BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/PB/S./2021-22/14778]

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

Nikhil Jalan and Sons HUF

(PAN: AAGHN3289N)

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 lead 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 Nikhil Jalan and Sons HUF (PAN: AAGHN3289N) (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 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 the Noticee had executed 4 non genuine trades in 2 Stock Options contracts which resulted in artificial volume of total 177500 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	BOBL15MAY150.00CEW2	7	73750	11.75	73750	100	100	100	100
2	SUNT15MAR430.00CEW1	4	15000	17	15000	100	20	100	5.3

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

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

   (b) Percentage of non-genuine trades of the Noticee in the 2 stock options contracts to total trades in the said contracts were in the range of 20% to 100%. The non-genuine trades of the Noticee have significantly contributed to total trades in the market in the above contracts.

   (c) The percentage of artificial volume generated by the Noticee in the above contracts to the total volume from the market in the said contracts was in the range of 5.3% to 100%. Therefore, substantial volume generated by the Noticee in each of the above contracts were artificial volume.

   (d) 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 same day.

7. The SCN ref no SEBI/HO/A&E/EAD/PB/PP/18152/2021 dated August 05, 2021 was served on the Noticee via Speed Post Acknowledgement Due (SPAD) and via email dated August 06, 2021. It is noted that no reply to the SCN was received within the time stipulated in the SCN. Thereafter, vide Hearing Notice dated October 18, 2021, an opportunity of hearing was granted to the Noticee on November 08, 2021. The scheduled hearing was

attended by Adv. Anjali Agrawal, the Authorised Representative of the Noticee. It is noted that the Noticee submitted its reply to the SCN vide letter dated November 05, 2021. During the course of the hearing, in view of the AR's request, the AR was granted time till November 18, 2021 for additional written submissions which was submitted on November 10, 2021. The said reply and additional submissions were taken on record. The contentions made by the Noticee in the aforesaid reply to the SCN, in the additional submissions and during the hearing are as follows:

- The Noticee denied that the impugned trades were in violation of PFUTP Regulations, 2003.
- The Noticee contended that the "Modified Client" column in the trade logs demonstrates that all the trades were initially executed in some other client codes and that such codes were modified by the Trading member by Noticee's client code AR243.
- The Noticee contended that the instant proceedings have been initiated without application of mind as the SCN has been issued without a cumulative analysis of all the factors associated with the trade which have to be considered.
- The Noticee conceded that the stock options referred to in the SCN were traded by the Noticee pursuant to their introduction by the Bombay Stock Exchange in consultation with SEBI within the available regulatory framework for trading on its anonymous electronic trading platform and was open to all trading participants and the same were subject to surveillance and other regulatory supervision of BSE at the first level and SEBI at the next level.

- The Noticee contended that the trades in question were market rate trades reflecting the underlying value of the security in cash market and thus the trades were genuine.
- The Noticee contended that there was trading sense and commercial basis for the sale transactions on two grounds. Firstly, that the trades were executed at market prices, and secondly that the Noticee did not want to risk losing the gains made. Many traders square off their transactions on the same day and Noticee was no exception to it.
- The Noticee contended that there was no bar notified by either BSE or SEBI on squaring off a trade on the same day and a trade does not become non genuine because it is reversed on the same day. In this regard the Noticee placed reliance upon the ruling of the Hon'ble SAT in Ketan Parekh vs. SEBI.
- The Noticee contended that it had no connection or collusion with the alleged counter-parties. The Noticee had no knowledge of the counter-parties in the screen based trading platform.
- The Noticee contended that it was only a coincidence that the counter party to the squaring off sale trade was the same as in corresponding initial purchase trade and the matching was accidental. As in same day squaring off, there was no law which prohibited matching of a trade with same counterparty and BSE introduced such rules only from February 2016.
- The Noticee contended that the profit or loss arising from these trades was settled by the parties to the trade to their respective brokers, who

cleared the same through the clearing corporation of BSE, and same was collected/paid to respective clients by BSE through respective brokers. BSE had collected transaction charges on these transactions, stamp duty was collected by State government through BSE, SEBI had collected turnover fees and the broker had collected his brokerage. This was done for both ends of the transaction. The volume was recorded by BSE and is part of historical data. Thus, the trading was genuine and not creating false or misleading appearance of trading or generating artificial volume as the trades were acted upon by all the entities involved including the Regulatory bodies. Also, judged on an important touchstone of settlement of accounts between the parties and brokers concerned, as laid down in the judgement of Hon'ble Supreme Court of India in SEBI v Kishore Ajmera, where the Court had found that artificial and non-genuine trades do not require any monetary settlement as the net effect on brokers is zero, the reversal trade cannot be called artificial and non-genuine trade as in Noticee's case monetary settlement has taken place.

- The Noticee contended that the act of manipulation or deception has to be demonstrated by direct evidence or by way of indirect evidence in the prices of securities or contracts traded after the traded days.
- The Noticee contended that that no cautionary warning, advisory, communication or alarm was raised by BSE at any point of time. Since the BSE did not annul or identify the impugned trades to be fraudulent, it means the same trades were genuine and fair. In this regard the

Noticee has placed reliance upon the judgement of Hon'ble Supreme Court of India in SEBI v Kishore Ajmera.

- The Noticee contended that the Noticee did not cause any loss to or make any misrepresentation to investors by way of executing the trades in question. It was also contended that the Noticee did not commit any fraud. It is the Noticee's contention that any charge of fraud must be specifically and strictly proved, and that the vague SCN issued in the instant proceeding fails to establish the same charge. In this regard the Noticee has placed reliance on the judgements of the Hon'ble Supreme Court of India in SEBI vs Kanaiyalal Baldevbhai Patel, Commissioner of Central Excise vs. M/s Brindavan Beverages (P) Ltd., and the judgement of Hon'ble Karnataka High Court in CIT v. SSA'S Emerald Meadows.
- The Noticee contended that the instant proceedings have been initiated after an inordinate delay of 6 years from the date of alleged trades which vitiates the proceedings. In this regard the Noticee has placed reliance on the judgement of the Hon'ble Supreme Court in Mahendra Lal Das v State of Bihar and the ruling of Hon'ble SAT in SEBI vs Ashok Shivlal Rupani.
- The Noticee contended that SEBI has not initiated proceedings against the brokers involved in the case despite WTM order dated February 2016 and the Hon'ble Supreme Court's order dated July 1, 2016.
- The Noticee contended that the Whole Time Member Order no WTM/MPB/IVD-ID8/161/2018 dated April 5, 2018, concerning 14,720 entities allegedly involved in illiquid stock option trades, did not

demonstrate any collusion or wrongdoing of the Noticee in execution of the impugned trades. Thus, the aforesaid order identified trades executed by numerous entities as non-genuine in a sweeping and generalised manner.

- The Noticee has contended that the rulings of the Hon'ble SAT in Bipin R Vora vs SEBI, Pooja Vinay Jain vs SEBI are inapplicable to the Noticee's case.

8. Thus, sufficient opportunity was provided to the Noticee to defend its case effectively and requirements of principles of natural justice have been fulfilled in the instant proceeding. In view of the same it is fit and proper to proceed with the consideration of issues and findings involved in the instant Adjudication proceeding.

<u>CONSIDERATION OF ISSUES AND FINDINGS</u>

9. I have carefully perused the charges levelled against the Noticee, its reply and the documents / material available on record. The issues that arise for consideration in the present case are:
   (a) Whether the Noticee has violated provisions of regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of PFUTP Regulations, 2003?
   (b) Does the violation, if any, attract monetary penalty under section 15HA of the SEBI Act, 1992?
   (c) If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in section 15J of the SEBI Act, 1992?

10. 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;

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

12. The Noticee has contended that SCN in the matter was issued after an inordinate delay, which has caused prejudice to the Noticee. In this regard the Noticee placed reliance on the rulings of Hon'ble SAT in Ashok Shivlal Rupani & Anr. vs. SEBI and the judgement of Hon'ble Supreme Court of India in Mahendra Lal Das vs. State of Bihar. I note that pursuant to a preliminary examination conducted in the Illiquid Stock Options matter, Interim order was passed by SEBI on August 20, 2015 which was confirmed vide Orders dated July 30, 2016 and August 22, 2016. Meanwhile, SEBI initiated a detailed investigation relating to stock options segment of BSE which was completed in the year 2018. The investigation revealed that 14,720 entities were involved in executing non-genuine trades in BSE's stock option segment during the investigation period. The proceedings initiated vide the aforementioned Interim Order were disposed of vide Final

Order dated April 05, 2018 also considering that appropriate action was initiated against the said 14, 720 entities in a phased manner. During the course of hearing in the case of *R. S. Ispat Ltd Vs SEBI*, the Hon'ble Securities Appellate Tribunal (SAT), vide its Order dated October 14, 2019, *inter alia* observed that "*SEBI may consider holding a Lok Adalat or adopting any other alternative dispute resolution process with regard to the Illiquid Stock Options".* A Settlement Scheme was framed under the SEBI (Settlement Proceedings) Regulations, 2018, which provided one-time opportunity for settlement of proceedings in the Illiquid Stock Options matter. The said scheme was kept open from August 01, 2020 till December 31, 2020. Adjudication proceedings were initiated against those entities who had not availed of the opportunity of settlement. As can be seen from the narration of facts in the foregoing paragraphs, pursuant to appointment of AO on July 14, 2021, the SCN was issued on August 05, 2021. In compliance with principles of natural justice, after receipt of reply, an opportunity of personal hearing was scheduled on November 08, 2021 which was attended by the AR of the Noticee as noted above. Thus, sufficient opportunity was provided to the Noticee to defend its case effectively and requirements of principles of natural justice have been fulfilled in the instant proceeding. Therefore, I note that contentions of Noticee in this regard are without merits.

13. The Noticee contended that the "Modified Client" column in the trade logs demonstrates that all the trades were initially executed in some other client codes and that such codes were modified by the Trading member by

Noticee's client code AR243. I note that modified client code is conclusive to establish that the trades in question were executed by the Noticee because the modified client code is generated in the ordinary course of trading in the stock exchanges after trades are executed. Thus, the contention of the Noticee is misleading in relation to the trading mechanism. I also note that the Noticee has conceded that the trades in question were executed by it while laying out its contentions pertaining to the anonymous trading platform of the exchange. Therefore, I note that the contention of the Noticee is devoid of merit.

14. The Noticee has contended that the impugned trades did not violate the PFUTP Regulations, 2003. It was also contended that the instant proceedings have been initiated without application of mind as the SCN has been issued without a cumulative analysis of all the factors associated with the trade which have to be considered. In this regard, I note from the 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 has allegedly executed 4 non genuine trades in 2 Stock Options contracts. I further note that the above mentioned trades of the Noticee had resulted in the creation of artificial volume of total 177500 units. Summary of non-genuine trades of the Noticee is as follows:

S. No.	Contract Name	Avg. Buy Rate (₹)	Total Buy Volume (No. of units)	Avg. Sell Rate (₹)	Total Sell Volume (No. of units)	% of Non Genuine trades of Noticee in the contract to Noticee's Total trades in the Contract	% of Non Genuine trades of Noticee in the contract to Total trades in the Contract	% of Artificial Volume generated by Noticee in the contract to Noticee's Total Volume in the Contract	% of Artificial Volume generated by Noticee in the contract to Total Volume in the Contract
1	BOBL15MAY150.00CEW2	7	73750	11.75	73750	100	100	100	100
2	SUNT15MAR430.00CEW1	4	15000	17	15000	100	20	100	5.3

15. 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 20% 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 all the contracts. It is also noted that the percentage of artificial volume generated by the Noticee in the contracts to the total volume from the market in the said contracts was in the range of 5.3% to 100%. Therefore, substantial volume generated by the Noticee in each of the above contracts were artificial volume. 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.

16. 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 May 13, 2015 at 14:33:22 hrs entered into 1 buy trade with counter party viz, Super Mercantiles Private Limited for 73750 units at rate of ₹ 7 per unit in the contract

"BOBL15MAY150.00CEW2". Thereafter, on the same day, Noticee at 14:33:28 hrs entered into 1 sell trade with same counterparty for 73750 units at the rate of ₹ 11.75 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 the same counterparty viz, Super Mercantiles Private Limited on the same day and with significant price difference in the buy and sell rate. Thus, the Noticee, through its dealing in the contract viz. "BOBL15MAY150.00CEW2" during the I.P., executed non genuine trades which constituted 100% of the total trades from the market in the said contract during the I.P., and thereby, Noticee generated artificial volume of 147500 units which was 100% of the volume traded in the said contract from the market during the I.P.

17. The non-genuineness of these transactions executed by the Noticee is evident from the fact that there was no commercial basis as to why, within a short span of time, the Noticee reversed the position with its counterparties with significant price difference. The Noticee contended that the trades in question were market rate trades reflecting the underlying value of the security in cash market and thus the trades were genuine. It was also contended that the trades were executed at market prices, and that the Noticee did not want to risk losing the gains made. Thus, the Noticee contended that it squared off its transactions on the same day. It was also contended that there was no collusion with the counterparty as the Noticee did not know the identity of the counterparty when trades were executed on the anonymous screen based trading platform. I note from the

trade log of the Noticee that the time taken by the Noticee for reversing the non-genuine trades ranged from 6 seconds to 37 minutes 44 seconds on the same day. Such a short span of time taken for reversing the trades in an illiquid stock option contract suggests the non-genuineness of these trades executed by the Noticee. The fact that the transactions in a particular contract were reversed with the same counterparty indicates a prior meeting of minds with a view to execute the reversal trades at a pre-determined price. Since these trades were done in illiquid option contract, there was no trading in the said contract and hence, there was no price discovery in the strictest terms. There was no significant change in the price of the underlying scrip to justify the wide variation in prices of the said stock options contract. The wide variation in prices of the said contract, within such a short span of time, is a clear indication that there was pre-determination in the prices by the counterparties while executing the trades. Thus, it is observed that Noticee had indulged in reversal trades with its counterparties in the stock options segment of BSE and the same were non-genuine trades.

18. The Noticee contended that there was no bar notified by either BSE or SEBI on squaring off a trade on the same day and a trade does not become non genuine or unlawful merely because it was matched and reversed on the same day with the same party. In this regard I note the observations of the Hon'ble Supreme Court of India pertaining to illiquid stock options in its judgement in the matter of SEBI v Rakhi Trading Private Limited in which it had ruled that,

“Otherwise it does seem unrealistic that the orders should match exactly both quantity and price wise, just as a matter of coincidence, with the same party again and again. It is clear that there was an intention of creating a false or misleading appearance in the market and also that a manipulative/deceptive device was used for synchronization of trades…The non-genuineness of these transactions is evident from the fact that there was no commercial basis to suddenly, within a matter of minutes, reverse a transaction when the value of the underlying had not undergone any significant change."

Therefore, I note that the contentions of the Noticee are without merit.

19. I also note that in the F&O segment, execution of a trade results in change of rights over the contract, so that the impugned reversal trades, which were executed without intention of actual change in rights over such contracts are non-genuine. I note that the Hon’ble Supreme Court in the matter of SEBI vs Rakhi Trading Pvt Ltd had ruled that,

“*No doubt, as in the case of trade in a scrip in the cash segment, there is no physical delivery of the asset. However, even in the derivative segment there is a change of rights in a contract. In the instant case, through reverse trades, there was no genuine change of rights in the contract… From the facts before us, it is clear that the traders in question did not intend to transfer beneficial ownership and therefore these trades are non-genuine.*”

Therefore, the trades executed by the Noticee were non-genuine and I note that contentions of Noticee in this regard are without merits.

20. I note that it is not a mere coincidence that the Noticee could match the trades with the same counter party with whom it had undertaken the first leg of respective trades. This is the outcome of meeting of minds elsewhere and it was a deliberate attempt to deal in such a manner. I note in matters dealing with violation of PFUTP Regulations, 2003, the reason as regards execution of non-genuine trades might not be forthcoming because direct evidence may not be available. 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 vs 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..."*

21. 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."

22. 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."*

23. I place my reliance on the judgment of Hon'ble Supreme Court in the matter in respect of SEBI v Rakhi Trading Private Limited (Civil Appeal Nos. 1969, 3174-3177 and 3180 of 2011 decided on February 8, 2018), in which the Hon'ble Supreme Court held that - *"Considering the reversal transactions, quantity, price and time and sale, parties being persistent in number of such trade transactions with huge price variations, it will be too naive to hold that*

the transactions are through screen-based trading and hence anonymous. Such conclusion would be over-looking the prior meeting of minds involving synchronization of buy and sell order and not negotiated deals as per the board's circular. The impugned transactions are manipulative/deceptive device to create a desired loss and/or profit. Such synchronized trading is violative of transparent norms of trading in securities….."

24. 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.*"

25. The Noticee has contended that the Noticee's trades were duly settled through the exchange mechanism with proper settlement of profits/losses with the payment of requisite transaction charges and stamp duty. Thus, the Noticee contended that it did not commit any fraud and did not cause any loss to or make any misrepresentation to investors by way of executing the trades in question. I note that the allegations against the Noticee pertain

to the reversal trades executed by it, on the same day with same counterparty with substantial price difference between buy and sell rates without any change in the price of underlying scrips, thus leading to generation of artificial volume. The charge against the Noticee does not relate to profit-making. It is also noted that the charge of creation of artificial volume may not necessarily depend on causing any loss or misrepresentation to investors. It was also contended that there was no alert generated by the exchange in response to the impugned trades of the Noticee. However, it is clear from the trade log that the Noticee failed in its primary obligation to comply with PFUTP Regulations, 2003 by executing reversal trades as explained above. The exchange provides a platform for trading. The primary responsibility to comply with the PFUTP Regulations, 2003 lies on the Noticee. Thus, the contentions of the Noticee are devoid of merit.

26. 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…".

27. 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].

28. 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;

[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

(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.

29. 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 Options contracts which demonstrates the repetitive nature of default on its part.

30. 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

31. 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
Nikhil Jalan and Sons HUF PAN: AAGHN3289N	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.

32. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, OR through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link:

ENFORCEMENT > Orders > Orders of AO > PAY NOW

33. 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

34. 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.

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

Date: January 25, 2022 **PARAG BASU**

Place: Mumbai **ADJUDICATING OFFICER**