BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/PB/AS/2021-22/14893]

UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995.

In respect of

Niraj Bothra & Sons HUF

(PAN: AAEHN8199K)

In the matter of Trading in Illiquid Stock Options on BSE

BACKGROUND OF THE CASE

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

2. Pursuant to investigation, it was observed that total 2,91,643 trades comprising substantial 81.38% of all the trades executed in stock options segment of BSE during the IP were non genuine trades. It was observed that Niraj Bothra & Sons HUF (PAN-AAEHN8199K) (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. Shri K Saravanan was appointed as Adjudicating Officer in the matter, conveyed vide communique dated April 26, 2021, under section 19 read with section 15-I(1) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act, 1992**") and rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as "**Adjudication Rules**") to conduct adjudication proceedings in the manner specified under rule 4 of Adjudication Rules read with section 15-I(1) and (2) of SEBI Act, 1992, and if satisfied that penalty is liable, impose such penalty deemed fit in terms of rule 5 of Adjudication Rules and

section 15HA of SEBI Act, 1992. Pursuant to transfer of Shri K Saravanan, the undersigned was appointed as Adjudicating Officer in the matter, conveyed vide communique dated July 14, 2021.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. A Show Cause Notice ref no SEBI/HO/A&E/EAD/PB/18174/2021 dated August 05, 2021 (hereinafter referred to as '**SCN**') was issued to the Noticee under rule 4(1) of the Adjudication Rules to show-cause as to why an inquiry should not be initiated against it and why penalty should not be imposed under section 15HA of the SEBI Act, 1992 for the violations alleged to have been committed by Noticee.

5. It was *inter alia* alleged in the SCN that Noticee had executed 4 non genuine trades in 2 Stock Options contracts which resulted in artificial volume of total 2,00,000 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	AMBC15APR245.00CE	3	50000	7	50000	100	100	100	100
2	YESB15MAR820.00PE	4	50000	9	50000	100	10	100	16.86

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

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

   (b) No. of non-genuine trades of the Noticee had significantly contributed to total no. of trades from the market in the above contracts, as 10% to 100% of the trades that happened in the two contracts were due to non-genuine trades executed by the Noticee.

   (c) The entire 100% of volume generated by Noticee in all of the above contracts was artificial volume, and further, the percentage of artificial volume generated by the Noticee in the above contracts to the total volume from the market in said contracts was in the range of 16.86% to 100%. Therefore, substantial volume generated by the Noticee in both of the above contracts were artificial volume.

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

7. The SCN was served on the Noticee via hand delivery and email dated August 06, 2021. Vide email dated August 16, 2021, Noticee requested for additional time for submitting reply to the SCN. Vide email dated November 20, 2021 enclosing reply dated November 18, 2021, Noticee submitted its reply to the SCN which has been summarized below:

   - No evidence has been provided to show that trades were fraudulent.

- Impugned trades were executed on floor of stock exchange in due compliance with regulations of BSE.
- No warning, alarm, communication or advisory were issued regarding impugned trades.
- Even assuming stocks were illiquid, any small quantity would look significant as no active trading was being done.
- For transactions to be fraudulent, element of inducement must be there.
- None of the trades were deceptive or had any impact on investment decisions.
- Noticee did not have any nexus with counterparty to the impugned trades.
- SCN does not state the reasons, rational, cause of action or locus for invoking of jurisdiction after over 6 years of impugned trades, and therefore, is arbitrary.
- Important documents including the Investigation Report which have been relied upon in the SCN have not been provided to Noticee.
- There was no major movement in the price of the underlying scrip. Impugned trades did not influence market price or volume.
- There is no question of transfer of beneficial ownership, since at the end of the Settlement cycle only net profit/loss is adjusted. Therefore, allegation of artificial/reversal trades is inconsequential.
- Noticee did not act in collusion, was not part of any group of entities and had no connection with the counterparties to the impugned trades.

- All the trades were executed on the floor of stock exchange, on which the trades are automated without any knowledge of the counterparty. In this regard, Noticee relied upon judgements of the Hon'ble Securities Appellate Tribunal (hereinafter referred to as **"SAT"**) in the matters of Jagruti Securities vs SEBI, S.P.J. Stockbrokers vs SEBI and Sanjay Agarwal vs SEBI.
- The impugned trades were not questioned by brokers.
- BSE later introduced measures for prevention of reversal trades in Equity Derivative Segment w.e.f. March 14, 2016. Therefore, no adverse inference can be drawn against Noticee merely because online checks and balances for prevention of inadvertent reversal trades did not exist at the relevant time.
- Besides making generic allegations against the Noticee, not a single instance or observation on specific role of the Noticee has been delineated in the SCN. In this regard, Noticee relied upon the judgement of the Hon'ble Supreme Court in the matter of Commissioner of Central Excise, Bangalore vs M/s Brindavan Beverages (P) Ltd and Ors.
- No grievance has been made by any investor, broker, stock exchange or any other entity concerned with impugned trades.
- SEBI has discontinued proceedings against the brokers and intermediaries against whom allegations pertaining to dealing in illiquid stock options while executing trades on behalf of clients had been levelled.

8. Vide email dated November 30, 2021, Noticee was granted opportunity of personal hearing on December 08, 2021. Vide email dated December 03, 2021, Noticee was intimated that the date of personal hearing was rescheduled to December 09, 2021. Vide letter and email dated December 03, 2021, Noticee made certain submissions which have been summarized below:

- To properly understand basis of allegation made in the SCN and to effectively respond to the same, Noticee needed access to all relevant documents in possession of SEBI based on which present proceedings had been initiated. Noticee provided the following as the indicative list of such documents:
  - Date on which the findings of the investigation were put up for the information/ knowledge of the Whole Time Member (WTM).
  - Copy of the material placed before the WTM to decide that there were sufficient grounds to enquire into the alleged violations.
  - Details of all the material placed before the WTM on the basis of which he decided to initiate proceedings against the Noticee.
  - Date on which investigation report was approved by WTM and the present proceedings was approved.
  - Copy of the file noting of WTM when he/she appointed Adjudicating Officer.
  - Copy of reasons recorded by SEBI, Chairman, WTM or the Executive Director that there are reasonable grounds to investigate the affairs of the Noticee in the said matter.

- Copy of Order of SEBI authorizing investigation in the matter.

9. Vide email dated December 06, 2021, Noticee was *interalia* conveyed the following:

   ……….

   In this regard, I have been directed to convey that your request has been perused and that following are the relied upon documents in the instant proceedings. Further, the 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, as per the directions of Adjudicating Officer, your request for inspection of non-relied upon documents is not reasonable and the same is being declined.

   ……….

   Further, vide aforesaid email, opportunity of personal hearing was granted on December 21, 2021.

10. Vide email dated December 18, 2021, Noticee confirmed Shri Gautam Agarwal as Authorized Representative (AR) in the matter. Personal hearing

in the matter was held on December 21, 2021 via video conferencing (Webex platform). During the course of hearing, AR reiterated submissions made vide letter dated November 18, 2021. Further, Noticee sought additional time to make post hearing submissions. Acceding to the request, time till December 27, 2021 was granted for making post hearing submissions. Thereafter, Noticee made additional submissions vide email and letter dated December 27, 2021. The said submissions have been summarized below. Further, contentions which have already been submitted in the previous submissions are not being repeated for the sake of brevity.

- Noticee relied upon judgement of the Hon'ble SAT in the matter of Dhvani Darshan Kothari & Anr. Vs SEBI decided on January 21, 2021, and contended that only one instance of allegedly non-genuine trade cannot be treated at par with trades executed by other entities which were larger in number, and that reasons have to be recorded to show as to how the trades were manipulative or fraudulent.
- No penalty must be imposed on the Noticee taking into consideration factors mentioned under section 15J of the SEBI Act, 1992. In this regard, Noticee stated that it was under the belief that transactions were genuine as they were executed on the floor of the stock exchange, no illegal gain had been made by the Noticee, no loss had been caused to any investor and that SEBI has taken any action against the Noticee for the first time. Further, Noticee relied upon the judgement of the Hon'ble Bombay High Court in the matter of Cabot International Capital Corporation vs SEBI, judgement of the Hon'ble SAT in the matters of

Yogi Sungwon (India) Ltd vs SEBI and NHAI vs SEBI, and judgement of the Hon'ble Supreme Court in the matter of Bhavesh Pabari vs SEBI. Noticee also cited SEBI Adjudication Order dated 26th February, 2021 in the matter of Octant Interactive Technologies Limited and Adjudication Order dated March 29, 2019 in the matter of Sangam Advisors Ltd.

- Noticee was not part of the 59 entities against who interim order was passed by Whole Time Member of SEBI, or of the first 567 entities against whom Adjudication Proceedings were initiated in the matter. This implies that SEBI considers Noticee's trades to be miniscule, so that it initiated Adjudication Proceedings against Noticee in the last stage only. Therefore, lenient view must be taken against the Noticee.

CONSIDERATION OF ISSUES AND FINDINGS

11. I have carefully perused the charges levelled against the Noticee, its 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 option contracts at BSE during the IP, it had executed reversal trades which were allegedly non-genuine and the same had resulted in generation of artificial volume in stock option contracts at BSE. Reversal trades are considered to be those trades in which an entity reverses its buy or sell positions in a contract with subsequent sell or buy positions with the same counterparty during the same day. The said reversal trades are alleged to be non-genuine trades as they are not executed in the normal course of trading, lack basic trading rationale, lead to false or misleading appearance of trading in terms of generation of artificial volumes and hence are deceptive and manipulative.

14. Noticee has *interalia* contended that the instant SCN does not state the reasons, rationale, cause of action or locus for invoking of jurisdiction after over 6 years of impugned trades and therefore, is arbitrary. 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 IP. 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, during the course of hearing in the case of *R. S. Ispat Ltd Vs SEBI*, the Hon'ble 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".* 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. Thereafter, Adjudication proceedings were initiated against those entities who had not availed of the opportunity of settlement.

16. As can be seen from the narration of facts in the foregoing paragraphs, pursuant to appointment of the undersigned as AO communicated vide communique dated July 14, 2021, SCN was issued on August 05, 2021. In compliance with principles of natural justice, after receipt of reply from Noticee vide email dated November 18, 2021, an opportunity of personal hearing was scheduled on December 21, 2021 and upon conclusion of hearing, additional written submissions were received from the Noticee vide email and letter dated December 27, 2021. Therefore, I note that the instant adjudication proceedings were initiated pursuant to a series of legal and judicial developments, and that the principles of natural justice were duly complied with during the course of proceedings. Therefore, I note that the aforesaid contentions are devoid of merits.

17. Further, Noticee had contended that important documents including the Investigation Report which have been relied upon in the SCN have not been provided to Noticee. Further, Noticee also requested to provide entire records in possession of SEBI in the matter *interalia* including copy of investigation report, date on which the findings of the investigation were put up for the information of the WTM, copy of the material placed before the WTM to decide that there were sufficient grounds to enquire into the alleged violations etc, and also, to grant an opportunity of inspection. Noticee has also contended vide its submissions that no evidence had been provided to show that the trades were fraudulent. I note that all the documents relied upon in the matter had been provided to Noticee as Annexures to the SCN. Further, vide email dated December 06, 2021, it was conveyed to the Noticee that all the documents relied upon in the matter were already provided to as Annexures to the SCN, and therefore, the request for inspection was denied.

In this regard, I rely on the judgement of the Hon'ble SAT dated February 12, 2020, in the matter of Shruti Vora vs. SEBI:

"Reliance was also made of a decision of the Supreme Court in Union of India and Others vs E. Bashyan (1988) 2 SCC 196 which has no bearing to the controversy involved in the present context, in as much as, the said decision relates to a disciplinary proceedings wherein the Supreme Court observed that the inquiry report was required to be made available to the delinquent. An inquiry report is totally distinct and different from an investigation report. The inquiry report considers all the materials in the

inquiry proceedings which form the basis of the final order and therefore the said report is required to be made available to the delinquent. In the instant case, the show cause notice relies upon certain documents which have been made available. Thus the investigation report is not required to be supplied".

"The learned counsel has also placed reliance upon a minority view of this Tribunal in Price Waterhouse vs Securities and Exchange Board of India decided by this Tribunal in Appeal No. 8 of 2011 on June 1, 2011 wherein it was observed that fairness demands that the entire material collected during the course of investigation should be made available for inspection to the person whose conduct was in question and that said material should also be supplied. In our opinion, the said minority view is directly against the decision of the Supreme Court in Natwar Singh case (supra)".

"A bare reading of the provisions of the Act and the Rules as referred to above do not provide supply of documents upon which no reliance has been placed by the AO, nor even the principles of natural justice require supply of such documents which has not been relied upon by the AO. We are of the opinion that we cannot compel the AO to deviate from the prescribed procedure and supply of such documents, which is not warranted in law. In our view, on a reading of the Act and the Rules we find that there is no duty cast upon the AO to disclose or provide all the documents in his possession especially when such documents are not being relied upon."

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

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

    Therefore, I note that documents relied upon in the matter were duly provided to the Noticee along with SCN dated August 05, 2021 in the matter, so that principles of natural justice have been complied with and the contentions in this regard are without merits.

