

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: S K MOHANTY, WHOLE TIME MEMBER

ORDER

Under Sections 11, 11(4) and 11B (1) of the Securities and Exchange Board of India
Act, 1992

In respect of:

S. No.	Name of the Noticee	PAN
1.	Jinesh Devendra Bhatt	AKDPB6133C

In the matter of Synergy Bizcon Limited

Background

1. An investigation was conducted by Securities and Exchange Board of India (for convenience "**SEBI**") into the trading activities in the scrip of Synergy Bizcon Limited (for convenience "**Synergy / Company**") for the period of May 26, 2015 to October 14, 2016 (for convenience "**Investigation Period**") for possible violation, if any, of the provisions of Securities and Exchange Board of India Act, 1992 (for convenience "**SEBI Act, 1992**") and rules and regulations made thereunder.
2. During the course of investigation, the price volume data in the scrip of the *Company* was analyzed. The period of investigation was divided into 2 patches, however, for the purpose of the instant proceedings only Patch-1 (May 26, 2015 to October 03, 2016) is relevant, wherein it was, *inter alia*, noticed that the price of the scrip of the *Company* was manipulated. The details of the price volume movement in the scrip of *Synergy* during the Investigation Period is tabulated below:

Table no. 1: Price-Volume movement in scrip of *Synergy*

Period	No. of Trading days	Price & Vol	Opening price (volume) on first day of the period (₹)	Closing price (volume) on last day of the period (₹)	Lowest price (volume) during the period (₹)	Highest price (volume) during the period (₹)	Total Volume (Avg. no. of shares traded daily during the period)
Patch-1 (26.05.2015 to 03.10.2016)	337	Price	49.99	317.75	49.99	418	18195025 (53991.17)
			(26.05.2015)	(03.10.2016)	(26.05.2015)	(03.10.2016)	
		Volume	1009	73861	5	188166	
			(26.05.2015)	(03.10.2016)	(27.05.2015)	(11.06.2016)	
Patch-2 (04.10.2016 to 14.10.2016)	7	Price	254.2	183	183	254.2	3415 (488)
			(04.10.2016)	(14.10.2016)	(14.10.2016)	(04.10.2016)	
		Volume	2667	11	7	2667	
			(04.10.2016)	(14.10.2016)	(10.10.16)	(04.10.2016)	

Findings of Investigation

3. In the course of investigation conducted by SEBI, while analyzing the price and trade movement in the scrip of Synergy, following facts, *inter alia*, came to light:

- a) Based on the Know Your Client (KYC) details, Unique client code (UCC) details, MCA database, Bank statements and off market transfer of equity shares, a group of 24 entities including the *Noticee* herein were identified as connected entities (hereinafter referred to as "***connected group entities***").
- b) During the Investigation Period, the *connected group entities* have entered into reversal of trades in the scrip of *Synergy* which resulted into no change in beneficial ownership. Such reversal trades among *connected group entities* accounted for 13.27% of the total market volume in the scrip during the

Investigation Period, which were *prima facie* non-genuine in nature and had resulted into creation of misleading appearance of trading in the scrip of the Company.

- c) During the Patch-1 of the Investigation Period, the price of the scrip opened at ₹ 49.99 on May 26, 2015 and moved to ₹ 418 and closed at ₹ 317.75 on October 03, 2016 with creation of a net positive Last Traded Price (for convenience “LTP”) of ₹ 267.76 and a total market positive LTP of ₹ 6572.3.
 - d) It was observed that during the Patch-1 of the Investigation Period, 8961 trades executed by the *connected group entities* amongst each other, resulted in contribution of the positive LTP of ₹ 2454.3 (37.34 % of total market positive LTP) in the scrip of the Company. It was further observed that out of the afore-stated 8961 trades, Noticee was a counterparty seller in 461 such trades which resulted into contribution of the positive LTP of ₹ 111.40 (1.69 % of total market positive LTP) in the scrip of the Company during the Patch-1 of the Investigation Period.
 - e) From the analysis of New High Price (for convenience “NHP”), it was revealed that out of 561 trades that resulted into establishing of NHP in the price of the scrip of Company during the Patch-1 of the Investigation Period, *connected group entities* were found to have contributed to NHP in 365 instances. The contribution of the *connected group entities* in establishing NHP in 365 instances through their buy trades was ₹ 247.86/- (67.35% of total NHP contribution of ₹ 368.01) in the scrip of Synergy during the Patch-1 of the Investigation Period. It was further unearthed that by trading amongst themselves, Noticee alongwith other *connected group entities* contributed to NHP of ₹ 103.35 (28% of total NHP) in the price of the scrip of the Company during the Patch-1 of the Investigation Period.
4. The aforesaid trading pattern of the Noticee alongwith other *connected group entities*, revealed that by entering into reversal trades amongst themselves which were *prima facie* non-genuine trades, the Noticee has allegedly created misleading

appearance of trading in the scrip of *Synergy*. Similarly, the *Noticee* alongwith other *connected group entities* have during the Patch-1 of the Investigation Period, executed trades in the scrip of the *Company* at a higher price than the LTP and by creating NHPs in the scrip of the *Company* have exhibited that the trading pattern of the *Noticee* during the said period was unfair, manipulative and fraudulent in nature and through execution of such trades, the *Noticee* has created a misleading appearance of trading in the scrip. Such acts of the *Noticee* alongwith other *connected group entities* have been alleged to be in breach of provisions of Section 12A (a), (b), (c) of the *SEBI Act, 1992* and regulation 3(a), (b), (c), (d) and regulation 4(1), 4(2) (a), (e) and (g) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (for convenience "*PFUTP Regulations, 2003*").

Show Cause Notice, Hearing and Replies

5. The *Noticee* was also seen to have been indulging in such manipulative trades violation in other scrips as well and such repetitive acts of the *Noticee* coupled with the findings of the investigation in the instant matter have led to the issuance of a Show Cause Notice dated August 27, 2019 (for convenience "*SCN*") asking him to show cause as to why suitable direction(s) under Section 11(1), 11(4) & 11 (B) *SEBI Act, 1992* should not be issued against him for his alleged violations of provisions of *SEBI PFUTP Regulations, 2003*.

6. I note from the available records that the aforesaid SCN was duly served on the *Noticee* through SPAD. Subsequently, in compliance with the principle of natural justice, opportunities of personal hearing were accorded to the *Noticee* on September 29, 2020, December 22, 2020 and February 18, 2021. I note that *Noticee* vide emails dated September 29, 2020, December 17, 2020 and February 16, 2021 had sought adjournment of the personal hearing citing reasons such as Covid-19 pandemic, unavailability of his advocate, etc. Accordingly, requests of the *Noticee* were acceded to from time to time. Meanwhile, *Noticee* vide letter dated June 15, 2021 had submitted his written reply to the SCN. Subsequently, another opportunity of personal hearing was accorded to the *Noticee* on October 12, 2021,

which was attended by Authorized Representative (AR) on behalf of the *Noticee* through video conferencing (Webex platform) during which the AR made various arguments on the lines of the written reply filed with SEBI. During the course of hearing, AR was advised to furnish certain additional details in support of various claims made by him during the personal hearing. Subsequently, *Noticee* vide letter dated November 07, 2021 has submitted an additional reply.

7. After perusing the written replies filed by the *Noticee* in response to the allegations made in the SCN, arguments made during the personal hearing and also by way of his post hearing submissions, I summarize his replies hereunder:

Absence of complete and thorough investigation

- a) A detailed investigation in the matter has not been conducted by SEBI, which would have unearthed the fraud committed by the Promoters of the *Company* who are the actual perpetrators of fraud and who defrauded the *Noticee*.
- b) No evidence is provided to show if the *Noticee* has received any pecuniary benefit or any other benefit, directly or indirectly. Even the SCN makes no averment that the *Noticee* had derived any benefit or advantage out of the alleged fraud by executing the alleged trades executed in the scrip of the *Company*.
- c) The *Noticee* had sought the inspection of Investigation Report (IR), however, the same was not provided to the *Noticee*. By non-supply of IR for inspection, principle of natural justice has not been followed.
- d) The alleged trades in the scrip of the *Company* as mentioned in the SCN were not executed by the *Noticee* and would have been executed by the promoters of the *Company*. With regard to his connection and interaction with the promoters of the *Company*, following, is inter alia, submitted by the *Noticee*:

- (i) *Noticee* was approached by the promoters of the *Company* for making investment in the *Company* through preferential allotment. For this purpose, *Noticee* was offered interest free loan from the entities related to the promoters of the *Company* for investing in shares of *Company* and was also asked to allow trading from his account by the promoters of the *Company*. During the interactions, *Noticee* was offered good returns on the aforesaid arrangement and therefore, was accordingly lured by the offer. Additionally, the *Noticee* arranged for similar facility of trading from the accounts of his relatives and employees.
- (ii) The *Noticee* had shared the details of all the bank accounts, demat and trading accounts with the Promoters. The details of the relatives and the employees were also shared with the Promoters. A sum of approximately INR 7 Crores was remitted into *Noticee's* bank accounts from several related entities / connected entities who were associated with the Promoters. As instructed, *Noticee* transferred certain funds into the bank accounts of his relatives and employees who had opened the demat accounts and provided their demat account details to the Promoters.
- (iii) *Noticee* did not place any orders in the scrip of *Synergy* during 2015-16. In fact, the *Noticee* had not given any authority to any person, including the Promoters, for placing any trade orders on his behalf. The *Noticee* had only agreed with the Promoters that the *Noticee* will place trade orders as per the advice and instructions of the Promoters, but the *Noticee* had never given the Promoters any form of authority to access and manage his trading and demat accounts. Therefore, the *Noticee's* trading account was dishonestly accessed.
- (iv) Around May 22, 2015, after observing a price rise in the scrip of the *Company* pursuant to its shift from SME board of the BSE to the

Main Board of the BSE, the *Noticee* informed the Promoters that he was keen on purchasing certain shares. Accordingly, wife of *Noticee* (one of the connected group entity) had placed an order for buying 900 shares. Apart from placing that one trade order, the *Noticee* never placed any other trade order in the scrip of *Synergy*.

(v) *Noticee* made several attempts to contact the Promoters and obtain details of the trades conducted from the account of the *Noticee*. However, since the Promoters failed and neglected to respond to the said requests, *Noticee*, sensing that a fraud was being played on him and his relatives / other employees, looked into the actions of the Promoters and found that various bank accounts and fake email IDs were opened by the Promoters only for conducting the impugned trades. In view of the same, in or around January 2017 the *Noticee* filed a Police complaint against the Promoters and informed them of the suspicious activities of the promoters. The Police investigations are ongoing as of date.

- e) The *Noticee* has further referred to order of the Hon'ble SAT dated April 07, 2021 with respect to an order passed by the Adjudication Officer (AO) against the *Noticee* and other connected entities in the matter, wherein the Hon'ble Tribunal has stayed the operations of the said order of the AO and also stayed the continuation of the recovery proceedings arising out of the above AO order passed against the *Noticee* and other entities.
- f) The *Noticee* has further submitted that he has even endeavored to gather all relevant information and documents and to conduct an independent forensic analysis for bringing to light the true picture before the regulatory authority. He has further submitted that he has also sent legal notice to the stockbrokers through his lawyers and has approached all stockbrokers and requested each one of them to share with him pertinent information and documents such as details about the persons who instructed or

executed the impugned trades and the details of authorizations received by them for placing trade orders on his behalf, etc., however, he has received no information from stock brokers in this regard.

- g) The *Noticee* has also relied upon the judgement of Hon'ble SAT in the matter of *Rahul H. Shah vs. SEBI (Appeal No. 83 of 2012)* and contended that he cannot be held liable for 'voluntary name lending', since he has not 'voluntarily' allowed/authorised the Promoters to access his demat accounts and to place trades on behalf of the *Noticee* or his relatives or employees.

Consideration of Issues and Findings

8. Considering the findings of Investigation, the allegations levelled against the *Noticee* in the SCN based on such findings and the explanations offered by the *Noticee* through his written reply to the SCN and arguments made by his AR during the personal hearing, I find that the only issue that requires consideration is as follows:

Issue 1: Whether the material on record suggest that the Noticee was part of the connected group entities and whether the acts of trading in the scrip of the Company by the Noticee during the Investigation Period have resulted in violations of the provisions of Section 12A (a), (b), (c) of the SEBI Act, 1992 and regulation 3 (a), (b), (c), (d) and Regulation 4 (1) and 4 (2) (a), (e) and (g) of SEBI PFUTP Regulations, 2003?

9. Before dealing with the aforementioned issues and the replies/arguments of the *Noticee* on merit, I deem it necessary to deal with the preliminary objection raised by the *Noticee* regarding non-supply of certain documents including the IR in the matter. In this regard, I find from the records available before me that SEBI vide email dated March 22, 2021, *inter alia*, had provided the opportunity to the *Noticee* for inspection of documents relied upon by SEBI. However, no request was received by SEBI in this regard. Relevant extracts of the email are reproduced below:

"In case the noticee want copies of SCN or annexures or any other additional document relied in the SCN and / or inspect the same, the noticee may submit his request by writing through email or by visiting SEBI's office."

10. Nonetheless, I find that the allegations against the *Noticee* have been clearly delineated in the SCN and all the relevant documents that have been relied upon in the SCN, including the trade logs, have been provided to the *Noticee* as annexures to the said SCN. Therefore, the contention of the *Noticee* that he has not been provided access to the relevant documents based on which the SCN has been issued is not acceptable as the *Noticee* has not categorically pointed out as to non-submission of which documents has caused prejudice to him in defending the charges made against him in the SCN. It is noted that once the documents that have been relied upon in the SCN have already been provided, it is the *Noticee's* responsibility to defend his case by referring to those documents based on which SEBI has made the allegations in the SCN. In this regard, I note that the Hon'ble SAT, in its order dated February 12, 2020, in the matter of *Shruti Vora vs. SEBI* had made the following observations:

"Reliance was also made of a decision of the Supreme Court in Union of India and Others vs E. Bashyan (1988) 2 SCC 196 which has no bearing to the controversy involved in the present context, in as much as, the said decision relates to a disciplinary proceedings wherein the Supreme Court observed that the inquiry report was required to be made available to the delinquent. An inquiry report is totally distinct and different from an investigation report. The inquiry report considers all the materials in the inquiry proceedings which form the basis of the final order and therefore the said report is required to be made available to the delinquent. In the instant case, the show cause notice relies upon certain documents which have been made available. Thus the investigation report is not required to be supplied".

"The learned counsel has also placed reliance upon a minority view of this Tribunal in Price Waterhouse vs Securities and Exchange Board of India decided by this Tribunal in Appeal No. 8 of 2011 on June 1, 2011 wherein it was observed that fairness

demands that the entire material collected during the course of investigation should be made available for inspection to the person whose conduct was in question and that said material should also be supplied. In our opinion, the said minority view is directly against the decision of the Supreme Court in Natwar Singh case (supra)".

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

11. Considering the above noted findings and observations made by the Hon'ble Tribunal, the fact that the *Noticee* has already been provided with the trade logs of alleged trades executed by him and all other relevant documents relied upon in the SCN and the fact that he has not availed the opportunity for inspection provided by SEBI, his arguments regarding non-supply of documents is merely an afterthought attempt just to delay the instant proceedings without any justifiable reasons and hence, deserve to be rejected in *limine*. Since all the documents which were relevant and relied upon in the instant proceedings, have been already provided to the *Noticee* along with the SCN, I am of the opinion that principles of natural justice have been duly complied with in the instant proceedings and no prejudice has been caused to the *Noticee* in so far as his ability to file his replies or to put up defense against the allegations made in the SCN.

12. After dealing with the preliminary arguments, I now proceed to deal with other issues & submissions of the *Noticee* on those issues in the subsequent paragraphs.

13. It is noted that the SCN has alleged that the *Noticee* was part of a *connected group entities* and has enjoyed connections with other entities in the group. In this

regard, I note from the records available before me that the *Noticee* was connected with some of the other *connected group entities* through common email id viz. *rex_rocky@yahoo.co.in*. Similarly, from the bank account statements, I note that the *Noticee* had financial transactions with various entities belonging to the *connected group entities*. In addition to the above, the *Noticee* is also found to be a director of one entity named, Shriti Enterprises which had financial transactions with some of the *connected group entities*.

14. I note that above facts pertaining to his connection with the other *connected group entities* have not been denied by the *Noticee* at any point of time during the proceedings. In fact, he has submitted that some of those connected group entities were his family relatives and employees. Further, I also note from the records that *Noticee* on various occasions has communicated with SEBI from the email id (*rex_rocky@yahoo.co.in*) that has been found to be one of the common threads of establishing connection of *Noticee* with some of the other *connected group entities*. It has also been admitted by the *Noticee* that he had furnished details of his near and dear ones to the Promoters of the *Company* for execution of trades in their names in the scrips of the *Company*. He has further submitted that the Adjudication Orders passed against some of such connected/related entities by SEBI are pending before the Appellate Authority (Hon'ble SAT) and those appeals are also being represented and defended by the *Noticee* only.

15. Considering the aforesaid discussions and the fact that there are materials sufficient enough to suggest that strong *inter se* connections existed to prove that the *Noticee* was connected with several other entities of the *connected group entities*, it can be reasonably concluded that the *Noticee* was admittedly enjoying close connections with some of the entities from the *connected group entities*.

16. The SCN has alleged that by indulging in reversal and non-genuine trades alongwith execution of other manipulative and unfair trades thereby contributing to positive LTP in the scrip of the *Company*, the *Noticee* has committed violations of various provisions of *SEBI Act, 1992* and *PFUTP Regulations, 2003*. Therefore, before

moving forward on this issue, it would be proper to visit the relevant regulatory provisions alleged as to have been violated in the SCN, which are produced hereunder for ready reference: -

SEBI Act, 1992

12A. No person shall directly or indirectly –

- (a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;*
- (b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognised stock exchange;*
- (c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;*

PFUTP Regulations, 2003

3. Prohibition of certain dealings in securities

No person shall directly or indirectly –

- a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;*
- (b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;*

(c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;

(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.

4. Prohibition of manipulative, fraudulent and unfair trade practices

(1) Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.

(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:-

(a) indulging in an act which creates false or misleading appearance of trading in the securities market;

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

(g) entering into a transaction in securities without intention of performing it or without intention of change of ownership of such security.

17. Moving on to the allegations made in the SCN on the trade related aspects, the SCN has alleged that the *Noticee* alongwith other *connected group entities* has accounted for creation of artificial volume in the scrip of *Synergy* by way of reversal trades during the Investigation Period. It is pertinent to note that reversal trades are the trades where the buyer and seller reverse their position with each other and such trades effectively do not result in change of ownership. Reversal trades create artificial/fictitious volume in the market and give a false and misleading appearance of trading in the scrip at the exchange. In this regard, I note from the SCN that reversal trades executed by the *Noticee* alongwith other *connected group entities* accounted for 13.27% of the total market volume in the scrip during the Investigation Period. A summary of such reversal trades executed by the *Noticee* during the Investigation Period in the scrip of *Synergy* is tabulated below:

Table no. 2: Summary of reversal trades executed by *Noticee* in the scrip of *Synergy*

Entity 1	Entity 2	Qty.1 (Entity 1 (Sell) To Entity 2 (Buy)	Qty.2 (Entity 2 (Sell) To Entity 1 (Buy))	Sum Of Reversa 1 Qty.	Artificial Volume created by reversal trades
Nagmaheshwar Balraj Yellamelli	<i>Noticee</i>	6000	291	291	582
Deepak Pandurang Vikhape	<i>Noticee</i>	4760	27	27	54
<i>Noticee</i>	Ravindra Nath Mishra	980	1449	975	1950
<i>Noticee</i>	Yogesh Bhawansingh Bisht	3955	6204	1577	3154
<i>Noticee</i>	Slesha Pradeep Ghosh	8405	6679	5939	11878
<i>Noticee</i>	Vineet Sinha	2633	2679	2029	4058
<i>Noticee</i>	Ganesh Nainsingh Sunar	5289	6549	2645	5290
Total		32022	23878	13483	26966

18. It is observed from the above table that the *Noticee* had indulged in reversal trades with other *connected group entities* involving an aggregate of 26,966 shares of *Synergy* through reversal trades during the Investigation Period. I further note from the trade details of the aforesaid reversal trades of the *Noticee* that such trades were reversed on the same day causing thereby creation of artificial volumes in the scrip of the *Company* on that particular day. For instance, *Noticee* purchased 6000 shares of *Synergy* from one of the *connected group entities* viz. Nagmaheshwar Balraj Yellamelli. However, 291 shares of *Synergy* were again sold by *Noticee* to the aforementioned entity viz. Nagmaheshwar Balraj Yellamelli on the said day of purchase which resulted into generation of an artificial volume of 291 shares pursuant to entering into the said reversal trade. Similar trading pattern has been

observed with respect to other reversal trades of *Noticee* with other *connected group entities*. By executing such reversal trades,

19. I note that persistent reversal trading in the aforesaid manner clearly indicates an intention to create artificial volume in the scrip of *Synergy*. Such reversal trades executed by the *Noticee* with other *connected group entities* evidently suggest that the same were not genuine trades executed with an intention to trades in the scrip as a normal trader but are loathed with a self-evident intention of generating misleading appearance of trading as there was no intention to change the beneficial ownership of the shares in such trades. In this respect, I note that the Hon'ble Supreme Court of India in the matter of *SEBI vs. Rakhi Trading Private Ltd.*, in Civil appeals no., 1969 of 2011 with Civil Appeal Nos., 3174-3177 of 2011 and Civil Appeal No., 3180 of 2011 decided on February 8, 2018 had observed that "*the price discovery system itself was affected by synchronization and rapid reverse trade, which also had the impact of excluding other investors from participating in the market. The Supreme Court, therefore found that the traders having engaged in a fraudulent and unfair trade practice while dealing in securities, are hence liable to be proceeded against for violation of Regulations 3(a), 4(1) and 4(2)(a) of PFUTP Regulations.*" The Apex Court had also observed that "*considering the reversal transactions, quantity, price and time and sale, parties being persistent in the number of such trade transactions with huge price variations, it will be too naïve 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.*"

20. Keeping in mind the aforesaid trading details of the *Noticee* and the judicial observations of the Hon'ble Supreme Court of India as reproduced above, I am of the view that the *Noticee's* reversal trades in the scrip of *Synergy* lacked honesty of intent to trade in the scrip of the *Company* as a genuine trader and instead, had all

the ingredients of creating artificial/fictitious volume in the market and give a false and misleading appearance of trading in the scrip at the exchange.

21. With reference to the allegations pertaining to *Noticee's* contribution to the LTP in the price of the scrip of the *Company*, I note that during the Patch-1 of the Investigation Period, the price of the scrip opened at ₹ 49.99 on May 26, 2015 then moved to ₹ 418 and closed at ₹ 317.75 on October 03, 2016 in course of which, the scrip witnessed creation of a net positive LTP of ₹ 267.76 and a total market positive LTP of ₹ 6572.3. I further note that during the Patch-1 of the Investigation Period, *connected group entities* executed 8961 trades amongst each other that resulted in contribution of the positive LTP of ₹ 2454.3 (37.34 % of total market positive LTP) in the scrip of the *Company*. I note from the trade details enumerated in the SCN that out of the afore-stated 8961 trades, *Noticee* himself was a counterparty seller in 461 such trades which resulted into contribution of positive LTP of ₹ 111.40 (1.69 % of total market positive LTP) in the scrip of the *Company* during the Patch-1 of the Investigation Period. I further note from the trade logs that except for 3 trades, in all the remaining 458 trades executed by the *Noticee* that resulted into contribution of positive LTP, the sell orders were placed by *Noticee* prior to the matching buy orders placed by buyers from the *connected group entities*. Further, the afore-stated sell trades were executed back to back on the same trading day and have thereby led to contribution to higher LTP. For better clarity, a sample of such trades executed by *Noticee* on 25.06.2015 are illustrated in the table below:

Table no. 3: Few trades executed by *Noticee* resulting into contribution to positive LTP on 25.06.2015

Order Number of the <i>Noticee</i>	Order time	Order Quantity	Order Price	Trade Time	Trade Quantity	Price	Contribution to LTP
1435203000004108051	09:05:33	140	117.55	09:22:00	114	117.55	0.05
1435203000004108050	09:05:27	55	117.6	09:39:38	55	117.6	0.05

1435203000004108049	09:05:20	67	117.8	09:39:38	67	117.8	0.2
1435203000004108053	09:05:51	25	117.85	09:39:38	25	117.85	0.05
1435203000004108054	09:05:58	40	117.95	09:39:38	40	117.95	0.1

22. From the table no. 3 above, I note that the *Noticee* has placed various sell orders at a prices higher than LTP on the same day within a period of few seconds. For instance, *the Noticee* placed an order (number 1435203000004108049) at 09:05:20 at a price of ₹ 117.8. However, before the said order was executed into a trade, *Noticee* immediately after 7 seconds, placed another sell order (number 1435203000004108050) for a quantity of 55 shares at a price of ₹ 117.6. Subsequently, within the next 30 seconds, *Noticee* placed another 3 sell orders for different quantities and at prices higher than the prevailing LTP. It is also important to note that all these sell orders were matched with only one buy order placed by one of the *connected group entity* at 09:39:38 at prices higher than the LTP. Similar order placing and trading pattern have been observed in other alleged trades executed by the *Noticee* that have resulted into creating a positive LTP in the price of the scrip of the *Company*. Looking at such trading pattern involving placing different sell orders in the scrip of *Synergy* at different prices (all at high LTP) almost at the same point of time, which was adopted and followed religiously by the *Noticee* apparently with an intent to inflate the LTP with every successive placing of orders, it clearly indicates manipulative nature of such trades and the *malafide* intention of the *Noticee*, since all such orders placed by the *Noticee* in the scrip of the *Company* have always resulted into trades creating high LTP in the price of the scrip of the *Company*.

23. The SCN has alleged that in 365 trades executed by the *connected group entities* have resulted in establishing NHP of ₹ 247.86/- (67.35% of total NHP contribution of ₹ 368.01) in the scrip of *Synergy* during the Patch-1 of the Investigation Period. In this regard, the *Noticee* and the *connected group entities* by trading amongst themselves, are found to have contributed to NHP of ₹ 103.35 (28% of total NHP) in

the price of the scrip of the *Company* during the Patch-1 of the Investigation Period. After perusing such trades that have resulted in establishing NHP, I note that on 7 instances, buy trades executed by the *Noticee* have resulted in establishing a cumulative NHP of ₹ 4.06. Similarly, on 4 instances, buy trades executed by the *Noticee* that matched with the counterparty *connected group entities* have resulted in establishing a cumulative NHP of ₹ 0.06. I note that the above noted contributions to NHP in the scrip of the *Company* by the *Noticee* is very small, however, when his contribution to NHP is looked at alongwith substantial contribution of *Noticee* in creating positive LTP in the scrip of the *Company* through his manipulative trades, the allegation of substantial LTP contribution by the *Noticee* assumes all the more gravity and seriousness when analyzed in the context of his NHP contribution. It is to be noted that in share trading activities, there is a constant interplay between the LTP and NHP. If LTP of a scrip is consistently high, it may lead to establishment of NHPs which in turn, is likely to push the closing price of the said scrip northwards thereby inflating the market price of the scrip over a period of time. In the instant case, it is observed that the scrip witnessed sustained increase in its market price over a period of time due to consistent contribution to the LTPs and repeated creation of NHPs by the trading acts of the *Noticee* and *connected group entities*. This group of entities, by consistently trading amongst themselves have successfully been pushing the LTP and NHP upwards. Therefore, from the overall market integrity point of view, the alleged NHP contribution read with LTP contributing trades were seemingly executed with the sole motive of raising the price of the scrip through those manipulative trades.

24. There is no dispute to the fact that the alleged trades were executed from the trading account of the *Noticee*. However, I note that the *Noticee* in his submissions has stated that the Promoters of *Synergy*, approached him for an investment opportunity in *Synergy*. It is also admitted by the *Noticee* that after getting lured by the offer given by the Promoters of *Synergy*, he provided details of his bank and trading accounts to the Promoters of *Synergy*. Further, *Noticee* has also admitted that

he convinced his relatives and employees (who belong to *connected group entities*) to deal in the scrip of *Synergy* from their trading accounts with the intention of earning profit by pursuing the above noted scheme of investment offered to him by the Promoters of the *Company*. As per the submissions of *Noticee*, he had received approximately ₹ 7 crores in his bank account and the same was utilized for the trading in the scrip of *Synergy* through his account and also through the accounts of various other *connected group entities*, which contributed to manipulation of volume and price in the scrip of *Synergy*. The *Noticee* has argued that he had not allowed the promoters to use his trading and bank accounts. However, it is a fact that operation of his trading and Bank accounts cannot be possible without the confirmation and signatures of *Noticee*. I also note that the funds used for entering into such trading transactions admittedly were not his own funds. From the above discussed undisputed transactions entered into by the *Noticee* from his own trading account only, and having gone through the justification advanced by the *Noticee*, I find no merit in the aforesaid explanations put forth by the *Noticee* in support of his submissions. I note that the transactions pertain to the period 2015-16 and it is not the submission of the *Noticee* that his KYC documents have been forged or misused in opening demat and trading accounts in his name in any unauthorized manner or the trades in the scrip of the *Company* were executed against his will and knowledge. It has rather been submitted by him that in lieu of receipt of monetary considerations, he had entered into an agreement or understanding with the Promoters of the *Company* to trade in the scrip of the *Company* and in fact the creation of artificial volume and contribution to LTP and NHP in the scrip as highlighted above are the outcome of the above arrangement/ understanding of the *Noticee* with the Promoters of the *Company*. Therefore, at this stage the plea of being ignorant about the execution of trades or the said impugned trades have been executed without his consent for which he has filed a complaint, cannot be viewed as sufficient enough so as to result in exoneration of charges against him.

25. *Noticee* has further stated that the Promoters of the *Company* have manipulated the markets to their benefit and have left behind the dues/losses to be paid to the stock brokers by the *Noticee*. *Noticee* has further requested that a detailed investigation in the matter has not been conducted by SEBI, which would have unearthed the fraud committed by the Promoters of the *Company* who are the actual perpetrators of fraud and who defrauded the *Noticee*. In this respect, it is pertinent to note that it is a trite law to state that in the quasi-judicial proceedings, the adjudicator is bound within the realms of the show cause notice before him. In the instant case, after examining the role of other *connected group entities*, if SEBI has found that it is not necessary to proceed against the Promoters of the *Company*, the same logic cannot be *suo moto* as a matter of right, extended to exonerate the *Noticee* in this proceedings, more particularly, when the *Noticee* has admitted that the trades were executed from his trading account whose details were shared with the promoters by the *Noticee* himself. In fact, in the matter of *Systematix Shares & Stocks India Limited v. SEBI (2012)*, the Hon'ble SAT had the occasion to deal with an argument similar to the *Noticee* contending that the Board should have proceeded against all wrongdoers and the action against few entities alone was discriminatory. In the said case, the Hon'ble SAT had observed that "*We cannot subscribe to this view since the Board has set its own benchmark in selecting cases for action and, in any case, the appellant cannot plead himself innocent or his trades as lawful.*" In the instant case as well, the Board after examining and considering the role of each of the *connected group entities*, including the *Noticee*, their trades during the relevant period, have consciously decided to initiate proceedings against the *Noticee* who was noticed to have played an active role in the commission of the violations as alleged in the SCN. In view of the above stated findings and having considered the replies of the *Noticee* wherein he has not disputed the execution of those manipulative trades as mentioned in the SCN, the defense that Promoters of the *Company* have breached the understanding and executed trades by exceeding the scope of arrangement, manifest that the excuse put forth by the *Noticee* is not tenable and the said breach, if any, appears to be a contractual breach between the *Noticee* and the Promoters of

the Company for which remedies lie not in this proceedings. Considering the foregoing, I reject this contention of the *Noticee* and do not find it necessary to further deal with such an argument advance by the *Noticee*.

26. The *Noticee* has further submitted that he has sent a legal notice and approached all stockbrokers and requested each of them to share pertinent information and documents such as details about the persons who placed orders to execute the impugned trades and what authorizations received by them to execute those trades, etc. In this regard, I am of the view that *Noticee* has admittedly willingly become part of a scheme conceived with the Promoters and just because the expected profits did not materialize, he is now conveniently claiming that the entire scheme of manipulative trades was being operated by other persons, which would not have been the case had he received promised profits from the said scheme. I note that the impugned transactions were done during the period of 2015-16, while the police complaint was filed by *Noticee* in the year 2017. Further, *Noticee* has sought the details from the stock brokers only in the year 2020 after the issuance of the SCN. The above act on part of *Noticee* indicate that the said actions taken by *Noticee* are part of a mere afterthought exercise to escape the regulatory action initiated by SEBI. In view of the above, I am not inclined to accept the above contention of *Noticee*.

27. I also note from the submissions of *Noticee* that he had voluntarily shared his demat and bank account details with the promoters so as enable those third parties to operate his account. I am of the view that the *Noticee* therefore cannot cry foul or cannot avoid the responsibility for misuse of his accounts by third parties by merely stating that he was not aware about the manipulative intent of those third parties. The *Noticee* has clearly stated that he allowed other parties to use his accounts in hope of profits. In the instant case, even if it is accepted that certain third parties had used the bank / demat accounts of *Noticee*, it is all the more a matter of serious concern and a serious threat to the integrity of the securities market since by his own conduct the *Noticee* has deliberately facilitated market operators to devise and

deploy deceptive, fraudulent and manipulative schemes for trading in the scrip of *Synergy* for artificially inflating price and creating volumes in the scrip.

28. The *Noticee* has also relied upon the judgement of Hon'ble SAT in the matter of *Rahul H. Shah vs. SEBI (Appeal No. 83 of 2012)* and contended that he cannot be liable for 'voluntary name lending', since he has not 'voluntarily' allowed/authorized the Promoters to access his demat accounts and place trades on behalf of the *Noticee* or his relatives or employees. First of all, the facts and circumstances of the above referred judgement are completely distinguishable from the facts of the present proceedings and therefore the aforesaid judicial decision of Hon'ble Tribunal cannot be held to be squarely applicable on the present proceedings. For instance, in the referred matter, the question before the Hon'ble Tribunal was as to whether the appellants who were two college going students and who admittedly were not in charge of the day today affairs of the company could be held to be liable merely because they were directors although they did not take part in the day to day affairs of the company. Further, the father of the appellants had admitted that he was directly responsible for the violations and the said explanations were accepted by SEBI and he was barred from the securities market for a period of three years. Therefore, the Hon'ble SAT, inter alia, observed that "*When SEBI itself in its order clearly states that the appellants were not in charge of the day-to-day affairs of the company, it cannot be by any stretch of imagination said that the appellants are guilty and have violated the Regulations*". However, in the present proceedings, the *Noticee* has already admitted that he was the instrumental in providing the details of his demat accounts and bank accounts as well as the details of accounts of his relatives / employees, from where the alleged transactions were executed. Therefore, the contention of the *Noticee* and reliance placed on the above referred judgment to support his contention is devoid of any merit and does not require further consideration.

29. *Noticee* has further contended that the SCN makes no averment that the *Noticee* had derived any benefit or advantage out of the alleged fraud by executing

the alleged trades executed in the scrip of the *Company*. I note that allegation of profit / benefit has not been attributed in the SCN. Though profit earning is an important motive for undertaking the trades, it is not the sole criterion to determine whether the trades executed are manipulative or not, which has to be determined by taking into account the attending facts and circumstances of the case. I find that trading at LTP variation is not *per se* illegal, but considering the connection of the *Noticee* with other *connected group entities*, his trading activities need to be viewed in totality. The discussion in the foregoing paragraphs clearly indicate that there are sufficient facts and circumstances to establish that the trades executed by the *Noticee* were not fair and transparent. The upward movement of price of the scrip and contribution to LTP through the alleged series of trades executed amongst connected entities clearly exhibit that the alleged trades have been manipulative in nature. In view of the discussion above, I conclude that the *Noticee* was not acting as a genuine trader and that his intent was to mark the price higher through his trades and not merely to enter into the transactions as a genuine investor in due course of investment activities.

30. Keeping in view the afore-stated non-genuine trading pattern exhibited by the *Noticee* and the discussions in the foregoing paragraphs it may be relevant here to note that the Hon'ble SAT, in the matter of *Ketan Parekh v. SEBI* (Appeal No. 2 of 2004 decided on 14.07.2006) had an occasion to deal with the propriety of non-genuine trades and had made the following observations:

".....Any transaction executed with the intention to defeat the market mechanism whether negotiated or not would be illegal. Whether a transaction has been executed with the intention to manipulate the market or defeat its mechanism will depend upon the intention of the parties which could be inferred from the attending circumstances because direct evidence in such cases may not be available. The nature of the transaction executed, the frequency with which such transactions are undertaken, the value of the transactions, whether they involve circular trading and whether there is real change of beneficial ownership, the conditions then prevailing in the market are

some of the factors which go to show the intention of the parties. This list of factors, in the very nature of things, cannot be exhaustive. Any one factor may or may not be decisive and it is from the cumulative effect of these that an inference will have to be drawn."

31. I would also like to refer to the judgement of the Hon'ble Supreme Court of India in the matter of *N. Narayanan v. SEBI* [(2013) 12 SCC 152], wherein it was held that *"if market abuse is not properly curbed, then it would result in defeating the very object and purpose of SEBI Act.Prevention of market abuse and preservation of market integrity is the hallmark of Securities Law."* The Hon'ble Supreme Court of India have also relied upon and quoted from Palmer's Company Law stating that *"Market manipulation is normally regarded as the "unwarranted" interference in the operation of ordinary market forces of supply and demand and thus undermines the "integrity" and efficiency of the market."* The Hon'ble Supreme Court of India have also observed that *"Section 12A read with Regulations 3 and 4 of the Regulations 2003 essentially intended to preserve 'market integrity' and to prevent 'Market abuse'."*

32. In the light of the aforesaid observations of the Hon'ble Supreme Court of India and the Hon'ble SAT, and after considering the trading pattern exhibited by the Noticee in the scrip of *Synergy*, I do not have any hesitation in holding that the Noticee had consciously allowed his indulgence in series of reversal trades and trades that were executed as a consequence to which the price of the scrip of *Synergy* was manipulated by contributing to the price rise and therefore, the Noticee has evidently violated Section 12A (a), (b), (c) of *SEBI Act, 1992* and regulations 3(a), (b), (c), (d) and regulations 4(1), 4(2) (a), (e) and (g) of the *PFUTP Regulations, 2003*.

Directions

33. In view of the above discussions and findings with respect to the violations of provisions of *SEBI Act, 1992* and *SEBI PFUTP Regulations, 2003* by the Noticee as found established, I in exercise of powers conferred upon me under Sections 11(1), 11(4), 11B(1) read with Section 19 of the *SEBI Act, 1992*, in order to protect the interest of investors and the integrity of the Securities Market and to meet the ends

of justice, hereby restrain the *Noticee* from accessing the securities market and further prohibit him from buying, selling or otherwise dealing in securities, directly or indirectly in any manner, for the period of 06 (six) months.

34. It is clarified that during the period of restraint, the existing holding of securities of the *Noticee* including units of mutual funds, shall remain frozen.

35. It is clarified that obligation of the *Noticee*, in respect of settlement of securities, if any, purchased or sold in the cash segment of the recognized stock exchange(s), as existing on the date of this Order, can take place irrespective of the restraint/prohibition imposed by this Order, in respect of pending transactions, if any. Further, all open positions, if any, of the *Noticee* in the F&O segment of the stock exchange, are permitted to be squared off, irrespective of the restraint/prohibition imposed by this Order.

36. The Order shall come into force with the immediate effect.

37. A copy of this Order shall be forwarded to the *Noticee*, all the recognized Stock Exchange, depositories and registrar and transfer agents for ensuring compliance with the above directions.

Sd/-

DATE: FEBRUARY 18, 2022

S. K. MOHANTY

PLACE: MUMBAI

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA