

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA, MUMBAI

ORDER

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Under sections 11 and 11B of the Securities and Exchange Board of India Act, 1992 read with SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003, SEBI (Prohibition of Insider Trading) Regulations, 1992 and SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 in respect of Nirmal Kotecha (PAN: AEZPK2016H), In the matter of Usher Agro Limited ('UAL').

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1. **Background**

1.1. The price of the scrip of UAL witnessed a significant rise from Rs. 107.30 on August 19, 2008, to a high of Rs. 208.75 on September 11, 2008 and then a continuous decline to Rs. 84.05 on December 31, 2008.

1.2. In view of the same, the Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') conducted an investigation into the alleged irregularity in the scrip of UAL for the period August 20, 2008 to December 31, 2008 (hereinafter referred to as the '**Investigation Period**') to examine the possible violation of the provisions of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the '**SEBI Act**') and the Rules, Regulations and Guidelines made thereunder.

1.3. Based on the said investigation, a Show Cause Notice dated May 18, 2015 (hereinafter referred to as the '**SCN**') was issued against Nirmal Kotecha (hereinafter referred to as the '**Noticee**').

The SCN alleged that Nirmal Kotecha was part of a group of entities, referred to as ‘**Group 1 entities**’ in the SCN, comprising of 12 entities viz., the Noticee, Manilal Kotecha, Amol Anand Kokane, Tushar Gopal Karmokar, Super Velours Private Ltd, Chetan Shashikant Shah, Mukesh Giridhar Konde, Hetal Rajesh Patel, DKG Securities Pvt. Ltd., Nikhil Securities Ltd, Pritesh A Patel and Pandoo P Naig. The connection amongst the entities of Group 1 is given below:

| Sl. No. | Entity Name                                 | Basis of Connection  |
|---------|---|--|
| 1       | Nirmal Kotecha (Noticee)                    | <ul style="list-style-type: none"> <li>Shri Nirmal Kotecha used the mobile number 9819988816 which was registered in the name of Shri Amol Kokane.</li> <li>Om Associates is related to Shri Nirmal Kotecha as it had transferred Rs.10 Lakh to Shri Amol Kokane (front entity of Shri Nirmal Kotecha) for his trades; transferred Rs.24 Lakh to Oodnap Agrotech Ltd.(where Shri Pandoo Naig is the Director) towards allotment money for preferential issue; transferred Rs.1 crore to Shri Mukesh G Konde to meet his pay-in obligations for his trades in UAL; transferred Rs.2 crore to M/s. Om Corporation, who in turn, transferred Rs.2 crore to Shri Pritesh Patel for his trades in UAL; and Ms. Hetal Patel had transferred Rs.1.12 crore to Om Associates.</li> </ul> |
| 2       | Amol Anand Kokane                           | <ul style="list-style-type: none"> <li>Shri Amol Kokane in his statement dated February 27, 2009 claimed to have opened an account with the broker M/s. India Capital Markets Pvt. Ltd. on the recommendation of his late brother-in-law, Shri Sandeep Gavhane and that his brother-in-law was operating that account for his boss Shri Nirmal Kotecha and that they used to take his signatures on blank forms and documents.</li> <li>He had banking transactions with Om Associates.</li> </ul>   |
| 3       | Shri Pandoo P Naig/ Oodnap Agrotech Limited | <ul style="list-style-type: none"> <li>Shri Pandoo Prabhakar Naig held directorship at UAL and also at Oodnap Agrotech Ltd.</li> <li>In his statement to SEBI, he had stated that he knew Shri Nirmal Kotecha for around 3 years and through him, he knew his family and their companies.</li> <li>Oodnap Agrotech Ltd. had banking transactions with Om Associates.</li> </ul>  |
| 4       | Mukesh Giridhar Konde                       | <ul style="list-style-type: none"> <li>He had banking transactions with Om Associates. Shri Pandoo Naig, in his statement dated November 06, 2009 had stated that Shri Mukesh Konde used his business centre premises at 22, Rajabhadur Mansion, Fort, Mumbai.</li> </ul>  |
| 5       | Hetal Rajesh Patel (Noticee No.3)           | <ul style="list-style-type: none"> <li>As per Ms. Hetal Rajesh Patel's KYC with her broker, way2wealth, her mobile number was provided as 9967577028, which was the same as Shri Mukesh Konde's mobile number.</li> <li>She had banking transactions with Om Associates.</li> </ul>  |
| 6       | Chetan S Shah                               | <ul style="list-style-type: none"> <li>Shri Chetan Shah, Shri Mukesh Konde and Shri Karmokar had together visited the office of M/s.Anand Rathi Share &amp; Stock Brokers Ltd.(formerly: Anand Rathi Financial Services Ltd.) (Anand Rathi), as per the statement dated March 15, 2010 of Shri Anish Kumar, Branch Manager, Anand Rathi.</li> </ul>  |

|    |                                       |   |
|----|---------------------------------------|---|
|    |                                       | <ul style="list-style-type: none"> <li>An off market transfer of 562 shares is observed from Shri Chetan Shah to Super Velours (Director:Shri Tushar Karmokar).</li> </ul>  |
| 7  | Tushar Gopal Karmokar                 | <ul style="list-style-type: none"> <li>He is the Director of Super Velours Private Ltd.</li> <li>The Mobile number 9323790775 was given in Shri Tushar Karmokar's KYC with his broker, Anand Rathi. The same number was also mentioned in the Account Opening Form of M/s. Mint Street Estates Pvt. Ltd. (Director: Shri Pandoo Naig) with HDFC Bank, Fort branch.</li> <li>Shri Karmokar had stated in his statement dated October 15, 2009 that he was an employee of Shri. Deven Patel who was the friend of Rajesh Patel (husband of Hetal Patel).</li> </ul> |
| 8  | Super Velours Private Ltd             | <ul style="list-style-type: none"> <li>3 Lakh shares have been transferred off-market from Super Velours Pvt. Ltd. to DRB Securities Pvt. Ltd. (Shri Radha Krishna Garg is the director of DKG Securities Pvt. Ltd and his brother, Shri Gobikrishna Garg is the director in DRB Securities Pvt. Ltd.)—MCA site</li> </ul>  |
| 9  | DKG Securities Pvt Ltd (Noticee No.2) | <ul style="list-style-type: none"> <li>The Call Data Records of Shri Nirmal Kotecha, vide his cell number 9819988816 revealed that he was in touch with Shri Radha Krishna Garg of DKG Securities on his mobile number 9839084979 on an almost daily basis.</li> </ul>  |
| 10 | Manilal Kotecha                       | <ul style="list-style-type: none"> <li>Shri Manilal Kotecha is the grandfather of Shri Nirmal Kotecha. He had stated in his statement recorded at SEBI that Shri Nirmal Kotecha was handling all the investment and trading decisions and placed orders on his behalf.</li> </ul>   |
| 11 | Pritesh A Patel                       | <ul style="list-style-type: none"> <li>Pritesh A Patel had received funds from Om Associates.</li> <li>In his statement dated April 30, 2010, he had stated that Shri Pandoo Naig was his elder brother's friend's friend and also like a friend to him. Further, he had also stated that he knew Deven Patel and had met him in Mumbai twice.</li> </ul>   |
| 12 | Nikhil Securities Limited             | <ul style="list-style-type: none"> <li>An amount of Rs.50 lacs was transferred on October 17, 2008 from Shri Amol Kokane's account to the account of M/s. Nikhil Securities Ltd.</li> </ul>   |

1.4. The connections brought out in the table above are primarily pursuant to the investigation carried out by SEBI with respect to the trading of the Noticee in the scrip of Pyramid Saimira Theatre Ltd. ('PSTL'), and may therefore include some entities who have not traded in the scrip of UAL.

1.5. It was observed in the investigation that during the investigation period, the entities of Group 1 had altogether purchased 81,13,427 shares of UAL accounting for 15.20% of the market volume and sold 80,73,869 shares accounting for 15.13% of the market volume. The details of the trading carried out by the Group 1 entities is given below:

| sl. no.      | client name               | Gross Buy        | Gross Buy % to total Buy vol. | Gross Sell       | Gross Sell % to total Sell vol. | Net Volume    |
|--------------|---------------------------|------------------|-------------------------------|------------------|---------------------------------|---------------|
| 1            | DKG Securities Pvt Ltd    | 17,53,921        | 3.29%                         | 11,98,133        | 2.25%                           | 5,55,788      |
| 2            | Pritesh A Patel           | 4,71,500         | 0.88%                         | 1,48,042         | 0.28%                           | 3,23,458      |
| 3            | Chetan S Shah             | 15,94,164        | 2.99%                         | 17,20,499        | 3.22%                           | -1,26,335     |
| 4            | Mukesh G Konde            | 12,78,129        | 2.40%                         | 12,71,649        | 2.38%                           | 6,480         |
| 5            | <b>Nirmal Kotecha</b>     | <b>8,53,123</b>  | <b>1.60%</b>                  | <b>7,54,061</b>  | <b>1.41%</b>                    | <b>99,062</b> |
| 6            | Tushar Gopal Karmokar     | 6,53,688         | 1.22%                         | 6,77,966         | 1.27%                           | -24,278       |
| 7            | Hetal Rajesh Patel        | 6,50,931         | 1.22%                         | 8,78,486         | 1.65%                           | -2,27,555     |
| 8            | Super Velours Pvt. Ltd    | 4,74,966         | 0.89%                         | 10,82,028        | 2.03%                           | -6,07,062     |
| 9            | Nikhil Securities Limited | 2,59,000         | 0.49%                         | 2,19,000         | 0.41%                           | 40,000        |
| 10           | Amol Anand Kokane         | 86,372           | 0.16%                         | 86,372           | 0.16%                           | 0             |
| 11           | Manilal Kotecha           | 37,633           | 0.07%                         | 37,633           | 0.07%                           | 0             |
| <b>Total</b> | <b>Group 1</b>            | <b>81,13,427</b> | <b>15.20%</b>                 | <b>80,73,869</b> | <b>15.13%</b>                   | <b>39,558</b> |

1.6. The details of the trades of the clients amongst Group 1 to total traded quantity of the client in the scrip of UAL, during the investigation period are given below:

| CLIENT NAME (Group 1)     | Buy amongst Group | total Buy Volume | Sell amongst Group | total Sell Volume | % of trades amongst the group to total traded quantity of the client |
|---------------------------|-------------------|------------------|--------------------|-------------------|--|
| A                         | B                 | C                | D                  | E                 | F=(B+D)/(C+E)  |
| Nikhil Securities Limited | 1,39,430          | 2,59,000         | 1,98,564           | 2,19,000          | 71%  |
| Manilal Kotecha           | 12,333            | 37,633           | 26,435             | 37,633            | 52%  |
| Super Velours Pvt. Ltd.   | 1,28,402          | 4,74,966         | 3,47,416           | 10,82,028         | 31%  |
| <b>Nirmal Kotecha</b>     | <b>2,65,236</b>   | <b>8,53,123</b>  | <b>2,05,097</b>    | <b>7,54,061</b>   | <b>29%</b>   |
| Amol Anand Kokane         | 48,672            | 86,372           | 0                  | 86,372            | 28%  |
| DKG Securities Pvt. Ltd.  | 5,90,172          | 17,53,921        | 2,12,112           | 11,98,133         | 27%  |
| Mukesh G Konde            | 84,950            | 12,78,129        | 3,00,473           | 12,71,649         | 15%  |
| Tushar Gopal Karmokar     | 85,858            | 6,53,688         | 1,01,658           | 6,77,966          | 14%  |
| Hetal Rajesh Patel        | 31,293            | 6,50,931         | 62,059             | 8,78,486          | 6%   |
| Chetan Shah               | 1,28,959          | 15,94,164        | 68,242             | 17,20,499         | 6%   |
| Pritesh A Patel           | 7,001             | 4,71,500         | 250                | 1,48,042          | 1%   |
| <b>Total</b>              | <b>15,22,306</b>  | <b>81,13,427</b> | <b>15,22,306</b>   | <b>80,73,869</b>  | <b>19%</b>   |

1.7. Upon analysing the trading of the Group 1 entities amongst themselves for 15,22,306 shares, it was alleged in the SCN that the said entities had entered into self-trades and thereby contributed to the total market volume. Upon further analysing of the material collected during the investigation period, it was alleged in the SCN that out of 40 trades for 1,46,478 shares, executed

by the entities of Group 1, the buyer and seller was one and the same person for 8 trades where in 10,703 shares were traded and the trades were executed through the same stock broker on either side & the remaining 32 trades for 1,35,775 shares were executed through different brokers. It is also noted that 7 self-trades were executed from the same location for 8703 shares.

The details of the same are as under:

| Trade Date | Client Name       | Member Name                  | Counterparty Member Name   | No. of trades | Traded quantity | Same Location |                 |
|------------|-------------------|------------------------------|----------------------------|---------------|-----------------|---------------|-----------------|
|            |                   |                              |                            |               |                 | No. of Trades | Traded quantity |
| 10/10/2008 | Nirmal Kotecha    | JM Financial Services        | Indiabulls Securities Ltd. | 22            | 85016           | -             | -               |
| 15/12/2008 | Nirmal Kotecha    | JM Financial Services        | Religare Securities Ltd.   | 1             | 870             | -             | -               |
|            |                   |                              | <b>Total</b>               | <b>23</b>     | <b>85886</b>    | -             | -               |
| 11/09/2008 | DKG Securities    | UPSE Securities Ltd.         | Gee Bee Securities         | 2             | 2899            | -             | -               |
| 15/09/2008 | DKG Securities    | Gee Bee Securities .         | UPSE Securities Ltd.       | 2             | 26486           | -             | -               |
| 16/09/2008 | DKG Securities    | Fair Intermediate Investment | UPSE Securities Ltd.       | 1             | 4               | -             | -               |
|            |                   |                              | <b>Total</b>               | <b>5</b>      | <b>29389</b>    | -             | -               |
| 10/12/2008 | Hetal Patel       | Nirmal Bang Securities       | Jash Securities Pvt. Ltd.  | 2             | 9500            | -             | -               |
| 11/12/2008 | Hetal Patel       | Nirmal Bang Securities       | Jash Securities Pvt. Ltd.  | 2             | 11000           | -             | -               |
| 15/12/2008 | Hetal Patel       | Jash Securities Pvt. Ltd.    | Jash Securities Pvt. Ltd.  | 1             | 2000            | -             | -               |
|            |                   |                              | <b>Total</b>               | <b>5</b>      | <b>22500</b>    | -             | -               |
| 09/09/2008 | Mukesh Konde      | Jash Securities Pvt. Ltd.    | Jash Securities Pvt. Ltd.  | 1             | 1428            | 1             | 1428            |
| 16/10/2008 | Mukesh Konde      | Jash Securities Pvt. Ltd.    | Jash Securities Pvt. Ltd.  | 1             | 63              | 1             | 63              |
| 18/12/2008 | Mukesh Konde      | Jash Securities Pvt. Ltd.    | Jash Securities Pvt. Ltd.  | 2             | 10              | 2             | 10              |
|            |                   |                              | <b>Total</b>               | <b>4</b>      | <b>1501</b>     | <b>4</b>      | <b>1501</b>     |
| 12/11/2008 | Nikhil Securities | Globe Capital Market         | Globe Capital Market       | 1             | 5000            | 1             | 5000            |
| 16/09/2008 | Amol Kokane       | India Capital Markets        | India Capital Markets      | 1             | 36              | 1             | 36              |
| 29/08/2008 | Chetan S Shah     | Anand Rath Fin. Ser.         | Anand Rath Fin. Ser.       | 1             | 2166            | 1             | 2166            |
|            |                   |                              | <b>Grand Total</b>         | <b>40</b>     | <b>146478</b>   | <b>7</b>      | <b>8703</b>     |

1.8. In view of the above, it was alleged in the SCN that the Noticee indulged in executing self-trades resulting in no change of beneficial ownership and thereby, created artificial volume in the scrip of UAL which gave a false and misleading appearance of trading in the scrip. Therefore, it was alleged in the SCN that the Noticee had violated provisions of Regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) & (g) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (PFUTP Regulations).

1.9. In addition to the above, it was observed in the investigation that during the quarter ended March 31, 2009, Noticee held shares in various beneficiary accounts maintained with various Depository Participants. In each account, he was holding shares less than 5% of equity, but as on January 12, 2009, by aggregating the shareholding of all his accounts, his shareholding exceeded 5% of share capital of UAL. A Consolidated view of his holdings in various beneficiary accounts is given below:

| <b>Date</b>       | <b>Debit</b> | <b>Credit</b> | <b>Balance</b> | <b>Disclosure triggered on</b> | <b>% of shareholding to total shareholding</b> |
|-------------------|--------------|---------------|----------------|--------------------------------|--|
| December 31, 2008 | -            | -             | 9,99,048       | -                              | 4.70%  |
| January 12, 2009  | -            | 1,05,000      | 11,04,048      | January 12, 2009               | 5.19%  |

1.10. From the above, it was observed that on January 12, 2009, a credit of 1,05,000 shares was received in the account of the Noticee, thereby increasing his shareholding from 4.7% to 5.19%. In view of the above, it was alleged in the SCN that the Noticee had violated the provisions of Regulation 13(1) of the SEBI (Prohibition of Insider Trading) Regulations, 1992

and Regulation 7(1) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as the 'SAST Regulations').

1.11. The relevant provisions PFUTP Regulations, PIT Regulations, Takeover Regulations read as under:

**PFUTP Regulations:**

***3. Prohibition of certain dealings in securities***

*No person shall directly or indirectly—*

- (a) buy, sell or otherwise deal in securities in a fraudulent manner;*
- (b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;*
- (c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;*
- (d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.*

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

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

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

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

*.....*

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

**Takeover Regulations:**

***Acquisition of 5 per cent and more shares or voting rights of a company.***

*7. (1) Any acquirer, who acquires shares or voting rights which taken together with shares or voting rights, if any, held by him would entitle him to more than five per cent or ten per cent or fourteen per cent or fifty four per cent or seventy four per cent shares or voting rights in a company, in any manner whatsoever, shall disclose at every stage the aggregate of his shareholding or voting rights in that company to the company and to the stock exchanges where shares of the target company are listed.*

**PIT Regulations:**

***Disclosure of interest or holding by directors and officers and substantial shareholders in a listed companies - Initial Disclosure.***

**13. (1)** *Any person who holds more than 5% shares or voting rights in any listed company shall disclose to the company in Form A, the number of shares or voting rights held by such person, on becoming such holder, within 2 working days of:—*

*(a) the receipt of intimation of allotment of shares; or*

*(b) the acquisition of shares or voting rights, as the case may be.*

## **2. Reply and Hearings**

2.1. In response to the SCN, the Noticee submitted his reply dated February 20, 2018.

Considering the facts and circumstances of the case, an opportunity of personal hearing was granted to the Noticee. Mr. Amit Bikram Dey, Advocate along with Ms. Nirali S. Mehta, Company Secretary, from Mindspright Legal, appeared on behalf of the Noticee and made submissions on February 23, 2018. They submitted that they have requested for cross examination of 3 entities, vide letter dated February 20, 2018 and the same may be considered first before proceeding with the hearing. When the authorised representatives were asked to explain the delay in requesting for cross-examination (SCN issued in May 2015), authorized representatives failed to give any reasonable explanation and submitted that without the cross-examination of 3 entities, the Noticee would not be able to place his defense.

2.2. When the Authorized Representatives were requested to argue the matter on merit, they requested for a short adjournment submitting that their counsel was undergoing some medical treatment. This request was acceded to and adjournment was granted. In the hearing on October 10, 2018, Noticee along with Mr. Pradeep Sancheti, Senior Advocate appeared and made submissions. Noticee vide letter dated November 09, 2018, also submitted written submissions. In the reply dated February 20, 2018, hearing on October 10, 2018 and written submissions dated November 9, 2018, Noticee inter alia submitted that,



- out of 72 days of investigation period, the Noticee had traded on 12 days in the scrip of UAL and during which on 2 days alleged self -trades had occurred;
- the investigation in the scrip of UAL had merely relied upon the investigation conducted by SEBI in the scrip of PSTL, since, no independent investigation had been made with respect to the alleged violations in the present case, SEBI cannot rely upon the material gathered during the course of investigation in the matter of PSTL;
- the issuance of show cause from statements recorded in 2009 is belated and impermissible;
- in order to set-off the credit and debit balances, the stock of UAL through the Indiabulls account was sold and the stock of UAL through the JM financial account was bought without any intention of entering into self-trades and to reduce the cost to a minimum and the matching of trades was incidental and not intentional;
- the buy orders and sell orders were placed not for the creation of artificial volume;
- had it been the case, there wouldn't have been time difference and quantity difference in the orders placed;
- no allegation has been made with regard to synchronised trading, circular trading or artificial price manipulation, so, placing reliance on Gold Multifab V. Chairman, SEBI, no order or finding can go beyond the charge in the show-cause;
- two alleged groups comprising several entities connected to each other traded in the scrip of UAL, and all trades were independent and devoid of any collusion with the alleged entities/individuals;

- the total buy volume percentage to the buy market volume in the scrip of UAL was 1.61%, and the buy trades which matched with the alleged group entities contributed to only 0.50%;
- the trade sell volume percentage to the sell market volume in the scrip of UAL was 1.41% and the sell trades which matched with the alleged group was 0.38%;
- the allegation of violations of Regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) & (g) of the PFUTP Regulations were on the basis that the related entities traded amongst themselves and carried out self-trades resulting in no change in the beneficial ownership, thereby creating artificial volume in the scrip of UAL, and the Noticee by no means was connected with any of the aforementioned entities and also was not the one directing the trading pattern of these entities and accordingly their cumulative trading should not be used as a base for alleging PFUTP violations;
- in order to establish charges of fraudulent trading or violation of PFUTP Regulations, it is set principle of law that the parties to these trades should have colluded amongst themselves, nothing has been shown in the SCN to make good the allegation of either connection or collusion;
- in Regulations 4(a) and 4(g) of the PFUTP Regulations specific requirement of intent is there. The SCN has not provided any proof or evidence to show that there was an intent to manipulate the scrip of UAL;
- in the quarter ending March 2009, the cumulative holding increased from 4.70% to 5.19%, which warranted a disclosure under Regulation 7(1) of SAST Regulations and Regulation 13(1) of the PIT Regulations, it is not disputed that necessary disclosures were not made, however, there was no intentional violation of the same;

- Clause 35 of the Listing Agreement requires a company to disclose holding of shareholders exceeding 1%, accordingly the Noticee's name features in the said disclosure since he crossed the threshold of 1% and subsequent all the changes which have been affected in the holding of the Noticee in the scrip of UAL is also visible from these disclosures, and in essence one disclosure required under these Regulations is covered under Clause 35;
- By way of Adjudication Order No. EAU-12/ AO/SM/8-14/2018-19 dated April 11, 2018, which is the same matter, the Ld. Adjudicating Officer has exonerated the Noticee, and the same reasoning be applied in the present matter; and
- Noticee also relied on SEBI Policy dated May 16, 2017 on self-trades.

2.3. Noticee was also given an opportunity to make additional submission for updating any relevant post-hearing developments vide email dated July 16, 2019. In response to the same, the Noticee submitted that he had nothing more to submit.

### **3. Consideration**

3.1. I have carefully perused the reply to the SCN and the submissions made by the Noticee.

3.2. At the outset, before proceeding to the issues, I find it relevant to consider the objection raised by the Noticee that the investigation in the scrip of UAL has merely relied upon the investigation conducted by SEBI in the scrip of PSTL and no independent investigation has been made with respect to the alleged violations in the present case. It is stated that the investigation in UAL's scrip was an off-shoot of the investigation that was done with respect to the Noticee along with certain others in the case of PSTL. However, the focus of the investigation in PSTL was different from that of the investigation in UAL. The SCN framing

the violations against the Noticee in the present matter was post the conclusion of the separate investigation into the scrip of UAL. The said investigation report was also provided to the Noticee, and the same has been acknowledged by the Noticee in its reply. In my view, investigations as contemplated under the SEBI Act are fact finding processes and there are possibilities of commonalities/ overlaps/ connections across cases. The emergence of facts or connections between entities from a particular investigation can very well provide the background for another investigation as facts by their very nature do not change from one investigation to the other. The Noticee has no right to insist that facts brought out in the PSTL investigation against/with respect to him need to be investigated again in the UAL investigation afresh. It is relevant to note that the trades have happened more or less during the same investigation period. Therefore, I am of the view that the above objection of the Noticee is without merit.

3.3. The two issues that need to be considered to evaluate the validity of the charges made out against the Noticee in the SCN are:

- a) Whether the self-trades allegedly carried out by the Noticee amounts to fraud and market manipulation for the purpose of SEBI PFUTP Regulations?
- b) Whether the Noticee has violated disclosure obligations under SAST and PIT Regulations?

3.4. With respect to the first issue, the Noticee has submitted that the alleged self-trades were carried out only on 2 days out of the 12 trading days and the same were unintentional. Noticee further submitted that on October 10, 2008, he had traded for a total of 85,500 shares amounting to Rs.1.04 cr in the scrip of UAL through his broker Indiabulls Securities and

85703 shares amounting to Rs.1.05 cr in the scrip of UAL through his broker J M Financial Services. Further, on December 15, 2008, Noticee had traded for a total of 8,384 shares amount to Rs.8.73 lakhs through his broker J M Financial and a total of 8,360 shares amounting to Rs.8.59 lakhs through his broker Reliagre Securities. It has been submitted by the Noticee that prior to the execution of trades on October 10, 2008, the funding account maintained with Indiabulls had a debit balance of Rs. 14.96 crore, whereas there was a total credit balance of Rs. 97 lakh with JM Financial. Further, the Noticee has submitted that Indiabulls was charging a higher interest rate (24%) while JM Financial was charging a lower interest rate. It has been, thus, submitted by the Noticee that in order to set-off the credit and debit balances and to reduce his payable interest component for the funds utilized from the funding account, he sold the shares of UAL from his Indiabulls account and bought it through his JM Financial Account. It has been submitted by the Noticee that such trades resulted in counter orders being placed from the different accounts of the Noticee, and there was no intention on the part of the Noticee of entering into self-trades and the trades were not for manipulation or fraud but for lowering the interest burden from one broker to the other where he had a credit balance, without losing the shares of UAL.

- 3.5. From the very submissions of the Noticee, it is clearly evident that he was knowingly engaging in self-trades. From a perusal of the order and trade logs, it is seen that on October 10, 2008 the Noticee entered into 22 instances of self-trades within a span of four minutes. It is pertinent to note that Noticee had entered the orders through both the brokers only after 3.15 p.m., i.e. only towards the fag end of the trading hours of the day. I have also considered the miniscule time difference of few seconds between placing of buy orders and sell orders for these trades from two different stock brokers. The conduct of the Noticee, therefore,

establishes that the self-trades were not inadvertent errors but were strategically done. In view of the same, I am unable to accept the submission of the Noticee that the self-trades were unintentional.

3.6. The Noticee has also relied upon the SEBI internal policy on self-trades, which has also been referred to by the AO in its order dated April 11, 2018 bearing number EAD-12/AO/SM/8-14/2-18-19 passed in the matter of UAL under Section 15 I of the SEBI Act, 1992 read with Rule 5 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties By Adjudicating Officer) Rules, 1995 on the same set of facts. The Noticee has submitted that as he has been exonerated by the AO, the Noticee should be exonerated by applying the same reasoning in the present matter.

3.7. In this regard, it is my view that the said policy on self-trade would apply only to accidental/unintentional self-trades and not to strategically executed self-trades like the one under consideration.

3.8. Further, I note that the AO applied the test of volume traded in comparison to the total market volume to determine whether the self-trades were intentional or not. And upon the application of the said test, the AO concluded that since, the trading volume was low, the self-trades were not intentional. There is no dispute with respect to the use of the test of trading volume to determine whether self-trades were intentional or not. However, it is my view that in a given case, if from the facts, the intention is apparent, as in the present case, the volume traded is not a relevant factor. Furthermore, the present proceeding, which is under Section 11B of the SEBI Act, 1992, is independent and distinct from an Adjudication proceeding, which is under Section 15 I of the SEBI Act, 1992 read with the Adjudication

Rules, 1995. Therefore, conclusion arrived at by the Adjudicating officer is not binding on the present proceeding.

3.9. The Noticee has also stated that on October 10, 2008 when the market was falling due to crisis in the global market, a fall in the Rupee and poor IIP numbers, he had to take emergency measures to protect his portfolio and to reduce his interest burden. It is my view that the same cannot be a justification to use the market platform for shifting his interest burden. I find that the Noticee did not want to actually transfer the shares of UAL to anybody in the market, and hence adopted the strategy as explained above. Self-trades of such nature create an impression of artificial trading volume, which gives a false and misleading appearance of trading in the scrip, which can lure innocent investors into the trap. The above facts coupled with the fact that connected entities were trading heavily in the scrip drive me to the conclusion that the trading carried out by the Noticee was with an intention to create artificial trading volume, and false and misleading appearance of trading in the scrip.

3.10. The exchange platform cannot be allowed to be used for effecting transfers in a manner that benefits the Noticee at the cost of the integrity of the securities market mechanism. The market mechanism is meant for sale and purchase of securities with an objective to transfer the beneficial ownership. The intentional self-trades, thus, cut at the very root of market integrity and undermines it.

3.11. As regards the disclosure violation under PIT Regulations and SAST Regulations, it is noted that in the quarter ending March 2009, the Noticee's cumulative holding increased from 4.70% to 5.19%, which warranted a disclosure under Regulation 7(1) of SAST Regulations and Regulation 13(1) of the PIT Regulations. The Noticee has not disputed the same, and has

stated that such non-disclosure was on account of a bonafide error. The Noticee has also placed reliance on Clause 35 of the Listing Agreement, which requires a company to disclose holding of shareholders exceeding 1%. In this regard, the Noticee has submitted that since his name features in the disclosure under Clause 35 made by the company when he crossed the threshold of 1%, and all changes in his shareholding subsequently in UAL, the disclosure required under the Regulations, in essence, was covered under Clause 35. In my view, the disclosures warranted under Regulation 7(1) of the SAST Regulations, 1997 and Regulation 13(1) of the PIT Regulations, 1992 cast an obligation on the shareholder who crosses the stipulated threshold. Therefore, any disclosure by any other entity on the same matter would not act as fulfilment of such obligation. Accordingly, I find that the Noticee has violated the above mentioned disclosure obligations under the PIT Regulations and the SAST Regulations.

3.12. Thus, from the aforesaid, I conclude that the Noticee, Nirmal Kotecha has contravened the provisions of section Regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) & (g) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003. I also conclude that the Noticee has violated Regulation 7(1) of the SAST Regulations and Regulation 13(1) of the PIT Regulations. Accordingly, in my view, the Noticee is liable to be debarred from the securities market for a suitable period.

#### **4. Directions:**

4.1. In view of the above, I, in exercise of the powers conferred upon me under section 19, read with sections 11(1), 11(4) and 11B of the Securities and Exchange Board of India Act, 1992, hereby direct that the Noticee, Nirmal Kotecha (PAN: AEZPK2016H), shall be restrained



from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, or shall not associate with the securities market in any manner, whatsoever, for a period of two years.

4.2. I have taken into consideration the fact that the Noticee has been debarred since April 23, 2009 (Interim Order) till date in the matter of PSTL. I have also considered the fact that in the scrip of PSTL, I, vide my orders dated March 22, 2018 and October 10, 2018 have debarred the Noticee for a period of 14 years (starting from April 23, 2009) and 1 year respectively. Accordingly, the direction at 4.1 above shall run concurrently with the period of debarment referred to in the present paragraph.

**Date: September 18, 2019**

**Place: Mumbai**

**G. MAHALINGAM  
WHOLE TIME MEMBER  
SECURITIES AND EXCHANGE BOARD OF INDIA**