19. I note from trade log of the Noticee that it had traded in 2 unique contracts in the stock options segment of BSE during the IP. It is observed that the Noticee had allegedly executed 4 non-genuine trades in the said 2 contracts. I further note that the above mentioned trades of the Noticee had resulted in the creation of artificial volume of 2,00,000 units in the said 2 contracts. Summary of non-genuine trades of the Noticee is as follows:

S. No.	Contract Name	Avg. Buy Rate (₹)	Total Buy Volume (No. of units)	Avg. Sell Rate (₹)	Total Sell Volume (No. of units)	% of Non Genuine trades of Noticee in the contract to Noticee's Total trades in the Contract	% of Non Genuine trades of Noticee in the contract to Total trades in the Contract	% of Artificial Volume generated by Noticee in the contract to Noticee's Total Volume in the Contract	% of Artificial Volume generated by Noticee in the contract to Total Volume in the Contract
1	AMBC15APR245.00CE	3	50000	7	50000	100	100	100	100
2	YESB15MAR820.00PE	4	50000	9	50000	100	10	100	16.86

20. It is noted that the Noticee had executed non-genuine trades in 2 contracts, wherein the percentage of non-genuine trades of the Noticee in stock options contracts to total trades in the contracts was in the range of 10% to 100% in the aforesaid contracts. Further, artificial volume generated by Noticee in the contracts amounted to the entire 100% of total volume generated by it in both the contracts. It is also noted that artificial volume generated by the Noticee contributed significantly viz. 16.86% to 100% of the total volume from the market in the said contracts. Non-genuine trades executed by the Noticee in the above contracts had significant difference in buy rates and sell rates considering that the trades were reversed on the same day.

21. I note from the trade log that the trades executed by the Noticee in a contract were squared up within a short span of time with its counterparties. To illustrate, the Noticee on April 20, 2015 at 15:10:13.12 hrs entered into 1 buy trade with counterparty viz. Open Futures and Derivatives Pvt Ltd for 50,000 units at the rate of ₹3 per unit in the contract

AMBC15APR245.00CE. Thereafter, on the same day at 15:12:53.82 hrs, Noticee entered into 1 sell trade with same counterparty for 50,000 units at the rate of ₹7 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. Open Futures and Derivatives Pvt Ltd on the same day and with significant price difference in buy and sell rate. Thus, the Noticee, through its dealing in the contract viz. “AMBC15APR245.00CE” during the I.P., executed non genuine trades which was 100% of the total trades from the market in the said contract during the I.P., and thereby, Noticee generated artificial volume of 1,00,000 units which was 100% of the volume traded in the said contract from the market during the I.P.

22. I note that the non-genuineness of these transactions executed by the Noticee is evident from the fact that there was no commercial basis as to why, within a short span of time, the Noticee reversed the position with its counterparties with significant price differences. I note from the trade log of the Noticee that the time taken by the Noticee for reversing the non-genuine trades ranged from 04 seconds to 02 minutes 41 seconds, on the same day. Such a short span of time taken for reversing the trades in illiquid stock options 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 stock options contracts, there was no trading in the said contract and hence, there was no price discovery in the strictest

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

23. Noticee has *interalia* contended that it did not have any nexus with counterparties to the impugned trades. Also that, Noticee did not act in collusion, was not part of any group of entities and had no connection with the counterparties to the impugned trades. Noticee also contended that all the trades were executed on the floor of stock exchange, on which the trades are automated without any knowledge of the counterparty. In this regard, Noticee relied upon judgements of the Hon'ble SAT in the matters of Jagruti Securities vs SEBI, S.P.J. Stockbrokers vs SEBI and Sanjay Agarwal vs SEBI. I note that it is not mere coincidence that Noticee could match its trades with the same counterparty with whom first leg of respective trades had been undertaken. This is the outcome of meeting of minds elsewhere and it was a deliberate attempt to deal in such a fashion. I note that in matters dealing with violation of PFUTP Regulations, 2003, the reason as regards execution of non-genuine trades might not be forthcoming. However, the correct test instead, is one of preponderance of probabilities. Here I would like to rely on the judgment of Hon'ble Supreme

Court in SEBI v Kishore R Ajmera (AIR 2016 SC 1079) decided on February 23, 2016, wherein it was held that - "…*in the absence of direct proof of meeting of minds elsewhere in synchronized transactions, the test should be one of preponderance of probabilities as far as adjudication of civil liability arising out of the violation of the Act or provision of the Regulations is concerned. The conclusion has to be gathered from various circumstances like that volume of the trade effected; the period of persistence in trading in the particular scrip; the particulars of the buy and sell orders, namely, the volume thereof; the proximity of time between the two and such other relevant factors. The illustrations are not exhaustive..."*

24. 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."*

25. 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."*

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

27. 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.*"

28. Noticee has also contended that there is no question of transfer of beneficial ownership in stock options segment, since at the end of the settlement cycle only net profit/loss is adjusted. Therefore, allegation of artificial/reversal trades is inconsequential. I note that the impugned trades, even though did not amount to physical delivery of assets, resulted in change of rights in the contract between the counterparties, and the same is borne out by judgement of the Hon'ble Supreme Court in the matter of SEBI v Rakhi Trading Private Limited (supra), wherein it was held that,

"……….No doubt, as in the case of trade in a scrip in the cash segment, there is no physical delivery of the asset. However, even in the derivative segment there is a change of rights in a contract. In the instant case, through reverse trades, there was no genuine change of rights in the

contract. ……….. Even in derivatives, the ownership of the right is restored to the first party when the reverse trade occurs”

Therefore, contentions of Noticee in this regard are without merits and liable to be rejected.

29. Noticee has *interalia* contended that impugned trades were executed on floor of stock exchange in due compliance with regulations of BSE. Noticee has also contended that there was no major movement in the price of the underlying scrip, and that impugned trades did not influence market price or volume. I note that the aforesaid facts have not been relied upon in framing instant allegations. Noticee has also contended that no warning, alarm, communication or advisory were issued regarding impugned trades at the time of execution of impugned trades, and that the impugned trades were not questioned by brokers. Noticee has also contended that no adverse inference can be drawn against Noticee because measures for online checks and balances for prevention of inadvertent reversal trades did not exist at the relevant time. I note that as trading was done in Noticee’s trading account, it was obligated to ensure genuineness of the trades executed on the exchange platform. The aforesaid obligation was mandatory not withstanding any warning issued or absence of any preventive measures by BSE.

30. Noticee has contended that only one instance of allegedly non-genuine trade cannot be treated at par with trades executed by other entities which were larger in number, and that reasons have to be recorded to show as to

how the trades were manipulative or fraudulent. In this regard, Noticee relied upon judgement of the Hon'ble SAT in the matter of Dhvani Darshan Kothari & Anr. Vs SEBI decided on January 21, 2021. Noticee has also contended that even assuming stocks were illiquid, any small quantity would look significant as no active trading was being done. In this regard, I note that in the instant matter, Noticee had executed 4 non genuine trades in 2 stock options contracts, so that the contention of Noticee as regards execution of trades in one contract is not applicable to the instant considerations basis facts of the case. I also note that even as regards execution of non-genuine trades in one contract, vide judgement dated November 24, 2021, the Hon'ble SAT disposed of the appeal in the matter of Radha Malani vs SEBI against the decision of Adjudication Officer of SEBI made vide order dated September 06, 2021, wherein in the said matter, 2 trades in one stock options contract were executed by the entity viz. Radha Malani in illiquid stock options contract, which were held by the Adjudicating Officer in the matter to be non-genuine. Further, Noticee's trades in the two contracts contributed 16.86% and 100% to the total market volume generated during the IP in said contracts, so that Noticee contributed substantially to artificial volume in such contracts. I also note that 100% of total volume generated by Noticee in both the contracts amounted to artificial volume. Therefore, I note that aforesaid contentions of the Noticee are without merits.

31. Noticee has also contended that it was not part of the 59 entities against whom interim order was passed by Whole Time Member of SEBI, and neither part of the first 567 entities against whom Adjudication Proceedings were initiated in the matter. I note that instant proceedings are independent, wherein trades executed by Noticee, considered along with attending circumstances have been alleged to be manipulative, so that contentions made by Noticee in this regard are not germane to the instant considerations and are liable to be rejected.

32. Noticee has also contended that no grievance has been made by any investor, broker, stock exchange or any other entity concerned with impugned trades. I note that the allegation levelled against the Noticee as regards alleged non-genuine trades are not contingent upon any grievance made by investors, brokers, stock exchanges etc, so that aforesaid contentions are not relevant as regards instant considerations and liable to be rejected.

33. Noticee also contended that for transactions to be fraudulent, element of inducement must be there, and that none of trades were deceptive or had any impact on investment decisions. I rely on the judgement of the Hon'ble Supreme Court 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 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.

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

35. Therefore, the trading behaviour of the Noticee confirms that such trades were not normal and wide variation in prices of the trades in the same

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

36. 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].*

[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

37. 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.

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

39. 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

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

Name of the Noticee	**Violation provisions**	**Penalty**
Niraj Bothra & Sons HUF PAN:AAEHN8199K	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.

41. 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 favor 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

42. 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

43. 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.

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

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

Place: Mumbai **ADJUDICATING OFFICER**