BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/PB/AE/2021-22/15269]

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

Niren Champaklal Ajmera

(PAN: AAGPA5735Q)

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 Niren Champaklal Ajmera (PAN- AAGPA5735Q) (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 Relating 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/29657/2021 dated October 22, 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 5 non genuine trades in 2 Stock Options contracts which resulted in artificial volume of total 13,44,000 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	IFCI15MAR38.00PE	2.9	416000	1.45	416000	100	18.18	100	32.1
2	LNTF15MAR80.00CEW3	1.98	256000	0.05	256000	100	75	100	83.66

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 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 18.18% to 75% of the trades that happened in the said contracts were due to non-genuine trades executed by the Noticee.
   (c) The entire 100% of volume generated by Noticee in 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 32.10% to 83.66%. Therefore, substantial volume generated by the Noticee in the above contracts was 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 October 25, 2021 at the email id - niren_ajmera@hotmail.com. Vide letter dated November 10, 2021, Noticee *inter alia* stated that it was in the process of preparing a detailed reply in the matter and requested for certain documents viz. investigation report, order placement records, voice recording of the Noticee, KYC of the

Noticee, Order logs and trade logs on March 17, 2015, and March 12, 2015, cross-examination of broker, BSE, counterparty broker and counterparty, copy of client agreement with broker, copy of complaint filed by SEBI against counterparty, circular issued by SEBI for the governance of investors for prevention of fraud, address/email/contact nos. of counterparties, noting recorded by Hon'ble WTM in the matter, etc. Further, the Noticee stated that it had not traded in the contract note viz. "IFCI15MAR38.00PE" and "LNTF15MAR80.00CEW3" dated March 17, 2015 and March 12, 2015 as alleged in the SCN.

8. Vide email dated December 01, 2021, it was clarified *inter alia* to the Noticee as follows –

"*1. This has reference to the trailing email dated November 10, 2021 in response to the Show Cause Notice (SCN) dated October 22, 2021 issued to the you (Mr. Niren Champaklal Ajmera). Vide your said email, 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*

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

It may be noted that all relevant material relied upon in the instant proceedings have been provided to you. Therefore, I am 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 time till December 15, 2021 to submit reply to the SCN and further, Noticee was also granted opportunity of personal hearing on December 17, 2021. Thereafter vide letter dated December 08, 2021, Noticee submitted reply to the SCN and the main contentions made therein are summarized as follows –

- *The allegations framed in the SCN relate to the derivatives trades of March 2015 which are more than six years ago. Initiation of proceedings by SEBI after such a long delay severely prejudices the Noticee. The Noticee has placed reliance on the judgements of the Hon'ble Supreme Court in the case of Anil Rai vs State of Bihar, Mohamad Kavi Mohamad Amin v. Fatmabai Ibrahim, Mansaram v. S. P. Pathak and Others, Lakhmani Mewal Das v. Income Tax Officer (1976 AIR 1753, 1976 SCR (3) 956), and Hon'ble SAT's judgement in cases of Anilkumar Nandkumar Harchandani & Others vs SEBI, Ashok Choudhury vs. SEBI,HB Stock Holdings Ltd V. SEBI, Rajeev Bhanot & Ors vs. SEBI, Rakesh Kathotia & Ors. Vs SEBI, AshleshGunvantbhai Shah vs SEBI, Libord Finance Ltd v. Whole Time Member, SEBI, and matter of Khandwala Securities Ltd., etc.*

- *SEBI's action begs the question as to how SEBI can issue SCN after 6 years whereas brokers are not required to maintain records after 5 years.*
- *As per SEBI's circular CIR/MRD/DSA/2/2011, Noticee does not have any claim against the trading member after 3 years.*
- *Article 137 in the Schedule to the Limitation Act, 1963 is the residual entry which provides the general period of the limitation of three years. The same applies to issuance of SCN. The SCN is issued beyond the limitation period of 3 years as prescribed in the Limitation Act, 1963.*
- *Section 11(2)(4A) of the SEBI Act which gives power to levy penalty was introduced via the Finance Act, 2018 w.e.f. March 08, 2019. The power to levy penalty itself was given to SEBI by way of the aforesaid 2019 amendment to the SEBI Act, 1992, hence the provisions proposing to levy penalty against the Noticee was not in existence at the time of the alleged transaction.*
- *Prior to 2019 Amendment, the Board only had the power to issue directions however they did not have the power to levy penalty which was awarded only post March 08, 2019.*
- *Section 15HA of the SEBI Act, 1992 has no application in the instant case.*
- *Prior to the amendment to PFUTP Regulations, 2003 w.e.f. February 01, 2019, the words 'manipulative', 'securities' and 'knowingly' were not there. The amended PFUTP Regulations cannot be used against the Noticee by SEBI.*

- *It is prayed that BSE Ltd. and the trading member be impleaded as necessary party to the proceedings. SEBI is called upon to deal with the impleadment application dated 13-11-2021.*
- *SEBI is called upon to produce the investigation report.*
- *BSE had introduced option trading with a 5 day settlement period and was providing trading members with incentives and engaging clients for trading in the new F&O product.*
- *Noticee contended that the trading member didn't collect margin with respect to the trade, and SEBI has not relied upon any order placement proof for the allegations made in the SCN.*
- *BSE is the first level regulator and BSE and the Clearing Corporation had not objected to the trades at the time they were executed, and the trades were cleared.*
- *Noticee was under bonafide belief that the trading member would not execute order beyond the confines of trite law.*
- *Noticee reiterated his request for provision of Investigation Report, and certain other documents and also for cross-examination of certain entities in regard to the matter. In this regard, the Noticee relied on and quoted from various case laws including Hon'ble Supreme Court's decision in Andaman Timber Industries v CCE – [2015] 62 taxmann.com 3 (SC) and also Hon'ble SAT's decision in the matter of Smitaben N Shah v SEBI (decided on July 30, 2010), etc.*
- *SEBI/BSE never made any rules and regulations to be followed by the investors.*

- *SEBI is in violation of articles 136 of constitution by issuing SCN on suspicion and surmises of the investor's dealings.*
- *SEBI has failed to produce the voice log report of sauda done by the trading member.*
- *As per Section 106 of Evidence Act, SEBI is entitled to ask the Noticee only with regards to the dealings that went on between the trading member and the Noticee. SEBI is estopped against asking questions w.r.t dealings if any with counterparty broker.*
- *In the present case all saudas are executed by broker of the Noticee and hence reversal trade if any has been done by the broker and nothing can be asked from the investors.*
- *Noticee does not have any knowledge of derivative hence is unable to do any fraud.*
- *There is no evidence or even a preponderance probability of prior meeting of minds, collaboration and co-ordination between the Noticee and counterparties. No one would like to incur losses voluntarily / deliberately.*
- *Assuming without admitting that the Noticee's orders were synchronized, such synchronization was in the nature of negotiated deals and are permissible in terms of SEBI circular dated September 14, 1999.*
- *No adverse inference could be drawn against the Noticee as BSE and SEBI had permitted trading in options for 'far months' with a strike price which are at large variance to current market price.*

- *The transactions neither distorted the equilibrium in market nor caused any loss or prejudice to investors at large.*
- *There is no question of transfer of beneficial ownership in option segment since at end of settlement cycle only net loss/profit is adjusted.*
- *The mere fact that BSE allowed trading in the said shares renders the allegations that the concerned scrips are illiquid as invalid, as the BSE had permitted trading in the said shares on their option trading platform after meeting the criteria of a highly liquid security, with minimal impact cost.*
- *The clearing corporation is the counterparty in all the trades.*
- *Price manipulation is not a charge in the SCN.*
- *PFUTP provisions are applicable on intermediaries and not on investors. Noticee is an investor and not an intermediary.*
- *In the present online trading platform offered by exchanges, trades are carried out through registered brokers in an anonymous opaque screen based trading system. The identities of the counterparties are not disclosed.*
- *Element of fraud missing. Thus, for the transaction to be termed fraudulent, as per definition of fraud, there has to be inducement and SEBI has not alleged inducement.*
- *The trades have matched with just two entities. The trades are genuine and have been brought and sold in the normal course of trading.*
- *Noticee submitted that there is no evidentiary basis for alleging fraud and has relied on the judgement in the matter of Nishit M Shah HUF v*

SEBI, Umang Dhanuka & Ors vs SEBI, Labhu Gohil vs SEBI and Narendra Ganatra vs SEBI. It was submitted that the SCN has grossly erred concluding the collusion of minds with the counterparty without credible evidence.

