSL carried out by NSE.
13. I note from the records that the extant proceedings have been initiated based on the complaints of Ms. Neerja Ahluwalia and her family members. On a perusal of the SCN, it is noted that the SCN has primarily focused on the complaint of Ms. Neerja Ahluwalia, though her family members also had similar complaints against the *Noticees*. Considering the SCN has focused primarily on the complaint of Ms. Neerja Ahluwalia, I will also be giving my findings with respect to her complaint based on which the allegations have been levelled in the SCN against the *Noticees*. However, reference to other complainants would be made, wherever it is deemed necessary to adjudicate the issues involved in the matter.
14. The allegations levelled against the *Noticees* in the SCN, can be broadly classified under the following headings:

- 14.1. Unauthorised Trading - *Noticees* have been alleged to have executed unauthorised trades in the trading accounts of Ms. Neerja Ahluwalia and her family members with the intention to earn huge brokerage.
- 14.2. Failure to provide relevant information – It has been alleged against the *Noticees* that they have failed to provide the complainants information regarding profit and loss in their accounts including the regular debit balances. Further, on certain instances incorrect information was also provided to the complainants.
15. Before adverting to the aforesaid allegations, it will be relevant here to reproduce the provisions which have been alleged to have been violated by the *Noticees*:

PFUTP Regulations

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: —

...

(m) an intermediary not disclosing to his client transactions entered into on his behalf including taking an option position;

...

(o) encouraging the clients by an intermediary to deal in securities solely with the object of enhancing his brokerage or commission;

Unauthorised Trading

16. The allegation of unauthorized trading has been based on the following circumstances / evidence:
- 16.1. There is no order placement call recording available with the stock broker, MCSL or with *Noticee No. 1*.
- 16.2. No funds pay-in has been made by the complainants to the stock broker. The debit balances in their accounts were settled through sale of their securities or square off their positions in derivatives.

- 16.3. No due diligence was conducted by *Noticee No. 1* or MCSL, even though the 'authorization to trade' on behalf of complainants were made in favour of *Noticee No. 2* / Mr. Milan Sharma.
- 16.4. Despite incurring significant losses, derivatives trading in high volumes was seen to have been executed by *Noticees No. 1* and *2* and Mr. Milan Sharma in the trading accounts of the complainants. Further, significant amounts of brokerage (INR 1.75 crore) were also charged from the complainants.
17. In order to adequately address the allegation of unauthorized trading against the *Noticees*, it will be relevant to set out certain facts in the instant matter. It is noted from the records that Ms. Neerja Ahluwalia had opened her account with MCSL on September 28, 2015 and was given the client code, 6XXXX09. It is also noted from records that her KYC documentation was carried out and from the details as furnished in the KYC documentation process the following is noted:
- 17.1. Her introducer was *Noticee No. 2*.
- 17.2. *Noticee No. 2's* relationship with the stock broker was declared as AP.
- 17.3. She had given authority to *Noticee No. 2* and to Mr. Milan Sharma to trade on her behalf.
- 17.4. She had opened her trading account for Cash Market, Future & Options and Currency Derivative segments of the securities market.
18. With respect to the details provided in the KYC documents, I note from the submissions made by the *Noticee No. 2* during his deposition dated June 22, 2018 and from his submission made during the extant proceedings that he knew one of the complainants, Dr. Anmol Maria, the brother-in-law of Ms. Neerja Ahluwalia prior to September 2015. Both, Dr. Anmol Maria and Ms. Neerja Ahluwalia had their trading accounts with Trustline Securities Ltd., prior to having a trading account with MCSL. The same is substantiated by the ledger accounts maintained by Trustline Securities Ltd. for the aforesaid two complainants. During the period when the aforesaid two complainants were clients of Trustline Securities Ltd., *Noticee No. 2* was one of the employees of Trustline Securities Ltd. From the above undisputed fact, it can be inferred that *Noticee No. 2* knew Ms. Neerja Ahluwalia, prior to her joining MCSL as a client. Here, it will be relevant to note that Ms. Neerja Ahluwalia had also opened her

trading account with MCSL on September 28, 2015 which is subsequent to the joining of *Noticee No. 2* as an employee of MCSL. This further goes on to strengthen the fact that there existed prior connection between Ms. Neerja Ahluwalia and *Noticee No. 2* before the impugned trades were executed from her trading account and the said connection find force from the fact that no reason has been attributed by Ms. Neeraj Ahluwalia for opening a demat and trading account with MCSL, only after *Noticee No. 2* joined MCSL. From the above, it can be safely held that her prior connection with the *Noticee No. 2* was certainly a strong reason for shifting her account from Trustline Securities Ltd. to MCSL and it was *Noticee No. 2* who was pivotal in introducing the complainant to MCSL. Moreover, from the ledger account maintained by Trustline Securities Ltd., it is also noted that Dr. Anmol Maria and Ms. Neerja Ahluwalia used to trade in the F&O and Currency Derivative segment of the market during the period April – August 2015 where they had substantial exposure and had also made significant profits. From the above undisputed facts, it is viewed that it was not the first time that they had traded in F&O segment of the market through MCSL, rather they have had prior experience in derivatives trading before the impugned trades were executed from their accounts opened with MCSL.

19. With respect to the designation of *Noticee No. 2* in MCSL, it is noted from the offer letter sent by the Human Resource Department of MCSL to *Noticee No. 2* vide an email dated September 12, 2015 that *Noticee No. 2* was appointed as VP-HNI sales for their Noida Office. Credence to the fact that he was an employee of MCSL is further lent from the fact that subsequently on September 15, 2015, an official email id with user name and password was also sent to him by MCSL. Thus, it can be held that *Noticee No. 2* was an employee of MCSL.
20. Moving towards the allegation of unauthorised trades, it is observed that the capacity in which *Noticee No. 2* was employed at MCSL, is not a sole relevant parameter, more so when the association of *Noticee No. 2* with MCSL remained for a very brief period. The Complainants on the one hand have stated that *Noticee No. 2* and one Mr. Milan Sharma were authorised to trade on their behalf and on the other hand have alleged execution of unauthorised trades by these persons in their accounts. Under the circumstances, in order to bring home the charge of unauthorised trading and to appreciate the allegation fully, the finding which has to be arrived at, based on the

facts and attending circumstances that demonstrate a prior connection between the Complainants and the *Noticee No. 2*, as to whether or not, particularly Ms. Neerja Ahluwalia was aware of / had the knowledge of the impugned trades that were executed from her trading account. To this effect, I find that emphasis in the SCN has been laid upon four pieces of evidence / circumstances, as noted in the preceding paragraph no. 16.

21. The first circumstance, as noted in the SCN, which lends support to the allegation of unauthorised trading is the inability of MCSL or *Noticee No. 1* to produce the order placement call recording. In this regard, I note that the instant proceedings are against *Noticee No. 1* and not against MCSL. Therefore, I would be exceeding the ambit and scope of the SCN if I have to make any adverse observation against MCSL, i.e. an entity which is not before me either as a *Noticee* or otherwise. Hence, I refrain from giving any finding against the stock broker, MCSL. The requirement to have telephonic recording / records of SMS was made mandatory vide SEBI Circular CIR/HO/MIRSD/MIRSD2/CIR/P/2017/108 dated September 26, 2017, with effect from April 1, 2018. The impugned trades are for the period November 2015 to February 2018. Thus, to draw an adverse inference on the basis of a regulatory requirement which was not in force at the relevant time, is untenable. Moreover, the aforesaid Circular has mandated the stock brokers to keep the evidence of the clients placing orders with them and such an obligation is not placed on any individual working with a Trading Member. Further, considering the fact that *Noticee No. 1* was an AP of MCSL at the relevant point of time and the said fact is not in dispute, in the absence of any other evidence to the contrary, drawing an adverse inference against *Noticee No. 1* on this count alone would not be justified in the facts of the matter, more so when the Complainants have got their accounts transferred to MCSL from Trustline Securities Ltd, only after the *Notices* especially *Noticee No 2* became associated with MCSL. The above undisputed facts show the kind of faith and trust Complainants had with the *Notices*, particularly with the *Noticee No. 2*. Therefore, based on the facts and evidence available on record, I find it difficult to conclude that *Notices* have executed unauthorised trades merely for the reason that there is no record of placing orders. As regard the alleged breach of trust committed by the *Notices* the remedy against the same lies elsewhere and it is open to the Complainants to pursue the same.

