REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1969 OF 2011

SECURITIES AND EXCHANGE BOARD OF INDIA ....APPELLANT(S)

VERSUS

RAKHI TRADING PRIVATE LTD. ....RESPONDENT(S)

WITH

CIVIL APPEAL NOS. 3174-3177 OF 2011

AND

CIVIL APPEAL NO. 3180 OF 2011

J U D G M E N T

KURIAN, J.

1. Fairness, integrity and transparency are the hallmarks of the stock market in India. The Securities and Exchange Board of India (hereinafter referred to as "SEBI") is the vigilant watchdog. Whether the factual matrix justified the

watchdog's bite is the issue arising for consideration in this case.

2. There are two sets of party respondents – the traders and the brokers. SEBI proceeded against the traders for violation of Regulations 3(a), (b) and (c) and 4 (1), (2)(a) and (b) of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as "the PFUTP Regulations"). In the case of brokers, the charge is that they also violated Regulations 7A (1), (2), (3) and (4) of the Securities and Exchange Board of India (Stock Brokers and Sub-brokers) Regulations, 1992.

3. As the matter before us involves three traders and three brokers, for convenience, we have extracted the dates of the decision of the Adjudicating Officer (hereinafter referred to as "A.O.") and the Securities Appellate Tribunal (hereinafter referred to as "the SAT") in the table below:

S.No.	Name of the Party	Trader/ Broker	Date of A.O's order	Date of SAT's decision
1.	Rakhi Trading Private Limited ("Rakhi Trading")	Trader	26.03.2009	11.10.2010

2.	Tungarli Tradeplace Private Limited (“Tungarli”)	Trader	30.04.2010	16.11.2010
3.	TLB Securities Limited (“TLB”)	Trader	16.03.2009	26.10.2010
4.	Indiabulls Securities Limited (“Indiabulls”)	Broker	25.02.2009	26.10.2010
5.	Angel Capital and Debt Market Limited (“Angel”)	Broker	22.05.2009	26.10.2010
6.	Prashant Jayantilal Patel (“Prashant”)	Broker	31.08.2009	26.10.2010

SAT set aside the decisions of the A.O. in all the aforementioned cases. Aggrieved, SEBI is before this Court under Section 15Z of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the “SEBI Act”).

4. Both the facts and the law are complex, and hence, we shall first analyse the legal framework.

5. The Securities Contracts (Regulation) Act, 1956 was introduced “*… to prevent undesirable transactions in securities by regulating the business of dealing therein, by providing for certain other matters connected therewith*”. Section 18A dealing with contracts in derivatives was

introduced with effect from 22.02.2000. The provision reads as follows:

> "18A. **Contracts in derivative**.—Notwithstanding anything contained in any other law for the time being in force, contracts in derivative shall be legal and valid if such contracts are —
>
> **(a)** traded on a recognised stock exchange;
>
> **(b)** settled on the clearing house of the recognised stock exchange; or in accordance with the rules and bye-laws of such stock exchange;
>
> **(c)** between such parties and on such terms as the Central Government may, by notification in the official Gazette, specify."

"Derivative" is defined under Section 2(ac) of the 1956 Act, which read as under:

> "2(*ac*)] "derivative" includes—
>
> (*A*) a security derived from a debt instrument, share, loan, whether secured or unsecured, risk instrument or contract for differences or any other form of security;
>
> (*B*) a contract which derives its value from the prices, or index of prices, of underlying securities.

(C) commodity derivatives; and

(D) such other instruments as may be declared by the Central Government to be derivatives;"

6. "Option in securities" is defined under Section 2 (d) of the 1956 Act, which reads as under:

> "2(*d*) "option in securities" means a contract for the purchase or sale of a right to buy or sell, or a right to buy and sell, securities in future, and includes a *teji, a mandi, a teji mandi, a galli,* a put, a call or a put and call in securities."

7. The term "securities" is defined under Section 2(h) of the 1956 Act, which reads as under:

> "2(h) "securities" include—
>
> (i) shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate.
>
> xxx xxx
> xxx
>
> (ia) derivative;"

8. In 1992, the SEBI Act was introduced "...*to provide for the establishment of a Board, to protect the interest of*

investors in securities and to promote the development of and to regulate, the securities market and for matters connected therewith or incidental thereto".

9. Section 15HA of the SEBI Act provides for penalty for fraudulent and unfair trade practices. The provision reads as under:

> **"15HA. Penalty for fraudulent and unfair trade practices.-** If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher."

10. Adjudication is provided under Section 15I. Section 15T provides for appeal to SAT against any order made by an Adjudicating Officer and Section 15Z provides for an appeal to Supreme Court against an order passed by the SAT "…*on any question of law arising out of such order*.."

11. Under Section 30 of the SEBI Act "….*the Board may, by notification, make regulations consistent with this Act and the Rules made thereunder to carry out the purposes of this Act*."

The PFUTP Regulations were notified on 17.07.2003.

12. Regulation 2(1)(b) of the PFUTP Regulations provides the definition of "dealing in securities", which reads as under:

> "2(1)(b) "dealing in securities" includes an act of buying, selling or subscribing pursuant to any issue of any security or agreeing to buy, sell or subscribe to any issue of any security or otherwise transacting in any way in any security by any person as principal, agent or intermediary referred to in section 12 of the Act."

13. Chapter II of the PFUTP Regulations comprising Regulations 3 and 4 deals with the prohibition of fraudulent and unfair trade practices relating to securities in the market. Regulation 3 speaks of prohibition about certain dealings in securities and Regulation 4 provides for prohibition of manipulative, fraudulent and unfair trade practices. The regulations relevant for the purpose of the present case read as under:

> "3. Prohibition of certain dealings in securities
>
> No person shall directly or indirectly—
>
> (a) buy, sell or otherwise deal in securities in a fraudulent manner;
>
> (b) use or employ, in connection with issue, purchase or sale of any security listed or

proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;

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

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

"4. Prohibition of manipulative, fraudulent and unfair trade practices

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

(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;

> (b) dealing in a security not intended to effect transfer of beneficial ownership but intended to operate only as a device to inflate, depress or cause fluctuations in the price of such security for wrongful gain or avoidance of loss;
>
> xxx xxx
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> xxx
>
> (e) any act or omission amounting to manipulation of the price of a security;
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> xxx xxx
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> xxx
>
> (g) entering into a transaction in securities without intention of performing it or without intention of change of ownership of such security;

14. The Regulations do not provide a definition for unfair trade practices but "fraud" and "fraudulent" have been defined under Regulation 2(1)(c), which reads as under:

> "2(1)(c) "fraud" includes any act, expression, omission or concealment committed whether in a deceitful manner or not by a person or by any other person with his connivance or by his agent while dealing in securities in order to induce another person or his agent to deal in securities, whether or not there is any wrongful gain or avoidance of any loss, and shall also include:

(1) a knowing misrepresentation of the truth or concealment of material fact in order that another person may act to his detriment;

(2) a suggestion as to a fact which is not true by one who does not believe it to be true;

(3) an active concealment of a fact by a person having knowledge or belief of the fact;

(4) a promise made without any intention of performing it;

(5) a representation made in a reckless and careless manner whether it be true or false;

(6) any such act or omission as any other law specifically declares to be fraudulent,

(7) deceptive behavior by a person depriving another of informed consent or full participation,

(8) a false statement made without reasonable ground for believing it to be true.

(9) the act of an issuer of securities giving out misinformation that affects the market price of the security, resulting in investors being effectively misled even though they did not rely on the statement itself or anything derived from it other than the market price.

And "fraudulent" shall be construed accordingly;

Nothing contained in this clause shall apply to any general comments made in good faith in regard to—

(a) the economic policy of the government

(b) the economic situation of the country

(c) trends in the securities market;

(d) any other matter of a like nature

whether such comments are made in public or in private;

xxx xxx
xxx

(e) "securities" means securities as defined in section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956)."

15. The Securities and Exchange Board of India (Stock brokers and Sub-brokers) Regulations, 1992 in Schedule II deals with the code of conduct for stockbrokers which reads as follows:

"SCHEDULE II
Securities and Exchange Board of India
(Stock Brokers and Sub-brokers)
Regulations, 1992
CODE OF CONDUCT FOR STOCK BROKERS
[Regulation 7]

A. **General.**

(1) Integrity: A stock-broker, shall maintain high standards of integrity, promptitude and fairness in the conduct of all his business.

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

(3) Manipulation : A stock-broker shall not indulge in manipulative, fraudulent or deceptive transactions or schemes or spread rumours with a view to distorting market equilibrium or making personal gains.

(4) Malpractices: A stock-broker shall not create false market either singly or in concert with others or indulge in any act detrimental to the investors interest or which leads to interference with the fair and smooth functioning of the market. A stock-broker shall not involve himself in excessive speculative business in the market beyond reasonable levels not commensurate with his financial soundness.

(5) Compliance with statutory requirements: A stock-broker shall abide by all the provisions of the Act and the rules, regulations issued by the Government, the Board and the Stock Exchange from time to time as may be applicable to him."

16. As the facts pertain to transactions involving certain technical terms, we will have to necessarily deal with their meaning and content.

17. Derivatives – Derivatives are a form of financial instruments which are traded in the securities market and whose values are derived from the value of the underlying variables like the share price of a particular scrip in the cash segment of the market or the stock index of a portfolio of stocks. Derivative trading is governed by Section 18A of the 1956 Act. There are two types of derivative instruments - 'futures' and 'options'. In futures and options, the trading can either be of individual stocks or of indices like NIFTY, Bank NIFTY etc.

18. Futures - a future contract is an agreement between two parties to buy or sell an asset at a certain time in the future at a certain price agreed upon on the date of the contract. All the futures contracts are settled in cash.

19. Options – options are contracts between a buyer and the seller which gives a right, but not an obligation, to buy or sell the underlying asset at a stated price on or before a specified date. While a buyer of an option pays the premium and buys

his right to exercise his option, the writer of an option is the one who receives the option premium and is therefore obliged to sell or buy the asset as per the option exercised by the buyer.

Options are of two types, 'Call' and 'Put'. Call Option gives the buyer the right but not the obligation to buy a given quantity of the underlying asset at a given price on or before a given future date. Put Option gives the buyer the right, but not obligation to sell a given quantity of underlying asset at a given price on or before a given future date.

20. The impugned SAT order in the case of Rakhi Trading has succinctly dealt with the working of options:

> "2. ...The seller in an options contract sells a right to the buyer and since nothing can be sold without a cost, the former charges an amount from the latter which is called the premium. It is this premium which is the only negotiable element in an options contract that is negotiated on the trading screen of the stock exchange. At the beginning of every trading cycle which is fixed by the concerned stock exchange, it (stock exchange) prescribes in the case of stock options a series of strike rates based upon the prevailing market price of particular shares that are allowed to be traded in the F & O segment. In the case of index options, the strike rates are determined with reference to the index value in the cash

segment. These strike rates are based on the general market perception both bullish and bearish. Equal number of strike rates both upwards and downwards of the prevailing market price/index value are fixed by the stock exchange. The stock exchange also fixes the size of the contracts that are traded in lots. When an investor chooses to trade in the options contracts, he has to choose a scrip or the Nifty, then assess whether the same will go up or down on the next settlement date and by how much. That is his gamble. Accordingly, he will select a strike rate which is the exercise price. He can then buy or sell a "call Option" or a "Put Option". A Call Option is an option to "buy", that is, the contract is to buy the shares on a settlement date at the selected strike rate. A Put Option is an option to sell, that is, the contract is to sell the shares on the settlement date at the selected strike rate. In case the price of the underlying or the value of the index in the cash segment goes below the selected strike rate/exercise price, the buyer will have no attraction to exercise his option under the contract and will allow the contract to lapse and thereby lose whatever premium was paid by him. Premium amount is the maximum that the buyer can lose in case the market moves contrary to his perception. In case the price of the underlying or the index value in the cash segment were to go beyond the selected strike rate/exercise price, the buyer would certainly exercise his option under the contract depending upon how high the price or the stock index has gone after adjusting the premium amount. These are some of the motivating factors which weigh with the investors in the options contracts. It is a one sided contract where the loss suffered, if

> any, by the buyer is limited only to the premium amount whereas the loss which could be suffered, if any, by the buyer is limited only to the premium amount whereas the loss which could be suffered by the writer of the contract (seller) is limitless. If during the period of the contract the market perception of the seller (writer) changes or the market starts moving contrary to his expectations, he may, in his anxiety to cap his losses, take a reverse position. He would then put in an offer or accept an offer of a higher premium for the same option and this in effect would result in his repurchasing the contract at a higher rate/premium to avoid greater losses."
>
> (Emphasis supplied)

21. Index - a stock market index is a measure of the relative value of a group of stocks in numerical terms. As the stocks within an index change value, the index value changes. NIFTY 50 is an index on National Stock Exchange which tracks the behaviour of 50 companies covering different sectors of the Indian economy.