- *It is relevant to consider that no evidence has been adduced by SEBI before making allegations as is set out in the SCN.*
- *No connection/collusion with counterparty entity (Sharda Lunkar).*
- *BSE as first level regulator is responsible for fraud in illiquid stock options.*
- *The instant SCN is discriminatory, being in favour of BSE.*
- *The Noticee has referred to SEBI's order dated April 05, 2018 ref. no. WTM/MPB/IVD-ID8/161/2018 and has stated that while BSE has taken various measures to prevent occurrence of reversal / non-genuine trades, they as retail investors cannot be blamed for BSE's failure negligence to embed such measures/features from day one.*
- *Reversal Trades not recognized as unlawful/illegal at the relevant time period.*
- *Intermediaries were responsible for fraud of illiquid stock options on BSE. It was the duty of stock brokers under regulation 9 of Code of Conduct for stock brokers which specifically says that a stock broker shall abide by all the provisions of the Act and the rules, regulations issued by the Government, the Board and the Stock Exchange.*
- *The SCN is violative of Article 20(1) of the Indian Constitution.*

- *NSE vide its circulars dated December 13, 2018 and February 07, 2019 with respect to "Abnormal / Non-Genuine transactions" only penalizes brokers and does not levy any penalty on the investors. Similarly, BSE also proposes to penalize its members and there is no intention to penalize investors. SEBI Circular no. CIR/MRD/DP/14/2014 dated April 23, 2014 cast responsibility on BSE to monitor such trades and prevent the fraudulent trades.*
- *The trades alleged to be reversal trades in the instant SCN have already been adjudicated by SEBI in three matters viz. AO in matters of Subh Stock Broking Pvt Ltd - order dated 13-04-2016, Best Bull Stock Trading Pvt Ltd – order dated 13-04-2016, and Guniess Securities Ltd – order dated 13-04-2016. As the impugned trades have already been adjudicated, AO had become functus officio.*
- *Intra-day trading is permissible, normal and a market reality.*
- *If BSE considered reversal trades as non-genuine it could have put upfront checks and rejected out-rightly or annulled them. For investors whether stock options were liquid or illiquid do not matter – as long as BSE permitted trading.*
- *The Noticee's objectionable trading was only on 1 day out of 18 months' investigation period.*
- *The buy rate and sell rate of the Noticee were within permissible price range.*
- *No objection or query about the trading was received at the relevant time.*

- *Matching of orders was the function of the trading system installed, and BSE has not sent any query about their trading till date.*
- *Without any linkage/connection between parties, the trades cannot be said to be non-genuine or artificial.*
- *Had there been any intention to create artificial volume, the objectionable trading would have taken on many days.*
- *No alert / warning etc was issued by BSE / SEBI as regards impugned trades.*
- *Unlike the cash segment, there is no physical delivery of shares in futures and options segment.*
- *The alleged violations have not caused any loss to any investor and have not affected the investors or securities market in any manner.*
- *There have been no investor complaints. Noticee has not made any gain.*
- *Synchronization is not illegal ipso facto under SEBI Act and SEBI Regulations.*
- *Noticee had traded in the option contract of a well known company, so that there was no reason to doubt credibility of the platform provided by Exchange.*
- *The stock option volume traded by the Noticee was relatively high, open and naked i.e. without any underlying position and hence speculative in nature.*
- *Compared to market volume of F&O segment, the Noticee's volume were insignificant.*

- *No allegations have been attributed to BSE and trading member.*
- *BSE had introduced an incentive scheme in order to attract Brokers to undertake maximum trade on BSE platform.*
- *No specific order or instructions of the Noticee or audio recording of placing the order has been brought on record and hence the transactions are denied.*
- *The price variation in the buy trade and sell trade of the alleged transactions is within the price fluctuation in the scrip and is based on several market factors. No extraordinary variation is established.*
- *In terms of Constitution of India Article 16 in relation to equality, unless SEBI prosecute all ALGO traders for reversing trades in fraction of seconds, allegation on the small investors like the Noticee is illegal.*
- *Noticee requests to cross examine BSE.*
- *As mitigating factors, the Noticee relies on the judgements passed by Hon'ble Supreme Court and Hon'ble SAT in the matters of SEBI v Bhavesh Pabari, case of M/s Roofit Industries Ltd, P. G. Electroplast Ltd & Ors v. SEBI, Ketan Parekh v. SEBI, Subhkam Securities Private Limited v. SEBI, Ratijit Thakur vs. Union of India, V.G. Nigam & Ors. Vs. Kedarnath Gupta & Anr., Ramod Kumar Agarwal (HUF) vs Adjudicating Officer, Narendra Vallabji Bhauva vs SEBI, Dhvani Darshan Kothari vs SEBI, SEBI vs. Rakhi trading Private Limited, DSE Financial Services Ltd vs SEBI, Piramal Enterprises Ltd vs SEBI and various other matters.*
- *Section 15HA and 15J of SEBI Act is not applicable to the Noticee.*