22. The second circumstance which has been adduced in favour of the allegation of unauthorised trading is that the settlement of debit balances in the accounts of the Complainants was done by sale of securities instead of asking for pay-in of funds to prevent the Complainants from knowing the losses in their accounts. From the available records, it is noted that Ms. Neerja Ahluwalia has been trading through MCSL in cash segment of the market since November 2015 and in the F&O segment of the market since December 2015. It is also on record that on 14 instances during the period June 2016 to October 2017, funds pay-out of INR 54.46 lakh was made to Ms. Neerja Ahluwalia, by MCSL. From the aforesaid circumstances, it can be reasonably inferred that for a regular trader like Ms. Neerja Ahluwalia who is not new to the market and has been receiving pay-outs from the stockbroker but has not made any regular payments to the stock broker, shows that she has authorised the stock broker to maintain a running account. The said facts find strength from the fact that contract notes, bills, quarterly financial statements, SMS regarding transactions were seen to be shared with her on regular basis and despite that, no alarm was raised by her upon receiving those documents / statement nor did she dispute the trades that were executed in her trading account by taking the ground that trades have been executed beyond or without her authority. In this respect, it is also observed from the record that the Complainants were trading in securities for substantial period of time and have also been trading in different segment of securities. As the complaints do not pertain to any specific trades, therefore, raising the issue of unauthorised trades without specifying those trades which were according to them executed unauthorisedly, and when Complainants were receiving pay out as well and their contract notes on periodical basis from the stock broker, I find no evidence available on record to refute the aforementioned inference. Further, as mandated by SEBI Circular MIRSD/ SE /Cir-19/2009 dated December 3, 2009, the stock broker has to settle the outstanding obligations on the settlement date by retaining the funds / securities towards such obligations. Thus, once Ms. Neerja Ahluwalia has given the stock broker the authorization to maintain a running account, as per the aforesaid SEBI Circular, it is challenging, on the basis of the materials available on records to hold the acts of MCSL as illegal and not permissible with respect to its action of retain the requisite securities / funds towards outstanding obligations of the clients as on the settlement date. Moreover, as noted from the NSE inspection report, MCSL has

issued the required quarterly statement of funds and securities to Ms. Neerja Ahluwalia on a quarterly basis. Thus, to infer that no pay-in was asked from Ms. Neerja Ahluwalia so as to hide the losses in her account, is incorrect more so when without making any regular payment for more than two years she was still active in two segments of the market and was receiving substantial pay-outs at frequent interval from MCSL during the said period including receiving quarterly statements of funds and securities without fail, which would be updating her with her losses as well from quarter to quarter. As noted above, that there is no record of her raising any dispute with MCSL regarding the receipt of quarterly statements of account or settlement of funds and securities so made by the stock broker with her. Though she has claimed that she did not receive the quarterly financial statements and received the same in physical mode through *Noticee No. 1*, the said claim is liable to be rejected as she has not submitted copy of any of the quarterly financial statements so received by her in the physical mode from *Noticee No. 1*. Further, the available records show that the quarterly financial statements were sent to her by MCSL on her registered email id given at the time of account opening and status of delivery of the said emails is also showing as "Success". Since there is no dispute with respect to her email id and the fact that the document was sent through electronic mode which has not returned undelivered, it is reasonable to infer that the quarterly financial statements were duly received by her on a regular basis. In view of the aforesaid discussion, I find that based on materials on record even the second circumstance, does not lend any strength to the allegation of unauthorised trading against the *Noticees*.

23. The third circumstance which has been adduced in favour of the allegation of unauthorised trading is the lack of due diligence of *Noticee No. 1* or MCSL, for the authorisation given to *Noticee No. 2* / Mr. Milan Sharma to trade on behalf of complainants. As noted earlier, the extant proceedings are not against MCSL, so it would not be proper to render any finding on issues *qua* an entity not a party to the instant proceedings. When it comes to *Noticee No. 1*, it is observed that at the relevant point of time he was an AP of MCSL. Being an AP, there is no legal requirement fastened upon him under any existing securities laws which can be said to mandate him to carry out due diligence of an authority letter given by any client of the stock broker. Therefore, the aforesaid circumstance also has no force. On the other hand, the attending facts and circumstances do indicate that Ms. Neerja Ahluwalia indeed

had given authority letter to *Noticee No. 2* / Mr. Milan Sharma to trade on her behalf as there is nothing on record disputing the pay-out of INR 54.46 lakh received by her out of the trades executed in her account maintained with MCSL. There is also nothing on record to suggest that the above pay out was generated out of those trades for which orders were placed by her only and not by *Noticee No 2* or Mr Milan Sharma. There is also nothing on record to show that the Complainant has not given explicit or implicit authorisation in favour of any person at any point of time. In the absence of the above, disputing her trades in derivative segment on the ground of having executed by someone without any authority, does not lay credence when the record before me does not show that the Complainant had given her authorisation only in respect of trade in equity/ cash segment hence, the execution of trades in her accounts in derivative segment should be treated as trades executed without any authority.

24. The last circumstance which has been put forth in support of the allegation of unauthorised trading is that despite incurring significant losses, derivatives trading in high volume continued to be executed by *Noticees No. 1* and *2* and Mr. Milan Sharma in her account so as to earn high brokerages from her and her family members. I note that the aforesaid circumstance is bereft on any specific details viz., when did Ms. Neerja Ahluwalia suffered loss, what was the loss amount, was it for the first time that loss was suffered by Ms. Neerja Ahluwalia, what steps she had taken to arrest the said loss, did she raise her concern with the stock broker etc. Thus, in the absence of the details as mentioned above, it is difficult to accept the aforesaid circumstance on its face value. Further, from the available records, it is noted that high volume trading in Ms. Neerja Ahluwalia's account in F&O segment of the market has been regularly observed since June 2016 onwards (turnover of INR 3 crore or more). As noted in preceding paragraphs, quarterly statements of funds and securities, were issued to her regularly. Consequently, it leads to an inference that Ms. Neerja Ahluwalia was well aware of the high volume of trades being executed in her trading account. No record of her objecting to the said high volume of trades in her trading account, has been brought on record. Moreover, the allegation of charging significant amount of brokerage from Ms. Neerja Ahluwalia is also bereft of any material particulars viz., the period for which it was charged, the computation of amount of excess brokerage paid by her etc. Be that as it may, it is noted from the NSE inspection report that on verification of sample top 10 dates selected on the basis of transaction values, it was

observed that the stock broker has charged brokerage as per the terms of the tariff sheet signed by Ms. Neerja Ahluwalia. Thus, based on the aforesaid facts and circumstances of the matter, even the last circumstance also does not hold good on merits.

25. While I have noted that the cumulative effect of the aforesaid four circumstances based on which the charge of unauthorised trading was labelled against the *Noticees* in the SCN does not adequately establish the charge of unauthorised trading in the account of Ms. Neerja Ahluwalia, in my view the charge of unauthorised trading would now hinge on the fact as to, whether or not, the trading account holder, herself had the knowledge / awareness of the trades that were being executed from her trading account. In the present matter, it is noted from the available records that there exists adequate evidence which exhibits Ms. Neerja Ahluwalia's knowledge / awareness of the trades that were executed from her trading account during the relevant period of time. Some of such evidence are as follows:

25.1. Emails: (a) Email dated January 7, 2016 sent by Ms. Neerja Ahluwalia to *Noticee No. 2* to buy proposed quantities in certain scrips only if the price is as low (or more low) as it was that day.

(b) Email dated July 10, 2016 sent by Ms. Neerja Ahluwalia to *Noticee No. 2* asking him why there was no business on July 6, 2016.

(c) Email dated September 25, 2017 sent by Ms. Neerja Ahluwalia to *Noticee No. 2* and Mr. Milan Sharma wherein she has *inter alia* stated that INR 30 lakh worth of shares have to be restored to her account which she had entrusted to them and going forward, how her account would be handled by them.

(d) Email dated November 12, 2017 sent by Ms. Neerja Ahluwalia among others to *Noticee No. 2*, Mr. Milan Sharma and to employees of MCSL wherein she is stating *inter alia* as follows: "*I therefore with immediate effect revoke unequivocally the power of attorney vested in you by me for trading on my behalf. I reiterate that from this very moment I take away from you all rights to trade in all segments in my account code 6AXXXX9.*"

- 25.2. Visitor Log: It is noted from the visitor log of the MCSL's office that Ms. Neerja Ahluwalia had visited the premises of the stock broker on 3 instances during the period February – July, 2016.
- 25.3. SMSs: (a) Text messages dated December 12, 2015 and January 16, 2016 received by *Noticee No. 2* (mobile no.: 9599xxxxx8) from Ms. Neerja Ahluwalia stating that she had received messages from the stock broker regarding outstanding amount.
- (b) Text message dated December 14, 2015 sent by *Noticee No. 2* (mobile no.: 9599xxxxx8) to Ms. Neerja Ahluwalia stating that “*INFY – 650@1071.75*” was sold from her trading account.
- (c) Text message dated December 24, 2015 received by *Noticee No. 2* (mobile no.: 9599xxxxx8) from Ms. Neerja Ahluwalia inquiring about a debit in CDSL account.
- (d) Text message dated January 18, 2016 sent by *Noticee No. 2* (mobile no.: 9599xxxxx8) to Ms. Neerja Ahluwalia informing her about certain securities bought in her trading account.
- 25.4. Trade Recording: The excerpts of recording of conversation between Ms. Neerja Ahluwalia and the Dealer of MCSL regarding her trading during the period from December 2015 to between May – June 2016, shows conversation between the aforementioned two entities around the trades executed / to be executed from Ms. Neerja Ahluwalia's trading account.
- 25.5. Income Tax Returns: Arbitral Award dated July 20, 2018 has been relied upon to contend that Ms. Neerja Ahluwalia was aware of the losses incurred by her from trading in her account in the securities market as on March 31, 2016 and March 31, 2017 as Ms. Neerja Ahluwalia had submitted a Chartered Accountant Certificate wherein she in her income tax returns filed for FYs 2015-16 and 2016-17 had disclosed loss before showing other incomes, expenses and charges etc.
- 25.6. Findings of NSE Inspection Report:
- (a) Trade Verification – FO trades: On verification of trade data of top 70 trades by value, electronic contract notes and log of electronic contract notes, it was observed that trades executed on NSE were duly reflected in electronic

contract notes and the said electronic contract notes were sent to Ms. Neerja Ahluwalia within the required time frame.

(b) Issuance of quarterly statements of funds and securities: As noted in the preceding paragraphs, statements of funds and securities were issued to Ms. Neerja Ahluwalia on a quarterly basis.

(c) Actual settlement of funds and securities: It was observed that MCSL had settled Ms. Neerja Ahluwalia's trading account for all applicable quarters and the balance of funds and securities reflecting in the retention statements were also issued to her which were in parity with the ROS and financial ledger of Ms. Neerja Ahluwalia.

25.7. The SCN itself states that Ms. Neerja Ahluwalia has received SMS regarding her transactions in her account from MCSL. Further, Depositories have also confirmed that regular CAS statements were being sent to Ms. Neerja Ahluwalia.

26. The cumulative effect of the aforesaid circumstances preponderantly leads to the inference that not only Ms. Neerja Ahluwalia was aware of the trades executed in her account with MCSL but was also in constant communication *inter alia* with respect to her trades with *Noticee No. 2*. The said inference further gets credibility from the fact and findings observed above that Ms. Neerja Ahluwalia has not made any complaints with respect to her trading in the cash segment where her turnover was also of considerable amounts and there is no evidence to show that a different authorised person(s) was trading on her behalf in cash segment.

27. In the light of the aforesaid discussion, I am of the view that based on appreciation of facts, circumstances and evidence of record, the allegation of unauthorised trading against the *Notices* remains sans any merit and cannot be sustained against the *Notices*.