22. Trading in Index – an investor can trade even the entire stock market by buying index futures instead of buying individual securities. The advantages of trading in index futures are- the contracts are highly liquid, the index futures provide higher leverage than any other stocks, it requires

comparatively low initial capital investment (only the premium), it has lower risk than buying and holding stocks, it is just as easy to trade the short side as the long side, the trader needs to study only one index instead of several stocks and finally, the contracts are settled in cash in the stock exchange and therefore, all problems related to bad delivery, fake or forged certificate etc. can be avoided.[1]

23. The case at hand deals, *inter alia*, with questions related to synchronised trading. The concept of synchronised trading has been explained by SAT in **Ketan Parekh v. Securities and Exchange Board of India**[2]. To quote:

> "20. .... "A synchronised trade is one where the buyer and seller enter the quantity and price of the shares they wish to transact at substantially the same time. This could be done through the same broker (termed a cross deal) or through two different brokers. Every buy and sell order has to match before the deal can go through. This matching may take place through the stock exchange mechanism or off market. When it matches through the stock exchange, it may or may not be a synchronised deal depending on the time when the buy and sell orders are placed. ..."

Facts:

[1] This information has been extracted from the NSE Handbook on Derivatives Trading.
[2] Appeal No. 2 of 2004 before SAT.

24. As mentioned before, this case involves three traders and three brokers.

Traders:

Rakhi Trading: Rakhi Trading was issued a show cause notice (hereinafter referred to as "SCN") on 05.10.2007 alleging execution of non genuine transactions in the Futures and Options segment (hereinafter referred to as the "F&O segment"). The trades in question pertain to NIFTY options. In his decision, the A.O. analysed the trade logs and observed that the trades executed by Rakhi Trading matched with the counter-party Kasam Holding Private Limited in a few seconds. The counter-party to all the trades in the NIFTY contract was Kasam Holding Pvt. Ltd. and the reversals took place in a matter of minutes/hours. The A.O. also noted that on various occasions, when the time was not matched by the respective parties, the first order was placed at an unattractive price relative to market price. These transactions took place on 21.03.2007, 22.03.2007. 23.03.2007 and 30.03.2007 and resulted in a close out difference of Rs 115.79

lakhs without any significant change in the value of the underlying.

Tungarli: The SCN was issued to Tungarli on 05.10.2007. The allegation in the SCN was that through these synchronized transactions, one party booked profits and the other party booked losses. The trades pertained to future scrips. The A.O.'s order notes that the trades were reversed in all the cases in a matter of few seconds showing significant difference between the buy and sell trade prices. The change in positions took place without any significant change/negligible change in the price of the underlying security. The trades took place on 12.03.2007, 15.03.2007, 23.03.2007, 26.03.2007 and 28.03.2007 and the total profit made by Tungarli was Rs 64.52 lakhs.

TLB: The SCN was issued to TLB on 05.10.2007. The trades pertained to future scrips. As per the A.O.'s order, TLB traded through stock broker SMC Global Securities Ltd and the same broker is the counter party broker as well, trading on behalf of different clients. All the transactions undertaken

by TLB resulted in loss to TLB and the total loss was Rs.38.69 lakhs. The trades in question took place on 22.01.2007, 23.01.2007, 31.01.2007, 01.02.2007, 05.02.2007 and 06.02.2007. The A.O.'s order notes that in many cases, the trades were reversed in a matter of minutes showing significant difference in prices without any significant change in value of the underlying. The A.O.'s order notes that during investigation, it was also seen that when the time was not matched by the respective parties, the first order that was placed was at an unattractive price relative to the market price.

Brokers:

Indiabulls: The case pertains to 23 reverse trades in 21 futures and 2 options on 22 different scrips and one Bank Nifty futures. The A.O. takes into account the fact, that in many cases, the reversals took place in a matter of seconds/minutes without change in the value of the underlying. The A.O. records that the Indiabulls representative stated that they could not have known about the intention of

the clients, however, the representative admitted that the trades were non-genuine and should not have taken place.

Angel: In the SCN dated 05.10.2007, the charge is that as a stock-broker, it executed 56 reversal trades. As per the A.O., these trades were reversed in a matter of a few minutes/ hours. However, the A.O. noted the positive steps taken by Angel in curbing such trades (post reversal trades) and submitted proof of its actions in this regard and therefore, a lesser penalty was imposed on Angel.

Prashant Jayantilal: The SCN was dated 05.10.2007. The case pertains to 19 reversal trades wherein the original trades were closed out during the day at a price which was significantly above or below the price at which the first/original transaction was executed.

25. The crux of the allegations in the show cause notices is that the parties were buying and selling securities in the derivatives segment at a price which did not reflect the value of the underlying in synchronised and reverse transactions.

26. After affording an opportunity for filing reply to the SCNs and a personal hearing, the A.O. passed a detailed order dated 26.03.2009 in the case of Rakhi Trading. Paragraphs 22 to 24 read as follows:

> "22. If the individual trades are seen from the order log provided to the noticee, it is seen that the time difference between the buy and sell order is only in seconds. Most of the orders were matched in a time gap of 1, 2 or 3 seconds and many orders have matched to the exact second, i.e. time difference is 0 (zero). This is proof enough to establish the existence of synchronization of trades; otherwise the trades would not have matched repeatedly to the exact second in the NIFTY Contracts which is the most active contract in the options segment. Hence it overrides the noticee's submission that no material or data has been disclosed to substantiate the said allegation of "synchronization" of any trades.
>
> 23. On analysis of the reversal transactions undertaken by the noticee, it is seen that the percentage to market gross is in the range of 30 percent to 50 percent in the 14 contracts executed by the noticee. In two contracts of NIFTY, the percentage to market gross reached 50 percent. This accounts for a significant percentage of trades on the concerned days and the traded value was Rs.95.75 lakhs for those two reversal trades. The trade quantities are also high. The total traded value is Rs.503.00 lakh in a matter of just 4 (four) trading days. As submitted by the noticee, NIFTY moves constantly. Also, NIFTY is the most active of the options contracts

traded on the exchange and it has contributed to 92.21 percent of the contracts traded in the Options segment during March 2007. Further, the NIFTY options contracts contributed to 99.97 percent of the total Index Options contracts traded in March 2007 (source: NSE website). In such a scenario it is seen that the noticee's counter party to all the trades in NIFTY contracts is Kasam Holding Pvt. Ltd. (trading through the broker Vibrant Securities Private Limited), this clearly gives an indication to the existence of a pre-arrangement/synchronization / matched trades between the clients. Otherwise it does seem unrealistic that the orders should match exactly both quantity and price wise, just as a matter of coincidence, with the same party again and again. It is clear that there was an intention of creating a false or misleading appearance in the market and also that a manipulative /deceptive device was used for synchronization of trades.

24. The trades executed by the noticee in all NIFTY contracts, matched with the counter party client, Kasam Holding Pvt. Ltd. in less than a few seconds. It is pertinent to note here that the noticee executed all the reversal trades in a matter of minutes/hours, at a profit of Rs.107.79 lakh without any significant change in the value of the underlying security. This raises doubts about the genuineness of the transactions. The fact that such transactions took place repeatedly over a period of time reinstates the fraudulent nature of such trades."

Thus, according to the A.O. a manipulative/deceptive devise was used for synchronization of trades and the trades were fraudulent/fictitious in nature. It was found that there is violation of Regulations 3(a), (b) and (c) and 4(1), (2)(a) and (b) of the PFUTP Regulations, 2003. Consequently, a penalty of Rs.1,08,00,000/- was imposed under Section 15HA of the SEBI Act, 1992. Appeal was filed under Section 15T before the SAT. An appeal was disposed of by order dated 11.10.2010 whereby SAT set aside the order of SEBI. The detailed consideration is available at paragraphs 5 to 8 of the SAT order in Rakhi Trading, which read as follows:

> "5. Index in a capital market is a statistical indicator of how the market is functioning and acts as a barometer for market behaviour. It is not a product but a measure expressed in numbers and a benchmark against which financial or economic performance is evaluated. Unlike stocks in the cash segment, it is not traded as such though investors speculate on market behaviour using index as the underlying in the F & O segment. Nifty, the stock index of NSE, is computed using market capitalization weighted method (share price x number of outstanding shares) of fifty stocks being traded in the cash segment of NSE. It is a well diversified stock index covering 22 different sectors of the Indian economy. The

eligibility of a particular stock for being selected for Nifty index depends on the liquidity of the stock as well as the floating stock of the company. Nifty, therefore, is a very dynamic index which is not constant but evolves continuously. Obviously, to manipulate such a diverse and changing portfolio of stocks in the cash segment is extremely difficult, if not impossible by trading in the
F & O segment. It is also NSE's stated position on its website that "stock index is difficult to manipulate as compared to stock prices, more so in India and the possibility of cornering is reduced. This is partly because an individual stock has a limited supply which can be cornered". It is obvious that when Nifty is traded in options contracts, the movement of prices in that segment cannot have any impact on the price discovery system in the cash segment which is one of the allegations brought out in the ad-interim ex-parte order and the show cause notice. The charge against the appellant in the show cause notice is that by executing trades in Nifty options in the F & O segment "the original trades were closed out during the day at a price which was significantly above or below the price at which the first/original transaction was executed without significant variations in the traded price of the underlying security". The insinuation is that by executing manipulative trades in the F & O segment, Nifty index was sought to be tampered with. This charge proceeds on the assumption that the

movement of Nifty options in the F & O segment should be in harmony with the movement of Nifty index in the cash segment. This assumption is fallacious and we cannot agree. Movement of index in the cash segment does influence the index options in the F & O segment because the strike rate is directly linked with the index value in the cash segment. However, the converse is not always true. While transactions in the cash market are based on the current market price of the underlying derived by the principle of demand and supply and in the case of an index, the value depends on the performance of the stocks that constitute it, the pricing in the F & O segment is based on future expected events which may or may not happen. Anticipated future events may not have a discernible effect on the cash segment today where delivery of shares is given/taken immediately. Such events may have a great impact on perceptions in the F & O market where the investor holds an open position and a continuous liability during the currency of the contract which is generally for one to three months with anticipation of future events which are always pregnant with all sorts of possibilities. Again, volatility and potential for greater losses may trigger movements in the F & O market without any equivalent cash market movements. Further, the cash market may move up today but the prediction for the F & O market could be that at the end of a month, two months or three months the market may move down. Only short term

investors like speculators trade in the F & O market whereas in the cash market long terms investors also trade. We are, therefore, satisfied that the movement in the two segments need not be in tandem. In the instant case the appellant executed Nifty option contracts and it must be remembered that Nifty index is determined by fifty highly liquid scrips which also vary from time to time and the index moves on the basis of their performance in the cash segment. These movements cannot be in tandem with the movement of the price of Nifty options in the F & O segment because Nifty as an index is not capable of being traded in the cash segment. What is traded in the cash segment are the fifty stocks which constitute Nifty. To say that some manipulative trades in Nifty options in the F & O segment could influence the Nifty index is too farfetched to be accepted. The only way Nifty index could be influenced is through manipulation of the prices of all or majority of the scrips in the cash segment that constitute Nifty. This is extremely difficult, if not impossible. It is common case of the parties that the appellant traded only 13 Nifty option contracts in the F & O segment. Assuming these trades were manipulative, could these ever influence the Nifty index. As already observed, Nifty index is a very large well diversified portfolio of stocks which is not capable of being influenced much less manipulated by the movement of prices in the F & O segment particularly by the handful of

trades executed by the appellant. In this view of the matter, we have no hesitation to hold that the 13 trades in Nifty options executed by the appellant had no impact on the market or affected the investors in any way nor did these influence the Nifty index in any manner. The charge in this regard must fail.

