BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[Adjudication Order No. Order/GR/RK/2022-23/16087]

UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995.

In respect of

DARSHANN KAYAN

(PAN: DVUPK2409D)

In the matter of trading in Illiquid Stock Options on BSE

BACKGROUND OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') observed large scale reversal of trades in the stock options segment of Bombay Stock Exchange (here in after referred to as '**BSE**') leading to creation of artificial volume at BSE. Pursuant to a preliminary examination conducted in the Illiquid Stock Options matter, Interim order was passed by SEBI on August 20, 2015 which was confirmed vide Orders dated July 30, 2016 and August 22, 2016. In this regard, SEBI conducted an investigation into the trading activity in the illiquid stock options Segment at BSE for the period April 01, 2014 to September 30, 2015 (hereinafter referred to as "Investigation Period/IP") and completed in the year 2018. The investigation

revealed that 14,720 entities were involved in executing non-genuine trades in BSE's stock option segment during the investigation period.

2. It was observed during the course of investigation that a total of 2,91,643 trades comprising 81.38% of all the trades executed in the stock options segment at BSE during the investigation period were trades which involved reversal of buy and sell positions by the clients and counterparties in a contract on the same day. It was also observed that the aforesaid trades resulted into creation of artificial volume to the tune of 826.21 Crore units or 54.68% of the total market volume in stock options segment of BSE during the investigation period.

3. In view of the large scale reversal of trades that were observed in the illiquid stock options segment at BSE, it is alleged that these trades were non-genuine in nature. It was observed that **DARSHANN KAYAN (PAN No. DVUPK2409D)** (hereinafter referred to as "**Noticee**") was one of the various entities which indulged in execution of the non-genuine trades in the stock options segment at BSE during the above referred investigation period. It was observed that Noticee had entered into reversal trades with his counterparties which involved squaring off transactions with significant difference in sell value and buy value of the transactions.

4. Therefore, it was alleged that Noticee had executed the reversal trades which were non-genuine in nature and have created false or misleading

appearance of trading in terms of creation of artificial volume in the stock options segment at BSE and therefore, it is alleged that the Noticee has violated the provisions of Regulations 3(a), (b), (c), (d) and Regulation 4(1), 4(2) (a) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Markets) Regulations, 2003 (here in after referred to as “PFUTP Regulations”). In view of the above, adjudication proceedings have been initiated against the Noticee under the provisions of section 15 HA of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as ‘SEBI Act’).

APPOINTMENT OF ADJUDICATING OFFICER

5. While disposing of the aforesaid interim order vide final order dated April 05, 2018, it was considered and decided that appropriate action would be initiated against the said 14,720 entities in a phased manner. Further, during the course of hearing in the case of **R. S. Ispat Ltd Vs SEBI**, the Hon’ble Securities Appellate Tribunal (SAT), vide its Order dated October 14, 2019, inter alia observed that *“SEBI may consider holding a Lok Adalat or adopting any other alternative dispute resolution process with regard to the Illiquid Stock Options”.*

6. Accordingly, a Settlement Scheme was framed under the SEBI (Settlement Proceedings) Regulations, 2018, which provided one-time opportunity for settlement of proceedings in the Illiquid Stock Options matter. The said scheme was kept open from August 01, 2020 till December 31, 2020.

Adjudication proceedings were initiated against those entities who had not availed of the opportunity of settlement.

7. In this regard, SEBI, after being satisfied that there are sufficient grounds to inquire into the affairs and adjudicate upon the alleged violations as mentioned above inter-alia in respect of Noticee, had appointed the undersigned as Adjudicating Officer ('**AO**') under section 19 read with section 15-I(1) of the SEBI Act, 1992 (hereinafter referred to as "**SEBI Act**") and rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter, referred to as "**Adjudication Rules, 1995**") to conduct adjudication proceedings in the manner specified under rule 4 of Adjudication Rules, 1995 read with section 15-I (1) and (2) of SEBI Act, and if satisfied that penalty is liable, impose such penalty as deemed fit in terms of rule 5 of Adjudication Rules, 1995 and section 15HA of SEBI Act.

SHOW CAUSE NOTICE, REPLY AND HEARING

8. A Show Cause Notice with reference no. SEBI/HO/EAD/EAD4/P/OW/2021/1083/1 dated January 07, 2022 (hereinafter referred to as '**SCN**') was issued to the Noticee under rule 4(1) of the Adjudication Rules to show-cause as to why an inquiry should not be initiated against him and why penalty should not be imposed under section

15HA of the SEBI Act, 1992 for the violations alleged to have been committed by Noticee.

9. It was *inter alia* alleged in the SCN that the Noticee had executed 6 non genuine trades in 3 Stock Options contracts which resulted in artificial volume of total 12,55,798 units. Summary of dealings of the Noticee in 3 Stock Options contracts, in which the Noticee allegedly executed non genuine trades during the I.P, is as follows:

S. No.	Contract Name.	Avg. Buy Rate (Rs)	Total Buy Volume (No. of units)	Avg. Sell Rate (Rs)	Total Sell Volume (No. of units)	Total Artificial Volume Generated(No. of units)	% of Non Genuine trades of Noticee in the contract to Noticee's Total trades in the Contract	% of Non Genuine trades of Noticee in the contract to Total trades in the Contract	% of Artificial Volume generated by Noticee in the contract to Noticee's Total Volume in the Contract	% of Artificial Volume generated by Noticee in the contract to Total Volume in the Contract
1	GMRI15APR12.00CE	2	330228	3.2	330228	660456	100	25	100	31.86
2	GMRI15APR20.00PE	3.2	247671	4.8	247671	495342	100	100	100	100
3	HPCL15APR640.00PE	5.5	50000	25.5	50000	100000	100	4.26	100	12.15

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

(a) The Noticee had executed non genuine trades in 3 contracts, wherein all trades of Noticee in the said 3 contracts were non genuine trades.

(b) No. of non-genuine trades of the Noticee had significantly contributed to total no. of trades from the market in the above contracts, as 4.26% to 100% of the trades that happened in the three contracts were due to non-genuine trades executed by the Noticee.

(c) The entire 100% of volume generated by Noticee in all of the above contracts was artificial volume, and further, the percentage of artificial volume generated by the Noticee in the above contracts to the total volume from the market in said contracts was in the range of 12.15% to 100%. Therefore, substantial volume generated by the Noticee in each of the above contracts was artificial volume.

(d) Non genuine trades executed by the Noticee in above contracts had significant difference in buy rates and sell rates considering that the trades were reversed on same day.

11. The aforesaid SCN was served on the Noticee via Speed Post Acknowledgement Due (SPAD) dated January 13, 2022. The proof of service is on record.

12. The Noticee vide email dated January 15, 2022 filed reply to the SCN via his Authorized Representative (AR).

13. In the interest of natural justice and in order to conduct an inquiry in terms of Rule 4 (3) of the Adjudication Rules, vide hearing Notice dated January 25, 2022 issued through email, the Noticee was granted an opportunity of personal hearing on February 01, 2022 at 11:00 AM through video conferencing on the Webex platform. The AR of the Noticee attended the said hearing. During the course of hearing, the AR reiterated the submissions made by the Noticee in the aforesaid email and sought time till February 16, 2022 to make post hearing submissions which was

granted. The Noticee made following submissions vide letter dated 14th January, 2022.

a) *There is no nexus directly or indirectly with the counterpart.*
b) *SEBI has not provided any evidence or proof to show my trades are fraudulent. None of the said PFUTP regulations are attracted in the present case.*
c) *The trades were executed on the floor of a premier exchange bound by risk management systems and with full compliance within all rules and regulations of the exchange. At no point was there any warning with regards to the scrip traded by me.*
d) *The trades were done in the normal course of business with cross verifiable prices from the NSE.*
e) *None of the trades are defective in nature or have any impact on investors or their investing decisions which does not fit into the definition of fraud.*
f) *SEBI and BSE have themselves permitted and opened various Illiquid and out of the money options for trading and it is natural for investors to attempt to exploit any mispricing in the same.*

CONSIDERATION OF ISSUES AND FINDINGS

14. I have carefully perused the charges levelled against the Noticee and the documents / material available on record. The issues that arise for consideration in the present case are:

(a) Whether the Noticee has violated provisions of regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of PFUTP Regulations, 2003?

(b) Does the violation, if any, attract monetary penalty under section 15HA of the SEBI Act, 1992?

(c) If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in section 15J of the SEBI Act, 1992?