- *The doctrine of preponderance of probabilities should not be applied in such a way that an innocent person suffers.*
- *The Noticee reiterates its request for providing additional documents.*
- *SEBI may implead BSE and trading member as party to the present proceedings. The Noticee may be granted an opportunity to cross examine BSE and the trading member, counterparty broker and counterparty.*

9. The personal hearing in the matter was held on December 17, 2021 via video conferencing over Webex platform. During the course of hearing, Authorized Representative(**AR**) of the Noticee viz. Mr. Ram Awatar Dhoot and the Noticee appeared for the hearing. During the course of the hearing the AR emailed copy of letter dated November 13, 2021 of the Noticee wherein it was *inter alia* requested that BSE and trading member of the Noticee be impleaded as necessary party to the present proceedings. Further, during the hearing the AR reiterated the submissions made by the Noticee vide his letters dated November 10, 2021, November 13, 2021 and December 08, 2021. The AR requested for opportunity to make post hearing submissions, and accordingly time till December 31, 2021 was granted for the same. Vide letter dated December 20, 2021, Noticee submitted post hearing submissions in the matter. The main contentions made in the aforesaid submissions are summarized below:

   - *Noticee submitted copy of the Contract Notes issued by the broker. He contended that SCN has alleged trade in contracts*

“IFCI15MAR38.00PE” and “LNTF15MAR80.00CEW3”, whereas contract note issued by the broker shows trade in “IFCI26MAR38.00PE” and “LNTF19MAR80.00CEW3”. He suggested that the proceedings have been started wrongly, and should be set aside on this ground.

- *Noticee contended that it was responsibility of brokers to stop any manipulative trades and has enclosed PMLA policy of DBFS Group (stock broker with NSE, BSE and MCX, and DP with CDSL) for reference. The Noticee relied upon and quoted Hon’ble SAT’s judgement in the case of Marwadi Shares & Finance Limited v SEBI.*
- *Noticee submitted that SEBI has failed to protect the interest of investors by not charging BSE and the broker.*
- *Noticee contended that the power to levy penalty by the Board was awarded post amendment on March 2019.*
- *Preamended PFUTP regulations do not apply to the Noticee.*
- *Noticee contended that Regulations 3(a), (b),(c),(d) and 4(1), 4(2)(a) of the SEBI (Prohibition of Fraudulent and Unfair Trading Practices relating to Securities Markets) Regulations, 2003 did not apply to the investors. Hence, the same are also not applicable to the Noticee.*
- *Noticee reiterated some of the submissions made by him vide letter dated December 08, 2021.*
- *The Noticee has enclosed copy of the Hon’ble SAT’s orders in the matter of Kasat Securities Pvt Ltd vs SEBI and Indiabulls Securities Ltd vs SEBI, and SEBI’s Order dated August 12, 2016 in the matter of*

illiquid stock options. The Noticee has also enclosed the case summary of SEBI vs Rakhi Trading Pvt Ltd.

10. Vide letter dated January 27, 2022 (received through email dated January 27, 2022) Noticee made additional submissions. The main contentions made therein are summarized as follows -

- *Noticee placed reliance on the Adjudication Order in case of Govindji Gupta and others (ref. no. MC/DS/2019-20/6209-6214) and submitted that the AO had considered a time difference upto 5 minutes between two trades and also difference in order prices to be significant. Hon'ble SAT's order in the matter of Almondz Entertainment Pvt Ltd vs. SEBI (Appeal no. 198 of 2020 dated 21.01.2021). In the present case there is gap of 17 minutes between buy and sell order which is above 5 minutes.*
- *No penalty was levied in the adjudication order dated January 20, 2022 in case of Neha Sethi.*
- *Trading in 4,16,000 units cannot be considered as creating artificial volume.*
- *Noticee has relied on the judgement of SEBI vs. Rakhi Trading Pvt Ltd and contended that SEBI as a regulator have not done its duty and is now blaming investors by trying to impose a penalty for no fault of theirs.*
- *Noticeee has relied on the judgement of SEBI vs Kishore Ajmera [(2016) 6 SCC 368] and stated that meeting of minds and knowledge of who the other party is very important which is apparently missing in Noticee's case.*

- *SEBI had allowed and wanted to increase the trade volume in that duration as there was hardly any trading done and to increase the volume during that time, the Liquidity Enhancement Scheme for illiquid securities in F&O segment was introduced. There is every possibility in the thinly traded contracts to get reversed with the same party and there was no ban in doing that.*

CONSIDERATION OF ISSUES AND FINDINGS

11. I have carefully perused the charges levelled against the Noticee, his replies 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. I note that allegation against the Noticee is that, while dealing in the stock options 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.

14. Noticee has *interalia* contended that the instant SCN has been issued after 6 years of the execution of impugned trades, and does not provide any explanation for the delay. The Noticee has also contended that the SCN is issued beyond the limitation period prescribed in the Limitation Act, 1963. 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.

15. 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*".

16. 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.

17. As can be seen from the narration of facts in the foregoing paragraphs, pursuant to appointment of AO vide communique dated September 30, 2021, SCN was issued on October 22, 2021. In compliance with principles of natural justice, after receipt of reply, an opportunity of personal hearing was conducted on December 17, 2021 and upon conclusion of hearing and submission of post hearing written submissions, 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.

18. 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, order logs, call logs and voice calls confirming the trades in Noticee's account, cross examination with BSE, broker, counterparty broker and the counterparty, KYC of the Noticee, copy of client agreement with broker, copy of complaint filed by counterparty, copy of client agreement with broker, copy of circular issued by BSE for prevention of fraud of illiquid options for investors showing amount of penalty payable by investors, etc. In this regard, I rely on the judgement of the Hon'ble SAT in the matter of *Mayrose Capfin Private Limited vs. SEBI* (decided on 30.03.2012) wherein it was held that:

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

19. 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."

20. 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 was 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".*

21. 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.

22. I note that Noticee has requested the cross examination of BSE, the trading member, counterparty broker and counterparty. In this regard, I note that no statement of the aforesaid entities has been recorded or relied upon in the present matter and the details of the trades is borne out of the trade log which is duly supplied to the Noticee; thus I find that no cross examination of the counterparty is warranted in the present matter. Further, I note that Noticee has requested that BSE and trading member of the Noticee be impleaded as necessary party to the present proceedings. In this regard, I note that the remit of the current proceedings are in terms of the adjudication order against the Noticee and are based on material already made available to the Noticee. Given the above the proceedings cannot travel beyond the authority granted therein. Thus impleading BSE or taking action against BSE or stock broker is not within the authority of the current proceedings. I note that the contentions of the Noticee are fallacious and irrelevant to the instant proceeding. Firstly, the Noticee is bound to comply with PFUTP Regulations, 2003 notwithstanding the fact that similar violations may or may not have been committed by market intermediaries

or other trading entities. Secondly, the instant proceeding against the Noticee does not depend upon the outcome of proceedings against any other entity. Thus, the contentions of the Noticee in this regard are liable to be rejected.

23. Noticee's contentions also imply that merely because other entities in the securities market may or may not have been involved in violating PFUTP Regulations, 2003, initiating a particular proceeding against the Noticee should necessarily be treated as unfair. I note that even if there are numerous violators in the securities market, it does not follow that SEBI must proceed against all entities in a single proceeding. Similarly, Adjudication proceedings are not vitiated merely because each violator is proceeded against in separate and distinct proceedings.

