BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

ADJUDICATION ORDER NO. Order/VV/NK/AK/2021-22/14796

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:
Sarita Agarwal
(PAN: ACWPA9366K)

In the matter of *Dealings in Illiquid Stock Options at the BSE*

BACKGROUND OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") conducted investigation into the trading activity in illiquid stock options on BSE Limited (hereinafter referred to as "**BSE**") for the period April 01, 2014 to September 30, 2015 (hereinafter referred to as the "**Investigation Period"/"I.P.")** after observing large scale reversal of trades in the stock options segment of the BSE.

2. The investigation revealed that during the Investigation Period, a total of 2,91,643 trades comprising 81.38% of all the trades executed in the BSE stock options segment were trades which involved reversal of buy and sell positions by the clients and counterparties in a contract. It was observed that Sarita Agarwal (hereinafter referred to as the "**Noticee**") was one such entity whose reversal trades involved squaring off open positions with a significant price difference without any basis for such change in the contract price. Such trades were observed to be non-genuine in nature creating false or misleading appearance of trading in terms of artificial volumes in stock options and therefore were alleged to

be manipulative and deceptive in nature. In view of the same, SEBI initiated adjudication proceedings against the Noticee for violation of the provisions of regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003 (hereinafter referred to as the "**PFUTP Regulations**").

APPOINTMENT OF ADJUDICATING OFFICER

3. I was appointed as the Adjudicating Officer in the matter, conveyed vide communique dated April 26, 2021, 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 of Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as ***"Adjudication Rules"***) to conduct adjudication proceedings in the manner specified under rule 4 of Adjudication Rules read with section 15 I(1) and (2) of SEBI Act, 1992, and if satisfied that penalty is leviable, impose such penalty as deemed fit in terms of rule 5 of Adjudication Rules and section 15HA of SEBI Act, 1992.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. The Show Cause Notice (Hereinafter referred to as "**SCN"**) bearing no. SEBI/HO/EAD9/EAD/VKV/NK/AKS/22029/2021 dated September 02, 2021 was served upon the Noticee under rule 4(1) of the SEBI Adjudication Rules to show cause as to why an inquiry should not be held and penalty not be imposed against it under section 15HA of the SEBI Act for the alleged violation of the provisions of regulations 3(a),(b),(c),(d) and 4(1), 4(2)(a) of the PFUTP Regulations along with the SCN relevant trade logs and summary of the concerned transactions were provided as annexures to the Noticee.

5. The allegations levelled against the Noticee in the SCN are summarized below as follows:
   i. The Noticee was one of the entities which had indulged in reversal trades which allegedly created false and misleading appearance of trading,

generating artificial volumes in stock options segment of the BSE during the Investigation Period.

ii. The Noticee has traded in 5 unique contracts, from which the Noticee has allegedly executed 10 non genuine trades in 5 Stock Options contracts which resulted in artificial volume of total 596000 units. Summary of dealings of the Noticee in a Stock Option contract, 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)	No. of alleged non genuine trades of Noticee in the Contract	Alleged Artificial volume generated by Noticee in the Contract (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	ADPW15JUL36.00PE	6.6	132000	4.7	132000	2	264000	100	50	100	86.84
2	BOIL15JUL180.00CE	0.6	20000	5.6	20000	2	40000	100	20	100	7.91
3	UBIL15JUL160.00CE	11	32000	19	32000	2	64000	100	10	100	10.32
4	UBIL15JUL175.00PE	1.8	50000	4.8	50000	2	100000	100	50	100	78.13
5	UCOB15AUG65.00PEW3	6.3	64000	10.25	64000	2	128000	100	20	100	37.21

Table No 1

iii) From the above table, following is noted as regard to dealings of the Noticee:

a. Substantial 100% trades executed by Noticee in above contracts were non genuine trades.

b. No. of non-genuine trades of Noticee was significantly high i.e. 100% of total trades executed by Noticee in the above contracts. Moreover, the said non genuine trade executed by Noticee contributed 10% to 50% of the total trades that happened in the above contracts.

c. Substantial 100% of the volume generated by the Noticee in each of the above contracts, was artificial volume. Further, said artificial volume generated by Noticee also contributed significant 7.91% to 86.84% of the total volume from the market in above contracts.

d. Alleged non genuine trades executed by Noticee had significant differential in buy rates and sell rates considering that the trades were reversed on same day.

e. By indulging in execution of aforesaid non-genuine reversal trades, it has been alleged that the Noticee has violated regulations 3(a),(b),(c),(d) and 4(1), 4(2)(a) of the PFUTP Regulations.

f. The aforesaid alleged violations, if established, make the Noticee liable for monetary penalty under section 15HA of the SEBI Act.

6. In response to the SCN, vide letter dated September 21, 2021 the Noticee had requested for the extension of time to submit reply to the SCN. Thereafter, in the interest of principles of natural justice and in terms of Rule 4(3) of the Adjudicating Rules, as per the material available on record, an opportunity of hearing, vide hearing notice dated October 12, 2021, given to the Noticee on October 25, 2021 with the another opportunity to file written submission on October 20, 2021. Vide letter dated October 22, 2021, the Noticee again requested for extension of time for written submission and to adjourn the scheduled personal hearing. Accordingly, in the interest of principle of natural justice, I acceded to the request made by the Noticee and the next date of hearing was granted to the Noticee on November 16, 2021 by the email dated October 23, 2021. Thereafter, vide letter dated November 10, 2021, the Noticee filed its written reply to the SCN.

7. The hearing was conducted on November 16, 2021. In view of the prevailing circumstances owing to COVID-19, the hearing was scheduled through video conferencing on WebEx platform. On the scheduled date of hearing, the authorized representative of the Noticee appeared before me and made

submissions on the lines of the reply dated November 10, 2021 of the Noticee in this matter.

8. The key replies/submissions of the Noticee are verbatim reproduced below:

<u>*Preliminary Objections*</u>

i. *I respectfully submit that SEBI has not provided any evidence or proof to show that my trades were fraudulent. None of the ingredients of the said PFUTP Regulations,2003 are attracted in the present case essentially because:*

   a) *The trades were executed on the floor of the exchange with due compliance with all the rules and regulations of the exchanges;*

   b) *At no point of time, was there any warning or any observation about the scrips / stocks / options or any contracts which were executed by me;*

   c) *The observations regarding the stocks being illiquid is incorrect;*

   d) *Even assuming the stocks were illiquid, then any small quantity or volumes would look significant as there are no active trades in the stock;*

   e) *The trades in question were in the normal course of business and there is nothing amiss in the trades executed by us;*

   f) *For the transaction to be termed fraudulent, as per the definition of 'fraud", there has to be an "inducement" and SEBI has not even alleged inducement;*

   g) *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".*

   h) *There is no nexus, directly or indirectly with the counter party brokers or the clients;*

   i) *The Show Cause Notice does not specify and consider facts matrix of our dealings in stock options segment of*

BSE. It does not state the reasons, rationale, and cause of action, locus and invoking of jurisdiction after over three (3) years from the dates of settled transactions. The Show Cause Notice is therefore arbitrary and bad in law.

j) The Show Cause Notice fails to appreciate that when SEBI itself has not discharged its obligations of quick investigation, seeking explanation of the parties at that time, declaring trades in stock options as illegal at the relevant time, subjecting to me to adjudication proceeding belatedly is unfair, unreasonable and absurd.

<u>Investigation report not provided by SEBI</u>

ii. I humbly submit that, upon reading of the Show Cause Notice, it appears that there are various documents and data that are referred to and relied upon by SEBI in the captioned proceedings as there is a disconnect in the charging provision. In fact, serious allegations is made against us that we have committed 'fraud' in securities market without even providing the investigation report or even cogent evidence in this regard.

iii. Without prejudice to the aforesaid, I hereby submit our explanations and clarifications with the limited data/information retrieved by us and made available to us in the subsequent paragraphs. I crave leave to file further submissions after I am provided with investigation report and all the relevant records during the course of captioned proceedings.

<u>Submissions on dealing in "illiquid" option segment of BSE</u>

iv. With respect to observation that I have dealt in stock options contracts which are illiquid in nature, we submit that Future & Options Segment is the basic heart of the market and only those shares are transacted in this category which are sought after scrips. These stocks are chosen by certain criterion set by the Exchange authorities and represent important one. In fact, we submit with humility that underlying stock of aforesaid contracts consists of companies which make up index of Bombay Stock Exchange. Thus, to allege that we deliberately traded in only those options which were illiquid in nature is unfair.

v. *Apparently, SEBI has held that we transacted in 'illiquid options' on the basis that my trades were in far off strike prices and therefore, very few entities were trading jn such strike rates. However, in that case, it may also be concluded that said trades could have had no effect on other investors or market at large and that such illiquidity would be the reason for volatility and alleged reversal transactions since variations in options price would be dramatic if the chosen strike price is thinly traded.*

vi. *I submit that BSE and SEBI have themselves allowed and permitted trading in options for months' with a strike price which are at large variance to current market price. The fact that such parameters are laid down is clearly indicative off act that options will always be 'in the money' and 'out of money' and since regulators have themselves permitted trading in same, no adverse inference be drawn against us in this regard.*

vii. *It is pertinent to mention that stock exchanges regularly come out with list of illiquid scrips 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 individual investor that he traded in illiquid option is unwarranted and unfair.*

viii. *I submit with humility that derivative market is 'zero-sum game' and thus in each and every case one party will inevitably make profit and counterparty will make loss. In capital market neither BSE nor SEBI can guarantee profit or loss to any individual/entity. In derivative trading, traders often make profit or loss over a period of time since the market does not always behave as per their prediction/expectation. Thus, profit and loss is concomitant to trading in derivative segment The mere fact that we traded in option segment cannot be a ground to rope us into present proceedings.*

ix. *As regard to allegation that I have created artificial volume, it should be noted that the dictionary meaning of 'artificial' in my context would be 'not truly intended' (as per Cambridge dictionary). It is to be noted that a loss or a profit arising from this trade was cleared from the clearing corporation of BSE. It is within powers of BSE and the clearing corporation to cancel non-genuine trades but the same was not done as those trades were* *considered genuine and not artificial. No one can create such significant artificial volume in the securities of companies with such huge market capitalization ranging from lakhs and crores of rupees. Only very large and very few companies are permitted for trading in F&O segment of the stock exchange. It is submitted that the allegation that I had indulged in trade which resulted in creating artificial volume and were non-genuine are strictly refuted, because these allegations are baseless.*

x. *It may also be noted that on the day of Expiry of the relevant Period, all transactions are squared off and as such, it is important to keep a track and square off your transactions.*

Our trades did not depress the price/volume of underlying shares in cash segment

xi. *I submit that the total number of alleged non-genuine trades were 10 which is a meagre part of overall trades in market considering the market volume of alleged non- genuine trades. Moreover, one has to consider the total volume of the Options Segment and should not be bifurcated.*

xii. *I submit that there was no major movement in price of underlying scrip which itself proves that my trades had no impact on market. Further, I traded in one scrip, thereby, I submit with humility that my transactions neither distorted the equilibrium in market nor caused any loss or prejudice to investors at large.*

No relationaship with counterparty or its broking entities

xiii. *I did not act in concert or in collusion with anyone and nor was part of any group or concerned with anyone for the purpose of influencing price or for any manipulative activity as alleged or otherwise. It is an admitted position that there is no connections whatsoever between us and counter parties highlighted by you in the Statement annexed with your Show Cause Notice.*

xiv. *All our transactions have been carried out on the floor of stock exchange. Undisputedly, in case of screen-based trading the automated system itself matched orders on a price-time priority basis and hence, it is not possible for anybody to have access over identity of counter party. Since counter party identity in not displayed; one can never have any choice* *with whom it wants to deal or not to deal. No adverse inferences can be drawn here for any kind of back of minds meet between the buyers and Sellers. Moresoever, when the transactions are executed by a Broker,*

xv. *While trading in an illiquid option as alleged, there are more chances of getting the trade squared off with the same party. I as an investor asked my broker to buy or sell which he did on my behalf on the Exchange platform. I am not in a position to see the screen nor can the broker identify with whom the deal gets punched as the details are not shared on the screen by the Exchange. Since, I am informed only when the deal gets punched and it becomes a part of the trade with the clearing corporations. SEBI keeps the trading parties anonymous, it will be very naive to draw conclusions that the parties knew each other. Then how and on which ground, one can be penalised by SEBI for wrongful trades.*

xvi. *Further, I had dealt in stock option segment through a SEBI registered intermediary. From the data provided by SEBI, it can be observed that the counterparties were dealing with different broking entities of different addresses or even the city which has come to our knowledge only from the data furnished by you.*

xvii. *I would like to further submit that all my trades in option segment were within prudential norms of exchange and as per procedure and guidelines as prescribed by regulator (BSE). At the relevant time, none of our trades were questioned by the broker who are SEBI registered intermediaries and frontline gate-keeper of stock exchange. Had I been alerted by the broker or stock exchange we would have taken prompt and immediate corrective measure, if any, at that point in time only.*

xviii. *Further, no cautionary warning advisory, communication or alarm was raised by BSE at any point of time. There was nothing in the public domain that there is anything amiss in the matter. In fact, with a fool proof and state of art surveillance system, BSE could have annulled the trades at that point in time only, in case it considered that the trades were fraudulent. However, this was not the case, which means that the trades executed by me were genuine and fair.*

xix. *I submit that there is no reason for any allegation that I have violated the provisions of the Securities and Exchange Board of India (Prohibition of fraudulent and Unfair Trade Practices relating to Securities Markets), Regulations 2003.*

<u>Other Objecctions/Grounds</u>

xx. *The process of trading was being followed for about three years on the platform of BSE out of which SEBI has chosen 18 months starting from April 1, 2014 to September 30, 2015. Unfortunately, the Exchange SEBI/BSE could never find a single occasion to point out to the Broker/investor concerned in question any irregularity in their trading pattern during the course of these six years. SEBI as the regulator is sending notice for trading done on their platform despite having all the possible surveillance system at their disposal and powers to annul the said trades. It appears unjustified as time gap differences are considered alright in judgments of SEBI related matters.*

xxi. *Whereas the objective of the Act is to protect the investors and regulate the Intermediaries/Agents/Brokers, action and/or investigations ought to be of those persons and the investors be spared as they are innocent about the transactions.*

xxii. *The Hon'ble Supreme Court in the case of SEBI v, Rakhi Trading Pvt. Ltd. stated that SEBI has to adhere to, is to ensure stringent enforcement and efficacy of cleanliness of the market place, otherwise SEBI will be failing in its duty to promote orderly and healthy growth of the securities market Inferior supervision might distort the path of securities market development. Thus, investors be spared as there is no fault of theirs.*

xxiii. *BSE has in fact incentivized brokers to increase volumes, so it was a scheme between BSE and brokers and thus investors should not be penalized.*

xxiv. *That, your kind attention is brought to the case of SEBI v. Kishore Ajmera [(2016) 6 SCC 368] wherein, the Supreme Court held in para 30 of the judgment that "According to us, knowledge of who the 2nd party/client or the broker is, is not relevant at all. While the screen-based trading system keeps the identity of the parties anonymous it will be too naïve to rest the* *conclusions on the said basis which overlooks a meeting of minds elsewhere", Thus, what we are trying to say is that if the Apex Court has said that meeting of minds and knowledge of who the other party is very important which is apparently missing in our case, so such baseless allegations are irrelevant.*

xxv. *The brokers/trading members have to be qualified before they are permitted to do stock/derivatives trading on behalf of the clients/investors. Therefore, in normal course of business an investor who trades in stocks/derivatives, is not aware of the alleged trades to be non-genuine or reversal. SEBI is blaming all the investors for the wrongdoings, mistakes or fault of their own officials and it failed to perform its own work of being a watchdog to exchange. Further, during the course of our understanding of this business we found out that a lot of risk management software are there which restrict transactions. No such risk management policy was followed and then, the investors cannot be responsible for such activities.*

xxvi. *While SEBI is willing to charge penalty to the investors directly, the stock exchanges like NSE and BSE have issued circulars to charge penalties to their brokers to the tune of 15% and 100% on the illiquid trades as and when they find the same happening on the exchange platform. They are not even considering investors guilty of doing such trades on the exchange platform. Hence, SEBI should not charge penalty to investors for no fault of theirs.*

xxvii. *Your kind attention is drawn to NSE Circular Ref No: NSE/WVG/2020/43144 of January 07, 2020- Circular Ref No: 04/2020 to all NSE Members, on the subject of Penalty on Abnormal /Non-Genuine Transactions read with NSE Circular No. NSE/INVG/39647 dated December 13, 2018 and NSE/INVG/40175 dated February 07, 2019 with respect to "Abnormal / Non-Genuine transactions" inter alia advising trading members to refrain from entering abnormal/ non-genuine transactions executed by the, market participants primarily with an objective of transferring profit/ loss between the concerned entities or creation of artificial volume in securities / contracts and Guidance note in* *order to assist trading members in identifying such type of transactions. In this Circular, it is mentioned, inter alia, "The exchange shall levy a penalty of 15% of the profit earned/ loss incurred on the trading members for both profit and loss making abnormal / non-genuine transactions after following the due process & providing necessary opportunity to the trading member for clarification in the matter". This should also apply to transactions on the BSE platform. There cannot be different rules for NSE and BSE In any event, the penalty of 15% of the profit earned loss incurred on the trading members still seems reasonable, but the Settlement Amount is by all means - unreasonable.*

xxviii. *When transactions are done by Brokers, Investors should not be held responsible unless the Brokers are charged as they only do business under directions of the investors.*

xxix. *There cannot be any kind of discrimination between Brokers and Investors as first part on the Platform is Broker and not the investors.*

xxx. *The alleged trades are of the year 2015; for which one is getting a notice in the year 2021. Such proceedings are ex-facie vitiated in law, and is a complete abuse of process. Such a long delay in initiation of the proceedings by itself poses grave difficulties and extreme hardship for my defence, highly prejudiced by such inordinate delay on the part of SEBI and may not be in a position to locate or lay hands on relevant material/information. In this regard, kind attention is drawn to inter alia, the following case law:*

> *Hon 'ble SAT in* ***Libord Finance Limited vs SEBI****, Appeal No. 37/2008, SAT order dated 31.03.2008 observed the following - "Before concluding, we cannot resist observing that there has been an inordinate delay in initiating action against the appellant It is alleged to have committed the irregularities in the earlier part of the year 1996 and the show-cause notice was admittedly issued inJune 2004. How could anyone file a proper reply after a lapse of more than eight years. This long delay itself causes grave injustice to the delinquent and results in the violation of the principles of natural justice. Such delays defeat the very purpose of the proceedings."*

Attention is also drawn to the judgment of Hon'ble Supreme Court of India in ***Government of India vs Citedal Fine Pharmaceuticals, Madras & others*** *[AIR (1989) SC 17711. Wherein it was held that in the absence of any period of limitation, the authority is requested to exercise its powers within reasonable period.*

xxxi. *The alleged trades were carried out on the platform of BSE of the alleged trades were not allowed, then BSE should have prevented / cancelled the alleged trades at the relevant time itself Therefore, it seems absolutely clear that BSE believed that such alleged trades were permissible one.*

xxxii. *SEBI has allowed and wanted to increase the trade volume in that duration as there was hardly any trading done and to increase the volume during that time, they had introduced the Liquidity Enhancement Scheme for illiquid securities in F&O segment It may be noted that there is every possibility in the thinly traded contracts to get reversed with the same party and there was no ban/restriction in doing that.*

xxxiii. *SEBI has been formed to protect the investors. As regards to Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities) Regulations, 2003 is concerned, I would like to mention the following:*

PFUTP SEC 2(C):

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

Thus, key ingredients of fraud are:

- *INDUCE another person to deal in securities.*
- *WRONGFUL GAIN OR AVOIDANCE OF LOSS*

There has been no allegation that

- *Anyone has been induced to trade/ deal in securities or*

- *That wrongful gain or avoidance ofloss has taken place*

xxxiv. *Since none of the allegation has been made against me, no investigation can be made out to put me in the above categow and the proceedings be dropped.*

xxxv. *In fact, I would like to point out that:*

a) *No complaint was made by any investor or anyone else.*

b) *No loss was suffered by anyone to my knowledge.*

c) *No fraud was committed by anyone.*

d) *No one was misguided to believe as true, what was not true.*

e) *No evidence of any kind was found or produced against anyone.*

f) *All trades were done legally on the platform of the oldest and functional stock exchange of the country under surveillance of SEBI.*

g) *The price range was within the permitted limit set by SEBI/BSE.*

h) *Trades were not done with parties not permitted to trade with.*

i) *BSE, who performs the first check, approved these transactions as bonafide.*

j) *All payments were made by cheque/banking channels.*

k) *All taxes including STT, stamp duty and others were paid.*

l) *There is no warning anywhere to alert traders to not reverse the transaction with the same counter-party on the same day.*

m) *As regards allegation that I have created artificial volume please note that no one can create significant artificial volumes in the securities of companies with such huge market capitalization running in to lakhs of crores. Only vet),' large and very few companies are admitted for trading in F&O segment of the stock exchanges.*

n) *Trading rational for price at which it was done can't be established subsequently. Any person having actual experience of trading and have suffered the nerve wrecking tension would easily agree and accept decisions done at the time of trading and on the trading table. The person sitting on the side line and analysing the data subsequently can never understand the mental state in which a particular trade was executed. It is very common to find traders daily cursing themselves for their own behavior and trade where they lost money or did not make enough money and trade where they lost money or did not make enough money as speculation/trading is pure game of nerve.*

o) *BSE were having their own surveillance system 24*7 looking in to trades of all clients online. The trades which they thought were not in agreement with their regulation should have been annulled on the same day.*

xxxvi. *It may also be noted that as an investor I can't file any complaint against any broker after lapse of three years then how come SEBI, without initiating any proceeding against the broker or the exchange concerned try to charge penalty to an investor after the lapse of more than five years. Even the charges being proposed are highly discriminatory.*

xxxvii. *That Section 15HA of SEBI Act is not applicable on me, since I:*

a) *Did not commit any-fraud.*

b) *Did not indulge in any unfair trade practice. The word 'trade practice" indicates continuity of the trades in similar manner.*

c) *Did not earn any profit or incurred loss at the cost of others.*

xxxviii. *That, it is deduced that penalty provisions under Section 15HA are not to be construed strictly but should only be applied in extreme situations. I have showed that I do not fit into the definition of fraud since SEBI failed to provide for any factual evidence to prove that my trade led to artificial increase in trade volume, or manner adopted was fraudulent, hence, such allegations are refuted.*

That Section 15I & 15J of SEBI Act is not applicable on me because:

a) *There is no gain or unfair advantage, in case of losses.*

b) There is no loss caused to any investor or to anyone at all.

xxxix. In summary, with regard to our dealings in stock options on BSE, I would like to clarify as under:

a) I acted as bonafide investor/trader and have transacted in stock option segment in normal course of business activity and my trading in the same was very much wjthjn our own financial and risk bearing capacity.

b) I submit that in any business activity in stock market, one can either make profit or loss. I humbly submit that at the relevant time I had no idea of any profit or loss in said transactions and I traded in option segment taking into account my 'risk and reward' parameters.

c) I am not connected to counterparty of my transactions in option segment and neither do I have any relation with promoters/ directors/ key management person of underlying scrips in cash segment.

d) I believe there has been no grievance by any investor, broker, stock exchange or any other agency concerned with respect to our dealing in the option segment of BSE Ltd.

e) I being a new investor in the market in the relevant period, no action has ever been taken against me in the past in respect of dealing in securities market.

f) SEBI has discontinued proceedings against the brokers and intermediaries against whom similar allegations of dealing in illiquid stock options while executing trades on behalf of clients have been levelled. I humbly submit that the same recourse ought to be adopted on an individual entity like me.

g) There is an amendment in PFUTP regulations in 2019 wherein the word Person is inserted in place of Intermediary who is defined under SEBI (Intermediaries) Regulations, 2008 as per SEBI Act, 1992. The specific attention is drawn to numerous amendments in Regulations 3 and 4 of the said Regulations which has inserted the specific words of "Knowingly" and "persons" in sub-regulations and *clauses thereof. The changes cannot be made applicable to alleged circular transactions under Pre-Amendment Regulations period prior to 31.12.2018.*

h) The Show Cause Notice is issued in general and did not highlight the violation of specific regulation and hence, it is bad in Law.

i) The Show Cause Notice is issued after 3 years of the completion of Investigation Report and hence it is bad in Law.

j) Speaking for myself, I state that I had followed and complied with all the procedures and requirements of capital market while dealing through SEBI registered intermediary. All the pre-trade, trade and post trade activities were carried out on the trading, clearing and settlement system of stock exchange which itself has sophisticated on-line surveillance software and systems in place.

xl. Based on my aforesaid submissions, it is apparent that I was not involved in any 'modus operandi' or manipulations while dealing in options segment of BSE. There is enough material on record to suggest that no further enquiry is required in the matter. It is, therefore, humbly requested that the Show Cause Notice be dropped without imposing any monetary penalty." I humbly request the learned Adjudicating Officer that a lenient view be taken in the matter and I be discharged from captioned proceedings.

CONSIDERATION OF ISSUES AND FINDINGS

9. The issues that arise for consideration in the instant matter are:

   i. Issue No. I: Whether the trading in illiquid stock options done by the Noticee during the Investigation Period were in violation of regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of the PFUTP Regulations?

   ii. Issue No. II: If yes, whether the violation, on the part of the Noticee would attract monetary penalty under section 15HA of the SEBI Act?

iii. Issue No. III: If the answer to Issue No. II is in affirmative, what would be the monetary penalty that can be imposed upon the Noticee?

Issue No. I: Whether the trading in illiquid stock options done by the Noticee during the Investigation Period were in violation of regulations 3(a), (b), (c), (d) , 4(1) and 4(2)(a) of the PFUTP Regulations?

10. Before moving forward, it is pertinent to refer to the relevant provision of the PFUTP Regulations which are alleged to have been violated. The said provisions are reproduced hereunder:

    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 thereunder;*
    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 *******[manipulative], fraudulent or an unfair trade practice in securities* *******[markets].*

__[Explanation.– For the removal of doubts, it is clarified that any act of diversion, misutilisation or siphoning off of assets or earnings of a company whose securities are listed or any concealment of such act or any device, scheme or artifice to manipulate the books of accounts or financial statement of such a company that would directly or indirectly manipulate the price of securities of that company shall be and shall always be deemed to have been considered as manipulative, fraudulent and an unfair trade practice in the securities market.]

*(2) Dealing in securities shall be deemed to be a **[manipulative] fraudulent or an unfair trade practice if it involves ***[any of the following]:*

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

** Inserted vide Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) (Amendment) Regulations, 2018 w.e.f. February 01, 2019.*

*** Inserted vide Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) (Second Amendment) Regulations, 2020 w.e.f. October 19, 2020.*

**** Substituted vide Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) (Amendment) Regulations, 2018 w.e.f. February 01, 2019. Before the substitution the words read as "fraud and may include all or any of the following, namely".*

11. The Noticee has argued that the alleged trades are of the year 2015, for which one is getting a notice in the year 2021. Further, Show Cause Notice is issued after 3 years of the completion of Investigation Report. Such proceedings are ex-facie vitiated in law, and is a complete abuse of process. Such a long delay in initiation of the proceedings by itself poses grave difficulties and extreme hardship for its defense, highly prejudiced by such inordinate delay on the part of SEBI and may not be in a position to locate or lay hands on relevant material/information.

12. In this regard, I note that in the instant matter, SEBI has investigated large scale reversal of trades in stock options which were entered into by large number of entities. 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 Order 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.

13. During the course of hearing in the case of **R. S. Ispat Ltd vs SEBI**, the Hon'ble Securities Appellate Tribunal (Hereinafter referred to as "**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*".

14. 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.

15. As can be seen from the narration of facts in the foregoing paragraphs, pursuant to appointment of AO on April 26, 2021, SCN was issued on September 02, 2021. Further, in compliance with principles of natural justice, after receipt of reply, an opportunity of personal hearing was given on October 25, 2021 to the Noticee by hearing Notice dated October 12, 2021 which is rescheduled due to request made by the Noticee. Accordingly, hearing was finally concluded on November 16, 2021.

16. I also note that with regard to the this aspect, reliance is also placed on the order of the Hon'ble SAT in the matter of **Pooja Vinay Jain vs SEBI** [Appeal No. 152 of 2019 dated March 17, 2020], wherein the Hon'ble Tribunal has inter-alia made the following observations–

"*12. The decision would show that the power to initiate the proceedings must be exercised by the authorities within a reasonable time. This would depend upon the facts and circumstances of the case, nature of the default / statute and prejudice caused to the notice.*

13. In the present case, the appellant neither put a plea of prejudice before the AO nor before us. It was simply stated that since the proceedings were launched by respondent SEBI after a period seven years, the same should be quashed on the ground of delay. 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. Further, as explained by the learned counsel for the respondent as recorded in paragraph No. 6.4 above, large numbers of entities and transactions were analyzed by SEBI which took some time. In the result, the following order:-

ORDER

14. The appeal is hereby dismissed without any order as to costs."

17. Further, in the matter of **M/s. Adamina Traders Private Limited vs SEBI** (Order dated December 15, 2021) SAT held that:

"6. Having heard the learned counsel for the parties, we find that the trades in question are of the year 2013. The show cause notice was issued on September 28, 2017 by the WTM and January 18, 2018 by the AO. We do not find any evidence to hold that there wasan inordinate delay in the issuance of the show cause notice. This contention is accordingly rejected. Further, nothing has been shown as to how this delay has prejudiced the appellant. In the absence of any prejudice the delay, if any, cannot be set aside."

18. Accordingly, I don't find any merit in the plea of the Noticee that delay in initiation of proceedings against the Noticee is unreasonable and has caused serious prejudice to the Noticee. Thus, I note that, in totality of these circumstances Noticee's reliance on SAT's order *Libord Finance Limited vs SEBI(supra) and Hon'ble Supreme Court order in Government of India v Citedal Fine Pharmaceuticals Madras & others [AIR(1989) SC 17771] is of no use.*

19. The Noticee has contended that SEBI has not provided it with investigation report and other copy of relevant documents as requested by the Noticee. Here, I note that Hon'ble Supreme Court in **Natwar Singh vs. Director of Enforcement (2010) 13 SCC 255** held that even the principles of natural justice do not require supply of documents upon which no reliance has been placed by the authority to set the law in motion and further held that the concept of fairness is not a one way street and that the principles of natural justice are not intended to operate as a roadblock to obstruct statutory inquiries. The Supreme Court held that the principles of natural justice do not supplant the law of land but supplements it and, therefore, duty of adequate disclosure was only an additional procedural safeguard in order to ensure attainment of fairness which has its own limitations. In this regard, the Supreme Court held:

> *"31. The concept of fairness may require the adjudicating authority to furnish copies of those documents upon which reliance has been placed by him to issue show-cause notice requiring the noticee to explain as to why an inquiry under Section 16 of the Act should not be initiated. To this extent, the principles of natural justice and concept of fairness are required to be read into Rule 4(1) of the Rules. Fair procedure and the principles of natural justice are in-built into the Rules. A notice is always entitled to satisfy the adjudicating authority that those very documents upon which reliance has been placed do not make out even a prima facie case requiring any further inquiry. In such view of the matter, we hold that all such documents relied on by the*

authority are required to be furnished to the notice enabling him to show a proper cause as to why an inquiry should not be held against him though the Rules do not provide for the same. Such a fair reading of the provision would not amount to supplanting the procedure laid down and would in no manner frustrate the apparent purpose of the statute."

20. The aforesaid principles was considered by Hon'ble Securities Appellate Tribunal (Hereinafter referred as *SAT*) in **Shruti Vora in appeal lodging no.28 of 2020 decided on 12th February, 2020** wherein SAT after analyzing the (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 Rules of 1995 held as under:

"16. However, we find that Rule 4 of the Rules does not provide any specific provision requiring the AO to supply copies of any documents along with the show cause notice nor requires the AO to furnish any list of documents upon which reliance has been placed by it. However, the principles of natural justice and doctrine of fair play requires the AO to supply the documents upon which reliance has been placed at the stage of show cause notice. In Natwar Singh vs Director of Enforcement and Another (2010) 13 SCC 255 the Supreme Court held that the fundamental principle remains that nothing should be used against the person which has not been brought to his notice. If relevant material is not disclosed to a party, there is prima-facie unfairness irrespective of whether the material in question arose before, during or after the hearing. The Supreme Court further held that the law is fairly well settled, namely that if prejudicial allegations are to be made against a person, he must be given particulars of that before hearing so that he could prepare his defence."

21. Aforesaid court further held:

"18. In the light of the aforesaid, we are of the opinion that concept of fairness and principles of natural justice are in-built in Rule 4 of the Rules of 1995 and that the AO is required to supply the

documents relied upon while serving the show cause notice. This is essential for the person to file an efficacious reply in his defence.

In the light of the aforesaid decisions, I am of the view that all the relied upon copies of the documents in the matter were provided to the Noticee along with the SCN, therefore, the contention that till such time all the documents are not supplied an efficacious reply cannot be filed is patently erroneous.

22. I note that it is worth mentioning that reversal trades are considered non-genuine if they involve an entity reversing its buy or sell positions in a contract with subsequent sell or buy positions with the same counterparty during the same day. In this regard, artificial volume is considered as the volume (no. of units) reversed in non-genuine trades, comprising both original volume and reversed volume while keeping out the volume which is not reversed. From the reply of the Noticee, I note that the Noticee has not disputed the execution and subsequent reversal of trades as alleged in the SCN. Admittedly, the Noticee had indulged in 10 such reversal trades in 5 stock option during the Investigation Period involving reversal of trades with same entity with whom it had done buy/sell transaction, in short span of time, in a synchronized manner. It is noted from the trade log relied upon in the matter that the Noticee and counterparty (ies) both had placed their respective sell-buy and buy–sell orders in same time i.e. within few seconds i.e. gap of 4 sec- 13 sec. Further, each trade involved matching of time, price and quantity of units. For example, in respect of the following 2 trades in contract "BOIL15JUL180.00CE", dated July 16, 2015 observations are provided in following paras:

Date	Client Name (buying)	Client Name (selling)	Trade Time	Trade Rate(Rs)	Trade quantity
16/07/2015	Alaknanda Dealtrade Private Limited	Sarita Agarwal	15:28:48	5.6	20000
16/07/2015	Sarita Agarwal	Alaknanda Dealtrade Private Limited	15:28:35	0.6	20000
Total					40,000

Table No. 2

23. It is observed from the above table that 2 trades for 40,000 units were executed in the said contract wherein Noticee was party to both the trades. While dealing in the said contract on July 16, 2015, Noticee at 15:28:35 hrs entered into 1 buy trade with counter party viz, *Alaknanda Dealtrade Private Limited* for 20,000 units at rate of Rs. 0.6 per unit. Thereafter, on the same day, Noticee entered into 1 sell trade with same counterparty for 20,000 units at the rate of Rs 5.6 per unit at 15:28:48. Thus, it is noted that while dealing in the said contract during the I.P., Noticee executed total 2 reversal trade (1 buy trade + 1 sell trade) with same counterparty viz, Alaknanda Dealtrade Private Limited within 13 seconds of the same day.

24. Further, I note that, from the trade log available on the record, Noticee, through dealing in the contract viz, "BOIL15JUL180.00CE" during the I.P., Noticee executed 2 non genuine trades which is 20% of the total trades from the market in the said contract during the I.P., and thereby, the Noticee generated artificial volume of 40000 units which is 7.91% of the volume traded in the said contract from the market during the I.P.

25. Similar pattern on trading was observed in respect of other aforementioned (table 1) illiquid Stock Options contracts, wherein trades were reversed in short span of time and buy-sell or sell-buy orders were placed within a time gap of few seconds/minutes. The buy orders placed by the Noticee were matched with sell orders of counterparties and sell orders placed by the Noticee were matched with buy orders of counterparties in terms of number of units and price and time. Thus, the total volume generated through such non genuine trades was 5,96,000 units. Such reversal of trades in quick succession with substantial price difference indicate towards employing of a manipulative device in connection with its dealing in said illiquid Stock Options contracts.

26. Noticee submitted that there was no connection with the counterparty had been established by the SCN, the transactions had been done in the screen based trading platform of the exchange and any buyer or seller is completely unaware about the identity of its counter party of such trades; Further, there

is no nexus, directly or indirectly with the counter party as it was trading in anonymous platform of BSE at price ranges that were permitted by BSE. In this context, I note that buy and sell orders of all the 10 reversal trades were synchronised on the same day, with time gap of 4 seconds to 13 seconds. While synchronised trades may occur by accident in a liquid stock, execution of synchronised trades in an illiquid market with anonymous trading indicates a prior meeting of minds with a view to execute the reversal trades at a pre-determined price.

27. I also note that, it was not mere coincidence that the Noticee could match its trades with the same counterparty with whom it had undertaken first leg of the respective trades. Though, direct evidence was not available in the present matter as regards to meeting of minds or collusion of the Noticee with other entities. The genuineness of trading has to be determined based upon circumstantial evidence involving multiple factors such as trading pattern, liquidity and volatility in the scrip/contract, etc. In this regard reliance has been placed on, the Hon'ble SAT order- **Ketan Parekh vs. SEBI (Appeal no. 2/2004, dated July 14, 2006** 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.*"

28. Further, in **SEBI v Kishore R Ajmera (AIR 2016 SC 1079)**, Hon'ble Supreme Court 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...". The Hon'ble Supreme Court further held 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*."

29. Furhter, Hon'ble SAT, in its order in the matter of **Global Earth Properties and Developers Pvt. Ltd. dated September 14, 2020** 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*."

30. With regard to reversal transactions, Hon'ble Supreme Court in **SEBI v Rakhi Trading Private Limited (Civil Appeal No. 1969 OF 2011***)*, 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…..” Hon’ble Supreme Court further held that- *“….quantity, time and significant variation of prices, without major variation in the underlying price of the securities clearly indicate that Respondent’s trades are not genuine and had only misleading appearance of trading in the securities market*”.

31. In view of said Hon’ble Supreme Court judgment, I see no reason to take a different view in the present case. In view of the foregoing, I note that the trading pattern as found in this case in illiquid Stock Options cannot occur just by accident or coincidence. The trading behavior of the Noticee in this case makes it clear that aforesaid trades of the Noticee could not have been possible without prior meeting of minds. The synchronized trading by the Noticee with same counterparty at same time for same quantity at same price and reversal of transaction with wide variation in price of the reversed trades in the same contract in a short time without any basis, 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 the contracts in question. Considering the aforesaid facts and circumstances, in view of the fact that these options contracts were illiquid in nature, having very small volume in trading, the Noticee created artificial volumes in Stock Options which was manipulative and deceptive in nature. Once the Noticee has been found to have indulged in such reversal transactions in illiquid Stock Options it is liable for its acts and omissions. Therefore, contention of the Noticee regarding the no connection with the counterparty bereft of any merits in the instant proceeding.

32. Noticee contended that BSE had settled the trades as they were executed, and that neither BSE nor any broker involved raised any warning, which indicates that the trades were genuine. Noticee has also contended that no grievance has been submitted by any investor as regards to the impugned trades. In this context, I note that when the impact of artificial volumes created by the two counterparties is seen as a whole, the making of loss or profit or causing investor grievance etc., is immaterial as the charge in this case is of creating false or misleading appearance of trading in the impugned stock

option contract. I also note that Noticee was obligated to ensure genuineness of the trades executed by him on the exchange platform. The aforesaid obligation was mandatory not withstanding any warning issued by BSE or other. Further, I note that the trades by the Noticee generated large artificial volumes without any change of beneficial ownership. With regard to such reversal transactions, Hon'ble Supreme Court in the matter **Rakhi Trading case(Supra**) held that - "*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*". The Hon'ble Supreme Court further held that - "*The non-genuineness of these transactions is evident from the fact that there was no commercial basis to suddenly, within a matter of minutes, reverse a transaction when the value of the underlying had not undergone any significant change*". Thus, the Noticee's contention regarding non-receiving of any warning/ caution from BSE and bona-fide trading, is devoid of any merit and rejected hereby.

33. Further, with regard to the reversal trades carried out by the Noticee, I note that the Hon'ble Supreme Court in ***SEBI vs. Rakhi Trading Private Limited*** (Civil Appeal Nos. 1969 of 2011 with 3174-3177 of 2011 and 3180 of 2011), decided on February 8, 2018 had held that "*the price discovery system itself was affected by synchronization and rapid reverse trade, which also had the impact of excluding other investors from participating in the market. The Supreme Court, therefore found that the traders having engaged in a fraudulent and unfair trade practice while dealing in securities, are hence liable to be proceeded against for violation of Regulations 3(a), 4(1) and 4(2)(a) of PFUTP Regulations*".

34. The Noticee in has contended that as per the definition of "fraud", there has to be an "inducement" for the transaction to be termed fraudulent. I note that the Hon'ble Supreme Court in the matter of SEBI vs. Rakhi Trading Private Ltd. (supra), had recognized that, 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. Further, the market 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. Considering the same, I reject such contention of the Noticee.

35. Noticee contended that observation regarding the stocks being illiquid is incorrect. In this context, I note that the term “illiquid” is antonym of “liquid” and in securities market it is used for “a scarcely traded securities”. Therefore, an option contract that cannot be easily sold or converted to cash quickly at the prevailing market price will always be treated as “illiquid” option that has very low or no open interest. Further, I note that the Noticee executed 10 non genuine trades in 5 Stock Options contracts by which Noticee contributed 7.91%-86.84% of the total volume from the market in the impugned trades. I note that Noticee’s trades contributed substantially to the volume generate in all the contracts, which indicates that the relevant stock options were thinly traded and that Noticee contributed substantially to artificial volume in such contracts. Such a substantial contribution by the Noticee by the impugned non genuine trades clearly indicates that stock option was an illiquid contract. I further note that these trades were part of the 81% (approx..) non-genuine trades executed on Stock Options Segment of BSE during the investigation period and when seen in totality these non-genuine trades have the ingredient to distort the equilibrium in market. Further I note that, law does not allow any allowance for such fraudulent act of creation of misleading appearance of trading due to impugned reversal trades. Therefore, I reject such contention of the Noticee.

36. Moreover, I note that the impugned reversal trades were carried out by the Noticee in an illiquid Stock Options Contracts where there was no participation of public. Reversal trades were undertaken by the Noticee with its counterparty with a predetermined arrangement to book profit or losses respectively, and, therefore, the parties to the trades were not trading in the normal sense and ordinary course of business. Such transactions in illiquid Stock Options cannot be taken as genuine one. Such trading was apparently

without any economic rationale. Thus, the Noticee claim of a bona fide or genuine trader without having any specific role in creating artificial volume through alleged trades is not acceptable.

37. Noticee has contended that in derivatives trading, traders either make profit or loss as market does not always behave as per predictions, and the fact that Noticee traded in options segment cannot be a ground to initiate instant proceedings against the Noticee. Noticee has further contended that, due to the illiquidity in options contracts, the reversal trades with wide variation in premium would be more probable. In this regard, I note that all the trades executed by Noticee in the five stock options were in the form of reversal trades, in which the buy and sell rates had substantial difference without any trading strategy or changes in price of underlying scrip to justify the same as per the records. I note that considering the nature of trades in toto along with attending circumstances, it is discernible that the aforesaid reversal trades were non-genuine, and were executed without the intention of mere change in rights to exercise the impugned contracts. Therefore, I note that aforesaid contentions are liable to be set aside on the above grounds.

38. The Noticee submitted that SEBI discontinued proceeding against the broker and intermediary against whom similar allegations of dealing in illiquid stock options while executing trades. In this regard, I note that Noticee has not brought on record anything to substantiate his submission. Therefore, I reject such contentions of the Noticee.

39. The Noticee submitted that the trades were carried out by the brokers just to earn the incentives as per the BSE Scheme. While no evidence is placed in front of me in support of her contention that the trades were carried out by the broker without her consent or if the Broker was registered as the Market Maker as per the Scheme, even if the same is considered, the above submission referring to the incentive in no way justifies or regularizes the reversal of trades of the nature which have been executed by the Noticee in the instant case. As noted above, the Noticee, while trading in the illiquid stock options has instantaneously reversed her buy trade wherein the price,

volume and time has matched with her counterparty in both the legs separated by mere 4 seconds. The scheme, plan, device and artifice employed by the Noticee in this case of executing reversal trades in illiquid stock options contracts tantamount to fraud on the securities market in as much as it involves non-genuine/manipulative transactions in securities and misuse of the securities market.

40. With regard to the reply submitted by the Noticee under para 8 (xxxiv) & Para 8 (xxxv), I note that the present proceeding is initiated against the Noticee and the submission made by Noticee no way justifies or regularizes the reversal of trades of the nature which have been executed by the Noticee in the instant case. As noted above, the Noticee, while trading in the illiquid stock options has instantaneously reversed her buy trade wherein the price, volume and time has matched with her counterparty in both the legs separated by mere gap of 4 seconds- 13 seconds. The scheme, plan, device and artifice employed by the Noticee in this case of executing reversal trades in illiquid stock options contracts tantamount to fraud on the securities market in as much as it involves non genuine/ manipulative transactions in securities and misuse of the securities market.

41. The Noticee has contended that SEBI has allowed and introduced the Liquidity Enhancement Scheme for illiquid securities in F&O segment. In this regard I note that while the trading happened within the anonymous trading platform of BSE under supervision of the BSE and SEBI, however, considering the precision at which the reversal transactions had taken place, the exact matching of price with huge price variations, I am of the view that it will be too naive to hold that just because these transactions were executed through exchange trading platform, within the applicable limits, such trades were genuine. Such conclusion would be over-looking the prior meeting of minds involving synchronization of buy and sell order w.r.t. the transactions entered into by the Noticee with its counter-party and such reversal trading is clearly violative of the transparent norms of trading in the securities market. In view of the above observations, I hold that the said transactions executed by the Noticee in the said Stock Option contract were synchronized, non-

genuine trades, in which positions were reversed within a small time gap with prior meeting of mind between the parties to the trade. Moreover, a scheme introduced by Stock Exchange to enhance liquidity in any particular segment is in no way can be misused for any ulterior motive.

42. I also note that 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 4 seconds to 13 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 counterparty 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. Further, there was wide variation in prices of the said contracts, within a short span of time, without substantial variation in the price of the underlying scrip to justify the aforesaid variation. Therefore, I note from the foregoing findings that the trading pattern of the Noticee in terms of volume of reversal trades, proximity of buy/sell and subsequent reversal evidences the indulgence, clearly demonstrates the manipulative practice by the Noticee by using the stock exchange platform to carry out non-genuine trades with the aim to execute such trades for various manipulative purposes.

43. In totality of the circumstances as observed above it is noted that the Noticee has employed manipulative and deceptive device in contravention of the SEBI Act or the rules and the regulations made there under. Further, the non-genuine and deceptive trades as found in this case are covered under the definition of ‘fraud’ and dealing of Noticee were ‘fraudulent’ as defined under Regulation 2(1)(c) of the PFUTP Regulations.

44. In view of the aforesaid facts and circumstances, it cannot be ignored that synchronization of trades in pre-determined manner as found in this case had an adverse impact on the fairness, integrity and transparency in the securities market. 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 by the Noticee stands established.

Issue No. II: If yes, whether the violation, on the part of the Noticee would attract monetary penalty under section 15HA of the SEBI Act?

AND

Issue No. III: If the answer to Issue No. II is in affirmative, what would be the monetary penalty that can be imposed upon the Noticee?

45. I find it appropriate to deal with Issue No. II and III together in the following paragraphs. Since violation of regulations 3(a), (b), (c), (d), 4(1) and 4(2) (a) of the PFUTP Regulations by the Noticee is established, I am of the view that the same warrants imposition of monetary penalty upon the Noticee under Section 15HA of the SEBI Act, text of which is produced as under:

> ***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].*
>
> ***** 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.*

46. Further, while determining the quantum of monetary penalty under section 15HA of the SEBI Act, I have considered the factors stipulated in Section 15-J 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 or section 11 or section 11B, the Board or 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 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.]

47. I note that when the impact of artificial volume created by the two counterparties is seen as a whole, it is not possible from the material on record to quantify the amount of disproportionate gain or unfair advantage resulting from the artificial trades between the counter parties or the consequent loss caused to investors as a result of the default. The Noticee has entered into 10 non-genuine transactions in 5 stock option contracts which demonstrates the nature of the default on its part. In this regard, it is pertinent to refer to the decision of the Hon'ble Supreme Court in the matter of ***SEBI vs Shri Ram Mutual Fund (Appeal Civil 9523-9524 of 2003) dated May 23, 2006***, wherein it 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.*

48. In the view of the above, I note that, in the present matter, the facts of the case clearly establish the violation committed by the Noticee and I consider it is necessary to impose monetary penalty which would act as deterrent to the Noticee in future.

ORDER

49. After taking into consideration the nature and gravity of the violations established in the preceding paragraphs and in exercise of the powers conferred upon me under section 15-I of the SEBI Act read with rule 5 of the SEBI Adjudication Rules, I hereby impose a penalty of Rs 5,00,000 (Rupees Five Lakh Only) on the Noticee *i.e., Sarita Agarwal* under section 15HA of the SEBI Act. I am of the view that the penalty is commensurate with the violation committed by the Noticee.

50. 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 favor 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

51. 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.

52. The aforesaid Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to "The Division Chief(Enforcement Department 1 DRA-2), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C –4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai –400 051.". The Noticee shall also provide the following details while forwarding DD / payment information
    - Name and PAN of the Noticee
    - Name of the case / matter
    - Purpose of Payment–Payment of penalty under AO proceedings
    - Bank Name and Account Number
    - Transaction Number

53. In terms of rule 6 of the SEBI Adjudication Rules, copies of this order are sent to the Noticee and also to SEBI.

Date: January 27, 2022 **VIJAYANT KUMAR VERMA**

Place: Mumbai **ADJUDICATING OFFICER**