6. Another charge against the appellant is that its trades in Nifty options were fictitious transactions which were synchronized and reversed resulting in the creation of misleading appearance of trading in those options. Derivative segment is highly volatile and involves a complexed form of trading with high risks and the players in this segment do not follow the herd mentality as is often noticed in the cash segment but take decisions based on their own perception of the market. The number of persons trading in this segment is comparatively much less than those in the cash segment. The Board has found that only 14 contracts executed by the appellant in the options segment constituted 30 to 50 per cent of the market gross in that segment though nifty is the most active of the options contracts traded on the exchange and contributed 92.21 per cent of the trades during March, 2007. This is indicative of the fact that the number of players in the options segment is very less. Artificial/fictitious trades in the cash segment do give a false appearance of active trading in a particular scrip by increasing volumes which tend to lure the lay investors to invest in that scrip. The impression given to the investors is

that the scrip is highly liquid and much in demand and this interferes with the price discovery mechanism of the exchange and it is for this reason that such trades are held illegal in the cash segment. This, however, cannot be the case in the F & O segment. Since all the trades are executed through the stock exchange and settled in cash through its mechanism they cannot be said to be artificial trades creating a misleading appearance of trading in the options. The charge is misconceived.

7. This brings us to the issue of synchronization of the buy and sell orders in the Nifty option contracts executed by the appellant where the counter party in the 13 impugned transactions was the same entity. Impugned order records that Nifty contracts which are the most active contracts in the options segment cannot be traded in the way the appellant has traded matching its orders to seconds with the counter party client. This, according to the adjudicating officer, was a pre-planned arrangement between the appellant and its counter party and their intention was to create a false and misleading appearance in the market and a manipulative device was used for synchronizing the trades. The learned senior counsel appearing for the appellant did not dispute the fact that the trades had been synchronized and reversed but he argued that these did not manipulate the market and that only the synchronized trades which manipulate the market are

prohibited. He placed reliance on a judgment of this Tribunal in Ketan Parekh vs. Securities and Exchange Board of India, Appeal No.2 of 2004 decided on 14.7.2006. He also referred to the order passed by the Board in the case of ICICI Brokerage Services Ltd. wherein a similar view had been taken and strenuously argued that since the synchronized trades of the appellant did not manipulate the market, the impugned order deserves to be set aside. We find merit in this contention. The fact that the trades executed by the appellant had been synchronized with the counter party is not really in dispute before us. We have already held that the 13 trades in Nifty options executed by the appellant had no impact on the market or affected the investors or the Nifty index in any manner. In Ketan Parekh's case (supra) this Tribunal had observed that synchronized trades per se are not illegal but only those which manipulate the market in any manner are the ones that are prohibited and violate the Regulations. Relying upon the observations made by this Tribunal in Nirmal Bang Securities Pvt. Ltd. vs. Securities and Exchange Board of India [2004] 49 SCL 421, the then chairman of the Board while dealing with the synchronized trades executed by the appellant therein observed as under:-

> "For the above reason, although it cannot be said that synchronized deals are pre se illegal, for the same reason, it cannot be said that

> all synchronized transactions are legal and permitted. All synchronized transactions which have the effect of manipulating the market are against fair market practices and hence undesirable and prohibited."

We have reproduced the observations from the order of the Board only to highlight that the Board also understands that the law is that only such synchronized trades violate the Regulations which manipulate the market. Since the impugned trades of the appellant in the F & O segment had no impact on the market, we hold that they did not violate the Regulations. Shri Kumar Desai learned counsel for the respondent was equally emphatic in arguing that the appellant had not only executed synchronized trades but had also reversed them during the course of the trading with the same counter party and, therefore, the trades were fictitious and non-genuine and that the adjudicating officer was justified in holding so and imposing the monetary penalty for violating the Regulations. He placed strong reliance on the observations of the Tribunal in Ketan Parekh's case (supra) wherein it has been held that reversal of trades between the same parties results in fictitious trades and they are illegal. We are unable to agree with him. The observations in Ketan Parekh's case were made with reference to the trades that were executed in the cash segment and we are clearly of the view that all those observations cannot apply to the trades executed in the F & O segment. Reverse trades in the cash segment have been held to be illegal and violate the Regulations because there is no "change of beneficial ownership" in the traded scrip. More-

over, in the cash segment the scrip is actually traded entailing not only "change of beneficial ownership" but also physical delivery/movement of the traded scrip. When this does not happen in the cash segment, the trade is described as a fictitious trade creating false volumes which manipulates the market. The scenario in the F & O segment, particularly in the options contracts with which we are concerned in the present case, is altogether different from that of the cash segment. In the F & O segment there is no concept of "change of beneficial ownership" since what is traded in this segment are contracts and not the underlying stock or index and it is only through cash settlement that the trade is concluded and no physical delivery of any asset is involved. In this view of the matter, synchronized and reversed trades in Nifty options in the F & O segment can never manipulate the market which, in the present context, means the value of the Nifty index in the cash segment. To repeat, we may again observe that it is almost impossible to manipulate the Nifty index which consists of fifty well diversified highly liquid stocks in the cash segment. Since the trades of the appellant were settled in cash through the stock exchange mechanism, they were genuine and these could not create a false or misleading appearance of trading in the F & O segment. It is the Board's own case that the appellant made profits in all these transactions and the counter party suffered losses.

8. When we analyse the nature of the trades executed by the appellant, we find that it played in the derivative market neither as a hedger nor as a speculator and not even as an

arbitrageur. The question that now arises is why did the appellant execute such trades with the counter party in which it continuously made profits and the other party booked continuous losses. All these trades were transacted in March 2007 at the end of the financial year 2006-07. It is obvious and, this fact was not seriously disputed by the learned senior counsel appearing for the appellant, that the impugned trades were executed for the purpose of tax planning. The arrangement between the parties was that profits and losses would be booked by each of them for effective tax planning to ease the burden of tax liability and it is for this reason that they synchronized the trades and reversed them. They have played in the market without violating any rule of the game. This Tribunal in Viram Investment Pvt. Ltd. vs. Securities and Exchange Board of India, Appeal no.160 of 2004 decided on February 11, 2005 while dealing with a contention as to whether trades could be executed through the stock exchange for tax planning, made the following observations which are relevant for our purpose:-

> "Even if we consider transactions undertaken for tax planning as being non genuine trades, such trades in order to be held objectionable, must result in influencing the market one way or the other. We do not find any evidence of that either in the investigation conducted by the Bombay Stock Exchange, copy of which has been an-

> nexed to the memorandum of appeal or in the impugned order that there was any manipulation. ..... Trading in securities can take place for any number of reasons and the authorities enquire into such transactions which artificially influence the market and induce the investors to buy or sell on the basis of such artificial transactions."

The observations even though made in the context of the cash segment are equally applicable to the F & O segment. We are in agreement with the aforesaid observations and relying thereon we hold that the impugned transactions in the case before us do not become illegal merely because they were executed for tax planning as they did not influence the market. The learned counsel for the respondent Board drew our attention to Regulation 3(a), (b) & (c) and Regulation 4(1) and 4(2)(a) & (b) of the Regulations to contend that the trades of the appellant were in violation of these provisions. We cannot agree with him. Regulation 3 of the Regulations prohibits a person from buying, selling or otherwise dealing in securities in a fraudulent manner or using or employing in connection with purchase or sale of any security any manipulative or deceptive device in contravention of the Act, Rules or Regulations. Similarly, Regulation 4 prohibits persons from indulging in fraudulent or any unfair trade practices in securities which include creation of false or misleading appearance of trading in the securities market or dealing in a security not intended to effect transfer of beneficial ownership. Having carefully considered these provisions, we are of the view that market ma-

> nipulation of whatever kind, must be in evidence before any charge of violating these Regulations could be upheld. We see no trace of any such evidence in the instant case. We have, therefore, no hesitation in holding that the charge against the appellant for violating Regulations 3 and 4 must also fail."
>
> (Emphasis Supplied)

27. The SAT has also taken a view that the circular dated 10.03.2005 issued by the NSE was not legally binding. The members were advised to desist from entering orders/transactions on illiquid securities/contracts where some set of members/clients executed reversing transactions/both buy and sell at abnormal price differences in premiums that had no relevance to the movement in prices of the underlying. In the said circular, members were also advised to desist from entering such orders which *prima facie* appeared to be non-genuine and further advised to put in appropriate internal systems for checking such orders. SAT held that only SEBI-the Regulator can issue and should issue such directions.

28. SAT, in the case of Tungarli, squarely followed its decision in Rakhi Trading. In TLB Securities also, after briefly

discussing the facts, SAT relied on Rakhi Trading to set aside the SEBI order.

29. As far as the brokers are concerned, in addition to relying on its decision in Rakhi Trading, SAT held in Indiabulls Securities that the brokers must succeed for two additional reasons. To quote:

> "7. The appellant before us which is a stock broker must also succeed for two additional reasons as well. The appellant is said to have executed 23 trades on behalf of its clients which were reversed between the same parties. Assuming that these trades were manipulative and had been executed by the clients with a premeditated plan, the fact still remains that the appellant only acted as a broker and carried out the directions of its clients which it ought to. Could the appellant be held liable merely because it acted as a broker? This question has come up for the consideration of this Tribunal time and again and this is what was held in Kasat Securities Pvt. Ltd. vs. Securities and Exchange Board of India, Appeal No. 27 of 2006 decided on June 20, 2006 wherein this Tribunal observed as under:-
>
>> "The trades, on the face of it, appear to be fictitious and we shall proceed on that assumption. It is obvious that these trades were executed by the clients and the appellant acted only as a broker. If the appellant knew that the trades were fictitious then there would be no hesitation in upholding the finding of the Board that it aided

and abetted the parties to execute fraudulent transactions. Having heard the learned counsel for the parties and after going through the record we are satisfied that this link is missing. There is no material on record to show that the appellant as a broker knew that the trades were fictitious or that the buyer and the seller were the same persons. Trading was through the exchange mechanism and was online where the code number of the broker alone is known and the learned counsel for the parties are agreed that it is not possible for anyone to ascertain from the screen as to who the clients were. This is really a unique feature of the stock exchange where, unlike other moveable properties, securities are bought and sold between the unknowns through the exchange mechanism without the buyer or the seller ever getting to meet. Therefore it was not possible for the broker to know who the parties were. Merely because the appellant acted as a broker cannot lead us to the conclusion that it must have known about the nature of the transaction. There has to be some other material on the record to prove this fact. The Board could have examined someone from KIL to find out whether the appellant knew about the nature of the transactions but it did not do so. As a broker, the appellant would

> welcome any person who comes to buy or sell shares. The Board in the impugned order while drawing an inference that the appellant must have known about the nature of the transactions has observed that the appellant failed to enquire from its clients as to why they were wanting to sell the securities. We do not think that any broker would ask such a question from its clients when he is getting business nor is such a question relevant unless, of course, he suspects some wrong doing for which there has to be some material on the record."

In Kishor R. Ajmera vs. Securities and Exchange Board of India, Appeal No. 13 of 2007 decided on February 5, 2008 this Tribunal again observed as under:-

> "Merely because two clients have executed matched trades, it does not follow that their brokers were necessarily a party to the game plan. On a screen based trading through the price order matching mechanism of the exchange, it is not possible for either of the brokers (or sub-brokers) to know who the counter party or his broker (or sub broker) is and when the trade is executed, their names or codes do not appear on the screen. A unique feature of the stock exchange is that, unlike other moveable properties, securities are bought and sold among the

> unknowns who never get to meet and they are traded at prices determined by the forces of demand and supply. If the Board is to hold the broker (or the sub-broker) responsible for a matching trade, it has to allege and establish that the broker (or the sub-broker) was aware of the counter party or his broker at the time when the trade was executed. There is no such allegation in this case."

The aforesaid observations apply with full force to the facts of the present case because the trading system is the same, both in the cash segment as well as in the F&O segment. As already observed, even if we assume that the appellant's clients had executed reverse trades with the same counter party for some mischief, we cannot impute knowledge of the same to the appellant when the anonymity of the trading system does not allow a broker to know who the counter party or counter party broker is. The screen based trading system provides complete anonymity and the trades are executed through the price order matching mechanism. In the instant case, no link other than broker client relationship between the appellant and its clients has been established, let alone any relation with the counter parties or the counter party brokers. Moreover, the appellant executed only 23 trades on behalf of 15 clients with a total close out difference of Rs. 35.44 lacs (positive) which have been called in question. Having regard to the fact that the appellant had executed 1,69,71,078 trades for 1,21,306 clients with a turnover of

Rs. 1,11,659 crores during the investigation period we are of the view that in terms of materiality and substance this miniscule number of trades done on behalf of 15 clients were not likely to raise any alarm for the appellant with a client base of over 4,70,000 clients. In these circumstances, we cannot hold the appellant liable for the impugned trades.

8. The other additional reason for which we cannot hold the appellant liable is that out of the 23 impugned trades that it executed on behalf of its clients, 17 were executed directly by the clients through the Internet. NSE by its circular of August 24, 2000 has set detailed guidelines on Internet based trading through order routing system which route client orders to the exchange trading system and the software for this service has to be in compliance with the parameters set by the Board. The appellant as a broker has very little direct control over such trades though it is recorded as a broker in those trades. Having regard to the total volume of trades executed by the appellant and the wide client base that it has, the learned counsel for the appellant was right in contending that the appellant could not be expected to put every single trade under its scanner on a continuous basis particularly those executed by the clients through the Internet and that the impugned trades being so miniscule, there was no occasion for the appellant to get a red alert. It is a fact that the clients had sufficient margins with the appellant with no credit defaults at any stage and that all the trades were settled in cash through the clearing system of the exchange. In this background, we find no

> evidence of lack of due diligence on the part of the appellant while executing the impugned transactions which could make him guilty of violating the code of conduct prescribed for the stock brokers. The charge must, therefore, fail."

30. Aggrieved by the SAT orders, SEBI is before us under Section 15Z of the SEBI Act.

31. We have extensively heard learned senior counsel and other counsel appearing on both sides. SEBI has assailed the SAT order on the ground that SAT has misunderstood SEBI's case. It is the submission of Mr. Gourab Banerji, learned Senior Counsel appearing for SEBI, that the stock exchange is a platform created to facilitate efficient and fair trading. However, the transactions between the parties were non-genuine and orchestrated which is prohibited under the PFUTP Regulations. The Show Cause Notice makes it clear that the transactions were a misuse of market mechanism as they were not genuine trades. The non-genuineness of these transactions is evident from the fact that there was no commercial basis to suddenly, within a matter of minutes,

reverse a transaction when the value of the underlying had not undergone any significant change.

32. According to SAT, the synchronization and reversal of trades effected by the parties with a significant price difference, some in a few seconds and majority, in any case, on the same day had no impact on the market and it has not affected the NIFTY index in any manner or induced investors. SAT has held that such trades are illegal only when they manipulate the market in any manner and induce investors. It has also taken a view that there being no physical delivery of any asset, there is no change of beneficial ownership and what is traded in the F&O segment are only contracts and hence, such synchronised and reverse trades in NIFTY options in the F&O segment "can never manipulate the market". It has also held that the trades being settled in cash through a stock exchange mechanism, are genuine and therefore cannot create a false or misleading appearance of trading in the F&O segment. Further, any trade to be objectionable must result in influencing the market one way or the other. SAT held that these trades were for the purpose

of tax planning which is not violative of any regulation. We are not inclined to get in to the issue of tax planning as it was not mentioned in the show cause notices.

33. We find it difficult to appreciate the stand taken by the SAT which is endorsed by the learned senior counsel appearing for the respondents. Mr. Chidambaram, learned senior counsel appearing for Rakhi Trading argues that the SAT decision is valid and proper. Reliance is also placed on the case of **Ketan Parekh** (supra) in which SAT held that synchronised trades are not *per se* illegal. As far as reversal of trades is concerned, the senior counsel has sought to distinguish **Ketan Parekh** (supra) as it pertained to dealings in the cash segment whereas the present case deals with the F&O segment. The learned senior counsel has strenuously argued that no rules of the game have been violated.

34. We are unable to agree with the arguments of the learned senior counsel appearing for Rakhi Trading. Regulation 4(1) in clear and unmistakable terms has provided that "no person shall indulge in a fraudulent or an unfair trade practice in securities". In **Securities and Exchange Board of India and Ors. v. Shri Kanaiyalal Baldevbhai Patel**

and Ors.[3], it has been held by this Court that a trade practice is unfair if the conduct undermines the ethical standards and good faith dealings between the parties engaged in business transactions. To quote:

> "**31**. Although unfair trade practice has not been defined under the regulation, various other legislations in India have defined the concept of unfair trade practice in different contexts. A clear cut generalized definition of the 'unfair trade practice' may not be possible to be culled out from the aforesaid definitions. Broadly trade practice is unfair if the conduct undermines the ethical standards and good faith dealings between parties engaged in business transactions. It is to be noted that unfair trade practices are not subject to a single definition; rather it requires adjudication on case to case basis. Whether an act or practice is unfair is to be determined by all the facts and circumstances surrounding the transaction. In the context of this regulation a trade practice may be unfair, if the conduct undermines the good faith dealings involved in the transaction. Moreover the concept of 'unfairness' appears to be broader than and includes the concept of 'deception' or 'fraud'.
>
> xxx xxx xxx
>
> **60**. Coupled with the above, is the fact, the said conduct can also be

[3] 2017 SCC Online SC 1148.

> construed to be an act of unfair trade practice, which though not a defined expression, has to be understood comprehensively to include any act beyond a fair conduct of business including the business in sale and purchase of securities. However the said question, as suggested by my learned Brother, Ramana, J. is being kept open for a decision in a more appropriate occasion as the resolution required presently can be made irrespective of a decision on the said question."

35. Having regard to the fact that the dealings in the stock exchange are governed by the principles of fair play and transparency, one does not have to labour much on the meaning of unfair trade practices in securities. Contextually and in simple words, it means a practice which does not conform to the fair and transparent principles of trades in the stock market. In the instant case, one party booked gains and the other party booked a loss. Nobody intentionally trades for loss. An intentional trading for loss *per se,* is not a genuine dealing in securities. The platform of the stock exchange has been used for a non-genuine trade. Trading is always with the aim to make profits. But if one party consistently makes loss and that too in preplanned and rapid reverse trades, it is not

genuine; it is an unfair trade practice. Securities market, as the 1956 Act provides in the preamble, does not permit "undesirable transactions in securities". The Act intends to prevent undesirable transactions in securities by regulating the business of dealing therein. Undesirable transactions would certainly include unfair practices in trade. The SEBI Act, 1992 was enacted to protect the interest of the investors in securities. Protection of interest of investors should necessarily include prevention of misuse of the market. Orchestrated trades are a misuse of the market mechanism. It is playing the market and it affects the market integrity.

36. Ordinarily, the trading would have taken place between anonymous parties and the price would have been determined by the market forces of demand and supply. In the instant case, the parties did not stop at synchronised trading. The facts go beyond that. The trade reversals in this case indicate that the parties did not intend to transfer beneficial ownership and through these orchestrated transactions, the intention of which was not regular trading, other investors have been excluded from participating in

these trades. The fact that when the trade was not synchronizing, the traders placed it at unattractive prices is also a strong indication that the traders intended to play with the market.

37. We also find it difficult to appreciate the stand of SAT that the rationale of change of beneficial ownership does not arise in the derivatives segment. No doubt, as in the case of trade in a scrip in the cash segment, there is no physical delivery of the asset. However, even in the derivative segment there is a change of rights in a contract. In the instant case, through reverse trades, there was no genuine change of rights in the contract. SAT has erred in its understanding of change in beneficial ownership in reverse trades. Even in derivatives, the ownership of the right is restored to the first party when the reverse trade occurs. In this context, the discussion in **Ketan Parekh** (supra) assumes significance:

> "**20**. …As already observed 'synchronisation' or a negotiated deal ipso facto is not illegal. A synchronised transaction will, however, be illegal or violative of the Regulations if it is executed with a view to manipulate the market or if it results in circular trading or is dubious in nature and is

> executed with a view to avoid regulatory detection or does not involve change of beneficial ownership or is executed to create false volumes resulting in upsetting the market equilibrium. 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."
>
> (Emphasis Supplied)

From the facts before us, it is clear that the traders in question did not intend to transfer beneficial ownership and therefore these trades are non genuine.

38. Rather than allowing the market forces to operate in their natural course, the traders repeatedly carried out the

impugned transactions which deprived other market players from full participation. The repeated reversals and predetermined arrangement to book profits and losses respectively, made it clear that the parties were not trading in the normal sense and ordinary course. Resultantly, there has clearly been a restriction on the free and fair operation of market forces in the instant case.

39. Regulation 2(1)(c) defines fraud. Under Regulation 2(1)(c)(2) a suggestion as to a fact which is not true while he does not believe it to be true is fraud. Under Regulation 2(1)(c)(7), a deceptive behaviour of one depriving another of informed consent or full participation is fraud. And under Regulation 2(1)(c)(8), a false statement without any reasonable ground for believing it to be true is also fraud. In a synchronised and reverse dealing in securities, with predetermined arrangement to book loss or gain between pre-arranged parties, all these vices are attracted.

40. Regulation 3(a) expressly prohibits buying, selling or otherwise dealing in securities in a fraudulent manner. Under Regulation 4(2) dealing in securities shall be deemed to be fraudulent if the trader indulges in an act which creates a

false or misleading appearance of trading in the securities market. It is a deeming provision. Such trading also involves an act amounting to manipulation of the price of the security in the sense that the price has been artificially and apparently prefixed. The price does not at all reflect the value of the underlying asset. It is also a transaction in securities entered into without any intention of performing it and without any intention of effecting a change of ownership of such securities, ownership being understood in the limited sense of the rights in the contract.

41. According to SAT, only if there is market impact on account of sham transactions, could there be violation of the PFUTP Regulations. We find it extremely difficult to agree with the proposition. As already noted above, SAT has missed the crucial factors affecting the market integrity, which may be direct or indirect. The stock market is not a platform for any fraudulent or unfair trade practice. The field is open to all the investors. By synchronization and rapid reverse trade, as has been carried out by the traders in the instant case, the price discovery system itself is affected. Except the parties who

have pre-fixed the price nobody is in the position to participate in the trade. It also has an adverse impact on the fairness, integrity and transparency of the stock market.

42. We are fortified in our conclusion by the judgment of this Court in **Securities And Exchange Board of India v. Kishore R. Ajmera**[4], though it is a case pertaining to brokers, wherein it has been held at paragraph 25:

> "**25.** The SEBI Act and the Regulations framed thereunder are intended to protect the interests of investors in the Securities Market which has seen substantial growth in tune with the parallel developments in the economy. Investors' confidence in the capital/securities market is a reflection of the effectiveness of the regulatory mechanism in force. All such measures are intended to pre-empt manipulative trading and check all kinds of impermissible conduct in order to boost the investors' confidence in the capital market. The primary purpose of the statutory enactments is to provide an environment conducive to increased participation and investment in the securities market which is vital to the growth and development of the economy. The provisions of the SEBI Act and the Regulations will, therefore, have to be understood and interpreted in the above light."

In this case it was also held that in the absence of direct proof of meeting of minds elsewhere in synchronised transactions, the test should be one of preponderance of

[4] (2016) 6 SCC 368

probabilities as far as adjudication of civil liability arising out of the violation of the Act or the provision of the Regulations is concerned. To quote:

> "**31**. The conclusion has to be gathered from various circumstances like that volume of the trade effected; the period of persistence in trading in the particular scrip; the particulars of the buy and sell orders, namely, the volume thereof; the proximity of time between the two and such other relevant factors…"

We do not think that those illustrations are exhaustive. There can be several such situations, some of which we have discussed hereinabove.

43. The traders thus 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. Appeal Nos.1969/2011, 3175/2011 and 3180/2011 are hence allowed. The orders of the Securities Appellate Tribunal are set aside and that of the SEBI are restored to the extent indicated above.

44. As far as brokers are concerned, we are of the view that there is hardly any evidence on their involvement so as to

proceed against them for violation of Regulation 7A of the Brokers Regulations and PFUTP Regulations. Merely because a broker facilitated a transaction, it cannot be said that there is violation of the Regulation. SEBI has not provided any material to suggest negligence or connivance on the part of the brokers. As held by this Court in **Kishore R. Ajmera** (supra), there are several factors to be considered. We would especially like to refer to the case of Angel Trading wherein the broker repeatedly wrote to the National Stock Exchange informing them about trades in the options segment that were executed at unrealistic prices and requesting them to put in mechanisms in the Options segment so that these trades are not allowed to enter the system. In the absence of any material provided by SEBI to prove the charges against the brokers, particularly regarding aiding and abetting fraudulent or unfair trade practices, we are of the opinion that the orders of SEBI against the brokers should be interfered with. Accordingly, the appeals filed against the brokers are dismissed.

45. Before concluding, we would like to reiterate the observations made by this Court in **Kishore R. Ajmera** (supra) and **Kanaiyalal Patel** (supra) regarding the need for a more comprehensive legal framework governing the securities market. As the market grows, ingenuous means of manipulation are also employed. In such a scenario, it is essential that SEBI keeps up with changing times and develops principles for good governance in the stock market which ensure free and fair trading.

46. There shall be no order as to costs.

.....J.
(KURIAN JOSEPH)

New Delhi;
February 8, 2018.

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1969 OF 2011

SECURITIES AND EXCHANGE BOARD OF INDIA ….APPELLANT(S)

VERSUS

RAKHI TRADING PRIVATE LTD. ....RESPONDENT(S)

WITH

CIVIL APPEAL NOS. 3174-3177 OF 2011

AND

CIVIL APPEAL NO. 3180 OF 2011

J U D G M E N T

R. BANUMATHI, J.

I have gone through the judgment proposed by His Lordship Justice Kurian Joseph. I am in agreement with the conclusion arrived at by His Lordship. However, in view of the importance of the issues involved, I prefer to give my own additional reasonings also for my concurrence.

2. Since the issues involved in all the appeals are one and the same, appeals filed by SEBI pertaining to the traders and the brokers were heard together. For convenience and reference on facts, I have

taken up the appeal arising out of Rakhi Trading Pvt. Ltd. as the lead case.

3. Brief facts of the case are that in 2007, SEBI had examined the nature of transactions occurring in the derivative segment of the capital market. Upon examination of the trading data of the *Future and Option Segment* (herein after referred as "*F & O Segment*") on the NSE for the period January to March, 2007, it was observed that the brokers at NSE were buying and selling almost equal quantities of contracts within the day. Moreover, it was noticed that such buy/sell orders were synchronized [*Synchronized trade is one where buy and sell orders are placed simultaneously for the same volume*]. In most of the cases, the same quantity and in few cases, substantially the same quantity of the original trade was closed out during the day at a price which was significantly above or below the price at which the first/original transaction was executed without significant variations in the traded price of the underlying security. After preliminary examination into the trading of *F&O contracts*, SEBI identified that certain entities including the respondent-Rakhi Trading operating in the derivative segment had executed fictitious and non-genuine trades. Exercising its powers under Section 19 read with Section 11B and 11D of the Securities and

Exchange Board of India Act, 1992, (for short 'SEBI Act, 1992') the Whole Time Member of the Board had passed an *ex parte* order directing the respondent and other entities to *cease and desist* from indulging in the violations till further orders as they were found indulging in non-genuine transactions.

4. Meanwhile, in terms of provisions of Rule 4(1) of the Securities and Exchange Board of India Rules, 1995, the Board issued a show cause notice to the respondent on 05.10.2007 alleging that the respondent executed synchronized/matched/reversal trades and indulged in non-genuine transactions with certain clients/stock brokers during the period of examination in the *F & O Segment* by enclosing a report showing fourteen *Options Contracts* executed by it in *F & O Segment* between 21st March to 30th March, 2007 with a total close out difference (COD) of Rs. 1,15,79,312.15/- i.e. net profit of Rs. 115.79 lakhs, thereby violating Regulations 3(a), 4(1) and 4(2)(a) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (for short "PFUTP Regulations"). On the show cause notice, the respondent, *inter alia,* contended that the impugned transactions were genuine trades, traded on the screen in anonymity in compliance with the rules and regulations of the

exchange for trading in *Options Segment* and the said transactions in no manner undermined price discovery or influenced the market.

5. Upon consideration of the findings in the preliminary enquiry and submissions of the respondent, the Adjudicating Officer found that most of the trades i.e. buying and selling of contracts within a gap of few seconds between the same parties through same set of brokers matched and found that it is unrealistic that the orders would match exactly both the quantity and price and with the same party again and again. The Adjudicating Officer further held that manipulative device was used for synchronization of trades and the trades were fraudulent/fictitious in nature. After referring to SAT's judgment in ***Ketan Parekh v. SEBI*** (Appeal No. 2 of 2004) and other judgments, the Adjudicating Officer found that the respondent has executed synchronized/reversal trades, in violation of PFUTP Regulations, 2003 and imposed a penalty of Rs.1,08,00,000/- on the respondent in terms of the provisions of Section 15HA of SEBI Act, 1992.

6. On appeal by the respondent, Securities Appellate Tribunal (SAT) set aside the order of the Adjudicating Officer and held that NIFTY is a large well diversified index of stocks which is not capable of being influenced. SAT further held that the thirteen trades in the

NIFTY options executed by the respondent had no impact on the market and those transactions did not influence the NIFTY index in any manner. SAT held that the impugned transactions do not become illegal merely because they were executed for tax planning as they did not influence the market. Holding that there has been no violation of any regulation of SEBI, SAT set aside the order of the Adjudicating Officer. Being aggrieved, SEBI has preferred this statutory appeal under Section 15Z of SEBI Act, 1992.

RELEVANT PROVISIONS OF THE SEBI ACT AND THE REGULATIONS

7. Section 12-A contained in Chapter V-A of the SEBI Act, 1992 deals with "*Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control*" and reads as follows:

> **12A.** ***Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control***.—*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 recognised 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;

(*d*) engage in insider trading;

(*e*) deal in securities while in possession of material or non-public information or communicate such material or non-public information to any other person, in a manner which is in contravention of the provisions of this Act or the rules or the regulations made thereunder;

(*f*) acquire control of any company or securities more than the percentage of equity share capital of a company whose securities are listed or proposed to be listed on a recognised stock exchange in contravention of the regulations made under this Act.

8. Section 30 of the SEBI Act reads as follows:-

30. Power to make regulations.- (1) The Board may, with the previous approval of the Central Government by notification, make regulations consistent with this Act and the rules made thereunder to carry out the purposes of this Act.

.....

9. Section 15HA of the Act which deals with penalty for fraudulent and unfair trade practices, Section 15HB which deals with penalty for contravention where no separate penalty has been provided and Section 15J which lays down the factors to be taken into account while adjudging the quantum of penalty read as follows:

> **15HA.** ***Penalty for fraudulent and unfair trade practices***.—If any person indulges in fraudulent and unfair trade practices relating to securities he shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher.
>
> **15HB. Penalty for contravention where no separate penalty has been provided.-** Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees.
>
> **15J.** ***Factors to be taken into account by the adjudicating officer***.—While adjudging the quantum of penalty under Section 15-I, the adjudicating officer shall have due regard to the following factors, namely—
>
> (*a*) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
>
> (*b*) the amount of loss caused to an investor or group of investors as a result of the default;
>
> (*c*) the repetitive nature of the default.

10. Section 12A has to be read along with the provisions of the PFUTP Regulations, 2003, SEBI (Stockbrokers and Sub-Brokers) Regulations, 1992 and the SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002. Regulation 3 of the PFUTP Regulations, 2003 deals with "***Prohibition of certain dealings in securities".*** Regulation 4 deals with "***Prohibition of manipulative, fraudulent and unfair trade practices".*** Regulation 2 (1)(c) defines "**fraud**". For relevant **Capital Market Terms**, I have made reference to SEBI Act and *K. Sekar's Guide to SEBI, Capital Issues, Debentures & Listing, Lexis Nexis fourth Edition 2017* and *Economics*

of Derivatives by Cambridge University Press by *T.V. Somanathan and V. Anantha Nageswaran.* To avoid repetition, I refrain from referring to the explanation of the relevant Capital Market Terms.

11. **Re-Contention: The impugned trades were normal transactions traded on the system and not fictitious transactions:-** Contention of the respondent is that the impugned trades were normal transactions traded on the system maintaining complete anonymity and the trades were not illegal and the respondent has not violated the provisions of SEBI Regulations. Respondent-Rakhi Trading Pvt. Ltd. contended that the trading was done on automated screen based trading and it was not possible for them to know who the counter party was and therefore, the synchronization of trade was a mere coincidence. Per contra, SEBI maintained that the respondent-Rakhi Trading and the counter party-Kasam Holding Pvt. Ltd. had prior understanding and have thwarted the checks and balances of the trading system by executing non-genuine transactions with ulterior purpose.

12. To appreciate the contentious issues raised by the parties, I refer to the impugned reversal trade transactions:

Trade Date and Time	Buy Order Time	Sell Order Time	Time diff between Buy & Sell Order	Strike Price	Trade Price	Buy Client Name	Sell Client Name	Total traded volume	Diff. in price of 2 legs of the trade	Close out Difference	% Market Gross
21-Mar-07	14:50:28	14:50:27	0:00:01	3,930.00	270.00	KASAM HOLDING	RAKHI TRADING	10000	160		40.82

14:50:28						PVT. LTD	PVT LTD				
21-Mar-07 15:06:45	15:06:42	15:06:45	0:00:03	3,930.00	110.00	RAKHI TRADING PVT LTD	KASAM HOLDING PVT. LTD	10000		1600000	
21-Mar-07 11:37:43	11:37:43	11:37:37	0:00:06	3,730.00	112.00	KASAM HOLDING PVT. LTD	RAKHI TRADING PVT LTD	4750	45		49.74
21-Mar-07 12:04:05	12:04:05	12:04:05	0:00:00	3,730.00	67.00	RAKHI TRADING PVT LTD	KASAM HOLDING PVT. LTD	4750		213750	
21-Mar-07 14:33:19	14:33:19	14:33:18	0:00:01	# 120	12.25	SPARK SECURITI ES P LTD	RAKHI TRADING PVT LTD	80000	10		31.5
21-Mar-07 14:53:18	14:53:16	14:53:18	0:00:02	# 120	2.25	RAKHI TRADING PVT LTD	SPARK SECURITI ES P LTD	80000		800000	
21-Mar-07 12:04:51	12:04:51	12:04:50	0:00:01	3,650.00	115.00	RAKHI TRADING PVT LTD	KASAM HOLDING PVT. LTD	10000	58		49.02
21-Mar-07 12:52:19	12:52:19	12:52:18	0:00:01	3,650.00	173.00	KASAM HOLDING PVT. LTD	RAKHI TRADING PVT LTD	8000	50		
21-Mar-07 13:07:20	13:07:20	13:07:19	0:00:01	3,650.00	165.00	KASAM HOLDING PVT. LTD	RAKHI TRADING PVT LTD	2000		564000	
22-Mar-07 14:02:25	14:02:25	14:02:23	0:00:02	4,190.00	410.00	KASAM HOLDING PVT. LTD	RAKHI TRADING PVT LTD	11500	125		38.59
22-Mar-07 11:39:28	11:39:28	11:39:26	0:00:02	4,190.00	285.00	RAKHI TRADING PVT LTD	KASAM HOLDING PVT. LTD	11500		1437500	
22-Mar-07 15:02:37	15:02:37	15:02:36	0:00:01	3,960.00	190.00	KASAM HOLDING PVT. LTD	RAKHI TRADING PVT LTD	11700	89		50
22-Mar-07 15:23:15	15:23:15	15:23:15	0:00:00	3,960.00	101.00	RAKHI TRADING PVT LTD	KASAM HOLDING PVT. LTD	11700		1041300	
Trade Date and Time	**Buy Order Time**	**Sell Order Time**	**Time diff between Buy & Sell Order**	**Strike Price**	**Trade Price**	**Buy Client Name**	**Sell Client Name**	**Total traded volume**	**Diff. in price of 2 legs of the trade**	**Close out Difference**	**% Market Gross**
22-Mar-07 10:15:21	10:15:21	10:15:21	0:00:00	4,050.00	200.00	RAKHI TRADING PVT LTD	KASAM HOLDING PVT. LTD	10500	85		35.84
22-Mar-07 11:37:08	11:37:08	11:37:07	0:00:01	4,050.00	285.00	KASAM HOLDING PVT. LTD	RAKHI TRADING PVT LTD	10500		892500	
23-Mar-07 10:22:37	10:22:37	10:22:37	0:00:00	3,880.00	190.00	KASAM HOLDING PVT. LTD	RAKHI TRADING PVT LTD	11600	133		30.05
23-Mar-07 11:14:05	11:14:05	11:14:04	0:00:01	3,880.00	57.00	RAKHI TRADING PVT LTD	KASAM HOLDING PVT. LTD	11600		1542800	
23-Mar-07 13:18:21	13:18:18	13:18:21	0:00:03	3,930.00	32.00	RAKHI TRADING PVT LTD	KASAM HOLDING PVT. LTD	10500	54		30
23-Mar-07 14:16:36	14:16:36	14:16:35	0:00:01	3,930.00	86.00	KASAM HOLDING PVT. LTD	RAKHI TRADING PVT LTD	10500		567000	
23-Mar-07 13:19:06	13:19:06	13:19:05	0:00:01	3,960.00	63.00	RAKHI TRADING PVT LTD	KASAM HOLDING PVT. LTD	10700	52		31.6
23-Mar-07 14:17:49	14:17:49	14:17:49	0:00:00	3,960.00	115.00	KASAM HOLDING PVT. LTD	RAKHI TRADING PVT LTD	10700		556400	
23-Mar-07 12:17:02	12:16:59	12:17:02	0:00:03	4,050.00	155.00	RAKHI TRADING PVT LTD	KASAM HOLDING PVT. LTD	11500	72		41.07
23-Mar-07 13:15:42	13:15:42	13:15:41	0:00:01	4,050.00	227.00	KASAM HOLDING PVT. LTD	RAKHI TRADING PVT LTD	11500		828000	
23-Mar-07 12:17:44	12:17:44	12:17:44	0:00:00	4,150.00	230.00	RAKHI TRADING PVT LTD	KASAM HOLDING PVT. LTD	11600	72		50

23-Mar-07 13:16:19	13:16:19	13:16:19	0:00:00	4,150.00	302.00	KASAM HOLDING PVT. LTD	RAKHI TRADING PVT LTD	11600		835200	
30-Mar-07 11:36:40	11:36:37	11:36:40	0:00:03	3,810.00	80.25	RAKHI TRADING PVT LTD	KASAM HOLDING PVT. LTD	8950	39.75		49.58
30-Mar-07 11:48:44	11:48:44	11:48:44	0:00:00	3,810.00	120.00	KASAM HOLDING PVT. LTD	RAKHI TRADING PVT LTD	8950		355762.5	
30-Mar-07 14:30:04	14:30:04	14:30:04	0:00:00	3,550.00	270.00	RAKHI TRADING PVT LTD	KASAM HOLDING PVT. LTD	11900	29		46.21
30-Mar-07 14:43:02	14:43:00	14:43:02	0:00:02	3,550.00	299.00	KASAM HOLDING PVT. LTD	RAKHI TRADING PVT LTD	11900		345100	

13. **Synchronized Trading**: As per the Oxford dictionary the word '*synchronize*' means "*cause to occur at the same time; be simultaneous*". A synchronized trade is one where the buyer and seller enter the quantity and price of the shares they wish to transact at substantially the same time. This could be done through the same broker (termed a cross deal) or through two different brokers. [***Ketan Parekh v. SEBI,*** **Manu/SB/0229/2006**]

14. Synchronized trade is one wherein '*buy and sell'* orders are placed simultaneously for the same quantity and price they wish to transact at substantially the same time. Synchronized trades are not illegal provided that they are executed on the screens of the exchange in the price and order matching mechanism of the exchanges just like any other normal trade. As per SEBI's circular No.SMDRP/ POLICY/CIR-32/99 dated 14.09.1999, *"All negotiated deals..... shall be executed only on the screens of the exchanges in the price and order matching mechanism of the exchanges just like any other*

normal trade.". In the said circular, it was stated that "*The above decision was taken as negotiated deals avoid transparency requirements, do not contribute to price discovery and some investors do not have benefit of the best possible price and militate against the basic concept of stock exchanges, which are meant to bring together a large number of buyers and sellers in an open manner.*". (**Reference: https://www.sebi.gov.in/legal/circulars/sep-1999/negotiated-deals_18629. html**)

15. In ***Ketan Parekh v. SEBI*** Manu/SB/0229/2006, the Securities Appellate Tribunal (SAT) has considered the circumstances under which "*Synchronized trade*" will be legal and held as under:

> "There are yet another type of transactions which are commonly called synchronized deals. The word 'synchronise' according to the Oxford dictionary means "cause to occur at the same time; be simultaneous". A synchronized trade is one where the buyer and seller enter the quantity and price of the shares they wish to transact at substantially the same time. This could be done through the same broker (termed a cross deal) or through two different brokers. Every buy and sell order has to match before the deal can go through. This matching may take place through the stock exchange mechanism or off market. When it matches through the stock exchange, it may or may not be a synchronized deal depending on the time when the buy and sell orders are placed. There are deals which match off market i.e., the buyer and the seller agree on the price and quantity and execute the transaction outside the market and then report the same to the exchange. These are also called negotiated transactions..... It has recently issued a circular requiring all bulk deals to be transacted through the exchange even if the price and quantity are settled outside the market. <u>When such deals go through the exchange, they are bound to synchronise. It would, therefore, follow that a synchronized trade or a trade that matches off market is per se not illegal.</u> Merely because a trade was crossed on the floor of the stock

> exchange with the buyer and seller entering the price at which they intended to buy and sell respectively, the transaction does not become illegal. A synchronized transaction even on the trading screen between genuine parties who intend to transfer beneficial interest in the trading stock and who undertake the transaction only for that purpose and not for rigging the market is not illegal and cannot violate the regulations...." [**underlining added**]

16. A synchronized transaction will become illegal or violative of the Regulations if it is executed with a view to manipulate the market or if it results in circular trading or is dubious in nature and with a view to manipulate the price or volume of the scrip or with some ulterior purpose. In ***Ketan Parekh case***, SAT held as under:

> "..... A synchronized transaction will, however, be illegal or violative of the Regulations if it is executed with a view to manipulate the market or if it results in circular trading or is dubious in nature and is executed with a view to avoid regulatory detection or does not involve change of beneficial ownership or is executed to create false volumes resulting in upsetting the market equilibrium. 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." **(underlining added)**

17. In the present case, all the fourteen transactions (except one) pertaining to Nifty were synchronized. Be it noted that as pointed out by SAT in para (7) of its order, the respondent did not dispute the fact

that "....*trades had been synchronized and reversed....*". The respondent only contended that the impugned "*synchronized trade'* did not manipulate the market and that what is prohibited are only the synchronized trades and that the impugned trades were normal transactions and the respondent had not violated the provisions of PFUTP Regulations. In the context of the stand taken by Rakhi Trading before SAT, it is now not open to respondent Rakhi Trading to contend that the transactions were not synchronized and reversed.

18. By perusal of details of *'buy and sell*', '*volume of trade*' and '*timing of trade*' of the impugned transactions, it was observed that the reversal trades were executed almost of the same quantity and the trade was also within a short gap of few seconds with significant variation of the price, though, there was no major variation in the underlying price during that period. Upon examination of the trade transactions, it was further observed that the respondent in the impugned transactions had operated through Prashant Jayantilal Patel as its broker and the counter party Kasam Holding Pvt. Ltd., which executed those transactions through Vibrant Securities Pvt. Ltd. as its broker. As pointed out in the tabular column, all reversed/closed out transactions were executed at prices with significant variation within a

short period though there was no major variation in the underlying price during that period.

19. For instance, let us refer to one of the impugned reversal trades. On 21.03.2007 at **14:50:27**, NIFTY 50 (Strike Price 3930) Options (Trade volume 10,000) was sold within a second at 14:50:28 at **Trade Price of Rs.270/-**. Within a short gap of time, at **15:06:42**, the same NIFTY 50 (Trade Volume 10,000) (Strike Price 3930) was bought by the respondent within three seconds at **Trade Price of Rs.110/-** and the price difference of two legs of the trade being Rs.160/- with **COD Rs.16,00,000/-**. The percentage of the gross of the trade on that day was 40.82%. As seen from the chart, the other reversal trade transactions were also almost similar within a gap of few seconds, between *'buy'* and *'sell'* order, with significant price variation, though no major price variation in the underlying price. During examination of those transactions, the Whole Time Member observed that the synchronized transactions had a definite objective of enabling one party (Rakhi Trading Pvt. Ltd.) to book profits and the other party (Kasam Holding Pvt. Ltd.) to book losses in the close out difference. Thirteen Options Contracts executed by respondent-Rakhi Trading in the *F & O Segment* between March 21 and March 30, 2007 with a total

Close Out Difference (COD) of Rs.1,15,79,312.15 (Positive) showing a net profit of Rs.115.79 lakhs to Rakhi Trading Pvt. Ltd. and loss to the counter party i.e. Kasam Holding Pvt. Ltd.

20. The question whether there was fictitious transactions creating illegal synchronization has to be gathered from the facts and circumstances and intention of the parties. Acting in concert is something about which it is difficult to obtain direct evidence. Proof of manipulation might depend upon inferences drawn from factual details. Such inferences could be gathered from pattern of trading data and the nature of the transactions etc.

21. '*By manipulation and synchronization*', it is meant that two parties have pre-meditated; as such a drastic movement in price within few seconds could have been only through prior understanding between the parties concerned only to fulfill an unlawful objective through misuse of the stock exchange. That is, prior arrangement/prior understanding with each other wherein one will make profit and other will lose and thereby as soon as one party opens up its trade in the market, the other party will buy it. Though the trading is shown on the screen, but prior arrangement is very well possible behind the screen. This is what has been done in the case in hand. Buy and sell orders

were placed at a difference of few seconds/minutes, while *'sell'* by respondent to Kasam Holding at a high price and *"buy"* by the respondent from Kasam Holding Pvt. Ltd. at a low price. The transactions wherein the *'buy and sell'* orders entered almost simultaneously and the transactions matched in time and quantity with significant price variation and respondent consistently making profit but Kasam Holding Pvt. Ltd. consistently making loss. Number of reversal trades between the respondent and Kasam Holding Pvt. Ltd. and such reversal trade taking place repeatedly over a period of time only indicates that there was pre-arrangement between the parties before the trade was executed. The transactions involving only the same two parties within few seconds with huge difference in *'buy and sell'* value, though there is no difference in the underlying security, can take place only with prior understanding between the two parties. The Board who is the regulator of the market, can always lift the veil of such transactions to show the non-genuineness of such transactions.

22. Buying and selling of equal quantities within the day may not be wrong but the trades with ulterior purpose are not genuine for sure. In the present case, every time one party is making profit and other party is facing loss. Further, there was proximity in the time of sell orders at

a high price to the party-Kasam Holding Pvt. Ltd. and the same quantity being reversed by Kasam Holding Pvt. Ltd. to the same party-Rakhi Trading Pvt. Ltd. at a low price through the same set of brokers. As discussed earlier, during March, 2007 thirteen Nifty Option Contracts got matched between the same parties through the same brokers. I fail to understand as to why Kasam Holding has made the transactions repeatedly by incurring losses. It seems improbable that Kasam Holding which was facing loss in each transaction by trading with the respondent, was still eager to trade with the same repeatedly for about four days which is not in consonance with the market trend and human conduct; more so, when there has not been any major difference in the underlying price. It is thus difficult to accept that several such sell and buy orders between the respondent and Kasam Holding being within a gap of "1", "2" or "3" or few seconds were by mere coincidence. As contended by the appellant-SEBI, it was too much of coincidence that there were number of transactions of '*buy and sell orders*' between the same parties with same quantity of stock with significant variation in price.

23. Insofar as synchronized trade involving same set of brokers and meeting of minds, in ***Securities and Exchange Board of India v. Kishore R. Ajmera*** (2016) 6 SCC 368, this Court held as under:

> "**29.** This will take us to the second and third category of cases i.e. *Ess Ess Intermediaries (P) Ltd.*, *Rajesh N. Jhaveri* and *Rajendra Jayantilal Shah* (second category) and *Monarch Networth Capital Ltd.* (earlier known as *Networth Stock Broking Ltd.*) (third category). In these cases the volume of trading in the illiquid scrips in question was huge, the extent being set out hereinabove. Coupled with the aforesaid fact, what has been alleged and reasonably established, is that buy and sell orders in respect of the transactions were made within a span of 0 to 60 seconds. While the said fact by itself i.e. proximity of time between the buy and sell orders may not be conclusive in an isolated case such an event in a situation where there is a huge volume of trading can reasonably point to some kind of a fraudulent/manipulative exercise with prior meeting of minds. Such meeting of minds so as to attract the liability of the broker/sub-broker may be between the broker/sub-broker and the client or it could be between the two brokers/sub-brokers engaged in the buy and sell transactions. When over a period of time such transactions had been made between the same set of brokers or a group of brokers a conclusion can be reasonably reached that there is a concerted effort on the part of the brokers concerned to indulge in synchronized trades the consequence of which is large volumes of fictitious trading resulting in the unnatural rise in hiking the price/value of the scrip(s). <u>It must be specifically taken note of herein that the trades in question were not "negotiated trades" executed in accordance with the terms of the Board's circulars issued from time to time. A negotiated trade, it is clarified, invokes consensual bargaining involving synchronising of buy and sell orders which will result in matching thereof but only as per permissible parameters which are programmed accordingly</u>.
>
> **30.** It has been vehemently argued before us that on a screen-based trading the identity of the 2nd party be it the client or the broker is not known to the first party/client or broker. According to us, knowledge of who the 2nd party/client or the broker is, is not relevant at all. <u>While the screen-based trading system keeps the identity of the parties anonymous it will be too naive to rest the final conclusions on said basis which overlooks a meeting of minds elsewhere. Direct proof of such meeting of minds elsewhere would rarely be forthcoming.</u> The test, in our considered view, is one of preponderance of probabilities so far as adjudication of civil liability

arising out of violation of the Act or the provisions of the Regulations framed thereunder is concerned. Prosecution under Section 24 of the Act for violation of the provisions of any of the Regulations, of course, has to be on the basis of proof beyond reasonable doubt.

31. The conclusion has to be gathered from various circumstances like that volume of the trade effected; the period of persistence in trading in the particular scrip; the particulars of the buy and sell orders, namely, the volume thereof; the proximity of time between the two and such other relevant factors. The fact that the broker himself has initiated the sale of a particular quantity of the scrip on any particular day and at the end of the day approximately equal number of the same scrip has come back to him; that trading has gone on without settlement of accounts i.e. without any payment and the volume of trading in the illiquid scrips, all, should raise a serious doubt in a reasonable man as to whether the trades are genuine. The failure of the brokers/sub-brokers to alert themselves to this minimum requirement and their persistence in trading in the particular scrip either over a long period of time or in respect of huge volumes thereof, in our considered view, would not only disclose negligence and lack of due care and caution but would also demonstrate a deliberate intention to indulge in trading beyond the forbidden limits thereby attracting the provisions of the FUTP Regulations."[**underlining added**]

24. In ***Nirmal Bang Securities Private Ltd. v. The Chairman, Securities and Exchange Board of India*** (MANU/SB/0206/2003), SAT applied the test of ***price, quantity*** and ***time*** to hold that synchronized trading in that case was violative of norms of trading in securities and held as under:-

"**249**. BEB has been charged for synchronized deals with First Global. I have examined the data provided by the parties on this issue. I find many transactions between BEB and FGSB. There are many instances of such transactions. I find the scrip, quantity and price for these orders had been synchronized by the counter party brokers. Such transactions undoubtedly create an artificial market to mislead the genuine investors. Synchronized trading is violative of all prudential and transparent norms of trading in securities. Synchronized trading on a large scale, can create false volumes. The argument that the parties had no means of knowing whether

any entity controlled by the client is simultaneously entering any contra order elsewhere for the reason that in the online trading system, confidentiality of counter parties is ensured, is untenable. It was submitted by the Appellants that it was not possible for the broker to know who the counter party broker is and that trades were not synchronized but it was only a coincidence in some cases. Theoretically this is OK. But when parties decide to synchronize the transaction the story is different. There are many transactions giving an impression that these were all synchronized, otherwise there was no possibility of such perfect matching of quantity price etc. As the Respondent rightly stated it is too much of a coincidence over too long a period in too many transactions when both parties to the transaction had entered buy and sell orders for the same quantity of shares almost simultaneously. The data furnished in the show cause notice certainly goes to prove the synchronized nature of the transaction which is in violation of regulation 4 of the FUTP Regulations. The facts on record categorically establishes that BEB had indulged in synchronized trading in violation of regulation 47 of the FUTP Regulations. In a synchronized trading intention is implicit."

25. In the quasi-judicial proceeding before SEBI, the standard of proof is preponderance of probability. In a case of similar synchronized trading involving same set of brokers emphasizing that the standard of proof is "preponderance of probability" in paras (26) and (27), in ***Kishore R. Ajmera case,*** this Court held as under:-

"**26.** It is a fundamental principle of law that proof of an allegation levelled against a person may be in the form of direct substantive evidence or, as in many cases, such proof may have to be inferred by a logical process of reasoning from the totality of the attending facts and circumstances surrounding the allegations/charges made and levelled. While direct evidence is a more certain basis to come to a conclusion, yet, in the absence thereof the Courts cannot be helpless. <u>It is the judicial duty to take note of the immediate and proximate facts and circumstances surrounding the events on which the charges/allegations are founded and to reach what would appear to the Court to be a reasonable conclusion therefrom. The test would always be that what inferential process that a reasonable/prudent man would adopt to arrive at a conclusion."</u> [**underlining added**]

26. There was no possibility of such perfect matching of quantity, timing, prices etc. between the same parties unless there was prior meeting of minds or a specific understanding/arrangement between the parties. After referring to ***Ketan Parekh*** and ***Nirmal Bang cases***, in ***SEBI v. Accord Capital Markets Ltd.*** (MANU/SB/0136/2007), SEBI held as under:-

> "**4.12** I note that most of the synchronized trades executed by the Broker were perfectly matched with the counter party orders even with respect of the price to the extent of two decimal points. The proximity in placing the orders at the same price and for the same quantity almost at the same time (in majority of the cases) resulted in the matching of the aforesaid transactions, with all the ingredients i.e. quantity, price and the time, required to conclude the trades. The time difference (between the buy and sell orders) of majority of the synchronized trades was very less with the price and quantity matching. The said synchronization cannot take place in the absence of any specific understanding/arrangement between the clients at the first instance, especially when the shares of the company were highly liquid at the time of the trades.
> .....
>
> **4.24** The proof of manipulation in the circumstances always depends on inferences drawn from a mass of factual details. Findings must be gathered from patterns of trading data and the nature of the transactions etc. Several circumstances of a determinative character coupled with the inference arising from the conduct of the parties in a major market manipulation could reasonably lead to conclusion that the Broker was responsible in the manipulation. The evidence, direct or circumstantial, should be sufficient to raise a presumption in its favour with regard to the existence of a fact sought to be proved. As pointed out by Best in "Law of Evidence", the presumption of innocence is no doubt presumption juris; but everyday practice shows that it may be successfully encountered by the presumption of guilt arising from circumstances, though it may be a presumption of fact. Since it is exceedingly difficult to prove facts which are especially within the knowledge of parties concerned, the legal proof in such

circumstances partakes the character of a prudent man's estimate as to the probabilities of the case. Hon'ble Securities Appellate Tribunal (SAT) has observed in the matter of ***Ketan Parekh v. SEBI***:

> "...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...."

4.25 Presumption plays a critical role in coming to a finding as to the involvement or otherwise of a market participant in any manipulation. For instance, while trading, a lip service can be paid to a screen based trading system while agreement is reached beforehand between brokers to effect the transaction. Anonymity can be a cloak to cover anastomosis of interest. Therefore, the hackneyed plea based on intentions in the market place cannot pass muster in all circumstances, more so when such intentions are in the special/peculiar knowledge of the parties to the transactions. Also any suggestion attributing innocence to the parties involved in such transactions would give rise to an untenable situation where certain other third persons/entities alone would be responsible for the manipulation and none else."

27. Applying the test laid down in ***Kishore R. Ajmera case*** to the present case, I find that by cumulative analysis of the reversal transactions between respondent and Kasam Holding, quantity, time and significant variation of prices, without major variation in the underlying price of the securities clearly indicate that the respondent's trades are not genuine and had only misleading appearance of trading in the securities market, without intending to transfer beneficial ownership.

28. Contention of the appellant is that if the market starts moving or there is a change in the perception of the market and the anticipated future performance thereof, then the seller often gets very apprehensive and may even panic, anticipating a substantial loss and would want to square off his position to restrict a loss. I find no merit in this contention. Insofar as the impugned transactions are concerned, it is seen that the market of underlying shares had remained unmoved altogether, then there was no question of getting panic. When there were no other transactions in the market affecting the price of the underlying shares or *F & O Segment* and the price in both the segments had remained static, then there was no reasonable ground to get apprehensive and panic. Therefore, squaring off the position appears to adjust the financial results with a view to avoid the tax incidence through an unfair trade practice or for some ulterior purpose.

29. On behalf of respondent, learned senior counsel Mr. P. Chidambaram contended that securities like *Nifty* are vast pools and *Nifty* has a dynamic index which evolves continuously and it is too difficult for a manipulator to affect such prices. Further contention of the respondent is that whether the impugned trades are synchronized

or not had no impact on the market and the respondent cannot be held to have violated regulations.

30. On behalf of the respondent-Tungarli Tradeplace Pvt. Ltd., Mr. Mehta learned counsel submitted that a person can be found to have violated Regulations 3 and 4, he should have indulged in some fraudulent practice with an intention to manipulate the securities market and has drawn our attention to Regulation 2(c) of the SEBI Regulations, 2003 in which '*fraud'* has been defined. Learned counsel submitted that for a person to be held liable for breach of the above mentioned Regulations, SEBI has to establish the following:- (i) that the party entered into the transactions with the intention to manipulate the market; and (ii) that there is evidence that the market was in fact manipulated.

31. Per contra, learned senior counsel for SEBI contended that SAT had misconstrued the charge that the impugned synchronized trades had no effect of manipulating the *Nifty* index and SAT was not right in holding that only those synchronized transactions which have the effect of manipulating the market are undesirable and prohibited. It was contended that it was never the case of SEBI that *Nifty* was being manipulated by the impugned trade executed by the respondent and

findings of SAT are not sustainable in law and would have serious repercussion on the market integrity.

32. The respondent has made the transactions repeatedly by incurring losses, particularly when there were no transactions made by any third party in the market. Abnormal difference between the prices at which the trades were executed without corresponding effect on the price of the underlying security, shows that the option in which the party traded was not in demand in the market. It is unusual that the trades were transacted with such huge profits when there was no change in the underlying prices. These trade transactions obviously only aimed at carrying out manipulative objective.

33. Once the reversal transactions are shown to be non-genuine or shown to be fictitious creating a false or misleading appearance in the market for ulterior purpose and that the stock market was misused by such manipulative device, this is in clear violation of the provisions of PFUTP Regulations, 2003. Regulations 3(a), 4(1) and 4(2)(a) of PFUTP Regulations prohibit such manipulative trades, unfair trade practices.

34. SAT mainly proceeded that the impugned reversal trade transactions had no impact on the market and it could have never

influenced the Nifty. After extracting the show cause notice, SAT, *inter alia,* recorded the findings:- (i) *The insinuation is that by executing manipulative trades in the F & O segment, Nifty was sought to be tampered with;* (ii) It is a common case of the parties that the appellant-Rakhi Trading traded only thirteen Nifty option contracts in the *F & O Segment*; assuming these trades were manipulative, they could have never influenced the Nifty; Nifty which consists of fifty well diversified highly liquid stocks in the cash segment is a very large well diversified index of stocks which is not capable of being influenced much less manipulated by the movement of prices; and (iii) thirteen impugned trades in Nifty options executed by the appellant had no impact on the market or affected the investors in any way nor did they influence the Nifty in any manner.

35. Regulation 3 deals with "***Prohibition of certain dealings in securities"***. Regulation 4 deals with "***Prohibition of manipulative, fraudulent and unfair trade practices"***. Regulation 4 starts as *"Without prejudice to the provisions of Regulation 3....."*. Regulation 4(2) is an inclusive provision. Regulation 4(2) stipulates that "*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.....*",

instances pointed out thereon. Regulation 4(2)(a) deals with "*.....an act which creates false or misleading appearance of trading in the securities market*". An act to fall within Regulation 4(2)(a), it is not necessary that the transactions entered into by the party was with intention to manipulate the market and that the market was in fact manipulated. Market manipulation is a deliberate attempt to interfere with the free and fair operation of the market and create artificial, false or misleading appearances with respect to the price, market, product, security and currency.

36. Respondent-Rakhi Trading and Kasam Holding on facts are found to have been engaged in non-genuine transactions creating appearance of trading. If the factum of manipulation is established, it will necessarily follow that the investors in the market have been induced to buy or sell and that no further proof in this regard is required. The market, as already observed, is so widespread that it may not be humanly possible for the Board to track the persons who were actually induced to buy or sell securities as a result of manipulation and the Board cannot be imposed with a burden which is impossible to be discharged.

37. In the context of 1995 Regulations, old Regulation 4(2)(a), SAT, observing that if the factum of manipulation is established, it will necessarily follow that the investors in the market had been induced to buy and sell and no further proof is required in this regard, in ***Ketan Parekh's* case** (supra), held as under:-

> "**12**. ....The stock exchange is also a platform for the fair price discovery of a scrip based on the market forces of demand and supply. Securities market is so wide spread and in a system of screen based trading various potential investors who track the scrips through the screens of the exchanges only see whether a particular scrip is active or not, whether it is trading in large volumes and whether the price is going up or down. Having regard to these factors he makes up his mind to invest or disinvest in the securities. When a person takes part in or enters into transactions in securities with the intention to artificially raise or depress the price he thereby automatically induces the innocent investors in the market to buy/sell their stocks. The buyer or the seller is invariably influenced by the price of the stocks and if that is being manipulated the person doing so is necessarily influencing the decision of the buyer/seller thereby inducing him to buy or sell depending upon how the market has been manipulated....In other words, if the factum of manipulation is established it will necessarily follow that the investors in the market had been induced to buy or sell and that no further proof in this regard is required. The market, as already observed, is so wide spread that it may not be humanly possible for the Board to track the persons who were actually induced to buy or sell securities as a result of manipulation and law can never impose on the Board a burden which is impossible to be discharged. This, in our view, clearly flows from the plain language of Regulation 4 (a) of the Regulations."

38. The smooth operation of the securities market and its healthy growth and development depends upon large extent on the quality and integrity of the market. Unfair trade practices affect the integrity and

efficiency of the securities market and the confidence of the investors. Prevention of market abuse and preservation of market integrity are the hallmark of securities law. In ***N. Narayanan v. Adjudicating Officer, Securities and Exchange Board of India*** (2013) 12 SCC 152, it was held as under:-

> "**33.** Prevention of market abuse and preservation of market integrity is the hallmark of securities law. Section 12-A read with Regulations 3 and 4 of the 2003 Regulations essentially intended to preserve "market integrity" and to prevent "market abuse". The object of the SEBI Act is to protect the interest of investors in securities and to promote the development and to regulate the securities market, so as to promote orderly, healthy growth of securities market and to promote investors' protection. Securities market is based on free and open access to information, the integrity of the market is predicated on the quality and the manner on which it is made available to market. "Market abuse" impairs economic growth and erodes investor's confidence. Market abuse refers to the use of manipulative and deceptive devices, giving out incorrect or misleading information, so as to encourage investors to jump into conclusions, on wrong premises, which is known to be wrong to the abusers. The statutory provisions mentioned earlier deal with the situations where a person, who deals in securities, takes advantage of the impact of an action, may be manipulative, on the anticipated impact on the market resulting in the "creation of artificiality". The same can be achieved by inflating the company's revenue, profits, security deposits and receivables, resulting in price rise of the scrip of the company. Investors are then lured to make their "investment decisions" on those manipulated inflated results, using the above devices which will amount to market abuse."

39. In an interview, *Lawrence E. Harris*, a former chief economist at the Securities and Exchange Commission and now a Finance Professor at the University of Southern California, has stated that the difficulty in proving manipulation is probably an inherent feature of

modern markets. "*Because the markets are so complex*", he said, "*.....It is relatively easy for traders engaged in manipulation to offer alternative explanations for their behaviour that would make it difficult to successfully prosecute them*". Professor *Harris* nonetheless said "*when presented with the data suggesting manipulation by firm proprietary traders, it is reasonable to expect that the S.E.C. would consider investigation of the matter further*". The S.E.C. had no comment on the researchers' study. [**Ref.:www.nytimes.com/2006/05/07/business/yourmoney/07stra.html**]

40. Stock market is regulated mainly by SEBI and to some extent by the Departments of Economic Affairs and Company Affairs of Government of India. Market manipulation can occur in a variety of ways. Manipulations/unfair trade practices reduce the market efficacy. Section 11 of the SEBI Act, 1992 provides for the functions of the Board, as per which it shall be the duty of the Board to protect the interests of the investors in securities and to promote the development and to regulate the securities market by such measures as it thinks fit. Main function of SEBI in this regard is to make inquiry, investigation and to give directions, to promote the orderly and healthy growth of the securities market. With a view to curb unfair trade practices, market

manipulation, price rigging and other frauds in securities market, SEBI is empowered to make inquiries and inspection.

41. Section 12A of the SEBI Act, 1992 read with Regulations 3 and 4 of the PFUTP Regulations, 2003 are essentially intended to preserve *'market integrity'* and to prevent *'market abuse'*. The object of the SEBI Act is to protect the interest of the investors in securities and to promote the development and to regulate the securities market so as to promote orderly, healthy growth of securities market and to promote investor's protection. ***N. Narayanan* case** arose in connection with violation of Section 12A of the SEBI Act as well as the relevant provisions of PFUTP Regulations, 2003. In ***N. Narayanan's case***, it was found that the financial results of the company as disclosed to the stock exchanges were inflated and the manipulation in financial results of the company resulted in price rise of the scrip of the company and that they did not represent the true state of affairs of the company and which has enabled certain shareholders to raise financing of pledging of shares. The director of the company was restrained in dealing with the securities for a period of two years and also monetary penalty was imposed on the appellant thereon which was affirmed by this Court. The Supreme Court observed that message should go that our country

will not tolerate *'market abuse'* and that the securities market abuse and that fraud, deceit artificiality, have no place in the securities market of the country and held as under:

> "**1.** India's capital market in the recent times has witnessed tremendous growth, characterised particularly by increasing participation of public. Investors' confidence in the capital market can be sustained largely by ensuring investors' protection. Disclosure and transparency are the two pillars on which market integrity rests. Facts of the case disclose how the investors' confidence has been eroded and how the market has been abused for personal gains and attainments.
>
> .....
>
> **11.** We would like to demonstrate on the facts of this case as well as law on the point that "market abuse" has now become a common practice in the Indian security market and, if not properly curbed, the same would result in defeating the very object and purpose of the SEBI Act which is intended to protect the interests of investors in securities and to promote the development of securities market. Capital market, as already stated, has witnessed tremendous growth in recent times, characterised particularly by the increasing participation of the public. Investor's confidence in capital market can be sustained largely by ensuring investors' protection.
>
> .....
>
> **42.** SEBI, the market regulator, has to deal sternly with companies and their Directors indulging in manipulative and deceptive devices, insider trading, etc. or else they will be failing in their duty to promote orderly and healthy growth of the securities market. Economic offence, people of this country should know, is a serious crime which, if not properly dealt with, as it should be, will affect not only the country's economic growth, but also slow the inflow of foreign investment by genuine investors and also cast a slur on India's securities market. Message should go that our country will not tolerate "market abuse" and that we are governed by the "rule of law". <u>Fraud, deceit, artificiality, SEBI should ensure, have no place in the securities market of this country and "market security" is our motto. People with power and money and in management of the companies, unfortunately often command more respect in our society than the subscribers and investors in their companies. Companies are thriving with investors' contributions but they are a divided lot. SEBI has, therefore, a duty to protect investors,</u>

> individual and collective, against opportunistic behaviour of Directors and insiders of the listed companies so as to safeguard market's integrity." [**underlining added**]

The Supreme Court has also emphasized the duties of print and electronic media, that they should not mislead the public who are present and prospective investors, in their forecast on the securities market.

42. The capital market regulator, SEBI has a significant role to play in safeguarding the interest of investors and to ensure strict compliance of all the relevant SEBI rules and regulations targeting at safeguarding the interest of small investors. In order to protect the interests of the investors and the integrity of the markets, as a regulator, SEBI has to make the market place efficient and clean, wherein all the participants play their role diligently and professionally within the four corners of the system, without there being any scope for market abuse. Where certain unscrupulous elements are trying to manipulate the market to serve their own interest, it becomes imperative on the part of SEBI to intervene and to curb further mischief and to take necessary action to maintain public confidence in the integrity of the securities market.

43. In ***N. Narayanan's case***, Supreme Court expressed a '*word of caution'* that SEBI-the regulator is to ensure stringent enforcement, and efficacy of cleanliness of the market place; otherwise SEBI will be failing in their duty to promote orderly and healthy growth of the securities market. I am conscious as supervisory functionary/ regulating body, SEBI has the duty and obligation to protect ordinary genuine investors and SEBI is empowered to do so under the SEBI Act, 1992 so as to make security market a secure and safe place to carry on the business in securities. At the same time, under the guise of supervisory intervention, SEBI cannot affect the development of the market or market oriented creativity. Intense supervision might distort the path of securities market development; but SEBI cannot be a silent spectator to unfair trade practices/manipulative market for some ulterior purpose like tax evasion etc. To find the right balance between market forces and Regulatory body's intervention, SEBI has to deal sternly with those who indulge in manipulative trading and deceptive devices to misuse the market and at the same time ensuring the development of the market.

44. Before I conclude, it is necessary to refer to the findings of SAT on 'tax planning'. SAT held that even assuming that non-genuine

synchronized trades have been entered into for the purposes of tax planning, such trade could be held objectionable only if they have resulted in influencing the market in one way or other. For its finding that every person is entitled to arrange his affairs as to avoid taxation, SAT relied upon ***Viram Investment Pvt. Ltd. and Ors. v. Securities and Exchange Board of India*** (MANU/SB/0046/2005) decided on 11.02.2005. Contention of the respondents is that transactions which have been entered into with a view to achieve tax planning are not illegal and respondents placed reliance upon ***Viram Investment Pvt. Ltd.*** **case**. The learned counsel for SEBI contended that the market cannot be manipulated by fictitious transactions either for tax planning or for some ulterior purposes like money laundering etc.

45. No grounds have been raised in the show cause notice alleging that the impugned fictitious transactions have been entered into with a view to avoid payment of tax and was an act of tax planning. Adjudicating officer also has not gone into this aspect. Hence, I am not inclined to go into this aspect, whether the impugned transactions were intended to reduce the brunt of taxation and an act of tax planning. The correctness of findings of SAT in the case of ***Viram Investment Pvt. Ltd.*** is left open.

Conclusion:-

46. Considering the reversal transactions, quantity, price and time and sale, parties being persistent in number of such trade transactions with huge price variations, it will be too 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. If the findings of SAT are to be sustained, it would have serious repercussions undermining the integrity of the market and the impugned order of SAT is liable to be set aside. On the above additional reasonings also, I agree with the conclusion allowing the appeal preferred by SEBI against the traders. I also agree with the conclusion dismissing the appeal preferred by the SEBI against the brokers.

……..J.
[R. BANUMATHI]

New Delhi;
February 08, 2018