BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

ADJUDICATION ORDER NO.: Order/DM/DR/2021-22/15005

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

In respect of:

Kalpana Agarwala

PAN: ACRPA9377M

In the matter of dealings in Illiquid Stock Options at BSE

FACTS 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 the Bombay Stock Exchange (hereinafter referred to as "**BSE**") leading to the alleged creation of artificial volume in the stock options segment. In this regard, SEBI conducted an investigation into the trading activity in the illiquid Stock Options segment at the BSE for the period April 01, 2014 to September 30, 2015 (hereinafter referred to as "**Investigation Period**").

2. It was observed during the course of investigation that a total of 2,91,744 trades comprising 81.41% of all the trades executed in the Stock Options Segment at the 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 observed that Ms. Kalpana Agarwala (hereinafter referred to as "**Noticee**") was one such client whose reversal trades involved squaring off open positions with a significant difference without any basis for such change in the contract price. The aforesaid reversal trades allegedly resulted into generation of artificial volumes, leading to allegations that the Noticee had violated theprovisions of regulations 3(a),(b),(c),(d) and regulations 4(1),4(2)(a) of the SEBI (Prohibition of Fraudulent and Unfair Trading Practices related to Securities Markets) Regulations, 2003 (hereinafter referred to as "**SEBI PFUTP Regulations**").

APPOINTMENT OF ADJUDICATING OFFICER

3. SEBI initiated adjudication proceedings and appointed the undersigned as Adjudicating Officer under section 15-I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act**") read with rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as "**Adjudication Rules**") vide order dated July 02, 2021 to inquire into and adjudge under section 15HA of the SEBI Act against the Noticee for the alleged violation of the aforesaid provisions of SEBI PFUTP Regulations. The appointment of AO was communicated vide order dated July 06, 2021.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. A Show Cause Notice bearing reference no. SEBI/HO/IMD7/DM/DR/OW/18242/2021 dated August 06, 2021 (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 the Noticee and why penalty should not be imposed on the Noticee under Section 15HA of the SEBI Act for the violations alleged to have been committed by the Noticee.

5. The allegations levelled against the Noticee in the SCN, inter alia, are summarised below:

   "….

   (a) The Noticee was one of the entities which indulged in reversal trades which allegedly created false and misleading appearance of trading, generating artificial volumes in the Stock Options Segment of BSE during the investigation period. The Noticee is alleged to have engaged in reversal trades through 02 (two) trades in 01 (one) unique contract, which led to generation of alleged artificial volume of 48,000 units.
   (b) The trades entered by the Noticee were reversed on the same day with same counterparty at a substantial price difference without any basis for significant change in the contract price which indicates that these trades are artificial and are non- genuine in nature.

   …."

6. A summary of dealings of Noticee in 01 (one) Stock Options contract in which the said Noticee allegedly executed reversal trades during the investigation period, is as follows: -

Table 1: Summary of dealings in contracts wherein the Noticee executed reversal trades

S. No.	Contract Name	Avg. Sell Rate (Rs.)	Total Sell Volume (no. of units)	Avg. Buy Rate (Rs.)	Total Buy Volume (no. of units)	% 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.	ALBK15MAR105.00PEW3	4.00	24,000	0.05	24,000	100.00%	3.11%

Note: "Unit" refers to lot size in contract multiplied by number of contracts traded.

7. The abovementioned reversal trade and volumes are illustrated through the dealings of Noticee in one contract viz., "ALBK15MAR105.00PEW3" during the investigation period, as follows: -

   (a) During the investigation period, 2 (two) trades for 48,000 units were executed by the Noticee in the said contract on 19/03/2015.

   (b) While dealing in the said contract on 19/03/2015, at 09:41:30:30 hrs the Noticee entered into a sell trade with JRK Vinimay Pvt. Ltd. for 24,000 units at Rs. 4.00 per unit. At 15:17:58:67 hrs the Noticee entered into a buy trade with same counterparty for 24,000 units at Rs.0.05 per unit.

   (c) The Noticee's two trades while dealing in the aforesaid contract during the investigation period allegedly generated artificial volume of 48,000 units, which made up 3.11% of total market volume in the said contract during this period.

8. In view of the foregoing, it is alleged that Noticee, by indulging in execution of non-genuine reversal of trades in Stock Options with same entity on the same day, created false and misleading appearance of trading in stock options and therefore

allegedly violated Regulation 3(a), (b), (c), (d), 4(1), 4(2)(a) of SEBI PFUTP Regulations.

…."

9. The aforesaid SCN was served on the Noticee via Speed Post Acknowledgement Due ("SPAD") and was returned undelivered. However, SCN was also sent vide email dated August 06, 2021 to the Noticee. Thereafter, the Noticee, vide email dated August 20, 2021, acknowledged the receipt of the SCN and submitted the following:
    a. *I hereby submit that SEBI has not provided any evidence/proof in it's notice to show that the trades done by me were fraudulent. The trades were executed through my SEBI registered broker on the floor of BSE with due compliance to all the rules and regulations of the exchange at that time.*
    b. *At no point of time was there any warning/observation from the exchange/regulator about the contracts which were executed by me.*
    c. *The observation that the contracts are illiquid is totally incorrect, I hereby submit that the underlying script in which I traded are highly liquid in nature and frequently traded in market.I traded in contracts of underlying scrips, most of these securities were part of BSE Index at that time, thus the allegation that I deliberately traded in only those options that were illiquid in nature is unfair.*
    d. *For the transaction to be termed fraudulent, as per the definition of fraud, there has to be inducement and SEBI has not even alleged inducement. There is no nexus, directly or indirectly with the counterparty brokers or the clients in the present matter and SEBI has not even alleged this. The trades were done by me at the screen based platform of BSE without knowing the counterparty broker/client.*
    e. *The trades in question were in the normal course of business and there is nothing amiss in the trades executed by it.*
    f. *None of the trades are deceptive in nature or have any impact on the investors or their investment decision which is a sine qua non of fraud.*
    g. *Noticee submitted that BSE and SEBI have themselves allowed and permitted trading in Options for 'far months' with a strike price which are at a large variance to current market price. Such parameters are laid down is clearly indicative of fact that options will always be 'in the money' and 'out*

of the money' and since regulators have themselves permitted trading in same, no adverse inference be drawn against it in this regard.

h. *Stock Exchanges regularly come out with list of illiquid scripts in cash segment. However,no such list is issued by exchanges or regulator for dealing in stock options contracts. Thus,to fasten the responsibility or allege a single entity that it traded in illiquid option is unwarranted and unfair.*

i. *Any kind of alleged fictitious/manipulative trade in cash segment may create distorted impression in minds of investors that price of scrip is rising/falling who may invest/divest from said scrip. However, in case of option segment and for every party who makes profit there is a counterparty who makes a loss. There is no question of transfer of beneficial ownership in option segment since at end of settlement cycle on net loss/profit is adjusted, Therefore, allegation of creation of artificial or reversal trade is of no consequence in option segment of exchange.*

j. *I did not act in concert or in collusion with anyone and nor part of any group of connected with anyone for the purpose of influencing price or for any manipulative activity. It is an admitted position that there is no connection whatsoever between it and counterparties to the impugned trades.*

k. *It is submitted, that provisions of Regulations 3 and 4 of PFUTP Regulations 2003 not attracted in our case. The essence of these Regulations 3 and 4 in presence of 'fraud' as defined in the exhaustive definition in Regulation 2(c) of PFUTP definition is 'to induce another person or his agent to deal in his securities'. As we have already explained, there is no material or record brought out in the notice, or in the price movement of the impugned options contracts and the underlying securities, that our trades were intend to induce or that the trades actually induced, any one to trade taking a leaf out of our trades.in the absence of any such concrete averment in Notice, allegation of fraud cannot be levelled blankly. There must be solid material such as a person alleging that he has been induced by us by our trades or circumstances show the effect of alleged inducement. Similarly, unfair trade practice has to be specifically alleged as to how it is unfair trade practice, and not just implied. Both are absent in our case. It is requested that should such material exist at your end, we must be offered an opportunity to rebut the same. It is thus submitted that Regulations 3 and 4 Of PFUTP Regulations 2003 have no application in our case.*

l. The inordinate delay in issuing Notice has caused prejudice to the noticee as in the meanwhile valuable rights have accrued upon the noticee. Thus, the Notice deserves to be withdrawn as issued beyond a reasonable period.

m. In view of the above submissions, it is requested that the enquiry proceedings and the Penalty proceedings u/s 15 HA be dropped on the grounds set out in our representations.

10. In the interest of natural justice and in terms of the Adjudication Rules, the Noticee was provided with an opportunity of personal hearing in the matter on September 15, 2021 through the online Webex platform. Mr. Rajesh Khandelwal, Advocate appeared as the Authorised Representative ("AR") on behalf of the Noticee on the stipulated date of hearing. During the course of the hearing, the AR reiterated the submissions made by the Noticee in her reply dated August 20, 2021. Further, the AR submitted that they would rely on the detailed submissions made earlier and would also submit additional details.

11. Subsequent to the hearing, the AR vide his email dated September 22, 2021 submitted the following :

a. Further to the personal hearing granted to her by your good self on 15th September, 2021 and in addition to her reply to the above SCN, the noticee repeats and reiterates what has been stated all along by her including what has been stated in her reply 1 and during the hearing held on 15th September, 2021.

b. The Noticee further respectfully submits that matching of merely one trade (includes buy and sell position of one same trade) may not be considered as artificial and fraudulent in any manner. It could be just a matter of chance that one trade gets matched on either side of buy and sell with same party. Neither the amount of profit is so substantial to attract any adverse inference. Merely 24,000 units were bought and sold by the Noticee for a profit of Rs 3.95 per unit thereby giving the Noticee a profit of Rs 94,800/- which is too miniscule and from one off trade with contra positions. Therefore, no adverse inference be drawn for the same qua the Noticee.

c. Further, the Noticee places reliance on the observation of the Hon'ble Securities Appellate Tribunal (SAT) in case of Narendra Vallabhj iBahuva Vs. SEBI (Appeal no. 516 of 2019 decided on 14.07.2021). Wherein in para

9 of the order, Hon'ble SAT has held that one single trade cannot lead to a conclusion that the appellant was involved in fraudulent execution of trades with a manipulative intent.

d. *The impugned trades were executed on the floor of exchange through a registered stock broker who has the requisite software as approved by the Exchange. The entire trading process is like a blind mechanism as far as buying and/or selling of stocks by a client through a broker is concerned. As a client, the Noticee had only instructed broker to buy or sell stocks specifying the quantity and the name of the scrip. Thereafter, it was impossible for the Noticee to know who is/are the counter parties to trades. Even a broker is not aware of the counter party to any trade carried out. Neither did the Noticee execute trades through her terminal nor was she aware of the mechanism by which a stock broker trades in the market for its clients. Further, the Noticee has made due payments for purchases and have received payments against sale by her.*

e. *The trading system prevents a member who places any orders from identifying the counterparty member or client and thus ensures anonymity of trades. The system does not even display details of all the pending orders; rather it only displays the 5 best pending orders. Therefore, at any given point of time, it is impossible to even verify the party & counter party of these transactions. The Noticee further states that there was no alert from the broker or the Exchange which would prompt her to take any caution or create an alarm to stop trading. Under these circumstances, it is erroneous to come to a conclusion that the Noticee had executed non-genuine trades which resulted in artificial volume.*

f. *The trades entered into by the Noticee were through her stock broker and that she had a bonafide belief that her stock broker would act within the prescribed parameters of law as applicable.*

g. *The Noticee submits that the stock broker was in a much better and strategic position to understand the technicalities of the stock market and the scrips. Admittedly the stock broker never alerted/estopped the Noticee from trading in the alleged illiquid scrips. Hence, by any stretch of imagination it was beyond the knowledge of the Noticee about the said scrips being ill-liquid.*

h. *The Noticee further states that to the best of her knowledge the trading in her account in stock options on the BSE were executed in a legitimate manner.*
i. *The Noticee submits that these scripts, in which she traded, were at no time banned and hence there was no bar on trading in the said scripts. Therefore it would be too farfetched for the Noticee to assume that these stocks are so called "ill-liquid".*
j. *The Noticee submits that the BSE allowed trading in these stocks renders her bonafides in trading in these stocks. No alert or embargo was set by BSE to even give the Noticee an iota of doubt about the said scrips being illiquid.*
k. *The Noticee submits there was no meeting of mind with the alleged counter party JRK VINIMAY PVT. LTD and that matching of trades is a matter of coincidence*
l. *The Noticee further submits that the said trades were executed in the normal course of business and she was in no way related to the alleged counter party. Also, the said SCN has failed to establish any connection between the Noticee and the alleged counter party except for matching of 2 trades (and that too two legs of same trade i.e buy and sell) which could also be a chance without any intent and much less malafide. Hence, allegations against the Noticee are based on mere surmises and conjectures. Thus, the Noticee was merely a trader/consumer and she has made a victim of the trading mechanism.*
m. *The Noticee submits that the allegation in the SCN about 100% of total trades being non genuine has been interpreted in an erroneous manner which is compared to the Noticee's own trades in her own contract. Furthermore, the percentage of Noticee's trades compared to market volume and contracts may have lower in absence of heavy trade volumes on the platform of the Exchange about which theNoticee is not aware of nor does she have the means and resources to find out thereon. The Noticee also submits that on the sell side the SCN itself alleges 3.11% as non genuine trades on the sell side when the trades on this leg would have been higher in the market. If the number of days in which the Noticee's trades are alleged are taken, they are hardly any and that too is purely incidental. For such a small quantity and for the sporadic days, it is too harsh to assume*

that the Noticee had entered into any meeting of minds with the counter party whom the Noticee doesn't even know. The Noticee had purchased shares and when the prices started going up, the Noticee decided to sell the shares in a bid to gain some profits. No adverse inference be drawn for such intraday trades by the Noticee.

n. *Even for sake of assumption trades are very miniscule to attract any adverse inference.*

Therefore, the Noticee humbly request that a lenient view be taken and the present proceedings qua the Noticee may be dropped and the Noticee may be exonerated from all the charges and no penalty be imposed against the Noticee under section 15HA of SEBI ACT, 1992, as mentioned in the captioned show cause notice.

CONSIDERATION OF ISSUES AND FINDINGS

12. I have taken into consideration the facts and circumstances of the case, the material/documents made available on record and the submissions of the Noticee and its AR. The issues that arise for consideration in the instant case are :

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

(b) Issue No. II: Does the violation, if any, attract monetary penalty under section 15HA of the SEBI Act?

(c) Issue No. III: 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?

13. Before advancing into the merits of the case, I would like to deal with the issue pertaining to the delay, as alleged by the Noticee, in the issuance of the SCN.

14. 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. Meanwhile, SEBI

initiated a detailed investigation relating to stock options segment of BSE which was 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. The proceedings initiated vide the aforementioned Interim Order were disposed of vide Final Order dated April 05, 2018 also considering that appropriate action was initiated against the said 14,720 entities in a phased manner.

15. 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 LokAdalat or adopting any other alternative dispute resolution process with regard to the Illiquid Stock Options".*

16. 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.

17. As can be seen from the narration of facts in the foregoing paragraphs, pursuant to appointment of AO vide Order dated July 02, 2021, SCN was issued on August 06, 2021. Thus, the Adjudication Proceeding was initiated after a series of legal and judicial developments. In compliance with principles of natural justice, after receipt of reply, an opportunity of personal hearing was scheduled on September 15, 2021 and upon conclusion of hearing, additional written submissions *(if any)* were received from the noticees on September 22, 2021.

18. Noticee has *inter-alia* contended that there was an inordinate delay in issuing SCN to the Noticee and therefore SCN to be withdrawn as issued beyond a reasonable period. I note that there is no provision under SEBI Act which prescribes a time limit for taking cognizance of a breach of the provision of SEBI Act and Rules and Regulations made thereunder. Further, as per Section 11C of SEBI Act, SEBI can initiate investigation at any point of time, for any period of alleged violation or any period of alleged transactions. I also note that the investigations relating to the SEBI PFUTP Regulations are complex (considering the volume of transactions,

connections and examination of trading of shares, etc.) and time consuming. In this regard, I feel it is pertinent to note that, in the matter of SEBI Vs. Bhavesh Pabari (2019) SCC Online SC 294, the Hon'ble Supreme Court of India has, inter alia, observed as follows:

"There are judgments which hold that when the period of limitation is not prescribed, such power must be exercised within a reasonable time. What would be reasonable time, would depend upon the facts and circumstances of the case, nature of the default/statute, prejudice caused, whether the third party rights had been created etc."

19. Further, I note that the Hon'ble SAT in the matter of Pooja Vinay Jain vs SEBI (Appeal No. 152 of 2019, Date of Decision - 17.03.2020) held that, "*The record would show that all the documents concerning the defense of the appellant were filed by her before the AO. Therefore, for want of any prejudice the proceedings cannot be quashed simply on the ground of delay in launching the same."*

20. I also note that the Hon'ble SAT in the matter of Bipin R Vora vs SEBI held that, "*As regards the plea of delay and latches and submission that the show cause notice is barred by limitation, I do not find any merit in these contentions as the time and efforts involved in an investigation though may vary from case to case, generally investigations per-se is a time consuming process which invariably involve collection, scrutiny and careful examination of voluminous records/ order-trade details of all the concerned including the exchanges/recording of statements etc. and therefore no time limit can be fixed in this regard to enable a regulator to take appropriate disciplinary action for the safeguard and improvement of the system/market.*"

21. In view of the aforesaid and considering the facts of the aforesaid matter, I do not find any merit in the contentions of the Noticee.

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

22. With respect to the alleged violations in the instant matter, I note that it is pertinent to refer to the relevant provisions of the SEBI PFUTP Regulations, which are reproduced as follows:

SEBI 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;

23. I note that the allegation against the Noticee is that, while dealing in the stock option contracts at BSE during the Investigation Period, the Noticee had executed reversal trades which were allegedly non-genuine trades and the same had resulted in generation of artificial volume in stock options contracts at BSE. Reversal trades are considered as 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 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 and manipulative. Artificial volume is considered to be the volume (no. of units) reversed in both legs of said reversal trades while keeping out the volume, if any, which is not reversed.

24. I note from the trade log of the Noticee that the Noticee had traded in 1 unique contract in stock options segment of BSE during the Investigation Period. It is observed that the Noticee had executed 2 non-genuine trades in 1 contract. I further note that the above mentioned trades of the Noticee had resulted in the creation of artificial volume of a total of 48,000 units in the said 1 contract. The summary of the non-genuine trades of the Noticee are as follows:

S. No.	Contract Name	Avg. Sell Rate (Rs.)	Total Sell Volume (no. of units)	Avg. Buy Rate (Rs.)	Total Buy Volume (no. of units)	% of non-genuine trades/ reversal trades of noticee in the contract to noticee's total trades in the contract	% of non-genuine trades/ reversal 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.	ALBK15MAR 105.00PEW3	4	24,000	0.05	24,000	100	5	100	3.11

Note: *"Unit" refers to lot size in contract multiplied by number of contracts traded.*

25. It is noted that the Noticee had executed non-genuine trades in 1 contract, wherein the percentage of non-genuine trades of the Noticee to the total trades in the contract was 5%. Further, the artificial volume generated by the Noticee in the contract amounted to a substantial 100% of total volume generated by her in the contract. It is also noted that artificial volume generated by the Noticee contributed 3.11% to the total volume from the market in the said contract. The non-genuine trades executed by the Noticee in the above contract had significant difference

between buy and sell rates considering that the trades were reversed on the same day.

26. Upon perusing the trade log, I note that the trades executed by the Noticee in the contract were squared up within the same day with the same counterparty. To illustrate, on March 19, 2015, at 09:41:27:954706 hrs., the Noticee placed a sell order for 24,000 units at a price of ₹4.00 per unit and the said order was matched with the buy order (which was for 7,72,000 units at a price of ₹4.00 per unit) of counterparty client JRK Vinimay Pvt. Ltd. I note that the said buy order was placed at 09:41:30:304226 hrs., i.e. immediately after the entry of the sell limit order by the Noticee. The said trade was executed at 09:41:30:304226 hrs. I also note that there was no modification of either price or quantity by either the Noticee or the counterparty and the sell limit order of the Noticee got executed into trade immediately upon the entry of the buy limit order by the counterparty. Subsequently, at 15:17:54:292852 hrs., the Noticee placed a buy limit order for 24,000 units at a price of ₹0.05 per unit and the said order was matched with the same counterparty (i.e. JRK Vinimay Pvt. Ltd.), who placed a sell order for 7,72,000 quantity at a price of ₹0.05 per unit. I note that the said sell limit order was placed by the counterparty at 15:17:58:676591 hrs., i.e. after the entry of the buy order by the Noticee. I also note that there was no modification of either price or quantity by either the Noticee or the counterparty and the buy limit order of the Noticee got executed into trade immediately upon the entry of the sell limit order by the counterparty. The said trade was executed at 15:17:58:676591 hrs. The Noticee traded on March 19, 2015 on which date a total of 40 trades were executed in the said contract. I note that the counterparty of the Noticee had executed each of the said 40 trades wherein he acted as party for 20 trades and counterparty for other 20 trades in the impugned contract during the investigation period.

27. 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 the same day, the Noticee reversed the position with the same counterparty client with a significant price difference. Such reversal of trades in an illiquid stock option contract suggests the non-genuineness of these trades executed by the Noticee. The fact that the orders of the Noticee and her counterparty matched with such precision (considering that there was a perfect match of price as well as a short

time difference between placing of the orders by the Noticee and counterparty) indicates a prior meeting of minds with a view to execute the reversal trades at a predetermined price. Since these trades were done in illiquid option contracts, there was very little 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. Therefore, it is observed that the Noticee had indulged in reversal trades with her counterparty in the stock options segment of BSE and the same were non-genuine trades.

28. Noticee has *inter alia* contended that contracts were illiquid was totally incorrect as he traded in contracts of underlying scrips, most of these securities were part of BSE Index at that time and thus the allegation that he deliberately traded in only those options that were illiquid in nature is unfair. In this regard, I note that liquidity in an underlying scrip can be significantly different as compared to liquidity in the options contracts pertaining to the said scrip. I also note that the SCN issued to the Noticee carried no such allegation that the underlying scrip was illiquid. The issue under examination is whether the trades executed by the Noticee in the concerned Illiquid option contract were non-genuine or not, thus leading to generation of artificial volumes. Therefore, I dismiss the contentions of the Noticee in this regard.

29. Noticee has *inter alia* contended that there was no question of transfer of beneficial ownership in option segment since at end of settlement cycle on net loss/profit is adjusted, so allegation of creation of artificial or reversal trade is of no consequence in option segment of exchange. I note that the Hon'ble SC in the matter of SEBI vs Rakhi Trading Pvt Ltd (Civil Appeal no, 1969 of 2011, 3174-3177 of 2011 and 3180 of 2011, decided on February 08, 2018) held that,

"*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…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.*"

I note that in the F&O segment, execution of a trade results in change of rights over the contract, so that the impugned reversal trades, which were executed without intention of actual change in rights over such contracts are non-genuine. Therefore, I note that contentions of Noticee in this regard are without merits.

30. The Noticee has contended that matching of merely one trade (includes buy and sell position of one same trade) may not be considered as artificial and fraudulent in any manner. Further, the Noticee places reliance on the observation of the Hon'ble Securities Appellate Tribunal (SAT) in case of Narendra Vallabhji Bahuva Vs. SEBI (Appeal no. 516 of 2019 decided on 14.07.2021) held that one single trade cannot lead to a conclusion that the appellant was involved in fraudulent execution of trades with a manipulative intent. However, I note that the allegation in the instant matter is not regarding the total number of trades executed by the Noticee but whether the trades executed by the Noticee in the concerned illiquid contract were non-genuine or not, thus leading to generation of artificial volumes. Therefore, I dismiss the contention of Noticee in this regard.

31. Noticee has *interalia* contended that the impugned trades were carried out on the Floor of the exchange through a registered stock broker and it was impossible for the Noticee to know who counterparty brokers or clients were as the trades were executed on screen based platform of BSE. The Noticee has also contended that trades were executed in the normal course of business and she was in no way related to the alleged counter party. The Noticee has also contended that the said SCN has failed to establish any connection between the Noticee and the alleged counter party except for matching of 2 trades (and that too two legs of same trade i.e. buy and sell) which could also be a chance without any intent and much less malafide and therefore allegations against the Noticee were based on mere surmises and conjectures. The Noticee also contends that she was merely a trader/consumer and she was made a victim of the trading mechanism. I note that it is not a mere coincidence that Noticee could match her trades with the same counterparty with whom she had undertaken 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. I note that in matters dealing with violation of SEBI PFUTP Regulations, the reason as regards execution of non-genuine trades might not be forthcoming. However, the correct test instead, is one of preponderance of probabilities. Here I would like to rely on the judgment of the Hon'ble Supreme Court of India in SEBI Vs Kishore R Ajmera (AIR 2016 SC 1079), 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..*."

32. The Hon'ble Supreme Court of India further 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. 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.*"

33. In the instant matter, I note that though direct evidence regarding meeting of minds or collusion of the Noticee with the counterparty is not forthcoming, the trading behavior of the Noticee makes it clear that the aforesaid non-genuine trades could not have been possible without meeting of minds at some level. In this context, I find it pertinent to refer to the Hon'ble SAT Order dated July 14, 2006 in the matter of Ketan Parekh Vs SEBI (Appeal No. 2 of 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*."

34. In the matter of SEBI Vs Rakhi Trading Pvt Ltd (Civil Appeal no, 1969 of 2011, 3174-3177 of 2011 and 3180 of 2011, decided on February 08, 2018), the Hon'ble

Supreme Court of India 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* "

35. Additionally, the Hon'ble SAT in its judgment dated September 14, 2020 in the matter of Global Earth Properties and Developers Pvt Ltd Vs. SEBI (Appeal No. 212 of 2020) relied upon the aforesaid judgment of the 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."*

36. Noticee has *interalia* contended that provisions of Regulations 3 and 4 of SEBI PFUTP Regulations are not attracted in her case as there is no material or record brought out in the SCN that her trades have induced other persons to deal in the securities. The Noticee has also contended that BSE and SEBI permitted trading in Options for 'far months" with a strike price which are at large variance due to the current market price. In this regard, I rely on the judgement of the Hon'ble Supreme Court in the matter of SEBI vs. Rakhi Trading (supra) in this regard, wherein it was held that, "*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." I note that the case facts in the aforesaid matter were similar, and that in the instant matter, the execution of manipulative reversal trades has been established already. Therefore, the contentions of Noticee in this regard are without merits. Noticee has also contended that unfair trade practice has to be specifically alleged as to how it is unfair trade practice, and not just implied. I note that all the trades executed by Noticee in the impugned contracts were in the form of reversal trades executed on the same day, in which the buy and sell rates had substantial difference without any trading strategy or any basis for significant change in the contract price which indicates that these trades are artificial and are non- genuine in nature. I note that considering the nature of trades in *toto* along with the attendant circumstances, it is discernible that the aforesaid reversal trades were non-genuine, and were executed without the intention of change in rights to exercise the impugned contract. Therefore, I note that aforesaid contentions are liable to be set aside on the above grounds.

37. Therefore, the trading behavior of the Noticee which confirms that the trades executed by the Noticee were not normal, the 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 aforesaid, I find that the allegation of violation of regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of SEBI PFUTP Regulations by the Noticee stands established.

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

38. Pursuant to detailed analysis as brought out above, it is established that reversal trades are not normal transactions and it clearly demonstrates beyond reasonable doubt that the Noticee had intentionally executed these trades and manipulated the volume by fraudulently trading in the contract ALBK15MAR105.00PEW3.

39. While dealing with the present issue, I would like to be guided by the Judgement of The Hon'ble Supreme Court of India in the matter of SEBI Vs Shri

Ram Mutual Fund [2006] 68 SCL 216(SC) 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..*"

40. In view of the aforesaid judgment of the Hon'ble Supreme Court, I am convinced that, in the instant matter, the Noticee is liable for monetary penalty under the provisions of section 15HA of the SEBI Act, which reads as follows:

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 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.

Issue No. III: 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?

41. While determining the quantum of penalty under section 15 HA of the SEBI Act, it is pertinent to consider the relevant factors stipulated in section 15J of the SEBI Act, which reads as under :

Factors to be taken into account while adjudging quantum of penalty

15J. *While adjudging quantum of penalty under 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.*

42. I observe that the from material / documents made available on record it is not possible to quantify the amount of loss caused to genuine investors as a result of reversal trades / non-genuine trades executed by the Noticee with her counterparty. However, the Noticee has entered into 2 non-genuine trades in 1 stock option contract during the investigation period.

43. Therefore, I note that the Noticee indulged in execution of reversal trades in stock options on BSE in the Investigation Period 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), 4(1) and 4(2)(a) of SEBI PFTUP Regulations.

ORDER

44. After taking into consideration all the facts and circumstances of the case, the material / documents made available on record including the submissions of the Noticee, the factors mentioned in section 15J of the SEBI Act and in exercise of the power conferred upon me under section 15-I of the SEBI Act read with rule 5 of the Adjudication Rules, I hereby impose a penalty of ₹5,00,000/- (Rupees Five Lakh only) on the Noticee, viz. Ms. Kalpana Agarwala (PAN: ACRPA9377M), under section 15HA of the SEBI Act for the violation of regulation 3(a), (b), (c), (d), 4(1) and 4(2)(a) of SEBI (Prohibition of Fraudulent and Unfair Trading Practices related to Securities Markets) Regulations, 2003. I am of the view that the said penalty is commensurate with the lapse / omission committed by the Noticee.

45. The Noticee shall remit / pay the said amount of penalty within 45 days of the receipt of this order either by way of Demand Draft (DD) in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai. The Noticee shall forward the aforesaid DD / confirmation of penalty so paid to "The Division Chief, Enforcement Department-I, Division of Regulatory Action-4, Securities and Exchange Board of India, SEBI Bhavan, Plot No.C4-A,' G' Block, Bandra Kurla Complex(BKC), Bandra (East), Mumbai-400051 with the below mentioned details.

The Noticee shall also send an email to tad@sebi.gov.in with the below mentioned details:

1.	Case Name	
2.	Name of the 'Payer / Noticee' along with PAN of Noticee	
3.	Date of Payment	
4.	Amount Paid	
5.	Transaction No.	
6.	Bank Name and Account No.	
7.	Purpose of payment	

46. Payment can also be made online by following the path mentioned below at SEBI website www.sebi.gov.in by clicking on the payment link:

ENFORCEMENT > Orders > Orders of AO > PAY NOW

47. In the event of failure to pay the aforesaid amount of penalty within 45 days of receipt of this Order, recovery proceedings may be initiated under section 28A of the SEBI Act for realization of the said penalty amount along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

48. In terms of the provisions of Rule 6 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995, a copy of this order is being sent to the Noticee viz. Ms. Kalpana Agarwala and to the Securities and Exchange Board of India, Mumbai.

DATE: February 17, 2022 | **DIPANJAN MITRA**

PLACE: MUMBAI | **ADJUDICATING OFFICER**