24. The Noticee has denied all allegations made in the SCN. The Noticee states that he has not violated the PFUTP Regulations. I note from the SCN and trade log of the Noticee that he had allegedly executed 5 non-genuine trades in 2 stock options contracts. I further note that the above mentioned trades of the Noticee had resulted in the creation of artificial volume of 13,44,000 units in the said 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	IFCI15MAR38.00PE	2.9	416000	1.45	416000	100	18.18	100	32.1
2	LNTF15MAR80.00CEW3	1.98	256000	0.05	256000	100	75	100	83.66

25. It is noted that the Noticee had executed non-genuine trades in the above mentioned contracts, wherein the percentage of non-genuine trades of the Noticee in the stock options contracts to total trade in the contracts was in the range of 18.18% to 75% 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 the contracts. It is also noted that artificial volume generated by the Noticee contributed 32.10% to 83.66% 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 counterparty. To illustrate, the Noticee on March 17, 2015 at 12:53:13.97 hrs entered into one sell trade with counter party viz, Sharda Lunkar for 416000 units at rate

of ₹ 1.45 per unit in the contract IFCI15MAR38.00PE. Thereafter, on the same day, Noticee at 13:10:37.33 hrs entered into one buy trade with same counterparty for total 416000 units at the rate of ₹ 2.90 per unit in the same contract. It is noted that while dealing in the said contract during the I.P., the Noticee executed reversal trades with same counterparty viz. Sharda Lunkar on the same day and with significant price difference in buy and sell rate. Thus, the Noticee, through his dealing in the contract viz. “IFCI15MAR38.00PE” during the I.P., executed non genuine trades which was 18.18% of the total trades from the market in the said contract during the I.P., and thereby, Noticee generated artificial volume of 8,32,000 units which was 32.10% of the volume traded in the said contract from the market during the I.P.

27. The Noticee also submitted that his trades in stock options segment were executed on scrips which were not illiquid, if one were to observe the trade volume in the underlying scrip in which the Noticee had traded. He further contended that even if it is assumed that the trades were synchronized, it was in nature of negotiated deals, and hence, permissible. In this regard, 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 was 15 minutes 38 seconds to 17 minutes 23 seconds, on the same

day. Such a short span of time taken for reversing the trades in an illiquid stock option contracts 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 illiquid option contracts, there was no significant trading in the said contracts and hence, there was no price discovery in the strictest terms. The wide variation in prices of the said contracts, within a short span of time, even without any significant variation in the price of the underlying scrip, 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 counterparties in the stock options segment of BSE and the same were non-genuine trades.

28. Noticee has inter alia contended that his trades were executed through the online trading platform where the identities of the counterparties are not disclosed. Further, Noticee has contended that there is no connection/collusion with the counterparty. 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 trades. This is the outcome of meeting of minds elsewhere and it was a deliberate attempt to deal in such a fashion. Moving forward, 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..."*

29. 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."*

30. 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."*

31. 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….."

32. 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.*"

33. The Noticee submitted that the broker and the stock exchange had invited and incentivised trading members and their clients to execute trades in F&O segment of the stock exchange in which there was a settlement period of 5 days. The Noticee states that as a result of such incentives, no margin was collected for the execution of the impugned trades. Thus the Noticee submitted that the investors were lured to invest in the scheme through SEBI registered intermediaries. I note that the Noticee's contentions imply that there is no dispute that the impugned trades were definitely executed by the Noticee. The Noticee's contention reveals that he had executed the

impugned trades as he intended to take advantage of the alleged incentives associated with the said trades. In the instant proceeding the fact that the Noticee had executed the impugned trades, which generated artificial volume as demonstrated by the trade log, sufficiently proves the charges made in the SCN as regards the violation of PFUTP Regulations, 2003. Thus, the Noticee's contentions do not establish any denial of the charges made in the SCN.

34. The aforesaid contentions of the Noticee are an attempt to deflect the blame on other entities while denying the charges made in the SCN. However, as already stated above, the charges made in the SCN were based on the trade log of Noticee. In this regard, it is pertinent to refer to the decision of the Hon'ble Supreme Court of India in the matter of ***Securities and Exchange Board of India v. Rakhi Trading Private Limited*** (Civil Appeal Nos. 1969, 3174-3177 and 3180 of 2011 dated February 08, 2018) wherein, the Hon'ble Supreme Court while cumulatively analysing reversal transactions held that,

"*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. Rather than allowing the market forces to operate in their natural course, the traders repeatedly carried out the impugned transactions which deprived other market players from full participation. The repeated reversals and predetermined arrangement to book profits and losses respectively, made it clear that the parties were not trading* *in the normal sense and ordinary course. Resultantly, there has clearly been a restriction on the free and fair operation of the market forces in the instant case….quantity, time and significant variation of prices, without major variation in the underlying price of the securities clearly indicate that Respondent's trades are not genuine and had only misleading appearance of trading in the securities market… one does not have to labour much on the meaning of unfair trade practices in securities. Contextually and in simple words, it means a practice which does not conform to the fair and transparent principles of trades in the stock market."*

35. Noticee has *interalia* contended that if at all there was a fault in the incentives and promotions with respect to F&O segment done by the stock exchange, SEBI should have taken action against the stock exchange and brokers. Thus, the Noticee should not be proceeded against as no action has been taken against the stock exchange and brokers. Noticee has also contended that he was under bonafide belief that the trading member would not execute order beyond the confines of trite law. I note that the allegations against the Noticee pertain to the reversal trades executed by him, on the same day with same counterparty with substantial price difference between buy and sell rates and generation of artificial volume. Therefore, the aforesaid contentions made by Noticee are not relevant as regards instant allegations. The Noticee's contentions imply that the Noticee executed the impugned trades which were in violation of PFUTP Regulations, 2003.

36. Noticee has contended that the power to levy penalty was given to SEBI by way of amendment (viz. *Finance Act, 2018 w.e.f. March 08, 2019),* hence the provisions proposing to levy penalty against the Noticee was not in existence at the time of the alleged transaction. In this regard, I find the above contentions of the Noticee to be grossly misplaced, as the power to adjudicate and impose penalty were clearly existing even prior to the aforesaid amendment referred by the Noticee.

37. Noticee has also contended that the provisions of PFUTP Regulations, 2003 are applicable on intermediaries and not on investors like the Noticee. I find the said contention to be untenable as there are no such restrictions in the provisions of PFUTP Regulations, 2003.

38. I note that one of the contentions of the Noticee is that the trades alleged to be reversal trades in the instant SCN have already been adjudicated by SEBI in three matters viz. in matters of Subh Stock Broking Pvt Ltd (Adjudication Order No. ORDER/WTM/RKA/ISD/94/2016 order dated 13-04-2016), Best Bull Stock Trading Pvt Ltd (Adjudication Order No. ORDER/WTM/RKA/ISD/94/2016 order dated 13-04-2016), and Guniess Securities Ltd (Adjudication Order No. ORDER/WTM/RKA/ISD/94/2016 order dated 13-04-2016). It was further argued that as the impugned trades have already been adjudicated, AO had become *functus officio*. In this regard, I note that the Order no. ORDER/WTM/RKA/ISD/94/2016 quoted

by the Noticee is dated August 12, 2016 (and not 13-04-2016 as claimed by the Noticee) passed by the Whole Time Member (WTM) of SEBI against 22 trading members and was passed pursuant to interim orders dated August 20, 2015 and February 17, 2016 in the matter of Illiquid Stock Options. I note that by virtue of the aforesaid order dated August 12, 2016 does not render the AO as *functus officio* as wrongly argued by the Noticee. I also note that the aforesaid order was passed under section 11B of the SEBI Act, 1992. The proceedings under section 11B of the SEBI Act, 1992 are separate from the adjudication proceedings as is being conducted in the instant matter. Further, I also note that even in cases where the counterparty has been issued notices and penalty been imposed, it is open to the AO to initiate adjudication proceedings and pass order against the party, and further I note that the AO does not become functus officio in such cases. In this regard, I would like to place reliance on the order of the Hon'ble SAT in the case of *Nimisha Saraf vs. SEBI* (Order dated February 07, 2022), wherein it was held -

"3. Having heard the learned counsel for the appellant on this issue, we are of the opinion that the controversy that was decided by the AO in the earlier round was with regard to the transaction made by the counter party to whom notices were issued. It was open to the AO to also issue notice in the same proceedings to the appellant but it was also open to initiate separate proceedings against the appellant which in the instance case has been done. Therefore, the principles of res judicata and the decisions relied upon by the appellant are not applicable. We are of the opinion that the AO does not

become functus officio and has the power to issue a show cause notice to the appellant."

39. The Noticee has contended that no penalty was levied on single reversal trade in the adjudication order dated January 20, 2022 in the case of Neha Sethi. 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 executed multiple reversal trades i.e. 5 non genuine trades with two different counterparties in 2 stock options contracts.

40. 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. 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. In this regard, 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.

41. Noticee has also contended that if BSE considered reversal trades as non-genuine it could have put upfront checks and rejected out-rightly or annulled them. Further, Noticee has inter alia contended that no alert / warning etc was issued by BSE / SEBI as regards impugned trades. I note that the same does not absolve the Noticee from the responsibility of trading in the exchange in a genuine manner. I also note that it is clear from the trade log that the Noticee failed in his primary obligation to comply with PFUTP Regulations, 2003 by executing reversal trades as explained above. The exchange provides a platform for trading. The primary responsibility to comply with the PFUTP Regulations, 2003 lies on the Noticee. Thus, the contentions of the Noticee are devoid of merit. Noticee has also submitted that BSE and SEBI have allowed trading in options for far months with strike price which are at large variance with each other. I note that while there is no such restriction, however at the same time it amounts to conceding that trading were in far-off strike prices, which were at large variance from current market prices, and that very few entities were trading in such strike rates. The same would lead to matching the trades with the same

counterparty thus leading to the execution of both legs of reversal trades. Therefore, the contention of the Noticee is not acceptable in this regard.

42. 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. 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.

43. Noticee has *inter alia* contended that for transaction to be fraudulent, there should be inducement and SEBI has not alleged inducement. Noticee submitted that there is no evidentiary basis for alleging fraud. Further Noticee has also contended that the transactions neither distorted the equilibrium in market nor caused any loss or prejudice to investors at large. 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.

44. 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. 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.

45. Noticee *inter alia* contended that the provisions of law under which charges have been framed are not applicable in the instant matter, on grounds of legality and constitutionality. I note that the contentions are not germane to facts of the case, and that the Hon'ble SAT has already upheld SEBI Adjudication orders passed in the matter of illiquid stock options in respect of various entities. The law in the matter is well settled. Therefore, the contentions with respect to correctness of legal provisions and constitutionality are not relevant for adjudicating facts of this case.

46. Noticee has submitted that he has not traded in the contracts "IFCI15MAR38.00PE" and "LNTF15MAR80.00CEW3" as alleged in the SCN on March 17, 2015 and March 12, 2015 respectively. The Noticee has submitted the contract notes dated March 17, 2015 and March 12, 2015 issued by Subh Stock Broking Pvt Ltd and has stated that that the contract notes are showing "IFCI26MAR38.00PE" and "LNTF19MAR80.00CEW3" respectively. The Noticee has contended that the proceedings has been started wrongly. In this regard, I note that the contract names stated by the Noticee viz. "IFCI26MAR38.00PE" and "LNTF19MAR80.00CEW3" denote the dates of expiry of the respective contracts as March 26, 2015 and March 19, 2015. The exact said expiry dates are also denoted in the trade log of the Noticee (which was duly supplied to the Noticee as annexure to the

SCN) under the heading “EXPIRY”, and hence there is no ambiguity vis-à-vis the contracts alleged in the SCN and the contract description denoted in the contract notes. All the relevant details including price, quantity, date and trade time are exactly the same in the trade log and the contract notes. Thus, the contentions of the Noticee in this regard are devoid of merits.

47. Noticee has *interalia* contended that there is no complaint by any investor and he has not made any gain and further that the alleged violations have not caused any loss to any investors. I note that in the instant matter, the allegations pertaining to the violation of impugned provisions of PFUTP Regulations, 2003 are not contingent upon any complaints made or losses incurred by investors. Therefore, I note that contentions of Noticee in this regard are without merits.

48. 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 contracts 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 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…".

49. 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].*

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

Factors to be taken into account by the adjudicating officer.

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

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

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

(c) the repetitive nature of the default.

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

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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

51. 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 5 non-genuine trades in 2 stock option contracts which demonstrates the repetitive nature of default on his part.

52. 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

53. 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**
Niren Champaklal Ajmera PAN:AAGPA5735Q	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.

54. 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

55. 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

56. 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.

57. In terms of the provisions of rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticee viz. Niren Champaklal Ajmera and also to the Securities and Exchange Board of India.

Date: February 28, 2022	**PARAG BASU**
Place: Mumbai	**ADJUDICATING OFFICER**