Failure to provide relevant information

28. It has been alleged against the *Notices* that they have failed to provide the complainants, information regarding profit and loss and regular debit balances in their account. It is further alleged that on certain instances incorrect information was also provided to the complainants. In this regard, it is noted that *Noticee No. 1* was an AP of MCSL at the relevant point in time and *Noticee No. 2*, as noted in the current

order, was the authorised person to trade on behalf of Ms. Neerja Ahluwalia. Under the extant securities law and the relevant regulations, the *Notices* were not under any legal obligation to provide information relating to the trades of Ms. Neerja Ahluwalia to her. The said obligation in fact rested on her stock broker, i.e. MCSL as she was registered as a client with the stock broker. As noted above, MCSL is not a party in the extant proceedings and *Notice No. 1* being an AP of MCSL was expected to provide administrative assistance in procurement of documents from the Complainants as clients of MCSL and to facilitate settlement of accounts but had no legal authority to issue any document to Ms. Neerja Ahluwalia in his own name. *Notice No. 2* being an agent of Ms. Neerja Ahluwalia, anyway did not have any legal burden to provide her information regarding her trades executed through MCSL except as per her mutual understanding with the Complainants. Thus, the allegation of failure to provide relevant information and incorrect information to the Complainants, cannot be sustained or made enforceable against the *Notices* of this SCN.

29. Irrespective of the aforesaid observation, if the aforesaid allegation is adjudicated based on the evidence as adduced in the SCN, still the allegation will not sustain on merits. To support the allegation of incomplete / partial information to the complainant regarding her profit and losses and regular debit balances, two text messages sent by MCSL to Ms. Neerja Ahluwalia in the month of December 2015 informing her about the outstanding balance has been cited. In the said text messages, *Notice No. 2* had replied to Ms. Neerja Ahluwalia that there is nothing to worry. In this regard, it is noted that the amount which has been mentioned as outstanding in the said SMSs has not been disputed. What has been alleged is that Ms. Neerja Ahluwalia did not understand the true import of the SMSs which is not the same thing, as alleging that the information provided to her was partial or wrong. Be that as it may, NSE's inspection has found that the balance of funds and securities as reflected in the retention statements issued to Ms. Neerja Ahluwalia, were in parity with the Register of Securities and financial ledger of the client maintained with MCSL which leads to an inference that whatever amount was actually outstanding, was in reality settled on her behalf. Thus, the allegation is rendered infructuous.

30. With respect to the other allegation of providing incorrect information, it is noted that it is based on the evidence of financial statements wherein the dividend amount is not reflected during one period while in other period, it is camouflaged and penal charges are also included. Firstly, there is no material on record to show that any dispute has been raised by the complainant that dividend was not paid to her or that she was not aware of it. Secondly, though camouflaging the dividend by not showing it as a separate entry, does give a less detailed picture but it does not lead to a wrong entry as the amount that would be received by the complainant or the amount that will be reflected in the statement, will remain the same. Lastly, it is a fact that penal charges were levied by the stock broker on the complainant, hence, including the said penal charges in the financial statement, is not incorrect. Thus, this allegation also does not hold to its ground.

31. In view of the aforesaid discussions and for the reasons recorded in this order while dealing with the allegations labelled against the *Notices*, in my considered view, the said allegations and charges made against them are not found to be sustainable. Consequently, no inference can be drawn that there was violation of provisions of regulations 4(1) and 4(2)(m) and (o) of PFUTP Regulations, by the *Notices* as alleged in the SCN. Therefore, no regulatory direction is warranted against the *Notices* in the present matter.

Directions

32. In view of the foregoing findings and having regard to the facts and circumstances of the case, I, in exercise of the powers conferred upon me under Sections 11(1), 11(4), and 11B (1) read with Section 19 of the Securities and Exchange Board of India Act, 1992, hereby disposed of the present proceedings without any direction against the *Notices*.

33. The Order shall come into force with the immediate effect.

34. A copy of this order shall be served on all the *Notices*.

Date: August 29, 2022
Place: Mumbai

-Sd/-
S. K. MOHANTY
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA