WTM/RKA/ISD/102/2016

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

UNDER SECTIONS 11(1), 11(4) AND 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 IN THE MATTER OF ILLIQUID STOCK OPTIONS PURSUANT TO *INTERIM ORDER* DATED AUGUST 20, 2015 IN RESPECT OF

S No.	Entity Name	Entity PAN	Authorised Representative
1	Adarsh Credit Co Op Society Limited	AAAJA0296J	Mindspright Legal
2	Riddisiddhi Bullions Limited	AAACR6727L	Mr Ritesh Bohra
3	Bharat Jayantilal Patel	AAAPP6652R	Mr. P N Modi
4	Quest Partners	AAAFQ3174B	Ms. Vaneesa Agrawal
5	Gajanan Enterprises	AAKFG7595A	Mr. Ravi Ramaiya Mr. Nilesh Tiwari
6	Kundan Rice Mills Limited	AAACK7098P	Mr. Prakash Shah
7	J B Overseas	AAIFJ6651J	Mr. Prakash Shah
8	Raghav Commodities	AARFR1409D	Adv Naresh Gupta
9	Woodland Retails Private Limited	AABCW1644A	Adv Naresh Gupta
10	Jaideep Halwasiya	AAWPH1706L	Adv Somasekhar Sunaresan
11	Kundan Care Products Limited	AACCK4743R	Mr. Prakash Shah and Associates
12	Anand Mining Corporation	AAGFA0187Q	NA
13	Mahakaleshwar Mines & Metals Private	AAHCM1276E	NA
14	Anantnath Vincom Private Limited	AAKCA2146A	Written Submissions only
15	Pasha Finance Pvt Ltd	AAACP8316P	Written submissions only
16	Xion Gems & Jewellers Private Limited	AAFCA5667D	Mr. Prakash Shah
17	Skeet Comsec Trading LLP	ACBFS5896B	CA Rajiv Ravani CA Ankit M. Shah
18	Ashok Kumar Damani	ACXPD6089R	Vinay Chauhan
19	Vinay Ramanlal Shah Huf	AABHV9007P	Mr. Prakash Shah
20	Swaran Financial Private Limited	AAECS4024R	Mr. Prakash Shah
21	Vitrag Rajendrakumar Sheth	BSUPS7339K	NA
22	Savitri Sons	AANFS6992C	NA
23	Gyandeep Khemka	AGBPK0640F	Adv J J Bhatt Mr. Gyandeep Khemka

24	Gandiv Investment Private Limited	AACCG3017C	Mr. Pankaj Bhatt Tejas Trivedi
25	Rashi Commercial Company	AAAFR1026K	Mr. Vinay Chauhan
26	Nikhil Jalan / Priyasha Meven	AADCP2042F	Mr. Joby Mathews
27	Rakesh K Baid / Gee Bee Securities	AACCG3141P	KRCV Sheshachalam
28	Open Futures And Derivatives Private Limited	AABCO1139Q	Adv Somasekhar Sundaresan, Adv. Ravi Chandra Hegde Adv Dhaval Kothari Ms.Yugandhara Kanoikar
29	Pragya Commodities Private Limited	AABCP5764C	Mr. Rajesh Khandelwal
30	Nouvelle Advisory Services Private	AADCN1774A	Mr. K.C.Jacob
31	Gck Stock Private Limited	AAACA5560C	Mr. J.J.Bhatt
32	Om Sales Corporation	AARPY4343F	Mr. Prakash Shah
33	Prompt Commodities Ltd	AADCP1910G	Mr. Vinay Chauhan
34	Gurmeet Singh	AAQPS9561E	Adv Deepika Vijay Sawhney Angad Singh Mr. Gurmeet Singh
35	N M Impex Pvt. Ltd.	AABCN0541M	NA
36	Vision Sponge Iron Pvt. Ltd.	AABCV4791R	Mr. Ravichandra Hegde Mr. Dhaval Kothari Ms. Yugandhara Khanwailkar
37	Umang Nemani	ABOPN7213K	NA
38	Vsp Udyog Pvt. Ltd.	AABCV6318G	Mr. Ravichandra Hegde Mr. Dhaval Kothari Ms. Yugandhara Khanwailkar
39	Shir Commodities & Futures (P) Ltd.	AAACU7902J	Mr. Prakash Shah
40	Sureshine Vintrade Pvt Ltd	AAUCS1804K	NA
41	Motisons Commodities Pvt. Ltd.	AADCM7184M	Mr. Prakash Shah
42	Evergrowing Iron & Finvest Pvt. Ltd.	AAACE1287C	Mr. Abhishek Borgikar
43	Rajbanshi Trading	AQEPR0750Q	NA
44	Tradebulls Enterprise Pvt. Ltd. / Buddhipriya Enterprises (P) Limited	AAECT2124M	NA
45	Avijit Saha	DCIPS3813Q	NA
46	Ketan Ramanlal Shah Huf	AACHK9724K	Mr. Prakash Shah
47	Steel Crackers Pvt. Ltd.	AADCS6663F	NA
48	Prime Gold Internation Ltd.	AACCK3755F	Mr. Prakash Shah
49	Raj Ratan Smelters Pvt Ltd	AADCR8689N	Mr. Vinay Chauhan
50	Sourabh H Bora	ADIPB7693R	Mr. Vinay Chauhan
51	Eden Trading Services Pvt. Ltd.	AADEC1272A	NA
52	Mammon Concast Pvt. Ltd.	AAGCM5635G	NA
53	Bhawani Ferrous Pvt Ltd	AACCB3369A	NA
54	Vsp Steel Pvt Ltd	AACCT2881K	J Sagar and Associates
55	Panem Steel Pvt. Ltd.	AAACP8592R	Mr. Prakash Shah

56	Deepak Natvarlal Pankhiyani Huf	AAJHP3250L	NA
57	Kirti Ramji Kothari	AAEPK3216C	Mr. Vinay Chauhan
58	Umesh Malani	BDHPM5310A	Mr. Ravichandra Hegde Mr. Dhaval Kothari Ms. Yugandhara Khanwailkar

1. Vide an *ad interim ex-parte order* dated August 20, 2015 (hereinafter referred to as "*interim order*"), 59 entities (hereinafter collectively referred to as 'Noticee(s)' and individually by their respective names) have been restrained from accessing the securities market and have been further prohibited from buying, selling or dealing in securities in any manner whatsoever, till further directions. The said *interim order* is an *ex parte order* - cum - show cause notice and has provided these restrained entities to file their objections, if any, within 21 days and to avail opportunity of personal hearing, if they so desire.

2. The facts and circumstances leading to the passing of the said *interim order* have been discussed therein and I do not deem it necessary to repeat the same and burden this order with repetition. The modus operandi as described in the said *interim order* was that the loss-making entities were deliberately making repeated loss through their reversal trades in stock options which does not make any economic sense, and the profit-making entities were facilitating them by becoming their counterparties and were acting in concert with a common object of intended execution of these suspicious and non-genuine trades.

3. Pursuant to the *interim order*, the Noticees filed their written submissions and sought inspection of documents. Based upon the request of the Noticees, an opportunity of inspection of the records/documents which were relied upon by SEBI for the purpose of the *interim order* was provided to the Noticees. On requests, opportunities of personal hearing was also granted to the Noticees. The Noticees have made their submissions vide multiple letters in the matter.

4. It is relevant to mention that pursuant to order dated July 15,2016 passed by Hon'ble SAT the interim order has already been confirmed by the confirmatory order dated July 30,2016 passed in respect one such restrained entity viz; Jai Annanya Investments Private Limited (PAN: AABCG0769Q).

5. The common replies/ written submissions of the Noticees, inter alia, are mentioned below:-
   (a) Order is vitiated by gross violation of principles of natural justice as no opportunity was provided to them to explain their views.
   (b) There was no such grave emergency or urgency to pass an *interim order* against them.
   (c) They have not derived any unfair gain or pecuniary advantage by executing the trades mentioned

in the *interim order*.

(d) The Noticee does not have any link/ nexus/ relationship/ connection/ dealing/ collusion/ arrangement or agreement with any of the entities against whom the *interim order* has been passed.

(e) They have not indulged in any act which creates false or misleading appearance of trading.

(f) The allegations are levelled only by taking their trades together with the trades of other entities which are not related/connected to them. Hence, the allegations are merely based on presumption and surmise and does not sustain.

(g) The trading system is anonymous and automated and the counterparties could not be identified.

(h) SEBI has merely selected persons/entities which made a profit/loss of more than ₹ 5 Cr. in the stock option segment and no allegations were made in the *interim order* against persons/entities who made a profit/ loss of less than ₹ 5 Cr.

(i) All their trades were legal since they were in the normal course of business and bonafide.

(j) Since they had traded in diversified options which were illiquid in nature, it is probably the reason that their trading could contribute up to 70% to 100% of total traded volume for the contracts.

(k) Prices above/below the intrinsic value are irrelevant and cannot be used to substantiate any allegation against them.

(l) The prices above/below the intrinsic value cannot be sole ground to substantiate the allegation of deliberate attempt to make loss. Intrinsic value is just an academic and theoretical value based on mathematical computations which does not take into account other market factors affecting price.

(m) It has traded in Option contracts of large number of blue chip scrips, all of which were highly liquid in nature. exchanges regularly come out with list of illiquid scrips in cash segment. However, no such list is issued by exchanges or regulator for dealing in stock options contracts. Further, no caution, advisory or alarm was raised by regulators at any point of time.

(n) Criteria of identifying suspected trades that was done at unreasonably low or high price/ out of sync with the underlying price is without specifying the range for the same.

(o) They have alleged to have 'thinly traded' options contracts without really defining as to what can be considered as thinly traded in the stock exchange platform.

(p) Without explaining what is normal market behavior, SEBI has alleged that their trading behaviour exhibits abnormal market behavior.

(q) There was no pre mediated plan as all the transaction are done on anonymous and electronic trading platform of the stock exchange wherein identity of the buyer and seller is not known and thereby one or two entities cannot influence the trading.

(r) They denied having misused the stock options, shown unreal picture of the market activity, damaged market integrity and presented wrong picture to other investors and that their trading has not affected market integrity, no harm has been caused to

any investor.

(s) The alleged reversal trades by no means affected the prices / premiums in the options concerned in F&O segment or cash segment of BSE.

(t) All the entities/persons which/who have executed trades in the said options during the examination period along with their respective brokers should have been made a party to the *interim order*.

(u) The trading done was within the permitted price range of the BSE and if the BSE or the regulator were of the view that there was an aberration to the normal trading pattern, it is their responsibility to issue them an alert. BSE has not even prescribed any penalty and no advisory circular issued by it.

(v) The definition of reversal ignores that BSE's F&O segment was illiquid and consequently few interested parties participating in trading in F&O segment. The spread between buy price and sale price of the options which appear significant was on account of illiquidity in the options of the scrip.

(w) Their trades were loss making trades, and therefore there is no question of requiring them to make any disgorgement or to hand over any profits. Therefore it is inconceivable as to why their funds / shares are at all frozen

(x) The Noticee has relied on the following case laws:

(i) Rakhi Trading Pvt Ltd vs SEBI (SAT Appeal no 70 of 2009); and

(ii) Viram Investments Pvt. Ltd. vs. SEBI in appeal no. 160 of 2004.

6. The following entities made specific submissions over and above the common submissions listed earlier:

(1) **Pragya Commodities Pvt. Ltd. –**

a) The order is erroneous to the extent that two independent transactions are viewed as single transaction. The buy orders for options were not reversal transactions as alleged, which were independent of sell transactions traded on the basis of their market perception.

b) Though non-consideration of the price of underlying scrip could be one of the reasons of their incurring losses, however, no adverse inferences may be drawn from their strategies to determine the price.

c) Reversal trades of ₹ 8.3 Cr. accounted for merely 52.5% approximately of the total turnover of their trades is very low as compared to other alleged loss making entities. SEBI ought to have considered and given due weightage to proportion of reversal transactions in the total turnover while implicating them.

(2) **Anantnath Vincom Pvt Ltd: -**

a) They denied any connection with the counter party entities and that there is any tax evasion.

b) They are a regular short term investor and frequently deal in the securities market and during the last two financial years i.e. from 1st April 2013 till March 31, 2015, its total turnover in cash segment was around Rs267 Cr. and in the FY 2014-15 in cash segment was around ₹ 217 Cr. Further, it regularly trade in Futures & Options segment of both NSE & BSE and till date no fault has been found either by the stock exchanges or SEBI. Trading in so called 'illiquid stock options' in very miniscule percentage of our total turnover.

c) They sought following interim reliefs pending investigations.

(i) Allow access to buy/sell/deal in securities and access to our demat account which has been frozen.

(ii) An order lifting the directions issued under ex *parte* ad *interim order* dated August 20, 2015 may be passed on an urgent basis so that reputation is restored.

(iii) An opportunity of personal hearing.

(iv) Undertook to fully cooperate with SEBI.

(3) **Adarsh Credit Co-operative Society Limited -**

a) They noticee started operations in the year 1999 as a co-operative society primarily catering to the local masses in Rajasthan, majorly involved in agricultural activities. It has a member strength of 13,76,871 who are being financially served through its 800 branches across 30 States and Union Territories in India. They are in the business of providing financial services to its members i.e., accepting deposits from and providing loans to its membe₹ As on March 21, 2016, the total amount of Loans extended by noticee to its Members stood at approx. ₹ 6,984 Cr.

b) Their main source of income is the interest charged by on the loans provided to the members and as on March 21, 2016, deposit from Members stood at ₹ 6187.73 Cr. The Deposits received from members are invested in mediums as prescribed in the approved Bye Laws of their Clients, which includes Bank Deposits, Securities and any other mode duly approved by the Board of Directors of their client.

c) They are entitled to take complete deduction of its business income under section 80P (2) of the Income Tax Act, 1961 and hence, has no financial or other benefit by deliberately making losses, as there would be no reduction in the tax liability.

d) Out of the total 365 entities/persons with whom they had traded, merely 3 were alleged/included in the *interim order*. Their trades with the aforesaid 3 counter parties constituted merely 10.26 % and 10.12% of total buy and sell value with all counter parties whereas noticee's trades with the balance 362 counter parties constituted a glaring 89.74% and 89.88% of total trades with all 365 counter parties.

e) The shares have been frozen since August 20, 2015 and have not been released till date. These shares had been purchased from its hard earned money and are not related to any ongoing

investigation of SEBI.

f) They requested to allow them to trade in the market till the investigation is concluded.

(4) **Ashok Kumar Damani : -**

a) For the purpose of trading, the Noticee had been raising finances from several entities and enjoyed considerable goodwill amongst his lenders The Noticee's borrowing as at September 5, 2015 is to the tune of about ₹ 95 Cr. Subsequent to the *interim order*, his creditors have started demanding repayment of their dues and he is facing repayment pressure from his creditors. His monthly interest servicing is to the tune of ₹ 75 lacs to 80 lacs. He would be financially ruined if the restraining order against him is not withdrawn immediately.

b) The impugned trades in Options on BSE are very insignificant part of his overall trading on BSE and NSE during the relevant period.

c) Pending investigation, the Noticee has sought permission to trade in the Cash Market or permission to liquidate the shares lying in his demat account, to enable him to clear his outstanding loan obligations.

d) The Noticee sought permission to sell his holding, tender his shares in Buyback Offer, in respect of shares of Technocraft Industries (India) Limited.

e) The Noticee sought permission to sell his holding, tender his shares in the Delisting Offer/ Open Offer, in respect of the shares of Essar Oil Ltd. and Golden Tobacco Ltd.

f) The alleged trades that matched with the entities (viz. M/s. N. M. Impex Pvt. Ltd. and Ketan Ramanlal Shah (HUF)) aggregated to ₹ 15.15 Cr. i.e. just 37.78% out of his total turnover of ₹ 40.10 Cr. A majority of his trades being 62.22% matched with entities not impugned in the said order.

(5) **Raghav Commodities :-**

a) It submitted that there is no provision in the SEBI Act, Rules and Regulations prescribing that transactions in future and option segments should be only for hedging or arbitrage and not for speculation. It submitted that it has done speculative trades under procedure in accordance with the law.

b) Further, it submitted that it is not a "connected person" or an "insider" within the meaning of Regulation No. 2(c) read with 2(h) and 2(e) of the SEBI (Prohibition of Insider Trading), Regulations, 1992 (in short, 'PIT Regn.").

(6) **Gajanan Enterprises :-**

a) Their only business is that of trading in the securities market, and they have been in this business since 2012. Further, they trade in the cash and derivatives segments and have a huge trading and investment portfolio.

b) Out of 13 counterparties, only 2 have been debarred from the market by the *interim order*, which implies that SEBI finds no fault with the trades of the remaining counterparties for the

very same trades, which is untenable.

(7) **Quest Partners :-**

a) They have been debarred from trading in the cash segment as well. This also amounts to unequal treatment by SEBI

b) They have already undergone punishment by being debarred for 8 months and hence the order against them be withdrawn in the lines of the directions of Hon'ble SAT in the matter of Guiness Securities Ltd Vs SEBI (order dated February 25, 2016).

(8) **Prompt Commodities Limited**

a) The prohibition from buying, selling and dealing in securities market, directly or indirectly, in any manner whatsoever, till further directions, is an absolute direction, which has throttled their business and crippled their operations.

b) Till the investigations are complete, permission may be given to liquidate the shares lying in their demat account and to utilize the same and to trade in the Cash Segment of the stock exchanges (since the trading which has been found to be violative by SEBI pertains only to Derivatives Segment). Further to trade in the commodities on the commodities exchanges (since the trading which has been found to be violative by SEBI pertains only to Derivatives Segment of the Cash segment as opposed to Commodities Market) and a suitable direction be issued to the commodities exchanges to permit us to trade in the commodities market.

c) To grant them permission to trade in commodities market since there is nothing adverse qua their commodities trading. As a commodity broker, they pray for the interim and urgent relief to trade in their proprietary account in the commodities market.

(9) **Mr. Nikhil Jalan / Priyasha Meven**

a) Even as per the data produced by SEBI in the interim order, only 49 out of 186 trades done by our client i.e. 26% were reversal trades, confirming that common counter parties to our client's buy and sell transactions was only coincidental and not deliberate.

(10) **Mr. Gyandeep Khemka -**

a) His demat account has been frozen, which has hit him hard. He has about ₹ 39 lacs worth shares in its investment portfolio and on account of SEBI's order it has been restrained from selling the same. The value of his portfolio has depleted.

b) He traded on about 26 days in F&O segment during the year and in options of 18 different scrips at different strike prices and at different premiums. [During the days on which he traded on BSE, he also traded on NSE.] These distinguishing features of his F&O trading have to be considered. The alleged reversal trades by no means affected the prices / premiums in the options concerned in F&O segment or cash segment of BSE

c) As an interim relief he may be permitted to sell shares lying in his demat account and also permitted to trade in commodities derivatives on commodities exchanges.

d) He may be permitted to trade on NSE with immediate effect.

(11) **M/s. Vinay Ramanlal Shah HUF and M/s. Ketan Ramanlal Shah HUF :-**

a) They have sought permission to trade in commodity derivatives in order to hedge their risks by taking positions in commodity derivatives.

b) They have sought permission to let their Karta's access the securities market. The Karta's would remain liable to repay any liability that arises due to their trading.

c) The entities have sought the following interim reliefs:-

(i) They have sought permission to return the shares belonging to their relatives. These shares are lying as margin with their broker. (This request is being dealt with separately).

(ii) Supporting documents submitted by the debarred clients –

a) Transaction statements for transfer of shares from relatives accounts to HUF demat account

b) DIS Slips for transfer of shares

c) Contract notes for purchase of shares by the relatives

(12) **Mr. Sourabh H Bora –**

a) He sought following interim reliefs pending investigations.

(i) Liquidate shares lying in his demat account to clear his loan obligations to persons to the extent of Rs 8.71 Cr., to Banks to the extent of Rs 3.97 Cr. and to stock brokers to the extent of Rs 3.52 Cr.

(ii) Permit to return the various shares taken by him by way of loan from various persons.

(iii) Permit to trade in cash segment till the time investigations are completed as findings in order are prima facie restricted to trading in F & O segment only.

(iv) He will provide the details of all the loans paid by him pursuant to SEBI permission.

b) He has traded in ordinary course and made profit and paid requisite taxes and CA certificate is enclosed as Annexure F. (However Annexure F was not annexed).

(13) **GCK Stock Pvt. Ltd.**

a) He has about ₹ 7.10 lacs worth shares in its investment portfolio and on account of SEBI's order it has been restrained from selling the same. There has been depletion in value of their portfolio.

b) MCX has on account of SEBI's order dated 20.8.2015 restrained the noticee from trading on that Exchange. They requested SEBI to clarify that SEBI's order is not applicable to their trading in commodities on commodity exchanges.

(14) **Skeet Comsec Trading LLP –**

a) The amount of loss mentioned in the order is erroneous and wrong.

(15) **Raj Ratan Smelter Ltd. –**

a) There are 33 counter parties to their trades. Directions have been issued qua only 2 of them,

whereas it has been saddled with punitive directions. If a transaction found to be tainted (as alleged) then both the parties involved in the transaction should be punished. It cannot be that one party is punished and the other party involved in the same transaction is not punished.

(16) **Vision Sponge Iron Pvt. Ltd. , VSP Udyog Pvt. Ltd. and VSP Steel Pvt. Ltd. -**

a) The balance of convenience lies in their favour and not in favour of the restraints being continued. They relied on the SEBI's findings and analysis in the order passed on March 26, 2012 lifting such interim ex parte restraints on the promoters of Bank of Rajasthan (Order No. WTM/PS/81/IVD/ID-4/MARCH/2012).

(17) **Mr. Umesh Malani -**

a) SEBI may issue a "cease and desist" direction to restrain the noticee from undertaking further trades of the same nature - rather than impose a ban on dealing in securities in general.

b) He has represented to be allowed to fully trade in the securities market.

(18) **Woodland Retails Private Limited :-**

a) He has sought permission to buy/sell/deal in securities and access to its demat account which has been frozen.

b) The noticee has sought permission to redeem its investment in securities.

(19) **Nouvelle Advisory Services Private Limited –**

a) They prayed that permission be given to liquidate the shares lying in demat account and to utilize the same and be permitted to trade in cash segment of the stock exchanges.

(20) **Mr. Jaideep Halwasiya –**

a) He has prayed that pending completion of investigation, directions issued against him from accessing the market may be vacated.

(21) **Tradebulls Enterprise Private Limited / Buddhipriya Enterprise (P) Limited**

a) It expressed its difficulty in appearing for personal hearing on grounds of difficulty faced in dealing with the contents of the order as well as data relied upon by SEBI and thereby expressed its inability to raise its objections properly and effectively. It was expressed that till the time clarification is not given and authenticity and reliability of the data provided by SEBI is proved beyond doubt, it would not be able to attend personal hearing.

b) Under the circumstances till the authenticity and correctness of the data claimed to have been relied upon in the impugned order is established, it does not deem fit to participate in the present proceedings in the present form and status.

(22) **Mammon Concast (P) Ltd:-**

a) The *interim order* dated 20.8.2015 may be annulled/cancelled/ rescinded/quashed till the matter is finally concluded.

b) The said order be immediately de-webbed from the SEBI website along with its operation thereof.

c) The said order be not shared with any authority/ forum till the matter is finally concluded and if

already shared, suitable directions to restrain the same be issued with immediate effect.

(23) **Pasha Finance Pvt. Ltd.**

a) Bharat J Patel is the Director of Pasha Finance Pvt. Ltd.

b) In the alternative to (a) above and only if the Ld. WTM is not inclined to presently grant the same, then at highest, the Noticee may be debarred from trading in the F&O / Derivatives segment till final orders, but they may be allowed to continue trading in the Cash Segment.

c) In the alternative to (a) and (b) above and only if the Ld. WTM is not inclined to presently grant either of the said reliefs, the Noticee may be permitted to at least sell his holdings in the Cash Segment and Mutual Funds.

(24) **Gandiv Investment Pvt. Ltd. ('GIPL')**

a) Mr. Deven Maniar, claimed to be an authorised representative of Odyssey Securities Pvt. Ltd. And N.S.Broking Pvt. Ltd., approached it advising to venture into BSE options trading. GIPL director studied the trading data of this segment for around past 2 months and found that really large volumes coupled with price volatility existed in BSE options.

b) Company gave mandate to Mr. Deven Maniar to trade in options segment with instructions not to carry on trade on next day so as to avoid any potential loss due to overnight change in market conditions. Company has no knowledge of the counter parties of the subject transactions.

c) Company has entered into transactions only for 4 days. After incurring continuous loss wiping 30% of its net worth, it immediately closed this BSE stock options trading business. Hence, it cannot be alleged for repeated losses.

d) Also, the transactions effected were not repetitive as different scrips were traded on each of the four days except two scrips were repeated for 2 days. This shows that there was no manipulative intention of any artificial volume for particular scrip for many days. It has neither financial strength & wherewithal nor any benefit to manipulate volume of such large market capitalisation companies.

e) There is no element of motive on behalf of company, it has filed the income tax return for the assessment year 2015-16 on 8th September, 2015 (within the stipulated due date as per the Income Tax Act, 1961). The computation of total income has been submitted to the concerned income tax authority and the resultant tax has been paid without claiming any set off on the losses incurred in these said stock options transactions.

f) It has engaged the services of a specialist possessing skill and expertise in derivative transactions and there is absolutely no reason or ground that the acts of its subject transactions on its part are not genuine and rational. These are bonafide transactions effected by it only with a desire to profit from and explore speculative opportunities in the options segment due to the then prevailing high volumes and fluctuations in prices.

(25) **J. B. Overseas, Motisons Commodities Pvt. Ltd, Prime Gold International Ltd., Om Sales Corporation, Panem Steel Pvt. Ltd., Swaran Financial Pvt. Ltd, Xion Gems & Jewellers Pvt. Ltd., Shir Commodities & Futures (P) Ltd., Kundan Rice Mills ltd., Kundan Care Products Ltd.**

Their submissions, inter alia, include the following;

a) They have sought information relied upon by SEBI in the present matter namely; copy of investigation report by of preliminary examination by SEBI, by BSE, if any references and correspondence, if any, with IT department, alerts generated, inspection report of inspection carried out by SEBI of BSE's F&O segment, copy of statement recorded of any person and any other material document pertaining to present proceedings. Additionally, it seeks data relating to list of illiquid options, complete order log w.r.t. options contracts inn which it traded, complete data pertaining to option trades executed on stock exchange and variation in premium of each trade in comparison to what SEBI considers to be 'intrinsic value', complete details in possession of SEBI establishing 'acting in concert' and annualized standard deviation of returns on underlying of which options have been traded.

b) Following interim reliefs were sought pending investigations.

(i) To buy, sell and deal in commodities so that it can take hedging positions against its business products/commodities so as to avert losses due to price fluctuations in international commodity market in case of Shir Commodities & Futures (P) Ltd., Kundan Rice Mills Ltd., Kundan Care Products ltd., Xion Gems & Jewellers Pvt. Ltd., Om Sales Corporation, Panem Steel Pvt. Ltd., Prime Gold International Ltd., Motisons commodities Pvt. Ltd. and J. B. Overseas.

(ii) Liquidate shares lying in its demat account and utilize entire sale proceeds thereof for need based requirements..

(iii) To buy, sell and deal in shares and securities to avail gainful opportunity of earning by participating in capital market.

(iv) To subscribe, liquidate and redeem units of mutual funds & liquid funds and utilize the proceeds thereof for our need based requirements.

(v) Vide letters 01/10/2015,07/10/2015 and 07/01/2016, Shir Commodities & Futures P Ltd. submitted that it had invested ₹ 75 lakhs in Reliance Liquid Fund, on the date of the *interim order* i.e. August 20, 2015, out of its working capital, to make short term gain, for a matter of few days. Accordingly, it transferred the said amount from Punjab National Bank to Reliance Liquid Fund. Given the *interim order*, the amount has now got blocked. Consequentially, the company is financially clogged to meet its working capital requirements. Hence, it has sought permission to redeem units of mutual fund i.e. Reliance Liquid Fund.

(26) **Savitri Sons**

a) They have sought inspection of documents. Not providing inspection of original documents, further additional documents, cross examination would tantamount to judicial indiscipline.

b) Merely on the basis of deriving outcome of Profit / Loss of few trades and denying furnishing of complete trade and order log for the entire day / period of investigation, the injustice are bound to cause to them on account of function of anonymous online trading system, if matter proceeds further in present form and status, for which there will not be any efficacious remedial course available to them in future.

c) They are not able to reconcile the data provided by BSE and data provided by SEBI.

(27) **Rashi Commercial Company**

a) If it is believed that the said trades were not genuine, as stated in the *interim order*, then he submitted that the trades must be reversed or annulled and its said trading losses must be refunded.

b) SEBI has alleged in the said order that we had executed transactions under 'stock options' by buying at high rates and selling at low rates, which is factually incorrect. We state that on the basis of inspection given by SEBI on 30th November,2015 it is clear that on number of occasions out of the trades covered in caption order, orders expired on close of settlement cycle and there was no close-out either by purchasing and/or selling and no impact on cash market price was observed.

c) It sought following interim reliefs pending investigations.

- Liquidate shares lying in its demat account and utilize entire sale proceeds thereof for need based requirements.
- To participate in cash segment of the stock exchanges, as they have already suffered a considerably long ban because of the order.

(28) **Rakesh K . Baid / Gee Bee Securities Ltd.**

a) Gee Bee Securities requested to be allowed to close their open positions in the derivative segments. They further sought permission to sell the shares and release shares from their margin account to clients from their demat account as and when required.

b) It had requested to be allowed to participate in the delisting offer of Essar Oil Ltd and use the proceeds for meeting our Outstanding Liabilities.

(29) **Open Futures & Derivatives Private Limited -**

a) SEBI may issue a "cease and desist" direction to restrain the noticee from undertaking further trades of the same nature rather than impose a ban on dealing in securities in general.

(30) **Evergrowing Iron and Finvest Pvt. Ltd. -**

a) It had been depending on its broker for trading in the securities market and accordingly the alleged

trades were also executed through brokers. The Noticee had never instructed the broker about the counterparties, particular order timings, etc. SEBI has wrongly held the Noticee prima facie guilty merely on the basis of profits made by it.

(31) **Riddhisiddhi Bullions Limited**

a) It is a leading bullion merchant in India specializing in bars and coins of various precious metals like Gold, Silver and Platinum. Noticee was founded in 1994 and has the reputation of holding the largest variety of bullions and coins across India. It participates in bullion futures trading including hedging its bullion holding risk and is one of the largest importers of Bullion in India and that in its bullion spot business, it has a daily turnover of around 50.00 KGs of Gold and 500 KGs of Silver. As on 31st December, 2015, it has a physical position of around 400 KGs of Gold. Before the passing the Exparte Order, it used to participate in Commodity Exchanges to ensure its positions are appropriately hedged.

b) They had employed professionals to run their treasury operations which include trading in Securities markets. It submitted that for the purpose of its securities market operations as above, it has instructed its professionals to hedge their positions in bullion either through Gold ETFs or any other stock options instruments which has positive correlation with bullion prices and had instructed its treasury to avoid taking overnight positions in view of the volatility of the markets and square off the positions intraday.

c) It did not exercise day to day control on the professionals in running the treasury operations, especially while trading in the securities markets as they are predominantly bullion traders and had trust and faith in the abilities of the said professionals.

d) These trades done in its account are not with the consent and approval and the same were done by the Professionals employed by it and hence this can in no way be called a fraud committed by it inviting any harsh action from the SEBI.

e) It submitted that SEBI did not take into account the fact that the Ex-parte Order had collateral consequences on Noticee like its implied prohibition from Commodities markets and that SEBI did not appreciate that an underlying stock cannot be manipulated through a stock option trading, especially, when such an underlying is highly liquid in the spot markets. Hence the question of committing a fraud does not arise by trading in few stock options.

f) It prayed and sought following interim reliefs pending investigations.

   (i) Ex-parte Order may kindly be withdrawn.

   (ii) Grant of personal hearing at the earliest

   (iii) Participation in commodity derivatives to hedge bullion positions

   (iv) Participate in Gold ETFs

   (v) Liquidate positions in the equity segments to enable to infuse funds in bullion business and to enable to liquidate existing positions under favorable conditions.

(vi) Undertake not to participate/trade in F&O segment till completion of investigation.

(32) **Mr. Umang Nemani**

a) While trading in the markets, the noticee had been raising finances by way of loan from various entities and as a result of freezing of his demat account everything has come to a grinding halt. The value of shares lying frozen in his demat account has reduced considerably.

b) Pending investigation, the noticee has requested permission for being allowed to trade in the Cash Market and permission to liquidate the shares lying in his demat account, to enable him to clear his outstanding loan obligations to third parties and for survival and maintenance of his family and office staff.

(33) **Mr. Vitrag Rajendrakumar Sheth & M/s. Deepak Natvarlal Pankhiyani HUF -**

a) Mr. Vitrag Rajendrakumar Sheth submitted that only 129 trades out of total 1377 trades i.e. just 9.37% have been found to be attracting charges and allegations leveled in the *interim order*, however, the value of total trades for entire 1377 trades being ₹ 27.80 has been taken into consideration in isolation of trade value for only 129 trades.

b) M/s. Deepak Natvarlal Pankhiyani HUF submitted that out of 99 trades having corresponding ₹ 20.98 Cr. trade value, only 9 trades have been selected with corresponding trade value of ₹ 21.0 Cr. Its conduct behind 90.91% indulgence in trading activity in BSE 7 days Settlement Option Segment are ignored in the shadow of just 9.09% conduct.

c) Additionally, M/s. Deepak Natvarlal Pankhiyani HUF requested permission to square off trades/ open positions in derivatives segment.

(34) **Mr. Kirti Ramji Kothari**

a) The noticee inter-alia made the following prayers

(i) He may be allowed to liquidate the securities lying in his demat account

(ii) He has already suffered heavily both reputationally and financially

(iii) The entities who are counter party to his trades and have made losses and free and he has made profit and paid tax is punished.

(iv) He sought all the documents/material relied upon by SEBI including the investigation report of SEBI, documents containing details of counterparties, order Log/Trade Log with regard to his trade and document/chart indicating the calculation of intrinsic value of illiquid stock options during the investigation period.

(35) **Mr. Gurmeet Singh**

a) The order covers persons who made a loss or profit of more than 5 crore, whereas in his case a lesser amount was involved, thus requested to withdraw his name from the order.

(36) **Mr. Bharat Patel :-**

a) That none of the trades were executed by Mr. Bharat Patel.

(i) Mr. Deven Maniar filed an affidavit dated September 19, 2015 stating that he was a

representative of M/s. N. S. Stockbroking Limited and had introduced Mr. Bharat Patel to the said broker, and that all transactions were carried out solely by him without any instruction from Mr. Bharat Patel.

(ii) Further, M/s. N. S. Broking vide letter dated October 26, 2015 to Mr. Bharat Patel confirmed that Mr. Maniar was its representative, and that the losses were due to error of judgment and miscalculations. M/s. N. S. Broking further confirmed that they had seen and confirmed the contents of the affidavit submitted by Mr. Deven Maniar.

b) That the findings in the order are incorrect / misconceived.

(i) The *interim order* has been passed against Mr. Bharat Patel only because the quantum of the loss was more than ₹ 5 Cr. This again exhibits discrimination and arbitrariness. However, the same is not significant compared to his normal trading volumes and losses, since he is a HNI.

(ii) In fact, Table 9 at page 25 of the *interim order* belies the allegations of some alleged conspiracy, since the same (though in vague generic manner) shows that there was no 100% conversion of orders into trades, and went as low as even 17.9%. If there had been any such conspiracy and synchronization of trades, obviously there would have been 100% conversion of orders into trades since the same would have been pre-negotiated.

(iii) It is also pertinent to note that out of the 25 so called profit making entities referred to in the said Table, only 3 are alleged to be counter parties to the trades in the name of Mr. Bharat Patel, although as aforesaid, there are alleged to be 35 counter parties to the trades in the name of Mr. Bharat Patel. Therefore, presumably, for 32 counter parties to the trades in the name of Mr. Bharat Patel, the order execution percentage must have been even lower, which also belies the alleged conspiracy theory.

(iv) Similarly, Table 10 at page 26 of the *interim order* belies the allegations of some alleged conspiracy, since the same shows (though in vague generic manner) that there was no 100% reversal of trades. If the alleged conspiracy was that Mr. Bharat Patel intentionally chose to make huge losses so as to give the counter party huge profits, then, obviously there had to be 100% reversal only, otherwise the profits would be taken away by some third party.

c) Mr. Bharat Patel sought the following relief:

(i) That he has a large portfolio of securities which comprises the bulk of his wealth, all of which is frozen pursuant to the said order. The entity sought permission to sell his shares to meet his liabilities and expenses.

(ii) That as per the *interim order*, he has made losses in the trades which have been impugned in the said *interim order*, and therefore there is no question of any impounding or disgorgement order against him. Further, there is no allegation of wrongdoing in the Cash

segment, as the order pertains to the Options market only. Thus, there is no rationale to freeze his demat accounts or to debar him from trading in the cash market.

(iii) That trading his regular business and means of livelihood.

(iv) That he holds 27,985 shares of Fulford (India) Limited, a company which has been acquired by a foreign acquirer and has been delisted. Thus, he requested to be allowed to participate in the Offer for Sale exercise.

7. Bharat Patel also filed an appeal, on April 13, 2016, before Hon'ble SAT (Misc. Application No. 150 of 2016 and Appeal No. 86 of 2016) challenging the *interim order*.

(i) Hon'ble SAT vide its order dated August 8, 2016 disposed of the appeal filed by Mr. Bharat Patel and directed SEBI as under :

"…*In these circumstances, as a last chance, two weeks' time is granted to the WTM of SEBI for passing the order. If the WTM of SEBI deems it fit to confirm the ex-parte ad-interim order, then the WTM of SEBI shall consider the alternate plea of the appellant to trade in the cash segment in the light of the order of this Tribunal in Appeal No. 50 of 2016 dated March 4, 2016.*

It is made clear that if the WTM of SEBI fails to pass an order within two weeks from today then the ex-parte ad-interim order dated August 20, 2015 qua the appellant shall come to an end forthwith without reference to this tribunal."

8. It is relevant to mention that SEBI has passed several *interim orders* in similar cases against several entities based upon *prima facie* findings and pending investigations in those matters In response to such *interim orders* several entities filed their replies praying for revocation of order and for certain common *interim reliefs* pending passing of confirmatory orders. Considering the large number of entities covered in such orders (more than 1200), complexities involved in the issues such- as inter linkages of different tranches of alleged schemes, connection/relation amongst transacting parties in different tranche of scheme, etc.- the conclusion of the proceedings to pass confirmatory orders in each case had to take time after completing the procedure in compliance of principles of natural justice with regard to each of the involved entities. After considering the facts and circumstances brought out by these entities who had responded to *interim orders*, to avoid erosion of value of securities due to volatility, maintain some investment avenues in the Capital Market such as Mutual Fund and to address the need of funds for meeting the business/ any other exigencies, all these entities were granted certain common *interim reliefs*.

9. Further, specific representation of any such entity was being separately decided on case to case

basis and communicated to them separately during pendency of the proceedings for passing of confirmatory orders. It was also taken into account that such *interim reliefs* were reasonable and that the same may be granted expeditiously pending passing of the confirmatory order in respective cases which had to take time considering factors mentioned in above paras. Therefore, the decision to grant such *interim reliefs* were caused to be communicated by separate letters to respective entities and were to be subsumed in the confirmatory orders.

10. In the above background, the noticees who had responded to the *interim order* in this case as on February 8, 2016, were granted the common interim reliefs as aforesaid and the decision in the regard was caused to be communicated to them vide separate letters dated February 8, 2016 permitting them:-

(i) to subscribe to units of the mutual funds including through SIP and redeem the units of the mutual funds so subscribed;

(ii) to avail the benefits of corporate actions like rights issue, bonus issue, stock split, dividend, etc.

(iii) to sell the securities lying in their demat accounts as on the date of the interim order, other than the shares of the companies which are suspended from trading by the concerned stock exchange, in orderly manner under the supervision of the stock exchanges so as not to disturb the market equilibrium and deposit the sale proceeds in an interest bearing escrow account with a nationalised bank.

(iv) to utilise and deal with the sale proceeds, lying in the aforesaid escrow account under the supervision of the concerned stock exchange, as provided hereunder:-

(a) the sale proceeds may be kept in a fixed deposit with a nationalised bank or may be utilised for subscription to units of the mutual funds which shall always be held in the demat form and if such units are redeemed the proceeds thereof shall be credited to the aforesaid escrow account or may be utilised for subscription to the units of mutual funds;

(v) The aforementioned window for sale of shares lying in respective portfolio shall be withdrawn if the noticees execute any trade beyond those mentioned in clause (iii) above. The aforesaid reliefs shall be subject to the supervision of the stock exchanges and depositories.

11. In addition to above, the entities mentioned at Sr. No. 3, 5, 18, 20, 25, 27, 48 and 50 were also permitted the following, subject to the condition that the residual value of the portfolio (i.e. remaining 75%) is higher/equal to the profit made as indicated in the *interim order*:

"to utilise up to 25% of the value of their portfolio as on the date of the interim order for their business purposes and/or for meeting other exigencies.

Explanation: For the purposes of determining the portfolio value of the entities, the value of portfolio of securities lying in the demat account/s (individual and joint both) on the date of the interim order after excluding the value of shares that have been suspended from trading as on the date of the communication shall be considered. For NBFCs and stock brokers the value of portfolio shall exclude the value of clients' securities lying in their demat accounts."

12. It is further noted that 6 Noticees, viz; – Mr. Vitrag Rajendrakumar Sheth, M/s. Savitri Sons, M/s. Tradebulls Enterprise Pvt. Ltd., M/s Deepak Natvarlal Pankhiyan HUF, Umang Nemani and Mammon Concast have though filed their written replies pursuant to the *interim order* but they refused to come for the hearing citing pending inspection as the reasons. In the multiple hearing notices issued, it has been clarified that, all the data that was relied upon for passing the *interim order* had already been provided to them. However, they chose to not avail the opportunities of personal hearing. I, therefore, proceed to decide the matter *qua* them taking into account their written replies.

13. Further, the following Noticees have neither filed any reply nor have they availed the opportunities of personal hearing and are deliberately keeping away from these proceedings and are not willing to cooperate.

S/No.	Name	PAN
1	Anand Mining Corporation	AAGFA0187Q
2	Mahakaleshwar Mines & Metals Private Limited	AAHCM1276E
3	N M Impex Private Limited	AABCN0541M
4	Sureshine Vintrade Pvt Ltd	AAUCS1804K
5	Rajbanshi Trading	AQEPR0750Q
6	Avijit Saha	DCIPS3813Q
7	Eden Trading Services Private Limited	AADEC1272A
8	Bhawani Ferrous Pvt Ltd	AACCB3369A

14. I therefore, proceed to decide the matter on the basis of the material available on record. I have carefully considered the allegations and the submissions of the noticees. In this case, the limited issue to be considered, in view of submissions made by the noticees and in the facts and circumstances so far brought on record in the instant case, is as to whether the directions in the *interim order qua* the Noticees need to be continued, revoked or modified in any manner.

15. Before dealing with replies/submissions of the Noticees on the allegations in the *interim order,* I deem it necessary to deal with preliminary and common contentions raised by some of the Noticees. The first such contention is that the *interim order* has been passed in contravention of

the principles of natural justice as no opportunity of hearing was provided to them before passing the said order. In this regard, I note that the *interim order* has been passed on the basis of *prima facie* findings observed during the preliminary examination/inquiry undertaken by SEBI. The facts and circumstances necessitating issuance of directions by the *interim order* have been examined and dealt with in the *interim order*. The *interim order* has also been issued in the nature of show cause notice affording the noticees a post decisional opportunity of hearing. This position has been upheld in various judgements of the Hon'ble SAT, the Hon'ble High Courts and the Hon'ble Supreme Court.

16. It is pertinent to note that the *interim order* in the present case was passed under the provisions of sections 11(1), 11(4) and 11B of the SEBI Act. The second proviso to section 11(4) clearly provides that "Provided further that the Board shall, either before or after passing such orders, give an opportunity of hearing to such intermediaries or persons concerned". Further, various Courts, while considering the aforesaid sections of the SEBI Act have also held that principles of natural justice will not be violated if an *interim order* is passed and a post-decisional hearing is provided to the affected entity. In this regard, the Hon'ble Bombay High Court in the matter of Anand Rathi & Others Vs. SEBI (2002) 2 Bom CR 403, has held as under:

> *"It is thus clearly seen that pre decisional natural justice is not always necessary when ad-interim orders are made pending investigation or enquiry, unless so provided by the statute and rules of natural justice would be satisfied if the affected party is given post decisional hearing. It is not that natural justice is not attracted when the orders of suspension or like orders of interim nature are made. The distinction is that it is not always necessary to grant prior opportunity of hearing when ad-interim orders are made and principles of natural justice will be satisfied if post decisional hearing is given if demanded. Thus, it is a settled position that while ex parte interim orders may always be made without a pre decisional opportunity or without the order itself providing for a post decisional opportunity, the principles of natural justice which are never excluded will be satisfied if a post decisional opportunity is given, if demanded."*

17. Further, the Hon'ble High Court of Judicature of Rajasthan at Jaipur in the matter *of M/s. Avon Realcon Pvt. Ltd. & Ors Vs. Union of India & Ors (D.B. Civil WP No. 5135/2010 Raj HC)* has held that:

> *"…Perusal of the provisions of Sections 11(4) & 11(B) shows that the Board is given powers to take few measures either pending investigation or enquiry or on its completion. The Second Proviso to Section 11, however, makes it clear that either before or after passing of the orders, intermediaries or persons concerned would be given opportunity of hearing. In the light of aforesaid, it cannot be said that there is absolute elimination of the principles of natural justice. Even if, the facts of this case are looked into, after passing the*

impugned order, petitioners were called upon to submit their objections within a period of 21 days. This is to provide opportunity of hearing to the petitioners before final decision is taken. Hence, in this case itself absolute elimination of principles of natural justice does not exist. The fact, however, remains as to whether post-decisional hearing can be a substitute for pre-decisional hearing. It is a settled law that unless a statutory provision either specifically or by necessary implication excludes the application of principles of natural justice, the requirement of giving reasonable opportunity exists before an order is made. The case herein is that by statutory provision, principles of natural justice are adhered to after orders are passed. This is to achieve the object of SEBI Act. Interim orders are passed by the Court, Tribunal and Quasi Judicial Authority in given facts and circumstances of the case showing urgency or emergent situation. This cannot be said to be elimination of the principles of natural justice or if ex-parte orders are passed, then to say that objections thereupon would amount to post-decisional hearing. Second Proviso to Section 11 of the SEBI Act provides adequate safeguards for adhering to the principles of natural justice, which otherwise is a case herein also…"

18. In view of the above, I find that the *interim order* passed by SEBI was not in violation of the principles of natural justice since, reasons for passing the *interim order* have been clearly stated in the *interim order* and, in accordance with law, the Noticees were afforded a post-decisional opportunity to file its reply and avail the opportunity of personal hearing. I, therefore, reject the contention of the Noticees in this regard.

19. Certain Noticees have further contended, as mentioned herein above, that there was no emergent scenario prevailing at the time of the passing of the *interim order* which warranted such a harsh action. In this regard, I note that the time taken to arrive at a decision/action, as in this case, is dependent on the complexity of the matter, its scale and *modus operandi* involved and other attendant circumstances. The power under sections 11 and 11B of the SEBI Act can be invoked at any stage i.e. either during pendency or on completion of inquiry or investigation. In the present case, the modus operandi where the Noticees were misusing the stock exchange mechanism came to light only in August 2015. The *interim order* clearly brings out the reasons and circumstances for issuance of *ex-parte ad- interim directions*. I, therefore, do not find merit in the contention of Noticees in this regard.

20. Some of the Noticees have contended that they have traded on the anonymous screen based system of the stock exchanges and as such their trades cannot be regarded as having manipulative/fraudulent intent. They have further contended that they have not provided exit to the preferential allottees. In this context, I note that in the screen based trading, the manipulative or fraudulent intent can be inferred from various factors such as conduct of the party, pattern of transactions, etc. In this context, vide its order dated July 14, 2006, in Ketan Parekh vs. SEBI

(Appeal no. 2/2004), the Hon'ble SAT has observed 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."*

21. I note that majority of the Noticees have claimed that their trading activity is not in violation of any securities law as they have traded on the exchange platform, within the permitted price band, not aware of the counterparty, trading was illiquid therefore trades have matched, exchanges have permitted and not objected, people make profit or loss in trading, these transactions are done for tax planning and there is nothing wrong, etc. It is relevant to mention that the Noticees have been debarred on the basis of suspicious trading pattern which does not make any economic sense and is *prima facie* found to be fraudulent as discussed in the *interim order*. The trading pattern of the Noticees suggested that these entities have carried several transactions repeatedly in a manner that one set of entities are constantly making losses and other set of entities are constantly making losses. There is too much of coincidence to believe that these transactions and normal transactions and the pattern suggests that there is clear motive of making profit or loss by executing repeated transactions which do not make any economic sense.

22. I note that some of the entities have made submission that they have paid taxes and therefore the allegations against them for executing transactions for tax violations does not apply. Here I note that entities have been booked for their alleged manipulative trading pattern which does not make any sense. The action is taken for their alleged trading activities and merely payment of tax or government dues does not absolve them of the alleged fraudulent activity. Therefore, at this juncture, pending investigation, I am not incline to take any cognizance of their submissions that the entities have paid the tax. Moreover this issue will require detailed verification form the Income Tax Department.

23. I note that the Noticees have raised an objection that the entities who have booked profits or losses lesser than ₹ 5 crore have not been debarred and are carrying on with such trading activity. In this regard, I deem it important to mention that the *interim order* clearly mentions that detailed investigation in the matter is in progress. Here I note that considering the market wide misuse of the exchange platform in illiquid options, it was necessary to send an urgent signal to the market and therefore, the analysis was carried out for a selected period and top entities were shortlisted

for action on priority. The fact that certain entities have been left out of the *interim order* does not signify that they are outside the scope of SEBI's investigation or have been exonerated. At the stage of the *interim order*, directions were issued against entities considering their role/involvement in the scheme and the impact on the securities market as observed at this stage. I, therefore, am not inclined to agree with contention of the Noticees in this regard.

24. The Noticees have also relied upon the order of Hon'ble SAT in *Rakhi Trading Pvt. Ltd. vs. SEBI* and has stated that its case is covered by the said order. In this regard it is noted that the facts of the present case are distinguishable for the facts of Rakhi Trading on grounds of the types of contracts and also the quantum of transactions executed by the appellant therein.

25. The Noticees have argued that all the trades were within the execution range or operating range and hence cannot be alleged to be manipulative. I note that the allegation of manipulative trades against the debarred entities have been adequately brought out in the *interim order* and multiple variables *inter alia* including the proportion in terms of quantity and value of squared up trades and reversal trades in total trades, same day and subsequent day reversal instances, analysis of reversal instances where loss has been booked, the trading concentration of debarred entities on the days and contracts in which they have traded have been considered to arrive at a *prima facie* view regarding manipulative trades.

26. Having dealt with the common preliminary submissions as above, I proceed to deal with submissions of the Noticees with regard to their specific submissions. Mr. Bharat Patel and M/s Gandiv Investment Pvt. Ltd. have claimed that Mr. Deven Maniar was placing orders on their behalf and incurring continuous losses. With respect to Mr. Bharat Patel, in support of his claim he has filed relied upon an affidavit filed by said Mr. Deven Maniar. It is noted that in the said affidavit, Mr. Deven Maniar has claimed that Mr. Bharat Patel had executed the Client – Member Agreement with the stock broker and authorized him to transact business with the broker to trade and speculate on behalf of Mr. Bharat Patel in the Options Segment. It is further noted that even the stock broker, M/s. N.S. Broking Pvt. Ltd., who was the stock broker for the trades of Mr. Bharat Patel has not been able to confirm such authorization and has relied upon the same affidavit of Mr. Deven Maniar which Mr. Bharat Patel has relied upon in these proceedings when the query was made to it in this regard. Mr. Bharat Patel has also relied upon a letter dated October 26, 2015 from M/s. N.S. Broking Pvt. Ltd wherein it has been stated that Mr. Deven Maniar was the authorized representative of the stock broker and the losses were incurred only due to error of judgment and miscalculations.With respect to M/s Gandiv Investment Pvt. Ltd. in support of his claim he has filed relied upon an affidavit filed by said Mr. Deven Maniar. It is

further noted that even the stock broker, Odyssey Securities Pvt. Ltd., who was one of the stock broker for the trades of M/s. Gandiv Investment Pvt. Ltd. has not been able to confirm such authorization which M/s. Gandiv Investment Pvt. Ltd. has relied upon in these proceedings when the query was made to it in this regard.

27. It is, however, noted that both Mr. Bharat Patel and M/s Gandiv Investment Pvt. Ltd. have not furnished any authorization for Mr. Deven Maniar to trade on their behalf. M/s N.S. Broking Pvt. Ltd, the stock broker for the trades of Mr. Bharat Patel, has also not been able to confirm this claim that Mr. Bharat Patel had authorized Mr. Deven Maniar to trades on his behalf. It is further noted that this affidavit was affirmed on September 19, 2015 for Mr. Bharat Patel and on September 28, 2015 for M/s Gandiv Investment Pvt. Ltd. i.e. a month after the *interim order* was passed. Furthermore, the said affidavit of Mr. Deven Maniar as stated by him on oath was made, signed and affirmed by him as he was authorized by M/s N.S. Broking Pvt. Ltd. and M/s Odyssey Securities Pvt. Ltd. to do so. I also note that in the KYC and Client Registration forms provided by M/s N.S. Broking Pvt. Ltd., Mr. Deven Maniar was only as the *"introducer"*. It is not in dispute that Mr. Bharat Patel had knowledge of the trades executed in his name. I note that Mr. Bharat Patel is a regular trader in the cash segment and has a substantial portfolio to the tune of ₹266.4 Cr. as on August 20, 2015. As per his own submissions, he had allocated a budget of ₹20 Cr. allegedly to Mr. Deven Maniar to let him trade in his account for 6 months to a year. No prudent and seasoned investor with such portfolio would repose faith to this magnitude on a person i.e. Mr. Deven Maniar who continuously incurs losses while trading on Mr. Bharat Patel's behalf that too without any valid authorization. I find that none of the documents show authority given by Mr. Bharat Patel and M/s. Gandiv Investment Pvt. Ltd. to Mr. Deven Maniar as claimed by him. Be whatever it may, Mr. Bharat Patel and M/s. Gandiv Investment Pvt. Ltd. cannot be absolved of liability in respect of transactions undertaken by them directly or by another person on their behalf under their authority.

28. One of the Noticees, Mr. Bharat Patel has contended that as per Table 9 at Para 30 of the *interim order*, there was no 100% conversion of orders into trades, and it went as low as even 17.9%. In this regard it is noted that the *interim order*, in Tables 9 and 10, refers to data points pertaining to the profit making entities only. As the noticee, Mr. Bharat Patel was the loss making entity and his trading pattern has been reflected from Table 1 to Table 4 of the *interim order* reliance upon data in Tables 9 and 10 thereof is misplaced. The figure of 17.9% in table 9 corresponds to one, Mammon Concast Private Limited, who is not the counterparty to any of trades of Mr. Bharat Patel.

29. It is pertinent to mention that the case, as *prima facie* found in the *interim order,* involves a premeditated manipulative device or contrivance while dealing in securities market and indulging in non- genuine and deceptive transactions prohibited under the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Related to Securities Market) Regulations, 2003 and the SEBI Act. The investigation in the entire scheme to find out the rationale of Noticees indulging in such suspicious / artificial trades including tracing the fund trail and the role of intermediaries allowing the alleged fictitious trades is going on. The investigation is also to cover the examination of other entities executing similar fictitious trades in the stock options segment. From the preliminary examination into the fund trails of 2 profit making Noticees – N M Impex Pvt. Ltd. (Account No: 913020048401088, Axis Bank) and Sureshine Vintrade Pvt. Ltd. (Account No: 409000278189, RBL Bank Ltd.), it has been *prima facie* observed that these profit making Noticees have transferred funds back into the accounts of loss making Noticees indirectly after booking profits on account of reversal transactions with them.

30. Given below is an example of one such fund flow.
    (i) From the MCA filings, it is noted that Mr. Bharat Patel and his brother Mr. Pankaj Jayantilal Patel hold directorship position in Equitable Financial Consultancy Services Private Limited since September 13, 1993 and they continue to be directors in this company as on date.
    (ii) Mr. Bharat Patel had incurred a reversal loss of ₹ 2.17 Cr. in his transactions with N M Impex Pvt. Ltd. on March 5, 2015. It is also noted that Equitable Financial Consultancy Services Private Limited, the company in which he holds directorship position, has received funds amounting to ₹ 2.40 Cr. from N M Impex Pvt. Ltd on March 9, 2015. Therefore, the losses shown to have been incurred by Mr. Bharat Patel due to his reversal transactions with counterparty Sureshine Vintrade Pvt. Ltd have been reverted to the account of Equitable Financial Consultancy Services Private Limited.
    (iii) Mr. Bharat Patel had incurred a reversal loss of ₹ 8.83 Cr. in his transactions with Sureshine Vintrade Pvt. Ltd. from February 27 to March 4, 2015. It is also noted that Equitable Financial Consultancy Services Private Limited, the company in which he holds directorship position, has received funds amounting to ₹ 8.95 Cr. from Sureshine Vintrade Pvt. Ltd on March 3 and March 4, 2015. Therefore, the losses shown to have been incurred by Mr. Bharat Patel due to his reversal transactions with counterparty Sureshine Vintrade Pvt. Ltd have been reverted to the account of Equitable Financial Consultancy Services Private Limited.

The said example herein above is illustrative in nature and an exhaustive exercise in terms of

funds movement for other Noticees and their counterparties is to be investigated in depth. From the findings mentioned herein above it is noted that the Noticees were deliberately making repeated losses / repeated profits through their reversal trades in stock options which does not make any economic sense, and their major counterparties were facilitating them by acting in concert with a common object of intended execution of these suspicious and non-genuine trades.

31. Considering the peculiar facts and circumstances of the case which involved fictitious reversal trades and subsequent funds flows indicated above, I have noted that the so called losses arising out of the fictitious reversal trades have been made using the stock exchange platform. Hence in effect stock exchange platform has been used to generate fictitious losses arising out of fictitious reversal trades. I note, from the material available on record that the Noticees have not produced significant arguments/submissions or documents to mitigate the allegations mentioned in the *interim order*. Thus, the findings in the *interim order* against Noticees cannot be modified or revoked at this stage.

32. Coming to the consideration of relief, It is noted that Prompt Commodities, Gyandeep Khamka, Vinay Ramanlal Shah HUF, Ketan Ramanlal Shah HUF, GCK Stock Pvt. Ltd., J.B.Overseas, Motisons Commodities, Prime Gold International, Om Sales Corporation, Panem Steel Pvt. Ltd., Swaran Financial Pvt. Ltd., Xion Gems and Jewellers, Shir Commodities & Futures, Kundan Rice Mills Ltd., Kundan Care Products Ltd. and Riddhisiddhi Bullions have made specific submissions with regards to their trading in commodities. These entities have specifically pleaded for allowing them trading in the commodity derivatives on the commodity derivatives exchanges. After due consideration of their submissions and the fact that the interim order has got extended to commodity derivatives too after the merger of FMC and SEBI and also the fact that the alleged manipulation has taken place in the derivatives segment only, though of the equity derivatives, I am not inclined to allow participation in the commodity derivatives market for trading purposes. I am however of the opinion that the Noticees who have dealings in the underlying commodities in the spot market may be allowed to hedge their physical market exposure on the commodity derivatives exchanges. I therefore allow the Noticees mentioned herein above to participate on the commodity derivatives exchanges for the limited purpose of hedging their physical market positions under the closed supervision of the exchanges.

33. I also note that Hon'ble SAT vide order dated August 8, 2016 in the matter of Bharat Patel has issued following directions : -

"….WTM of SEBI shall consider the alternate plea of the appellant to trade in the cash segment in the light of the order of this Tribunal in Appeal No. 50 of 2016 dated March 4, 2016. "

34. In this regard, in the appeal filed by SEBI against the aforesaid orders of Hon'ble SAT, Hon'ble Supreme Court, vide its order dated July 1, 2016, *inter alia* directed as under:

"…..the respondents should give reply to the show cause notice, which had been issued to them by the SEBI by virtue of order dated 17th February, 2016, within two weeks from today. Upon getting the reply, within four weeks thereafter the SEBI shall decide the matter finally after giving a hearing to the parties, to whom the show cause notice had been given by the SEBI.

In view of the above order, we dispose of these appeals. It is clarified that the SEBI shall pass an order after hearing the concerned parties and without being influenced by any observation made by the SAT.

Looking at the facts of the case, the order passed by the SAT shall operate till the SEBI decides the case pending before it."

35. In light of the aforesaid directions of the Hon'ble Supreme Court, the directions of Hon'ble SAT would remain operative till SEBI passes an order in the matter. SEBI passed an order dated August 12, 2016 in the matter.

36. I, however, note that majority of them have raised concern over challenges in running their activities on account of ban and consequent freezing of their demat accounts. Many of these entities have pleaded for removal of the restraint imposed vide the *interim order* or atleast allow them partial relief of permitting trading in securities other than those involved in this case. It is worth mentioning that the case in hand is peculiar as large number of entities have been restrained and the ongoing investigation in the matter may take time in completion. I have been conscious that the restraint order should not cause disproportionate hardship or avoidable loss to the portfolio of the noticees. That is why several relaxations, such as allowing investment in mutual fund units, permission to liquidate existing portfolio and keep the proceeds in escrow account and even utilize 25% of the proceeds for meeting exigencies, etc. have been made in the past. Now at this stage, considering the facts and circumstances of this case and submissions/oral arguments made before me, I deem it appropriate to make further relaxations so as to address the issues of the personal and business exigencies or other liquidity problems.

37. Considering the above, I, in exercise of the powers conferred upon me under section 19 of the SEBI Act, read with sections 11(1), 11(4) and 11B thereof, hereby confirm the directions issued vide the *ad interim ex parte* order dated December 04,2014 as against the aforesaid 71 noticees except that they can:-

(a) enter into delivery based transactions in cash segment in the securities covered in NSE Nifty 500 Index scrips and/ or S&P BSE 500 scrips;

(b) subscribe to units of the mutual funds including through SIP and redeem the units of the mutual funds so subscribed;

(c) deal in Debt/Government Securities;

(d) invest in ETF

(e) avail the benefits of corporate actions like rights issue, bonus issue, stock split, dividend, etc.;

(f) tender the shares lying in their demat account in any open offer/delisting offer under the relevant regulations of SEBI;

38. Further considering business and personal exigencies and liquidity problems submitted by the restrained entities I allow them further relaxations/reliefs as under:-

(a) They are permitted to sell the securities lying in their demat accounts as on the date of the interim order, other than the shares of the companies which are suspended from trading by the concerned stock exchange, in orderly manner under the supervision of the stock exchanges so as not to disturb the market equilibrium and deposit the sale proceeds in an interest bearing escrow account with a nationalized bank.

(b) They may deal with or utilize the sale proceeds lying in the aforesaid escrow account under the supervision of the concerned stock exchange as provided:-

i. the sale proceeds may be utilised for investments permitted in para 81;

ii. upto 25% of the value of the portfolio as on the date of the *interim order* or the amount* in excess of the profit made /loss incurred or value of shares purchased to give exit, whichever is higher, may be utilized for business purposes and/or for meeting any other exigencies or address liquidity problems etc.

* *The amount will include the value of portfolio in the demat account*

Explanation: For the purposes of determining the portfolio value of the entities, the value of portfolio of securities lying in the demat account/s (individual and joint both) on the date of the interim order after excluding the value of shares that have been suspended from trading as on the date of the communication shall be considered. For NBFCs and stock brokers the value of portfolio shall exclude the value of clients' securities lying in their demat accounts.

(c) The aforesaid reliefs shall be subject to the supervision of exchanges and depositories. The stock exchanges may use this existing mechanism available for implementing the similar interim relief earlier granted to some of the entities.

39. It is, however, clarified that the aforesaid exceptions/relaxation/reliefs shall be available

(a) To the Noticees herein, except those who have not respobed to the *interim order* as mentioned in para 14 above, and also to the restrained entity in respect of whom the confirmatory order dated July 30,2016 has already been passed as mentioned in para 2 above.

(b) The common *interim* reliefs already granted in the matter earlier are subsumed in the aforesaid general relaxations/reliefs. The specific reliefs granted if any, to any of the Noticees shall remain in operation.

40. This order is without prejudice to any enforcement action that SEBI may deem necessary against the aforesaid *Noticees* on completion of the investigation in the matter.

41. Considering the above, I, in exercise of the powers conferred upon me under section 19 of the SEBI Act, read with sections 11(1), 11(4) and 11B thereof, hereby confirm the directions issued vide the *ad interim ex parte order* subject to the interim relief(s) provided earlier and communication dated February 08, 2016. I, therefore, in exercise of the powers conferred upon me under section 19 of the SEBI Act, read with sections 11(1), 11(4) and 11B thereof, hereby confirm the directions issued vide the *ad interim ex-parte* order dated August 20, 2015 against the entities.

42. This order shall continue to be in force till further directions.

43. A copy of this order shall be served on all recognized stock exchanges and depositories to ensure compliance with above directions.

Sd/-

Date: August 22nd, 2016
Place: Mumbai

RAJEEV KUMAR AGARWAL
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA