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 BY ADJUDICATING OFFICER) RULES, 1995

In respect of:

1. Nirshilp Commodities and Trading Pvt Ltd (PAN: AABCN4361M), earlier known as Nirshilp Securities Pvt Ltd.
2. Shailesh Shah Securities Pvt Ltd (PAN: AAECS3607E, and SEBI Stock Broker reg. no. INB011064558)

In the matter of Denso (India) Limited

BACKGROUND

1. SEBI, pursuant to an investigation conducted w.r.t dealing in scrip of Denso India Ltd (hereinafter, referred to as "**Denso**" or "**Company**") for period 15/12/2011 to 28/10/2013 (hereinafter, referred to as "**investigation period**") observed significant rise in price of scrip at BSE and NSE. At BSE, price of the scrip rose from Rs. 47.5 to Rs. 142.7 during the investigation period.

2. As part of investigation, to see if there was any concentration in price rise by a single entity/ group of entities in the scrip of Denso during the investigation period, an analysis of top 10 contributors to Last Traded Price (hereinafter, referred to as "**LTP**") as a buyer was undertaken. Details of such analysis were as follows:

Buyer Name	All Trades			LTP Diff. > 0			LTP Diff. < 0			LTP Diff. = 0		% of Positive LTP to Total Mkt. Positive LTP
	Sum of LTP (Rs.)	Sum of Qty.	No. of trades	Sum of LTP (Rs.)	Sum of Qty.	No. of trades	Sum of LTP (Rs.)	Sum of Qty.	No. of trades	Sum of Qty.	No. of trades	
NSE												
M/S M & M E Systems Pvt. Ltd.	49.9	18184	673	70.7	3143	215	-20.8	2014	48	13027	410	2.35
Satinderpal Singh Sachdeva	32.2	28	27	32.2	27	26	0	0	0	1	1	1.07
MBL & Co. Ltd.	26.65	964	228	38.3	318	77	-11.65	283	58	363	93	1.27
Pooja Goyal Pooja Rani	24.6	1846	155	45.2	220	30	-20.6	775	42	851	83	1.50
Vaibhav Doshi	18.6	11008	31	18.6	1567	12				9441	19	0.62
Globe Capital Market Ltd.	18.15	182615	903	45.2	53730	187	-27.05	16474	86	112411	630	1.50
Rajesh Jain	17.9	3458	88	21.1	1486	26	-3.2	585	15	1387	47	0.70
Sunil Kumar Dutta	12.7	226	16	12.95	126	7	-0.25	1	1	99	8	0.43
Sudhir Mullick	11.6	63321	291	17.2	32526	62	-5.6	1771	20	29024	209	0.57
Trustline Holdings Pvt. Ltd.	10.85	21798	260	13.05	5950	61	-2.2	3598	11	12250	188	0.43
Group Total	**223.15**	**303448**	**2672**	**314.5**	**99093**	**703**	**-91.35**	**25501**	**281**	**178854**	**1688**	**10.45**
Total Market	**94.75**	**5097316**	**84284**	**3010.95**	**1539757**	**7912**	**-2916.2**	**1204559**	**7706**	**2353000**	**68666**	**100**

Buyer Name	All Trades			LTP Diff. > 0			LTP Diff. < 0			LTP Diff. = 0		% of Positive LTP to Total Mkt. Positive LTP
	Sum of LTP (Rs.)	Sum of Qty.	No. of trades	Sum of LTP (Rs.)	Sum of Qty.	No. of trades	Sum of LTP (Rs.)	Sum of Qty.	No. of trades	Sum of Qty.	No. of trades	
BSE												
Nirshilp Commodities and Trading Pvt. Ltd.	185.85	36781	29460	772.90	2137	1554	-587.05	1853	1425	32791	26481	25.67
Satinderpal Singh Sachdeva	73.55	1586	112	77.50	397	70	-3.95	292	8	897	34	2.57
Parvinder Singh	30.75	21242	1452	105.50	4552	192	-74.75	5001	144	11689	1116	3.50
Quadeye Securities Pvt Ltd	20.90	19328	1124	44.40	3189	175	-23.50	917	60	15222	889	1.47
Globe Capital Market Ltd.	17.10	207450	1752	48.40	31604	142	-31.30	11809	85	164037	1525	1.61
Jawale Sanjiwani Sudhakar	15.55	3100	279	15.85	1341	39	-0.30	52	3	1707	237	0.53
Gajanan Enterprises	15.15	23486	201	30.00	1200	37	-14.85	1002	33	21284	131	1.00
Sudhir Mullick	12.85	37085	356	18.10	22191	64	-5.25	1953	17	12941	275	0.60
Bharat Jayantilal Patel	12.70	310191	151	14.55	301502	48	-1.85	4152	6	4537	97	0.48
Ram Pal Singh	12.45	1400	46	12.45	613	12	0.00	0	0	787	34	0.41
Group Total	**396.85**	**661649**	**34933**	**1139.65**	**368726**	**2333**	**-742.80**	**27031**	**1781**	**265892**	**30819**	**37.84**
Total Market	**95.20**	**5642729**	**96752**	**3010.30**	**1622348**	**7786**	**-2915.10**	**842451**	**7406**	**3177930**	**81560**	**100**

3. At NSE, top 10 entities appeared in overall LTP contribution, contributed positive LTP of Rs. 314.5 (10.45% of total market positive LTP) in 703 trades for 99,093 shares. No entity among the top 10 LTP contributors at NSE, contributed more than 5 % of total market positive LTP, and hence it was scattered. At BSE, top 10 entities appeared in overall LTP contribution, contributed positive LTP of Rs. 1139.65 (37.84% of total market positive LTP) in 2,333 trades for 3,68,726 shares. Nirshilp Commodities and Trading Private Limited (hereinafter, referred to as "**Nirshilp**") dealing through connected Stock Broker viz, Shailesh Shah Securities Pvt Ltd (hereinafter, referred to as "**Shailesh Shah Securities**") contributed to 772.90 (25.67% of total market positive LTP) in 1,554 trades for 2,137 shares. Top 5 counterparties of Nirshilp contributed 7.57 % of total market positive LTP. The top counterparty to Nirshilp was Nirshilp itself i.e. through self-trades and accounted for 4.46% of total market positive LTP. Hereinafter, Nirshilp and Shailesh Shah Securities are individually referred by their aforesaid acronym names and jointly referred to as "**Noticees**".

4. On further analysis of these 1,554 positive LTP trades, it was observed that Nirshilp inter-alia (i) repeatedly placed buy orders above prevailing sell orders rate with negligible buy order quantity, and thereby contributed to 8.17% of the total positive LTP, (ii) repeatedly matched sell orders that are placed above LTP with market orders, with negligible buy order quantity, and thereby contributed to 5.76% of the total positive LTP and (iii) repeatedly executed self-trades in negligible quantity, and thereby contributed 4.46% of the total positive LTP. It was alleged that Nirshilp undertaken above trades in repeated manner with manipulative intent to increase the price of the scrip of Denso.

5. Thus, it was alleged that Nirshilp manipulated the price of the scrip of Denso in violation of Regulations 3(a), (b), (c) and (d), 4 (1), 4 (2) (a), (b), (e) and (g) of SEBI (Prohibition of Fraudulent and Unfair Trading Practices related to Securities Markets) Regulations, 2003 (hereinafter, referred to as "**PFUTP Regulations 2003**").

6. Nirshilp dealt in the scrip of Denso through its Stock Broker Shailesh Shah Securities. From the information available on website of MCA, it was observed that Nirshilp and Shailesh Shah Securities have common registered address and contact e-mail id. Further, there are common shareholders in both entities during the investigation period. Hence, Shailesh Shah Securities allegedly being connected with Nirshilp and as the Stock Broker of Nirshilp for its trades under question, the manipulative trades of Nirshilp in the scrip during the investigation period was also allegedly attributed to Shailesh Shah Securities. Hence, Shailesh Shah Securities was also alleged to have violated Regulations 3 (a), (b), (c) and (d), 4 (1), 4 (2) (a), (b), (e) and (g) of PFUTP Regulations 2003.

7. Shailesh Shah Securities acted as buy and sell broker of Nirshilp in 355 self-trades at BSE. 170 self-trades for 176 shares were executed from the same terminal ID. Nirshilp's Self-trades were repetitive in nature and contributed towards 4.46% of total market positive LTP at BSE. Thus, it was alleged that Shailesh Shah Securities failed to exercise due skill and care in terms of Clause A(2) of the Code of Conduct for Stock Brokers as specified under Schedule II read with Regulation 7 / 9 (w.e.f Sept. 27, 2013, regulation 7 becomes regulation 9) of SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992 (hereinafter, referred to as "**Stock Brokers and Sub-Brokers Regulations 1992**").

APPOINTMENT OF ADJUDICATING OFFICER

8. In view of the above, SEBI, in terms of Section 19 read with Section 15I(1) and (2) of the SEBI Act, 1992 and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter, referred to as "**SEBI Adjudication Rules, 1995**") appointed Adjudicating Officer to inquire into and adjudge the alleged violations of aforesaid regulations in respect of Nirshilp and Shailesh Shah Securities, and if liable, impose such penalty deemed fit in terms of Rule 5 of SEBI Adjudication Rules, 1995 and Section 15HA in respect of Nirshilp Commodities, and under said Rule 5 of SEBI Adjudication Rules 1995 and Section 15HA and Section 15 HB of SEBI Act in respect of Shailesh Shah Securities.

SHOW CAUSE NOTICE, WRITTEN SUBMISSIONS, PERSONAL HEARING

9. Show Cause Notice dated July 25, 2018 (hereinafter referred to as "**SCN**") was issued to the Noticees, mentioning the allegations against the Noticees and requiring them to show cause within 14 days of receipt of the SCN, as to why an inquiry should not be held and penalty be not imposed under Section 15HA and Section 15HB of SEBI Act for the aforesaid alleged respective violations against the Noticees.

10. SCN was delivered to the Noticees through speed post AD. Noticees, vide their separate letters dated 09/08/2018 requested for extension of time of 14 days to reply to SCN. In this regard, vide letter and e-mail dated 13/08/2018, Noticees were granted the extension and were advised to submit their replies latest before 30/08/2018.

11. Vide separate letters dated 29/08/2018, Noticees made following key submissions:

11.1 **Submissions of Nirshilp vide letter dated 29/08/2018**:

a) Allegations made in and findings arrived at in the SCN are misconceived and based on incomplete and incorrect assumption of facts and therefore, erroneous. Corresponding trades at NSE to the trades impugned in the present SCN were not considered during investigation by SEBI which lead to erroneous observations, allegations and findings against us as contended vide SCN as has been explained in our reply hereunder.

b) Arbitrage being our primary business we look for arbitrage opportunities in the price differences between Exchanges and make arbitrage benefit accordingly which is completely and legally valid. The fact that we have also traded on the platform of NSE has either been completely ignored or has not been brought on record during the investigation. Apparently, our corresponding trades were not considered during investigation by SEBI which lead to erroneous observations, allegations and findings against us as contended in the SCN. On this ground alone the SCN ought to be set aside.

c) Our trading in the shares of Denso is based on the NSE BSE Arbitrage Strategy and Systematic Investment Plan Strategy

d) Allegation that LTP contributed by repeatedly placing buy order rate above the prevailing sell order rate and buy order quantity being less than sell order quantity, and in this respect facts and illustration given in table 4 of SCN

The assumption that a genuine buyer would not repeatedly place buy orders at a price higher than the sell order price and for a quantity lesser than the available sell order quantity is completely incorrect and is based on false assumption and appreciation of facts and market practice. Assuming without admitting that we have contributed to the positive LTP, we deny that we had knowingly and with manipulative intent contributed towards the alleged contribution to the LTP. No adverse inference may be drawn against us in view of the fact that we are amongst top 10 net positive LTP contributors as buyers. Some of the sell orders were placed before our buy orders at higher price and for the remaining trades, the sell orders were placed after the buy orders in normal course of business pursuant to our trading strategies which is a permissible practice.

*We refer Table 4 in para under reply. Our trades as on 07.03.2012, 13.08.2012 and 24.08.2012 were pursuant to our Arbitrage Strategy. The details of our corresponding orders and trades at NSE during the investigation period are enclosed herewith in soft copy as **Annexure B.** Further, our trades as on 30.12.2011 and 05.06.2012 mentioned in table 4, were pursuant to our SIP strategy, details of which is enclosed herewith **in softcopy** on CD as **Annexure C**.*

*Date wise details of our trades during investigation period on BSE and NSE are enclosed herewith as **Annexure D.***

W.r.t placement of buy order price above the available best sell price viz, as mentioned in point 1 of table 4 in SCN, we have entered limit buy price at Rs. 51.75 when counterparty sell order was in range of Rs.51.70 to Rs.58.90. In this scenario, at the most what could have been alleged is that we had attempted to increase the "LTP" by .05 paise i.e., Rs. 51.75 less Rs. 51.70(being the sell order price already queued in the system and our purchase order price, respectively) and not Rs. 6.65 as wrongly observed in the SCN. On further perusal, this premise would also prove inconsequential since the trade was at Rs. 51.70 and not at Rs. 51.75 and hence there was no attempt to increase the LTP.

***NSE BSE Arbitrage**: We follow NSE BSE arbitrage strategy i.e. we buy/sell various scrips on BSE and correspondingly sell/buy on NSE and vice versa to take advantage of the price differential in the two markets. We have in place an automated system which has more chances of capturing the price difference available than is available to the manual traders. Further, in our case the quantity that we put in order is the same as the best bid and asks quantity available at the other Exchange i.e. NSE or BSE. The order quantity that we input is always less than the available demat stock we are holding in particular scrip. As soon as any trade gets executed on one Exchange say for* *example, on NSE the automated system squares off the opposite trade in other Exchange, i.e., BSE with similar quantity at market rate or "Zero rates" which is synonyms to market rate and immediately and simultaneously cancels the remaining pending order.*

Placing of any order is based on the arbitrage price difference that may be available between two Exchanges. Orders, buy or sell are placed in NSE depending upon the bid and ask price of BSE and vice versa. If bid and ask price quotes are available than we place an order just below the ask price or above the bid price. If bid and ask price are not available then we place an order to earn a positive difference of approximately 0.35% of the other Exchange. All these trades are carried out within a very narrow price range and this is the actual essence of arbitrage. We have thus, executed trades in Denso with miniscule margins.

The entire realm of arbitrage has to be considered in accordance with the technicality, intention, frequency, volume of trades etc. Factors such as order time, price etc. is a condition precedent before placing any order. Thus, there is no malafide intent in executing the alleged trades and these trades have arisen out of the normal course of business and are within the prescribed regulations. Volatility and liquidity are the essence of arbitrage activities. We have traded in the shares of Denso which was listed under 'B Group' during the investigation period which signifies good category scrip as per the Exchange categorization.

Arbitrage being our primary business, we look for arbitrage opportunities in the price differences between Exchanges and make miniscule arbitrage profit accordingly which is completely and legally valid. In any event the SCN has not alleged any wrongdoing in the business of arbitrage.

Systematic Investment Plan Strategy: *We were buying shares of more than 950 scrips almost every alternate day to create a portfolio of different scrips of different sectors and categories like large cap, mid cap and small cap. The entire data of systematic investment executed during the investigation in Denso is enclosed herewith in* ***softcopy on CD*** *as* ***Annexure C****.*

b) Allegation that LTP contributed by repeatedly matching sell orders placed above LTP through market orders with negligible buy quantity, and in this respect facts and illustrations mentioned in table 5 of SCN

We refer Table 5 in para under reply. Our trades as on 30.12.2011, 02.01.2012, 10.01.2012 and 28.05.2012 were pursuant to our Arbitrage Strategy. The details of our corresponding trades at NSE on 10.01.2012 and 28.05.2012 are enclosed herewith in soft copy as ***Annexure E.*** *The details of our total trades under NSE and BSE strategy during the investigation period are enclosed herewith in soft copy as* ***Annexure D.***

It is evident from the aforesaid details that our orders and trades were based on arbitrage strategy and no adverse inference may be drawn there from. In any event we fail to understand how matching markets order with negligible buy quantity or otherwise could ever be with an intent to deliberately increase the scrip price so as to be manipulative in nature. The table in the para under reply has failed to elaborate and appreciate that the sell order was inputted prior in time and our buy market order was subsequent in time, got matched with the sell order. Thus, the observation that our market orders were with "negligible" buy quantity does not stand to scrutiny as clarified above that we had adopted a arbitrage startegy. Therefore, our market buy order for 1 share at Rs. 52.95 as on 28.05.2012 (point 5 in table 5 of SCN) ought to have matched the pending sell order for 2,937 shares at Rs. 52.95 since the market works on a price time priority. We fail to understand how a market order could have led to a difference in LTP of Rs. 3.05 as per Sr. no. 5 in table 5 since our buy order had matched an already queued sell order in the system. It is therefore, submitted that the allegation of deliberately increasing of price would squarely fall on the seller who had a limit sell order at Rs. 52.95.

e) Allegation of contribution to LTP by executing self trades and illustration in respect of the facts and illustrations for the same mentioned in table 6, 7 and 8 of SCN

We deny our self-trades which contributed towards 4.46% of total market positive LTP and being repetitive in nature, were with an intent to increase the price of the scrip. We have not only sold but also bought and sold shares in Denso during the investigation period. Our trades have also resulted in negative LTP as reflected vide Table 7 under para 9 iii on page 8 of the SCN. It is therefore, submitted that concluding on the basis of gross aggregation of LTP is flawed. Our trading wrt trades as reflected vide Table 7 under para 9 iii on page 8 in the shares of Denso is based either on the NSE BSE Arbitrage Strategy and/or Systematic Investment Plan Strategy.

Our trades as on 30.12.2011and 18.06.2012 were pursuant to our Arbitrage Strategy. The details of our corresponding orders and trades at NSE during the investigation period are enclosed herewith in soft copy as vide ***Annexure F herein above.*** *We most humbly submit that our trades as on 16.01.2012, 30.07.2012 and*

01.08.2012 were based on combining the both the strategies i.e the Arbitrage Strategy and Systematic Investment Plan Strategy. Besides the aforesaid trades were executed from two different terminals.

f) *It is pointed out that Self Trade Prevention Check - That Self Trade Prevention Check was introduced by the Exchanges only in the year 2015 and was not available during the investigation period. In this regard, extracts of BSE and NSE circulars were referred.*
   Various previous AO orders were quoted to refer the matters involving execution of self trades viz, following
   i. *Adjudicating Officer's Order no. EAD/AO-NP/JR/47/2017 dated 19.06.2017 in the matter of Unitech Limited*
   ii. *Adjudication Order No. EAD/NP/JS/AO/21/2017 dated 22.02.2017 in the matter of MIC Electronics Ltd*
   iii. *Adjudication Order No. EAD/NP/JS/AO/22/2017 dated 27.02.2017 in the matter of MIC Electronics Ltd*
   iv. *Adjudication Order No. EAD-2/DSR/KM/108-115/2014 dated 30.04.2014 in the matter of Gayatri Projects Limited*
   v. *Adjudication Order No. EAD-2/AO/143/2013 dated 14.02.2013 in the matter of Wockhardt Limited*

g) *In view of the above aforesaid quoted AO orders, it is inter-alia pointed out that distinction between fraudulent and unintentional self trades to be made, and scenarios should be considered where orders of different jobbers operating separate terminals matches, intent of material market harm is absent, quantum of self trades vis a vis the market volume, etc.*

h) *In the light of above contentions related to self trades, following is submitted:*
   i. *Self-trades have occurred on account of buy and sell orders placed at different point of time in trading system and these have matched with each other on account of movement in price of the stock of the scrip. Also, the quantum of self-trades (0.006% of the market volume) was not of such magnitude vis-à-vis total volume in stock of scrip on daily basis that it could adversely affect equilibrium of the market as a whole in terms of price or liquidity in stock of Scrip. Self-trades were few in the light of the total transactions in the scrip.*

   ii. *Further the self trade are executed in either side of price not particularly in one direction to influence the price discovery process. Therefore, it cannot be suggested that self-trades were executed with the intent of bringing price rise in the scrip of Denso.*

   iii. *Further, we crave leave to rely on order dated 09.03.2018 of Adjudicating Officer passed in the matter of Ess Dee Aluminium Ltd. disposing of the proceedings initiated against us vide SCN dated 18.03.2014 wherein it has been observed as in under para 18 page 11 as:-*