15. Before proceeding further, I would like to refer to the relevant provisions of the PFUTP Regulations, 2003 as below:

PFUTP Regulations, 2003

3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

(a) buy, sell or otherwise deal in securities in a fraudulent manner;

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

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

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

4. Prohibition of manipulative, fraudulent and unfair trade practices

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

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

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

Issue No.1: Whether the Noticee has violated provisions of regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of PFUTP Regulations, 2003?

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

17. I note from the trade log of the Noticee that the Noticee had traded in 3 unique contracts in the stock options segment of BSE during the IP. It is

observed that the Noticee had executed 6 non-genuine trades in 3 contracts. I further note that the above mentioned trades of the Noticee had resulted in the creation of artificial volume of 12,55,798 units in the said 3 contracts. Summary of non-genuine trades of the Noticee is as follows:

S. No.	Contract Name.	Avg. Buy Rate (Rs)	Total Buy Volume (No. of units)	Avg. Sell Rate (Rs)	Total Sell Volume (No. of units)	Total Artificial Volume Generated(No. of units)	% of Non Genuine trades of Noticee in the contract to Noticee's Total trades in the Contract	% of Non Genuine trades of Noticee in the contract to Total trades in the Contract	% of Artificial Volume generated by Noticee in the contract to Noticee's Total Volume in the Contract	% of Artificial Volume generated by Noticee in the contract to Total Volume in the Contract
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3	HPCL15APR640.00PE	5.5	50000	25.5	50000	100000	100	4.26	100	12.15

18. It is noted that the Noticee had executed non-genuine trades in 3 contracts, wherein the percentage of non-genuine trades of the Noticee in stock options contracts to total trades in the contracts was in the range of 4.26% to 100% in the aforesaid contracts. Further, artificial volume generated by Noticee in the contracts amounted to the entire 100% of total volume generated by him in all the contracts. It is also noted that artificial volume generated by the Noticee contributed significantly viz. 12.15% to 100% of the total volume from the market in the said contracts. Non-genuine trades executed by the Noticee in the above contracts had significant difference in buy rates and sell rates considering that the trades were reversed on the same day.

19. I note from the trade log that the trades executed by the Noticee in a contract were squared up within a short span of time with his counterparties.

20. The same is illustrated through the dealings of the Noticee in the contract viz, "GMRI15APR20.00PE" during the Investigation Period, mentioned as follows:

Trade Date	**Client Name**	**CP Client Name**	**Trade Time**	**Trade Rate (Rs.)**	**Traded Quantity**
29/04/2015	DARSHANN KAYAN	AMBICA CAPITAL MARKETS LIMITED	13:44:16.105840	3.20	247671
29/04/2015	AMBICA CAPITAL MARKETS LIMITED	DARSHANN KAYAN	13:46:53.517547	4.80	247671

The Noticee on April 29, 2015 at 13:44:16 hrs entered into 1 buy trade with counterparty viz. Ambica Capital Markets Limited for 2,47,671 units at the rate of Rs 3.20 per unit in the contract GMRI15APR20.00PE. Thereafter, on the same day, Noticee at 13:46:53 hrs entered into 1 sell trade with same counterparty for 247671 units at the rate of Rs 4.80 per unit in the same contract. It is noted that while dealing in the said contract during the I.P., the Noticee executed reversal trades with same counterparty viz. Ambica Capital Markets Limited on the same day and with significant price difference in buy and sell rate. Thus, the Noticee, through his dealing in the contract viz. "GMRI15APR20.00PE" during the I.P., executed non genuine trades which was 100% of the total trades from the market in the said contract during the I.P., and thereby, Noticee generated artificial volume of

4,95,342 units which was 100% of the volume traded in the said contract from the market during the I.P.

21. The non-genuineness of these transactions executed by the Noticee is evident from the fact that there was no commercial basis as to why, within a short span of time, the Noticee reversed the position with his counterparties with significant price difference. I note from the trade log of the Noticee that the time taken by the Noticee for reversing the non-genuine trades ranged from 6 seconds to 116 seconds, on the same day. Such a short span of time taken for reversing the trades in an illiquid stock option contract suggests the non-genuineness of these trades executed by the Noticee. The fact that the transactions in a particular contract were reversed with the same counterparties indicates a prior meeting of minds with a view to execute the reversal trades at a pre-determined price. Since these trades were done in illiquid option contracts, there was no trading in the said contract and hence, there was no price discovery in the strictest terms. The wide variation in prices of the said contracts, within a short span of time, is a clear indication that there was pre-determination in the prices by the counterparties while executing the trades. Thus, it is observed that Noticee had indulged in reversal trades with his counterparties in the stock options segment of BSE and the same were non-genuine trades.

22. The Noticee has contented that there is no nexus directly or indirectly with the counterparty and none of the trades were defective in nature or had any

impact on investors or on their investing decisions, which did not fit into the definition of fraud. In this regard, I note that it is not a mere coincidence that Noticee could match his trades with the same counterparties with whom it had undertaken the first leg of the respective trades. This is the outcome of meeting of minds elsewhere and it was a deliberate attempt to deal in such a fashion. Here I would like to rely on the judgment of the Hon'ble Supreme Court in **SEBI v Kishore R Ajmera** (AIR 2016 SC 1079) decided on February 23, 2016, wherein it was held that - *"…in the absence of direct proof of meeting of minds elsewhere in synchronized transactions, the test should be one of preponderance of probabilities as far as adjudication of civil liability arising out of the violation of the Act or provision of the Regulations is concerned. The conclusion has to be gathered from various circumstances like that volume of the trade effected; the period of persistence in trading in the particular scrip; the particulars of the buy and sell orders, namely, the volume thereof; the proximity of time between the two and such other relevant factors. The illustrations are not exhaustive..."*

23. Further, the Hon'ble Supreme Court had held in the same matter that – *"It is a fundamental principle of law that proof of an allegation levelled against a person may be in the form of direct substantive evidence or, as in many cases, such proof may have to be inferred by a logical process of reasoning from the totality of the attending facts and circumstances surrounding the allegations/charges made and levelled. While direct evidence is a more certain basis to come to a conclusion, yet, in the absence thereof the Courts*

cannot be helpless. It is the judicial duty to take note of the immediate and proximate facts and circumstances surrounding the events on which the charges/allegations are founded and to reach what would appear to the Court to be a reasonable conclusion therefrom. The test would always be that what inferential process that a reasonable/prudent man would adopt to arrive at a conclusion."

24. I note in this regard that direct evidence is not forthcoming in the present matter as regards to meeting of minds or collusion of the Noticee with other entities. However, I note that the trading behaviour of the Noticee makes it clear that aforesaid non-genuine trades could not have been possible without meeting of minds at some level. In this context, I deem it appropriate to refer to the judgement of the Hon'ble SAT order dated July 14, 2006, in the matter of **Ketan Parekh vs. SEBI** (Appeal no. 2/2004), wherein the Hon'ble SAT has held that - *"The nature of transactions executed, the frequency with which such transactions are undertaken, the value of the transactions, the conditions then prevailing in the market are some of the factors which go to show the intention of the parties. This list of factors, in the very nature of things, cannot be exhaustive. Any one factor may or may not be decisive and it is from the cumulative effect of these that an inference will have to be drawn.".*

25. I place my reliance on the judgment of Hon'ble Supreme Court in the matter in respect of **SEBI v Rakhi Trading Private Limited** (Civil Appeal Nos.

1969, 3174-3177 and 3180 of 2011 decided on February 8, 2018), in which the Hon'ble Supreme Court held that - *"Considering the reversal transactions, quantity, price and time and sale, parties being persistent in number of such trade transactions with huge price variations, it will be too naive to hold that the transactions are through screen-based trading and hence anonymous. Such conclusion would be over-looking the prior meeting of minds involving synchronization of buy and sell order and not negotiated deals as per the board's circular. The impugned transactions are manipulative/deceptive device to create a desired loss and/or profit. Such synchronized trading is violative of transparent norms of trading in securities…..".*

26. Further, the Hon'ble SAT in its judgement dated September 14, 2020 in the matter of **Global Earth Properties and Developers Pvt Ltd** relied upon the aforesaid judgment of Hon'ble Supreme Court and held that, *"It is not a mere coincidence that the Appellants could match the trades with the counter party with whom he had undertaken the first leg of respective trade. In our opinion, the trades were non-genuine trades and even though direct evidence is not available in the instant case but in the peculiar facts and circumstances of the present case there is an irresistible inference that can be drawn that there was meeting of minds between the Appellants and the counter parties, and collusion with a view to trade at a predetermined price."*

27. With regards to the contention of the Noticee that SEBI didn't provide any evidence or proof to show that his trades were fraudulent and thus none of the said PFUTP regulations are attracted in this case. In this regard, I refer to the relevant portions of the Judgement of the Hon'ble Supreme Court of India in **SEBI vs. Rakhi Trading Pvt Ltd.**

Pronounce by His Lordship Justice Kurian Joseph

"1. Fairness, integrity and transparency are the hallmarks of the stock market in India.

35.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.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.In the instant case, through reverse trades, there was no genuine change of rights in the contract.... From the facts before us, it is clear that the traders in question did not intend to transfer beneficial ownership and therefore these trades are non genuine.

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.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.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."*

Pronounced by Her Ladyship Justice R. Banumathi

"25. In the quasi-judicial proceeding before SEBI, the standard of proof is preponderance of probability.

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.

32.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.

35. 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. 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.

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.

28. I now turn to the relevant portions of the Judgement of the Hon'ble SAT in **Shivam Investments vs. SEBI**

"6. ...The scope of the term 'fraud' as defined above is wide enough to take in its sweep any act which disturbs the equilibrium of the market. It is not necessary that the fraudulent act should result in price Manipulation. There are other several wrong doings envisaged in the definition of fraud as mentioned above. So the contention of the appellant's learned

representative that creation of artificial volumes in the market cannot be regarded as a wrong doing is devoid of any substance....The only defence of the appellant's learned representative is that the trades represent only those on the National Stock Exchange of India Limited and they are a small percentage of the total volume traded in the market and there was no adverse impact on the market. We are

of the view that in the facts and circumstances of this case, the volume of trades, as contended by the appellant, is not relevant since the wrong doing stands established."

29. Therefore In reference to the judgments cited above and considering the fact that the Noticee has not disputed execution and subsequent reversal of trades as alleged in the SCN and I note that the allegations pertaining to the violation of impugned provisions of PFUTP Regulations, 2003 by the Noticee depends upon the trading pattern exhibited by the Noticee which indicates its manipulative intent i.e. such trades with price differentials have been deliberately structured for manipulative purposes as one party to the contract had deliberately foregone profitable proposition at the time of executing trade. Such pattern completely runs contrary to economic rationale of any investor to buy at lesser price and sell at higher price. Any rational investor would never deal in the market to deliberately register loss to facilitate buyer to profit at the time of entering trades. Had the counterparties for trades of the Noticee been different, intraday squaring of positions would not have been possible as no genuine counter party

investor would ever forego profits. The fact that the counterparties are same, corroborates that the trades were not genuine and executed for manipulative purposes. Therefore, considering the fact that the Noticee has not disputed execution and subsequent reversal of trades as alleged in the SCN and the trading behaviour of the Noticee confirms that such trades were not normal and wide variation in prices of the trades in the same contract in a short time without any basis. Hence, execution of non-genuine trades and creation of artificial volume indicate that these acts were done deliberately by the Noticee while dealing in securities. Therefore, the contentions of the Noticee in this regard are without merits.

30. The Noticee has also contented that the trades were executed on the floor of a premier exchange bound by risk management systems and with full compliance within all rules and regulations of the exchange. At no point was there any warning with regards to the scrip traded by him. Further the trades were done in the normal course of business with cross verifiable prices from the NSE and that SEBI and BSE have themselves permitted and opened various Illiquid and out of the money options for trading and it thus it was natural for investors to attempt to exploit any mispricing in the same. In this regard, I note that stock exchange merely provides a platform for carrying out the trades and the clearing corporation affiliated with exchange handles the confirmation, settlement and delivery of transactions, however, the obligation to ensure genuineness of trades as regards instant considerations lies squarely on the Noticee. I also note that instant SCN levies the allegations against Noticee, and that permitting of trading by

stock exchange cannot be a ground to absolve the Noticee from his obligation to ensure genuineness of trades executed on exchange platform. Thus, the contention of the Noticee in this regards is not tenable.

31. Further, with regard to the above contentions, it has already been established in the preceding paragraphs, total 2,91,643 trades comprising substantial 81.38% of all the trades executed in stock options segment of BSE during the IP were non genuine trades. The aforesaid non-genuine trades resulted into creation of artificial volume to the tune of 826.21 crore units or 54.68% of the total market volume in stock options segment of BSE during the IP. It was observed that the Noticee was one of the various entities who indulged in execution of reversal trades in stock options segment of BSE during the IP. Further almost in all the aforesaid illiquid stock option trades there was negligible participation by the public. Hence, it would be appropriate to consider the impact of these transactions in *toto.* Therefore, I reject the contentions of Noticee in this regard.

32. Therefore, the trading behaviour of the Noticee confirms that such trades were not normal and wide variation in prices of the trades in the same contract in a short time without any basis for such wide variation, all indicate that the trades executed by the Noticee were not genuine trades and being non-genuine, created an appearance of artificial trading volumes in respective contracts. In view of the above, I find that the allegation of violation of regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of PFUTP Regulations, 2003 by the Noticee stands established.

Issue No.2: Does the violation, if any, attract monetary penalty under Section 15HA of the SEBI Act?

33. Considering the finding that the Noticee as mentioned above has executed non-genuine trades resulting in the creation of artificial volume, thereby violating provisions of Regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of PFUTP Regulations, 2003 and in terms of the judgment of the Hon'ble Supreme Court of India in the matter of **SEBI Vs. Shri Ram Mutual Fund** [2006] 68 SCL 216(SC) decided on May 23, 2006 held that - *"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant…",* I am convinced that it is a fit case for imposition of monetary penalty on the Noticee under the provisions of Section 15HA of the SEBI Act which reads as under:

*[1][**Penalty for fraudulent and unfair trade practices.***

15HA. If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty [2][which shall not be less than five lakh rupees but which may extend to twenty - five crore rupees or three times the amount of profits made out of such practices, whichever is higher].

[1] Inserted by the SEBI (Amendment) Act, 2002, w.e.f.29-10-2002.

[2] Substituted for the words ―twenty-five crore rupees or three times the amount of profits made out of such failure, whichever is higher ‖ by the Securities Laws (Amendment) Act, 2014, w.e.f. 08-09-2014

Issue No.3: If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in Section 15J of the SEBI Act?

34. While determining the quantum of penalty under section 15HA of the SEBI Act, it is important to consider the factors relevantly as stipulated in section 15J of the SEBI Act which reads as under:-

Factors to be taken into account by the adjudicating officer.

15J. While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to an investor or group of investors as a result of the default;

(c) the repetitive nature of the default.

Explanation.—For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 15A to 15E,clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.

35. I observe, that the material available on record does not quantify any disproportionate gains or unfair advantage, if any, made by the Noticee and the losses, if any, suffered by the investors due to such violations on part of the said Noticee. However, Noticee has entered into 6 non-genuine

trades in 3 stock option contracts which demonstrates the repetitive nature of default on his part.

36. Therefore, I note that Noticee indulged in execution of reversal trades in stock options contracts in the IP which were non-genuine and created false and misleading appearance of trading in terms of artificial volumes in stock options, leading to violation of regulation 3(a),(b),(c),(d) and 4(1),(2)(a) of the PFUTP Regulations, 2003.

ORDER

37. Having considered all the facts and circumstances of the case, the material available on record, the factors mentioned in section 15J of the SEBI Act, 1992 and in exercise of power conferred upon me under section 15-I of the SEBI Act, 1992 read with rule 5 of the Adjudication Rules, 1995, I hereby impose following penalty under section 15HA of the SEBI Act, 1992 on the Noticee:

Name of the Noticee	**Violation provisions**	**Penalty**
Darshann Kayan PAN: DVUPK2409D	Regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of PFUTP Regulations, 2003	Rs 5,00,000/- (Rupees Five Lakh only)

I am of the view that the said penalty is commensurate with the lapse/omission on the part of the Noticee.

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

ENFORCEMENT → Orders → Orders of AO → PAY NOW

39. The said demand draft or forwarding details and confirmations of e-payments made (in the format as given in table below) should be forwarded to “The Division Chief, Enforcement Department (EFD1 – DRA I), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C –4 A, “G” Block, Bandra Kurla Complex, Bandra (E), Mumbai –400 051.

1. Case Name:	
2. Name of the Noticee:	
3. PAN No. of the Noticee	
4. Date of payment:	
5. Amount paid:	
6. Transaction no.:	
7. Bank details in which payment is	
8. Payment is made for: (like penalties/ disgorgement/ recovery/ settlement amount etc.)	

40. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, SEBI may initiate consequential actions including but not limited to recovery proceedings under section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest

thereon, *inter alia*, by attachment and sale of movable and immovable properties.

41. In terms of the provisions of rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticee and also to the Securities and Exchange Board of India.

Date: April 22, 2022 **G RAMAR**

Place: Mumbai **ADJUDICATING OFFICER**