   "I am of the considered view that a charge of market manipulation due to self-trades should be made on the basis of strong and cogent evidence, which is lacking in this case. On comparing the volume of self-trades done by the Noticee during the investigation period, with the total market volume of EAL on BSE, I find that the contribution of such self-trades by the Noticee is miniscule and insignificant. It is essential to establish the circumstances under which self-trades have been entered and the impact it had on the market. I am of the view that it is necessary to establish that either there was an intent to manipulate the market in case of self-trades or a loss has been caused to other investors due to such self-trades. Accordingly, mere occurrence of self-trades should not be considered as per se illegal in the absence of any other additional evidence to prove manipulation or intent to defraud as it is done in cases of synchronized trades "

   We thus, deny that there was any manipulative intent to inflate the scrip price by involving in self trades. The allegation for self trades in negligible quantity contributing to total market positive LTP is therefore incorrect.

i) *We deny that merely because we shared a common registered address, e- mail id, had common shareholders and common Managing Director, we were connected to Shailesh Shah Securities for the purpose of manipulation of the price of Denso. We deny that we have indulged in manipulation of the price of the scrip of Denso. We state that the SCN itself is flawed as is based on incomplete facts and records and fails to establish the allegation. Therefore the allegation of being connected for the purpose of alleged manipulation remains unsubstantiated.*

11.2 **Submissions of Shailesh Shah Securities vide letter dated 29/08/2018**: Shailesh Securities re-iterated the submissions made by Nirshilp Securities, and made following additional submissions:

a) *We deny that while dealing for our client Nirshilp in the shares of Denso at BSE during the investigation period, we have violated Regulations 3 (a), (b), (c) and (d) and 4 (1), 4 (2) (a), (b), (e) and (g) of PFUTP Regulations 2003. and*

Clause A(2) of the Code of Conduct for Stock Brokers as specified under Schedule II read with Regulation 7/ 9 of SEBI(Stock Brokers and Sub-Brokers) Regulations, 1992 as wrongly alleged.the alleged trades were executed purely under the instructions of our client Nirshilp Commodities and Trading Pvt. Ltd.*

b) *Nirshilp has been our client since last 14 years. The trades executed by us were solely under instructions and on behalf of client. There was no mala fide intent and the orders were placed according to the instructions of the client. We crave to refer to the order dated 25.11.2011 passed by the Hon'ble Securities Appellate Tribunal in the matter between SMC vs. SEBI which had set aside the Order of SEBI and held the broker not guilty of violation of Clause A(2) of the Code of Conduct specified in Schedule II of the Regulations under similar facts and circumstances. Further, since we have not traded in the shares of Denso in our proprietary account during the period of investigation demonstrates that we can never have had any intent to execute manipulative trades.*

c) *Upon receiving the SCN we had sought necessary documents, information and clarification from Nirshilp.*

d) *Nirshilp has clarified that it has been following NSE BSE arbitrage strategy i.e. buying /selling various scrips on BSE and correspondingly selling/buying on NSE and vice versa to take advantage of the price differential in the two markets.*

e) *Nirshilp has clarified that the alleged orders were placed in normal course of business pursuant to its trading strategies which are permissible practices. Nirshilp has clarified that it invested in small quantities through us as per its NSE BSE Arbitrage Strategy. The alleged trades are based on NSE BSE Arbitrage Strategy and Systematic Investment Plan Strategy.*

f) *Arbitrage aims at opportunities in the price differences between Exchanges and makes miniscule arbitrage profit accordingly which is completely and legally valid. In any event the SCN has not alleged any wrongdoing, either by Nirshilp or by us in the business of arbitrage.*

g) *We have abided by the Code of Conduct as specified in Schedule II and have acted with due care, diligence and skill while conducting our business. It is evident from our submissions that there is no malafide intent in executing the alleged trades on behalf of Nirshilp and these trades arose out of the normal course of business and are within the prescribed regulations. There was no reason for us to suspect the alleged trades. We would also request you to kindly consider the related factors such as nature of business, frequency of trades, change in price of the scrip on other Exchanges, value of trades and condition prevailing in the market during the investigation period. Hence it cannot be construed that we have violated Clause A(2) of the Code Conduct for Stock Brokers as specified under Schedule II read with Regulation 7 of Stock Brokers and Sub-Brokers Regulations, 1992.*

Hearing granted to Noticees and their additional submissions

12 Vide notice dated 05/09/2018, Noticees were provided an opportunity of hearing on 25/09/2018. Noticees, vide their letters dated 11/09/2018 requested to postpone the scheduled hearing as its Director was travelling out of the country. Subsequently, vide e-mail dated 19/09/2018, Noticees were provided another opportunity of hearing on 15/10/2018. Upon further request from Noticees, hearing was re-scheduled to 16/10/2018.

13 Noticees availed the hearing on 16/10/2018, and therein also submitted additional written submissions dated 16/10/2018. Further, AR of Noticees reiterated submissions already made in its reply dated 29/08/2018 and 16/10/2018, and sought time to make more submissions in the matter. Noticees were granted time till 05/11/2018 to make its final submissions.

14 Aforesaid additional submissions dated 16/10/2018 covers following key issues:

14.1 **Submissions of Nirshilp vide letter dated 16/10/2018**:

"We had been discharged from the Adjudication proceedings by the Ld. Adjudicating Officer,…. on 09.03.2018 initiated against us vide SCN dated 18.03.2014 for the violation of Regulation 3(a), (b), (c), (d), 4(1) , 4(2)(a) and 4(2)(g) of SEBI(Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 for dealing in the shares of Ess Dee Aluminium Ltd. (copy enclosed herewith as Annexure 1).

We further state that the allegations levied against us in the present proceedings in the matter of Denso India Ltd are of the very similar nature vis-à-vis the proceedings in Ess Dee Aluminium Ltd. (Copy of SCN of Ess Dee Aluminium Ltd. Is enclosed herewith as Annexure 2).

In addition, subsequent to investigation period of 15/12/2011 to 28.10.2013, the shares of Denso India Ltd has since been delisted from the Exchanges in the year 2013. It may be appreciated that the valuation of the shares which promoters accepted was Rs.145/- per share and consequent thereto, we had offered our shares under the Delisting guidelines. This bring the case, the LTP and the NHP were bound to be in sync with the development of the proposed delisting. The letter for the delisting news from the company dated 27/04/2013 is enclosed herewith as Annexure 3. The notice for post delisting offer dated 03/10/2013 is enclosed herewith as Annexure 4. The notice for Exit offer dated 01/11/2013 is enclosed herewith as Annexure 5.

We therefore aver that based on the similarity of facts in the present proceedings and maintain parity of the sanctity of orders passed by various Adjudicating Officers, we most humbly be discharged from the adjudication proceedings in the matter of Denso India Ltd."

14.2 **Submissions of Shailesh Shah Securities vide letter dated 16/10/2018**:

"We had dealt for our client Nirshilp Commodities and Trading Pvt. Ltd (erstwhile Nirshilp Securities Pvt Ltd). To place on record, a apenalty of Rs. 11,00,000/- had been imposed on us vide order dated 27.03.2015 of the Adjudicating Officer in the matter of Es Dee Aluminium Ltd. (Copy enclosed herewith as Annexure 1). Consequent thereto, we had made the payment. However, we wish to bring to your notice that subsequently our client Nirshilp Commodities and Trading Pvt. Ltd was discharged from the Adjudication proceedings by the Ld. Adjjudicating Officer, …. On 09.03.2018 initiated against them. (Copy enclosed herewith as Annexure 2).

Based on the findings in the order dated 09.03.2018, we had preferred appeal to the Hon'ble SAT being appeal no. 155 of 2018 for relief of refund of Rs.11,00,000/- on the ground as specified in the appeal. The Hon'ble SAT was pleased to allow the appeal vide order dated 13.06.2018. Since the we have received refund of Rs.11,00,000/- vide SEBI letter dated 16/07/2018. The Order from SAT is enclosed herewith as Annexure 3. The letter for refund from SEBI is enclosed herewith as Annexure 4.

We further state that the allegations levied against us for dealing on behalf of our client in the present proceedings in the matter of Denso India Ltd. Are of the very similar nature vis-à-vis the proceedings in Ess Dee Aluminium Ltd.

In addition to the above, subsequent to the investigation period of 15.12.2011 to 28.10.2013, the shares of Denso India Ltd has since been delisted from the Exchange sin the year 013. It may be appreciated that the valuation of the shares which the promoters accepted was Rs. 145/- per share and consequent thereto, we have been informed by our client that they have offered their shares under the Delisting guidelines. This being the case, the Last Traded Price (LTP) and New High Price (NHP) were bound to be in sync with the development of the proposed delisting. The letter for the delisting news from the company dated 27/04/2013 is enclosed herewith as Annexure 5. The notice for post delisting offer dated 03/10/2013 is enclosed herewith as Annexure 6. The notice for Exit offer dated 01/11/2013 is enclosed herewith as Annexure 7.

We therefore aver that based on the similarity of facts in the present proceedings and maintain parity of the sanctity of orders passed by various Adjudicating Officers we may most humbly be discharged from the adjudication proceedings in the matter of Denso India Ltd."

15 In the subsequent separate final submissions dated 05/11/2018, Noticees made following key submissions:

15.1 **Submissions of Nirshilp vide letter dated 05/11/2018**:

"We reiterate what has been submitted in our earlier replies and hereby wish to place on record additional submissions as under:

Enclosed please find copy of Auditor's Certificate dated 24/10/2018 obtained by our broker Shailesh Shah Securities Pvt Ltd certifying that our orders and trades in Denso were pursuant to that Arbitrage strategy and the Systematic Investment Plan ***(Annexure 1).*** *It may be appreciated that as per the Certification of the Auditors, the "markings" of all orders/trades duly reflect the outcome of the algorithm software adopted by Shailesh Shah Securities Pvt. Ltd. for the purpose of Arbitrage strategy and manual placing of orders in the strategy of Systematic Investment Plan. This fortifies our contention that all the orders and trades relating to Arbitrage strategy were in line with the algorithm software and this being the case, all our orders/trades at BSE ought to have corresponding orders/trades at NSE.*

Further in case of Systematic Investment Plan strategy, we submit that orders were placed by creating a basket and that orders were placed through the ODIN terminals using the facility of bulk orders. It is also submitted that orders are placed as ***"limit orders"*** *and price that is inputted is taken as* ***"ask price"*** *available in the market at the time of placing orders. We enclose herewith logs of 2 days in soft copy for SIP investments showing orders placed for around 950 scrips in all.* ***(Annexure 2)*** *It may be observed that as per the order log of 30/07/2012, we had started placing orders at 10:20:23 am and it ended at 10:21:42 am and as per the order log of 01/08/2012, it is submitted that we had started placing orders at 10:24:39 am and it ended at 10:25:37 am. The said order log files shows that in the span of one minute, orders for around 950 scrips were placed i.e. approximately 15-18 orders per second. The order relating to Denso was also part of the strategy. You will appreciate the fact that manually placing orders for around 950 scrips in a span of one minute is humanly impossible. It may thus be reasonably concluded that orders were placed through bulk order placing facility in the ODIN terminal by creating a basket.*

Further, attached please find the following 2 annexure in soft copies:

a. *Entire data of NSE BSE Arbitrage of the scrip Denso India with order number, trade number, order time, trade time and terminal ID which have been sorted according to trade time for the entire investigation period which clearly depicts that the arbitrage pattern with buy trade in one Exchange and sell trade in another Exchange and vice versa.* ***(Annexure 3)***
b. *Entire data of SIP of Denso with order number, trade number, order time, trade time and terminal ID for the entire investigation period.* ***(Annexure 4)***

We once gain wish to place on record the fact that arbitrage being our primary business, we look for arbitrage opportunities in the price differences between Exchanges and make arbitrage benefit accordingly, which is completely and legally valid. It is therefore submitted that on this ground alone the SCN against us ought to be set aside as against us.

In view of the Auditor's Certificate, it is submitted that findings arrived at in the SCN as against us are misconceived and based on incomplete and incorrect assumption of facts and therefore, erroneous. The fact that we have also traded on the platform of NSE has either been completely overlooked or has not been brought on record in the SCN as well as during the investigation. We refer to ***Annexure "3"*** *attached herewith, being the details of our trades in the scrip of Denso on NSE during the investigation period. Further, it is submitted that since the orders are either placed through algo/automated system or through bulk order trading facility by creating a basket, there was no intention from our side to place an order at a particular price to increase the LTP of the scrip as wrongly alleged.*

Under the circumstances, it is prayed that we should be granted an opportunity to cross-examine the investigation officer who has failed to bring on record our corresponding trades in Denso on NSE and has proceeded to place incorrect/partially correct data and facts before yourself for adjudication. It is humbly submitted that in the alternative, your good self may, in the interest of justice and fair play, call for the all relevant records pertaining to our corresponding trades in Denso on NSE and then proceed to adjudicate the matter. It is humbly submitted that in case records pertaining to our corresponding trades in Denso on NSE are not taken on record and considered for the present adjudicating proceedings the same may result into miscarriage of justice and irreparable loss to us.

We request you to grant us a personal hearing after being given an opportunity to cross-examine the investigating officer and recalling the files pertaining to corresponding trades of Denso at NSE."

15.2 **Submissions of Shailesh Shah Securities vide letter dated 05/11/2018**:

"We reiterate what has been submitted in our earlier replies and hereby wish to place on record additional submissions as under:

Enclosed please find copy of Auditor's Certificate dated 24/10/2018 certifying that orders and trades in Denso were pursuant to that Arbitrage strategy and the Systematic Investment Plan ***(Annexure 1).*** *It may be appreciated that as per the Certification of the Auditors, the "markings" of all orders/trades duly reflect the outcome of the algorithm software adopted by Shailesh Shah Securities Pvt. Ltd. for the purpose of Arbitrage strategy and manual placing of orders in the strategy of Systematic Investment Plan.*

Further in case of Systematic Investment Plan strategy, we submit that orders were placed by creating a basket and that orders were placed through the ODIN terminals using the facility of bulk orders. It is also submitted that orders are placed as ***" limit orders"*** *and price that is inputted is taken as* ***"ask price"*** *available in the market at the time of placing orders. We enclose herewith logs of 2 days in soft copy for SIP investments showing orders placed for around 950 scrips in all.* ***(Annexure 2)*** *It may be observed that as per the order log of 30/07/2012, we had started placing orders at 10:20:23 am and it ended at 10:21:42 am and as per the order log of 01/08/2012, it is submitted that we had started placing orders at 10:24:39 am and it ended at 10:25:37 am. The said order log files shows that in the span of one minute, orders for around 950 scrips were placed i.e. approximately 15-18 orders per second. The order relating to Denso was also part of the strategy. You will appreciate the fact that manually placing orders for around 950 scrips in a span of one minute is humanly impossible. It may thus be reasonably concluded that orders were placed through bulk order placing facility in the ODIN terminal by creating a basket.*

Further, attached please find the following 2 annexure in soft copies:

a. *Entire data of NSE BSE Arbitrage of the scrip Denso India done by our client Nirshilp Commodities and Trading Pvt. Ltd. with order number, trade number, order time, trade time and terminal ID which have been sorted according to trade time for the entire investigation period which clearly depicts that the arbitrage pattern with buy trade in one Exchange and sell trade in another Exchange and vice versa.* ***(Annexure 3)***

b. *Entire data of SIP of Denso done by our client Nirshilp Commodities and Trading Pvt. Ltd. with order number, trade number, order time, trade time and terminal ID for the entire investigation period.* ***(Annexure 4)***

We once gain wish to place on record the fact that arbitrage being primary business of Nirshilp, Nirshilp would look for arbitrage opportunities in the price differences between Exchanges and make arbitrage benefit accordingly, which is completely and legally valid. It is therefore submitted that on this ground alone the SCN against us ought to be set aside as against us.

In view of the Auditor's Certificate, it is submitted that findings arrived at in the SCN as against us are misconceived and based on incomplete and incorrect assumption of facts and therefore, erroneous. The fact that Nirshilp has also traded on the platform of NSE has either been completely overlooked or has not been brought on record in the SCN as well as during the investigation. We refer to ***Annexure "3"*** *attached herewith, being the details of trades of Nirshilp in the scrip of Denso on NSE during the investigation period. Further, it is submitted that since the orders are either placed through algo/automated system or through bulk order trading facility by creating a basket, there was no intention from our side to place an order at a particular price to increase the LTP of the scrip as wrongly alleged.*

Under the circumstances, it is prayed that we should be granted an opportunity to cross-examine the investigation officer who has failed to bring on record our corresponding trades in Denso on NSE and has proceeded to place incorrect/partially correct data and facts before yourself for adjudication. It is humbly submitted that in the alternative, your good self may, in the interest of justice and fair play, call for the all relevant records pertaining to our corresponding trades in Denso on NSE and then proceed to adjudicate the matter. It is humbly submitted that in case records pertaining to our corresponding trades in Denso on NSE are not taken on record and considered for the present adjudicating proceedings the same may result into miscarriage of justice and irreparable loss to us.

We request you to grant us a personal hearing after being given an opportunity to cross-examine the investigating officer and recalling the files pertaining to corresponding trades of Denso at NSE."

CONSIDERATION OF ISSUES AND FINDINGS

16. On perusal of the material available on record and giving regard to the facts and circumstances of the case and submissions of the Noticees, following issues require consideration in the present matter followed by findings in this respect:

a) Whether the Noticees manipulated the price of the shares of Denso at BSE during the investigation period, and thereby violated the provisions of Regulations 3 (a), (b), (c) and (d), 4 (1), 4 (2) (a), (b), (e) and (g) of PFUTP Regulations 2003?

b) Whether Shailesh Shah Securities failed to abide by relevant code for Stock Brokers and thereby violated provisions of Clause A(2) of the Code of Conduct for Stock Brokers as specified under Schedule II read with Regulation 7 / 9 (w.e.f Sept. 27, 2013, regulation 7 becomes regulation 9) of Stock Brokers and Sub-Brokers Regulations 1992?

c) Does the violation, if any, on part of the Noticees attract monetary penalty under Section 15HA and Section 15HB of SEBI Act?

d) If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of the SEBI Act?

17. It is appropriate to refer to the aforesaid provisions alleged to have been violated by the Noticees. The same read as follows:

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;
(e) any act or omission amounting to manipulation of the price of a security;

Stock Brokers and Sub-Brokers Regulations 1992

Conditions of registration.
9. *Any registration granted by the Board under regulation 6 shall be subject to the following conditions, namely,-*
……
(f) he shall at all times abide by the Code of Conduct as specified in Schedule II; and
…..
SCHEDULE II
Securities and Exchange Board of India (Stock Brokers and Sub-brokers) Regulations, 1992
CODE OF CONDUCT FOR STOCK BROKERS
[Regulation 9]
A. General.
………

(2) Exercise of due skill and care : A stock-broker shall act with due skill, care and diligence in the conduct of all his business.

Issue a) Whether the Noticees manipulated the price of the shares of Denso at BSE during the investigation period, and thereby violated the provisions of Regulations 3 (a), (b), (c) and (d), 4 (1), 4 (2) (a), (b), (e) and (g) of PFUTP Regulations 2003?

18. Investigation reveal that Nirshilp had significant contribution in price rise of Denso at the BSE during the investigation period, as it contributed 25.67% of the total positive LTP through its 1554 buy trades undertaken at positive LTP. Details of analysis of top 10 entities contributing most to the LTP as buyer at BSE are as follows:

Buyer Name	All Trades			LTP Diff. > 0			LTP Diff. < 0			LTP Diff. = 0		% of Positive LTP to Total Mkt. Positive LTP
	Sum of LTP (Rs.)	Sum of Qty.	No. of trades	Sum of LTP (Rs.)	Sum of Qty.	No. of trades	Sum of LTP (Rs.)	Sum of Qty.	No. of trades	Sum of Qty.	No. of trades	
BSE												
Nirshilp Commodities and Trading Pvt. Ltd.	185.85	36781	29460	772.90	2137	1554	-587.05	1853	1425	32791	26481	25.67
Satinderpal Singh Sachdeva	73.55	1586	112	77.50	397	70	-3.95	292	8	897	34	2.57
Parvinder Singh	30.75	21242	1452	105.50	4552	192	-74.75	5001	144	11689	1116	3.50
Quadeye Securities Pvt Ltd	20.90	19328	1124	44.40	3189	175	-23.50	917	60	15222	889	1.47
Globe Capital Market Ltd.	17.10	207450	1752	48.40	31604	142	-31.30	11809	85	164037	1525	1.61
Jawale Sanjiwani Sudhakar	15.55	3100	279	15.85	1341	39	-0.30	52	3	1707	237	0.53
Gajanan Enterprises	15.15	23486	201	30.00	1200	37	-14.85	1002	33	21284	131	1.00
Sudhir Mullick	12.85	37085	356	18.10	22191	64	-5.25	1953	17	12941	275	0.60
Bharat Jayantilal Patel	12.70	310191	151	14.55	301502	48	-1.85	4152	6	4537	97	0.48
Ram Pal Singh	12.45	1400	46	12.45	613	12	0.00	0	0	787	34	0.41
Group Total	**396.85**	**661649**	**34933**	**1139.65**	**368726**	**2333**	**-742.80**	**27031**	**1781**	**265892**	**30819**	**37.84**
Total Market	**95.20**	**5642729**	**96752**	**3010.30**	**1622348**	**7786**	**-2915.10**	**842451**	**7406**	**3177930**	**81560**	**100**

19. Upon further perusal of the aforesaid 1554 trades placed at price above the LTP, it was noted that Nirshilp consistently undertaken buy trades above the LTP involving pattern viz, (a) in 650 instances of the aforesaid 1554 trades, it placed buy order at rate above the prevailing sell order rate and therein its buy order quantity being less than sell order quantity, (b) in 341 instances of aforesaid 1554 trades, it repeatedly matched its market buy orders with sell orders placed above the LTP, and (iii) in 355 instances of aforesaid 1554 trades, it executed self trades by matching its own buy and sell orders. Details of the same with illustration are as follows:

i) **<u>LTP contributed by repeatedly placing buy order rate above the prevailing sell order rate and buy order quantity being less than sell order quantity</u>:** Out of 1,554 positive LTP trades, in 650 trades for 722 shares, buy order rates were placed above the sell order rates and buy order quantity was lesser than sell order quantity in 647 instances. Such trades contributed LTP of Rs. 246 (8.17% of total market positive LTP). On further analysis of 650 trades in which the buy order rates were placed above the sell order rates, it was observed that in 438 trades for 478 shares contributing to LTP of Rs.

216.25 (7.19% of total market positive LTP), the buy orders were placed after the sell orders are available in the system and buy order quantity was lesser than sell order quantity in all the instances. Few instances of such order pattern are tabulated below:

Sl	Date	Order Type	Order No	Order Time (LM)	Order Qty (LM)	Order Price (LM)	Counterparty Pending Order Qty	Counterparty Pending order Price range	Trade time	Trade Qty.	Trade Price	Diff in LTP (Rs.)
1	30/12/2011	Buy	23000120008112	10:14:30	1	51.75	1937	51.7-58.9	10:14:30	1	51.7	6.65
		Sell	15000112013098	10:14:27	200	51.7	8488	39.35-47.5				
2	07/03/2012	Buy	14000191004967	09:24:28	1	55.6	3275	55.25-66	09:24:28	1	55.25	3.25
		Sell	14000191004180	09:23:12	200	55.25	11016	44.5-53.05				
3	05/06/2012	Buy	18000117103931	14:26:04	1	51.1	2004	51-60.2	14:26:04	1	51	2.25
		Sell	13000097032136	11:09:15	100	51	4190	40.25-48.85				
4	13/08/2012	Buy	16000086154086	15:22:19	1	47	2172	46.9-55.7	15:22:19	1	46.9	2.4
		Sell	14000092042787	13:18:22	29	46.9	2074	37.7-44.55				
5	24/08/2012	Buy	13000074006724	10:07:03	1	49.15	1561	48.8-57.55	10:07:03	1	48.8	2.25
		Sell	23000073032234	09:47:58	47	48.8	3020	41.1-46.8				

It was observed that Nirshilp repeatedly placed buy orders above prevailing sell order rates with negligible buy quantity (mostly 1 share). A genuine buyer would not repeatedly place buy orders at a price higher than the sell order price and for a quantity lesser than the available sell order quantity. Thus, it is alleged that Nilshilp repeatedly placed the aforesaid orders with a manipulative intent to increase the price of the scrip.

ii) **<u>LTP contributed by repeatedly matching sell orders placed above LTP through market orders with negligible buy quantity</u>**: Out of 1,554 positive LTP trades, Nirshilp placed market buy order (a market order is a buy or sell order to be executed immediately at current market price) in 341 trades for 803 shares. Such trades contributed Rs. 173.45 (5.76% of total market positive LTP). Market orders of Nirshilp that contributed the highest LTP were further analysed and the details are as follows:

Sl.	Date	Order Type	Order No	Order Time (LM)	Order Qty (LM)	Order Price (LM)	CP Pending Order Qty.	CP Pending order Price range	Trade time	Trade Qty.	Trade Price	Diff in LTP (Rs.)
1	30/12/2011	Buy	15000112003555	09:17:54	8	MO	250	56-57.5	09:17:54	8	56	6.95
		Sell	12000121006215	09:16:13	50	56	1801	40.1-45.05				
2	02/01/2012	Buy	15000112073112	13:59:45	1	MO	1837	48.9-56.4	13:59:45	1	48.9	2.3
		Sell	12000122033473	11:23:54	50	48.9	8261	38.05-46.65				
3	10/01/2012	Buy	20000121034603	09:56:50	1	MO	436	52.5-57.55	09:56:50	1	52.5	4.35
		Sell	21000115018278	09:56:43	20	52.5	10222	38.55-48.1				
4	10/01/2012	Buy	20000121035033	09:57:26	1	MO	482	52.5-57.55	09:57:26	1	52.5	2.5
		Sell	21000115018278	09:56:43	20	52.5	10222	38.55-48.1				
5	28/05/2012	Buy	14000097025600	09:42:20	1	MO	2937	52.95-59.8	09:42:20	1	52.95	3.05
		Sell	14000095003734	09:39:29	100	52.95	3003	41.65-48.3				

It is noted from the above trading pattern of Nirshilp of matching market orders with negligible buy quantity was with a intent to deliberately increase the scrip price and hence, manipulative in nature.

iii) **<u>LTP contributed by repeatedly executing self-trades</u>:** Self-trades trades does not result in change in beneficial ownership and create artificial volumes in the scrip, sending wrong signal to gullible investors about trading in the scrip. Details of self-trades by Nirshilp at BSE during the investigation period are as under:

Entity Name	**Broker on both buy and sell side**	**Total self-trades vol.**	**No. of self-trades**	**No. of self-trades days**	**% of self-trades qty. to mkt. vol.**	**No. of self-trades from same terminal**	**Net LTP contribution by self-trades**
Nirshilp	Shailesh Shah Securities Pvt. Ltd.	363	355	148	0.006	170	79

LTP contributed by Nirshilp through self-trades in BSE is as under:

Buyer Name	All Trades			LTP Diff. > 0			LTP Diff. < 0			LTP Diff. = 0		% of Positive LTP to Total Mkt. Positive LTP
	Sum of LTP (Rs.)	Sum of Qty.	No. of trades	Sum of LTP (Rs.)	Sum of Qty.	No. of trades	Sum of LTP (Rs.)	Sum of Qty.	No. of trades	Sum of Qty.	No. of trades	
Nirshilp	79.00	363	355	134.35	163	158	-55.35	122	119	78	78	4.46
Total Market	**95.20**	**5642729**	**96752**	**3010.30**	**1622348**	**7786**	**-2915.10**	**842451**	**7406**	**3177930**	**81560**	**100**

Self-trades of Nirshilp that contributed the highest LTP were considered for analysis and the details are as follows:

Sr. No.	Date	**Order Type**	**Order No**	**Order Time (LM)**	**Order Qty (LM)**	**Order Price (LM)**	**CP Pending Order Qty.**	**CP Pending order Price range**	**Trade time**	**Trade Qty.**	**Trade Price**	**Diff in LTP (in Rs.)**
1	30/12/2011	Buy	18000121028460	10:39:16	25	MO*	2036	51.65-58.9	10:39:17	1	51.6	4.10
		Sell	14000143000143	10:39:10	1	51.6	8548	39.35-48.5				
2	30/12/2011	Buy	18000121029604	10:41:43	19	MO*	1988	51.55-58.9	10:41:43	1	51.5	4.15
		Sell	18000121029394	10:41:38	1	51.5	8532	39.35-47.35				
3	16/01/2012	Buy	12000119014429	10:04:44	1	53.8	2977	53.85-63.45	10:04:44	1	53.8	3.15
		Sell	21000115008794	09:53:56	1	53.8	8403	42.55-50.7				
4	18/06/2012	Buy	23000144002565	09:42:15	1	49.75	1305	49.65-56.05	09:42:15	1	49.65	3.15
		Sell	22000179009248	09:32:45	1	49.65	1876	40-46.95				
5	30/07/2012	Buy	12000076014370	10:21:18	1	48.15	1578	48.8-54	10:21:19	1	48.15	3.15
		Sell	15000086002051	10:21:19	1	47.25	4254	36.05-48.15				
6	01/08/2012	Buy	13000085060254	10:25:03	1	48.9	2436	48.9-54.9	10:25:03	1	48.9	4.6
		Sell	18000110009230	09:59:44	1	48.9	3044	40-45.1				

**MO= Market order*

Nirshilp executed 355 self-trades for 363 shares on 148 trading days. It is also observed that 170 self-trades for 176 shares were executed from the same terminal ID and the broker for these trades on buy and sell side was Shailesh Shah Securities. Hence, it was alleged that the self-trades of Nirshilp which contributed towards 4.46% of total market positive LTP and being repetitive in nature, were with an intent to increase the price of the scrip.

20. It was also alleged in the investigation that Shailesh Shah Securities, the stock broker of Nirshilp, was a connected entity with Nirshilp, and dealings of Nirshilp were also attributed to Shailesh Shah Securities in carrying out the trades under question. Hence, Shailesh Shah Securities, along with Nirshilp by dealing in aforesaid manner, manipulated the price of the scrip of Denso during the investigation period.

21. Noticees, in their replies, have contended that Nirshilp was inter-alia undertaking BSE-NSE arbitrage activity, and same is not on record as trades of Nirshilp at NSE were not taken into consideration in the investigations and this lead to erroneous observations, allegations and findings. In this regard, it is noted that under the investigations, analysis of LTP in scrip of Denso was undertaken for dealings at both BSE and NSE. Based on the aforesaid analysis, though there was no significant concentration in overall LTP contribution or price rise at NSE, however, at BSE, Nirshilp emerge as the top entity contributing to price rise in overall trades, and in its buy trades above LTP by placing 1554 buy trades at higher price than the LTP with concentration of 25.67% to the total positive LTP. Further analysis of such trades, also provide certain pattern as mentioned in above paras, based on which it was alleged that Noticees undertaken such trades with intention to manipulate the price of the scrip at BSE. It is noted that there was pattern put on record which supports the allegations made in the matter. Further, as regards to contentions put up by Noticees and plea to also consider their trading pattern at NSE, same is being considered under the present proceedings.

22. It is noted that at BSE, Nirshilp dealt in the scrip of Denso through stock broker Shailesh Shah Securities, and at NSE, it dealt through stock Broker Nirpan Securities Pvt. Ltd. It is noted that Shailesh Shah Securities, Nirpan Securities and Nirshilp are all related to each other through common registered address and through common Director viz, Harendra Dolatrai Shah (DIN 00012601).

23. Upon perusal of trade log of the dealings in the scrip of Denso at BSE and NSE during the investigation period, following is noted inter-alia regarding the dealings of Nirshilp:

a) At BSE, scrip of Denso was traded on 466 days, in which total 96752 trades were executed with total volume of 5642729 shares. At NSE, scrip of Denso was traded on 467 days, wherein total 84284 trades were executed with total volume of 5097316 shares.

b) Nirshilp dealt in scrip of Denso at BSE on 407 days, in which it executed total 59429 trades (buy + sell), and the same was 61.29% of total no. of trades (i.e, 96752 trades) executed in the scrip of Denso. Through aforesaid trades at BSE, Nirshilp bought 36781 shares and sold 36062 shares, which were combinedly 1.28% of the total market volume (i.e, 5642729 shares) in scrip of Denso at BSE.

c) Nirshilp dealt in scrip of Denso at NSE on 311 days, in which it executed total 59429 trades (buy + sell), and the same was 70.51% of total no. of trades (i.e, 84284 trades) executed in the scrip of Denso at NSE. Through aforesaid trades at NSE, Nirshilp bought 37232 shares and sold 40024 shares, which was combinedly 1.5% of the total market volume (i.e, 5097316 shares) in scrip of Denso at NSE.

d) Most of the dealing of Nirshilp were in small lot of 1 shares. At BSE, it executed 56030 trades in lot of 1 share and the same comprise 94.28% of its total no. of trades at BSE. Further, at NSE, it executed 56095 trades in lot of 1 share and the same comprise 94.6% of its total trades at NSE. Further, among all the trades executed in lot of 1 share in scrip of Denso at BSE and NSE, Nirshilp contributed to 96% and 93% of such trades, respectively.

e) Nirshilp undertaken self trades at both BSE and NSE. At BSE, it executed 355 self trades for 363 shares, among which 351 trades were for 1 share each. At NSE, Nirshilp executed 480 self trades for 515 shares, among which 466 trades were for 1 share each.

24. Given the above, it is noted that Nirshilp was the most frequent trader in the scrip of Denso at both BSE and NSE during the investigation period. It is to note that though Nirshilp significantly dominated the trading in terms of no. of trades executed in scrip of Denso at BSE and NSE, with concentration of 61% and 70%, respectively, however, its volume contribution was a meagre 1.28% at BSE and 1.5% at NSE.

25. Noticees have submitted in their replies that arbitrage being primary business, Nirshilp look for arbitrage opportunities in the price differences between Exchanges and make arbitrage benefit accordingly. It is also argued that trades of Nirshilp under question which allegedly increased the price of shares of Nirshilp, were part of its arbitrage activity or systematic investment plan. Based on facts provided by Noticees, Nirshilp undertaken arbitrage activity at NSE and BSE on 312 days and systematic investment at BSE on 279 days, and on 196 days it undertaken both the aforesaid activities simultaneously.

26. *It is noted that Noticees, in reply dated August 29, 2018 identified 279 days in which it undertook systematic buying (SIP trades) at BSE. Noticees in subsequent reply dated November 5, 2018 identified lower no. of 220 days in which its various instances of buying undertaken at BSE inter-alia during March 15, 2013 to August 28, 2013 were not covered. Considering apparent error in the facts in later reply, details of SIP trades are taken on record as submitted in reply dated August 29, 2018.*

27. It is noted that Nirshilp was not only the sole major arbitrager, but also the single major trader in the scrip of Denso with substantial domination of trading viz, 60% and 70% in terms of no. of trades executed at BSE and NSE. Further, it is also noted that dealings of Nirshilp were not limited to arbitrage, and admittedly, it undertook simultaneous buying of 1 share a day over a long period of 278 days at BSE.

28. As regards to claim of arbitrage trading, it is pertinent to note that in general, arbitrage by a single arbitrager do not result into significant rise / fall in price of a scrip, that too consistently over a long period of time. Contrary to this trend, dealings of Nirshilp has resulted into significant rise in price of the scrip of Denso at BSE by consistent execution of buy trade above the LTP over the long investigation period of 21 months.

29. It is noted that scale of dealings of Nirshilp in scrip of Denso varies at BSE and NSE. At BSE, Nirshilp dealt on 407 days compared to its dealings on 311 days at NSE. Further, as per information provided in reply of the Noticees, Nirshilp separately undertaken systematic buying of 1 shares each at BSE on 278 days. Hence, Nirshilp had relatively more focused dealings at BSE. Further, it is noted that more than 200 of the aforesaid over 278 systematic buy trades at BSE, were executed at higher price than the LTP amounting to more than 8% of the positive LTP at BSE during the investigation period.

30. On a separate parallel scale, consideration is given to the submissions of Noticees that all manual orders of Nirshilp at BSE were part of its so claimed systematic investment. In this regard, it is noted that total 317 such buy trades were executed through manual buy orders at BSE and they were placed as limit orders. It is pertinent to note that 220 of the aforesaid 317 buy trades were executed at price higher than the LTP, contributing to positive LTP of Rs.285.45 or 9.48% of the total positive LTP during the investigation period. These trades are not a factor of innocent trading algorithm.

31. Noticees have argued that the trades undertaken by Nirshilp were entered through either algorithmic orders for arbitrage or through basket orders for systematic investment. Also, it has been claimed that there was no intention by Nirshilp to place an order at a particular price to increase the LTP as alleged. In support, Noticees have submitted audit report certifying the placement of algorithmic orders and basket orders. Upon perusal of the said report from auditors, it is noted that auditors certified on sample basis placement of algorithm orders for arbitrage activity and basket orders for systematic investment of Nirshilp. Further, it is noted that Auditors have perused buy orders of 2 trades of Nirshilp at BSE mentioned in the SCN, and verified the same with corresponding 2 sell orders placed by Nirshilp at NSE and confirmed that these corresponding orders of Nirshilp were part of its arbitrage activity. As regards to so claimed basket orders, auditors, upon relying on information given to it by Noticees and without adding further, certified that 2 sample orders of Nirshilp were entered as basket orders along with orders in 950 other scrips.

32. Claim of placement of manual orders by Nirshilp in form of a basket could not be verified from the information available in trade-order log of BSE, though it is noted that such orders were placed as limit orders. As regards to claim of arbitrage trading, it is noted that 14^{th} digit being 1 in 16 digit location ID at BSE and 13^{th} digit being 0 in 15 digit location ID at NSE, identify that such trade was executed through an algorithm order. Upon application of above provision on the dealing of Nirshilp in Denso at BSE and NSE during the investigation period, it is noted that at BSE, except 317 buy trades and 15 sell trades, all other trades were executed through algorithmic orders. Further, at NSE, except 8 buy trades and 1 sell trade, rest all trades of Nirshilp were executed through algorithmic orders.

33. Above facts show that major part of the dealing of Nirshilp was through algorithm orders, and it has also been claimed that its remaining trades were executed through basket orders. However, it is pertinent to note that just because algorithmic trading was undertaken or orders were placed in a basket, it does not mean that there is characterisation that these are presumably non- manipulative trades. The effect the trades have on the price and the volume in the markets that they operate are very critical factors to determine the genuineness and intention behind the trading strategy.

34. In the aforesaid audit report, Auditors inter-alia mentioned that buy order ref. no. 13000074006724 placed on 24/08/2012 at 09:35:18 hrs at BSE, was subsequently frequently updated 503 times during 9:35:33 to 10:07:03 before resulting into trade at 10:07:03 hrs. From the perusal of the above buy order in order log of Denso at BSE, it is noted the above order was placed for 1 share and was subsequently updated 503 times for revision of buy rate. At 10:07:03 hrs, aforesaid buy order of Nirshilp was matched with sell order ref. no. 23000073032234 which was originally placed at 09:35:43 hrs for 47 shares @ Rs.49 and was last modified for price to Rs.48.8 at Rs.09:47:57 hrs. Resulting trade happened at existing sell order rate of Rs. 48.8. It is pertinent to note that Nirshilp modified its aforesaid buy order 448 times after last modification of the aforesaid sell order at 09:47:57 hrs, and despite the fact that aforesaid sell order was the best sell order at Rs.48.8, Nirshilp modified its buy order from its existing rate of Rs.46.8 to a higher rate of Rs.49.15. From the above, it is noted that not only the buy order was frequently modified with total 503 instances, but the order was also ultimately modified to a price higher than the best sell order, even <u>though there was one share to be bought which was available at lower rate</u>. Hence, the above dealings of Noticee defy the buyers intention in general to buy lower.

35. Similarly, it is pertinent to note that out of its aforesaid 1554 buy trades executed above the LTP at BSE, in 650 trades for 722 shares, Nirshilp placed <u>buy orders wherein rate was quoted above the best sell order rate</u>. It is also noted that in 647 of the said 650 trades, <u>buy order quantity placed by Nirshilp was less than sell order quantity available at the time</u>, indicating that there was no requirement to place the buy order at higher price than the best available sell order rate. Through these trades, Nirshilp has contributed to significant 8.17% of total market positive LTP. This dealing pattern of Noticee has shown to other unsuspecting investors, its willingness to buy at higher rate, hence the same was a deceptive and manipulative act.

36. Noticees have not come with any credible justification except that they also executed trades with negative LTP which may be considere, and their contribution to the price rise should be seen in context with the best sell order price instead of LTP. In this regard, it is noted that such point has already been taken while undertaking the LTP analysis available on record. It is noted that top 10 entities as buyers contributing to overall LTP (+ve and –ve) were shortlisted, and for them further analysis was undertaken if they had any major contribution in terms of trades undertaken at +ve LTP. It is on record that, no significant concentration in contribution to LTP was observed at NSE. While, at BSE, it is clearly seen that Nirshilp appear as top LTP

contributor in terms of overall LTP contribution of Rs. 185 compared to net rise in price of Rs. 95.2 at BSE during the investigation period, and further, during the same period at BSE, it also contributed 25.67% of the total positive LTP . Hence, contention of Noticees is not found tenable, and it is noted that Nirshilp has significant contribution in price rise in both scenarios of overall LTP contribution and positive LTP contribution through its buy trades.

37. Nirshilp, while dealing in the scrip of Denso at BSE, contributed Rs. 772.90 i.e, 25.67% of the total market positive LTP through its 1554 trades for 2137 shares executed at higher price than the LTP. It is noted that 1534 of the aforesaid 1554 trades were executed for miniscule quantity of upto 5 shares, and wherein 1402 trades were executed for mere 1 share.

38. As per trade wise details of arbitrage activity provided by Nirshilp in its reply, it is noted that Nishilp executed total 1,18,826 trades as part of its arbitrage activity which amounts to 65% of the total no. of trades executed in scrip of Denso at NSE and BSE. It is to note that every last trade executed in a scrip, is a tick by tick price movement in the scrip during a given day, and same act as a reference price for entities dealing in the scrip including arbitragers. Further, it is to take note that arbitragers only take advantage of the difference in price prevalent at two stock exchanges at a given point of time. Given the above premises, it is pertinent to note that being an entity present as either buyer or seller in 65% of the trades in scrip of Denso at BSE and NSE during investigation period, Nirshilp played key role in price movement in the scrip. This cast serious doubt about intentions of the Nirshilp behind its arbitrage activity, as its dealing pattern have not only disrupted the dealing in the scrip of Denso, but also contributed to the price rise in the same at BSE.

39. It is relevant to refer to pattern of placement of orders in the scrip of Denso. In this regard, order log in the scrip of Denso at BSE was perused on sample basis for longer period viz, December 2011 to November 2012. From the same, following is noted:

Particulars of instances of buy and sell orders	**Total instances**	**Instances by Nirshilp**	**Concentration of Nirshilp (%ge)**
Placement of orders	1,07,777	74,822	69.42
Modification of orders	8,60,025	8,46,132	98.38
Deletion of orders	46,181	36,737	79.55

40. It is visible in the above table that Nirshilp heavily dominated the order book of Denso in terms of placement, modification and deletion of orders (buy/sell). Specifically, as regards to modification of orders, domination was as high as 98.4% of the total such instances. Despite above domination in order book, Nirshilp dealt in meagre volume involving purchase and sale of 27,853 shares and 19,943 shares, respectively.

41. From the trading behaviour of Nirshilp, it is noted that Nirshilp has dominated the dealing in the scrip of Denso in terms of placement and modification of orders and execution of no. of

trades. Despite the above dominant activity, Nirshilp bought and sold meagre volume of shares. Further, given the fact that dealings of Nirshilp resulted into significant price rise at BSE, it can be seen as act to manipulate the price of the scrip of Denso.

42. As regards to allegation of self trades resulting into price rise, Noticees have contended that they were not intentional, and was result of BSE-NSE arbitrage strategy of Nirshilp undertaken through algorithmic orders. Noticees argued that self trades prevention check was not in practice during the investigation period, and Stock Exchange introduced it in 2015 only. Further, Noticees quoted cases laws where instances of self trades were not considered manipulative, and same inter-alia involved matter of Ess Dee Aluminium where proceedings in respect of Nirshilp was disposed of without adverse action.

43. Upon perusal of the aforesaid matter viz, Ess Dee Aluminium in respect of Nirshilp, it is noted that charge was made against Nirshilp for contribution to artificial volume and misleading appearance of trading, and no charge of price manipulation was made. In the said case, it was found that self trade volume of Nirshilp was very negligible part of total volume in the scrip, hence same were not found to be manipulative. Whereas, in the present matter, Nirshilp contributed to over 25.67% of positive LTP in the scrip of Denso at BSE during the investigation period, and wherein inter-alia its self trades only contributed significant 4.46% of the total positive LTP. Upon relating the facts and scenarios of both the cases, it is noted that they are different, and the present matter require consideration according to its own facts and circumstances.

44. It is pertinent to note that just because one has strategic plan of trading does not mean that such trades are not disruptive / violative in nature. The trades are to be seen in the context of the markets in which they operate. In the present matter, as noted above, Nirshilp was the most frequent trader in the scrip of Denso with sole domination of such scale in terms of no. of orders placed and trades executed in the scrip. As noted above, order entry pattern of Noticee was disproportionate to the volume bought and sold by it. In addition, arbitrage trading and systematic investment of Nirshilp resulted into significant price rise in scrip of Denso at BSE.

45. Claim of systematic investment in form of 1 share a day appear not more than a peculiar manner to cover up for its dealings, specifically taking note that Nirshilp was also simultaneously undertaking arbitrage trading. Under the garb of arbitrage trading, Nirshilp used algorithm to indulge into frequent placement of orders, and further aggressive modification of the same to consistently execute buy trades above the LTP at BSE. Algorithm trades, if unchecked, can create havoc and disrupt the trading in a particular scrip. Evidently, dealing of Nirshilp in the present case has resulted into disruption in equilibrium of prices in the scrip of Denso and given price rise at BSE. Further, owing to lack of due diligence and checks in this regard, buy and sell orders of Nirshilp have also resulted into self trades, and

significant part of which were too executed at price higher than the LTP, and from common terminals of Shailesh Shah Securities.

46. The entities are focussed on their trading strategies for arbitraging between exchanges, for their own benefit. However they operate in two different markets, the BSE and the NSE. The trading strategies they deploy should stand the test of market prudence at both the exchanges independently. In the present case, dealings of Nirshilp has significantly contributed to price rise in the scrip of Denso at BSE, and same amounts to manipulation of price of the scrip of Denso.

47. It has also been alleged that Shailesh Shah Securities, Stock Broker dealt for Nirshilp in scrip of Denso at BSE, is connected to Nirshilp, and Nirshilp undertaken the price manipulation along with Shailesh Shah Securities. It is noted that a strong connection has been alleged between the Noticees, where they have common registered address, and common directors including common Managing Director during the investigation period. In this regard, it is pertinent to note that Shailesh Shah Securities has not contended to the alleged connection, however, as regards to allegation of price manipulation, it has argued that there was no malafide intent in executing the alleged trades on behalf of Nirshilp, and these trades arose out of the normal course of business and are within the prescribed regulations, and there was no reason for Shailesh Shah Securities to suspect the alleged trades.

48. It is noted that Shailesh Shah Securities, as a Stock Broker has undertaken trades for Nirshilp at BSE, and they were both closely associated with each other by way of the aforesaid undisputed connection. Noticees in their replies inter-alia submitted that Nirshilp has used the algorithmic software adopted by Shailesh Shah Securities. Given the above facts and scenarious of the case, it is noted that while dealing in the scrip of Denso activities of Nirshilp and Shailesh Shah Securities were aligned and it is clear that they acted in concert. Hence, contention of Shailesh Shah Securities in this regard are not tenable, and it is clear that Shailesh Shah Securities, along with Nirshilp are responsible for manipulation of price in scrip of Denso at BSE.

49. Given the above observations, it is clear that Noticees have manipulated the price of the scrip of Denso at BSE during the investigation period. Hence, thereby, Noticees have violated the provisions of Regulations 3 (a), (b), (c) and (d), 4 (1), 4 (2) (a), (b), (e) and (g) of PFUTP Regulations 2003.

Issue b) – Whether Shailesh Shah Securities failed to abide by relevant code for Stock Brokers and thereby violated provisions of Clause A(2) of the Code of Conduct for Stock Brokers as specified under Schedule II read with Regulation 7 / 9 (w.e.f Sept. 27, 2013, regulation 7 becomes regulation 9) of Stock Brokers and Sub-Brokers Regulations 1992?

50. It has been alleged that Shailesh Shah Securities acted as buy and sell broker of Nirshilp in its 355 self-trades. 170 self-trades for 176 shares were executed from the same terminal ID.

Nirshilp's Self-trades were alleged to be repetitive in nature and they contributed towards 4.46% of total market positive LTP at BSE. Thus, it is alleged that Shailesh Shah Securities failed to exercise due skill and care in terms of Clause A(2) of the Code of Conduct for Stock Brokers as specified under Schedule II read with Regulation 7 of Stock Brokers and Sub-Brokers Regulations, 1992 (w.e.f Sept. 27, 2013, regulation 7 becomes regulation 9).

51. Shailesh Shah Securities has argued that there was no malafide intent in executing the alleged trades on behalf of Nirshilp, and these trades arose out of the normal course of business and are within the prescribed regulations. There was no reason for Shailesh Shah Securities to suspect the alleged trades. It is also plead that the related factors be considered in the matter, such as nature of business, frequency of trades, change in price of the scrip on other Exchanges, value of trades and condition prevailing in the market during the investigation period.

52. Noticees have also argued that self trades resulted due to its BSE-NSE arbitrage trading undertaken through algorithmic orders, and the self trades prevention check at Stock Exhange level was not in practice during the investigation period, and same was introduced in 2015 only.

53. As already noted above, it is undisputed fact that Shailesh Shah Securities was closely associated with Nirshilp. It has been placed on record that Nirshilp undertaken its most of the dealings through algorithm trades as per software adopted by Shailesh Shah Securities. It is pertinent to note that Shailesh Shah Securities was expected to follow due care and skill to undertake trades on behalf of its client Nirshilp. However, it has been noted that Shailesh Shah Securities indulge into aggressive placement of orders for Nirshilp simultaneously, which has resulted into frequent self trades. Though these self trades were less than 1% of the total no. of trades executed at BSE in Denso, however, it is pertinent to take into consideration that they resulted into significant price rise with contribution of 4.46% to the total positive LTP at BSE.

54. There is nothing wrong in having higher scale in dealings, however, at the same time it is desirable that appropriate diligence and checks are followed to ensure that there is no disproportionate and manipulative impact of such dealings on the market.

55. Given the above, it is clear that Shailesh Shah Securities failed to exercise due skill and care in its dealing for Nirshilp. Hence, thereby it has violated provisions of Clause A(2) of the Code of Conduct for Stock Brokers as specified under Schedule II read with Regulation 7 of Stock Brokers and Sub-Brokers Regulations, 1992 (w.e.f Sept. 27, 2013, regulation 7 becomes regulation 9).

Issue c) Does the violation, if any, on part of the Noticees attract monetary penalty under Section 15HA and Section 15HB of SEBI Act?

56. Given the above, it is found that Nirshilp and Shailesh Shah Securities have manipulated the price of the scrip of Denso at BSE. Further, it is also found that Shailesh Shah Securities as a stock broker of Nirshilp, failed to execise due skill and care to avoid self trades which also contributed to significant rise in price of scrip of Denso at BSE. Such acts of Noticees have violated the aforementioned provisions of PFUTP Regulations, 2003 and Stock Brokers and Sub-Brokers Regulations, 1992, and same attract monetary penalty under provisions of 15HA and 15HB of SEBI Act, respectively, which reads as follows:

*88[**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 89[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].*

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88 Inserted by the SEBI (Amendment) Act, 2002, w.e.f.29-10-2002.
89 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

Penalty for contravention where no separate penalty has been provided.
***15HB.** Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be 90[liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.]*

90Substituted for the words ―liable to a penalty which may extend to one crore rupees by the Securities Laws (Amendment) Act, 2014, w.e.f. 08-09-2014.

57. Noticees have inter-alia submitted that their dealings were never intended to give price rise in scrip of Denso. In this regard, it is noted that Noticees adopted trading strategies in an informed manner, and even if price rise was not intended, their dealings resulted into significant price rise and in the manner which were manipulative in nature. In this respect, reliance is also placed on order of the Hon'ble Supreme Court of India in the matter of *SEBI Vs. Shri Ram Mutual Fund* [2006] 68 SCL 216(SC), where honourable court has also 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…".*

58. Given the above, appropriate monetary penalty is liable to be imposed in respect of the Noticees under provisions of Section 15HA and Section 15HB of SEBI Act.

Issue c) - If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of the SEBI Act?

59. While determining the quantum of penalty under section 15HA and section 15HB of SEBI Act, it is important to give consideration to the factors stipulated in section 15J of SEBI Act, which reads as follows:

Section 15J of SEBI Act - Factors to be taken into account by the Adjudicating Officer

While adjudging quantum of penalty under section 15-I of SEBI Act, 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."

93[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.]

93 Inserted by Part VIII of Chapter VI of the Finance Act, 2017 vide Gazette Notification No. 7, Extraordinary Prt II Section 1 dated March 31, 2017. This shall come into force from April 26, 2017.

60. As per records, disproportionate gains or unfair advantage and loss caused to investors, if any, have not been quantified in the present matter.

61. As per available information, other enforcements are pending in respect of Nirshilp for alleged violation of PFUTP Regulations, and in respect of Shailesh Shah for alleged violation of code of conduct for Stock Brokers. Further, Shailesh Shah Securities have been cautioned / censured by SEBI in past for its dealings.

ORDER

62. In view of the above, after taking into consideration all the facts and circumstances of the case, violation established as mentioned above, and after considering the factors enumerated in section 15Jof the SEBI Act, following monetary penalty is hereby imposed upon Noticees:

a) Penalty of Rs.7,50,000/- (Rupees Seven Lakh and Fifty Thousand only) upon Nirshilp Commodities and Trading Pvt Ltd under section 15HA of SEBI Act for violation of Regulations 3 (a), (b), (c) and (d), 4 (1), 4 (2) (a), (b), (e) and (g) of PFUTP Regulations 2003;

b) Penalty of Rs.5,00,000/- (Rupees Five Lakh only) upon Shailesh Shah Securities Pvt Ltd under section 15HA of SEBI Act for violation of Regulations 3 (a), (b), (c) and (d), 4 (1), 4 (2) (a), (b), (e) and (g) of PFUTP Regulations 2003; and

c) Penalty of Rs.3,00,000/- (Rupees Three Lakh only) upon Shailesh Shah Securities Pvt Ltd under section 15HB of SEBI Act for violation of Clause A(2) of the Code of Conduct for Stock Brokers as specified under Schedule II read with Regulation 7 / 9 (w.e.f Sept. 27, 2013, regulation 7 becomes regulation 9) of Stock Brokers and Sub-Brokers Regulations 1992.

63. The Noticees shall remit / pay the said amounts of penalty (total Rs.15,50,000/-)within 45 (forty five) days of receipt of this order either by way of Demand Draft (DD) in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, or through e-payment facility into Bank Account, the details whereof are as follows:-

Account No. for remittance of penalties levied by Adjudication Officer	
Bank Name	State Bank of India

Branch	Bandra Kurla Complex
RTGS Code	SBIN0004380
Beneficiary Name	SEBI – Penalties Remittable To Government of India
Beneficiary A/c No.	31465271959

64. The Noticee shall forward the said Demand Draft or the details / confirmation of penalty so paid through e-payment to the Division Chief of the Enforcement Department 1 (EFD1) – Division of Regulatory Action 3 (DRA 3) of SEBI.

65. The format for forwarding details / confirmations of e-payments shall be made in the following tabulated form as provided in SEBI Circular no. SEBI/HO/GSD/T&A/CIR/P/2017/42 dated May 16, 2017 and details of such payment shall be intimated at e-mail ID: tad@sebi.gov.in:

Date	
Department of SEBI	
Name of Intermediary / Other Entity	
Type of Intermediary	
SEBI Registration no. (If any)	
PAN	
Amount (in Rupees)	
Purpose of payment (inluding the period for which payment was made e.g, Quarterly, Annually	
Bank Name and Account Number for which payment is remitted	
UTR No.	

66. In terms of rule 6 of the SEBI Adjudication Rules, copies of this order is being sent to the Noticee and also to the SEBI.

Date: January 31, 2019 **Jeevan Sonparote**
Place: Mumbai **Adjudicating Officer**