BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

ADJUDICATION ORDER NO. ORDER/GG/BS/2021-22/15334

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:

Sanjay Agarwal HUF

(PAN: AATHS0821A)

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 an 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")** after observing large scale reversal of trades in the stock options segment of the BSE.

2. Pursuant to a preliminary examination conducted in the Illiquid Stock Options matter an Interim order was passed by SEBI on August 20, 2015 against 59 entities which were confirmed vide Orders dated July 30, 2016 and August 22, 2016. Meanwhile, SEBI initiated a detailed investigation relating to trading in stock options segment of BSE which was completed in the year 2018. The investigation findings revealed that of all trades executed in the stock options

segment of BSE during the Investigation Period, 81.38% of the trades, that is 2,91,643 trades, were trades which involved a reversal of buy and sell positions by the clients and counterparties in a contract. The investigation revealed that 14,720 entities were involved in executing non-genuine trades in BSE's stock options segment during the investigation period. The proceedings initiated against the first set of 59 entities, vide the aforementioned Interim Order were disposed of vide final Order dated April 05, 2018, without any further directions, observing that the Adjudicating Officer shall continue the proceedings in accordance with the SEBI Act, 1992 and SEBI (Procedure for Holding and Imposing Penalties by Adjudicating Officer) Rules, 1995 and pass appropriate order on merits. It was also recorded therein that SEBI has decided to take appropriate action against all 14720 entities in phases. The captioned proceedings initiated against the Noticee is part of the aforesaid mass action initiated by SEBI against the large number of entities.

3. In the meantime, the Hon'ble Securities Appellate Tribunal (Hon'ble SAT), vide its Order dated October 14, 2019, in the case of *R. S. Ispat Ltd Vs SEBI*, *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".*

4. Thereafter, a Settlement Scheme was framed under the SEBI (Settlement Proceedings) Regulations, 2018, which provided a 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. Finally, adjudication proceedings were initiated against those entities who had not availed of the opportunity of settlement.

5. It was observed that 13,186 entities had not availed of the opportunity of settlement and therefore Adjudication proceedings were initiated against the entities in a phased manner. In order, to duly expedite the Adjudication proceedings against the entities, SEBI had appointed additional Adjudicating officers to adjudicate against the said entities. However, owing to the huge

number of alleged entities, the adjudication proceedings are being conducted in a phased manner that would require adequate time to complete the proceedings against all entities.

6. It was observed that **Sanjay Agarwal HUF (PAN: AATHS0821A)** (hereinafter referred to as the "**Noticee**") was one of the entities, who did not seek settlement under the Settlement Scheme in 2020. The reversal trades allegedly contributed to the generation of artificial volumes, leading to allegations that the Noticee had violated the provisions of Regulations 3(a), (b), (c), (d) and Regulation 4(1) and 4(2) (a) of the SEBI (Prohibition of Fraudulent and Unfair Trading Practices relating to Securities Markets) Regulations, 2003 (hereinafter referred to as the "**PFUTP Regulations**").

APPOINTMENT OF ADJUDICATING OFFICER

7. SEBI initiated adjudication proceedings and appointed me, as the Adjudicating Officer under section 15-I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the "**SEBI Act**") read with rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as the "**SEBI Adjudication Rules**") *vide* order dated November 12, 2021 to inquire into and adjudge under section 15HA of the SEBI Act, with respect to the allegations against the Noticee.

SHOW CAUSE NOTICE, REPLY AND HEARING

8. A show cause notice dated 06.12.2021 (hereinafter referred to as "**SCN**") 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 initiated against him and why penalty should not be imposed against him under section 15HA of the SEBI Act for the alleged violation of the provisions of regulations 3(a),(b),(c),(d), 4(1) and 4(2)(a) of the PFUTP Regulations.

9. The SCN issued to the Noticee, *inter alia* alleged, that the Noticee engaged in 6 non-genuine trades through 3 contracts, on 3 days viz. 24.06.2014, 03.02.2015 and 27.02.2015, through 3 counterparties viz. Ritudhara Traders Private Limited, Rudramala Impex Private Limited and Flute Developers Private Limited which led to generation of artificial volume of 9,34,000 units. The trades executed by the Noticee were reversed on the same day with the same counterparties at a substantial price difference without there being any rationale. The summary of the dealings of the Noticee in the 3 (three) stock option contracts, in which the Noticee allegedly executed the 6 (six) non-genuine trades during the investigation period is as follows:

Table-1

Summary of dealings in contracts wherein the Noticee executed reversal trades as given below:

S. No.	Contract Name	Date of transaction	Trade Time	Avg. Buy Rate (Rs.)	Total Buy Volume (no. of units)	Trade Time	Avg. Sell Rate (Rs.)	Total Sell Volume (no. of units)	Total vol 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.	JPPW14JUN24.00CE	24/06/2014	15:03:59.927192	0.05	403000	14:57:38.570841	1.05	403000	806000	100%	43.36%
2.	IBRL15FEB75.00PEW1	03/02/2015	13:43:32.575103	0.05	40000	11:21:25.618797	1.3	40000	80000	100%	4.88%
3.	RPOW15MAR75.00CEW1	27/02/2015	15:03:11.391909	0.3	24000	13:52:54.892324	2.3	24000	48000	100%	2.42%

10. The allegation is that the above trades were non-genuine trades executed by the Noticee in the stock options contract, through two contracts, involving reversal of trades in two days with the same counterparty at a substantial price difference, as shown above in Table-1.

11. The abovementioned contracts which resulted in 3 reversal trades creating artificial volumes is elaborated through an illustration of one of the contracts viz. “JPPW14JUN24.00CE” (Serial.no. 1 of the above table), which is as follows:

(a) During the investigation period, in the said contract viz. “JPPW14JUN24.00CE” the Noticee on 24/06/2014 has executed 2 trades for total volume of 8,06,000 units with counterparty, viz. Ritudhara Traders Private Limited.

(b) While dealing in the said contract on 24/06/2014, the Noticee at 14:57:38.570841 hrs executed one sell trade for 4,03,000 units at the rate of Rs. 1.05 per unit with counterparty Ritudhara Traders Private Limited. After around 6 minutes of the aforementioned sell trade, the Noticee reversed the trade by executing one buy trade at 15:03:59.927192 hrs for 4,03,000 units at the rate of Rs. 0.05 per unit with the same counterparty Ritudhara Traders Private Limited.

(c) From the above, it is noted that while dealing in aforesaid contract (i.e JPPW14JUN24.00CE) during the investigation period, the Noticee executed a total of 2 trades (1 buy trade and 1 sell trade). This made up to 43.36% of the total market volume for this contract during the investigation period. Likewise, in the contract shown at S.no.2 and 3 of Table 1, the Noticee has executed 2 reversal trades, which constituted 4.88% of market volume in the contract viz. IBRL15FEB75.00PEW1 and constituted 2.42 % of market volume in the contract viz. RPOW15MAR75.00CEW1.

12. Based on the above, it was alleged that the Noticee by indulging in execution of the aforesaid non-genuine reversal trades, has violated Regulations 3(a),(b),(c),(d) and 4(1), 4(2)(a) of the PFUTP Regulations, text of which is reproduced as under:

PFUTP Regulations

3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

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

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

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

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

4. Prohibition of manipulative, fraudulent and unfair trade practices

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

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

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

………

13. The Noticee submitted his reply to the SCN *vide* letter dated 08.02.2022 (hereinafter referred to as the "**Reply of the Noticee**"). The relevant portion of the reply is reproduced as under:

i. In your SCN you have mentioned that we have allegedly entered into Non-genuine Reversal Trades and as per your SCN a reversal trade is "The reversal trades involves squaring off transactions, with significant difference in the sell value and buy value of the transactions. ". Therefore, the first component to qualify as reversal trade is to square off the transaction which we believe is the basic trade pattern on any stock exchange globally, particularly in Options other than those which expire on the expiry date either In the money or out of Money. The second aspect mentioned is "significant difference in sell value and buy value of the transactions" and what is significant is a subjective issue unless parameters in the given context are predefined.

ii. Para 5 of the SCN reads inter alia "Noticee was one of the entities alleged to have indulged in reversal trades which created false and misleading appearance of trading, generating artificial volumes in the stock option segment of BSE during the investigation period. The Noticee is alleged to have engaged in three such reversal trades through 3 unique contracts, which led to generation of alleged artificial volume of 9,34,000. Each of the trades of the noticee involved reversal of the trades with the same counterparty on the same day at different price.

iii. Para 6 of the SCN reads "The Noticee has entered into 3 reversal tracks on 3 days viz. 24/06/2014, 03/02/2015 and 27/02/2015 through 3 unique contracts with 3 counterparties viz. Rudramala Impex Private Limited, Ritudhara Traders Private Limited and Flute Developers Private Limited. The 6 trades each entered into by the notice were reversed on the same day with the same counterparty at a substantial price difference, without there being any rationale for the significant change in the contract price. This goes to indicate that these trades are artificial and not genuine."

From the background mentioned in the SCN it is understood that there were large scale reversal trades at BSE in the alleged Illiquid Stock Option during the investigation period so to say they stood at 81.38% total number of trades. As it is alleged that the Noticee indulged into reversal trades which led to these proceedings on the presumption that they have created artificial volume and other violations of the law. Therefore, it appears that SEBI believes all transactions which have resulted into a square off trade with the same counterpart)/ are non-genuine but allowed it to be continued despite its monitoring mechanism over a long period of time where such trades constituted almost entire trade in the segment. This presumption as mala-fide trade is neither sustainable in law nor suffice the test of judicial proceedings.

The Noticee entered into various derivative contracts including those which are subject matters of this SCN. In this connection certain facts about the trades which are subject matter of this SCN are worth noting.

(i) The Counterparty of all the 3 trades are different
(ii) There were 3 different Brokers of the Counterparties for the 3 trades
(iii) There is no common link between the parties.
(iv) The Addresses of the Counter parties are different, Master data from MCA is enclosed
(v) The Directors of the Counter party companies are different individual and no one is common, Master data from MCA is enclosed.
(vi) There is no communication or connect between the Noticee and the counter parties or their brokers.
(vii) There is a substantial time gap between the order time of the Noticee and the counter party.
(viii) In 4 out of 6 orders the Noticee exercised the already available bid/offer in the online platform. Therefore, the trades were not even originated by the Noticee but were accepted as per the availability on the Trading Platform.
(ix) In one of the alleged reversal trade of IBRL, PE sale was done for 40000 units but a reversal with same party was for only for 8000 units B) Thus the volume stands at 870000 taking buy & Sell Quantity together instead of 934000 as mentioned in SCN
(x) In case of RPower trade dated 27/02/2015, it may be imperative to note from the data provided by you that the counter party had placed an order of 816000 units but the noticee had traded for only 24000 units.

Taking into consideration our three Genuine Square-off Trades in question, we would like to mention the difference in the Buy and sell rates of the options and 'quantities are as follows:

Sl No	Script	Expiry	Strike Price	CE/PE	Quantity	Buy Rate	Sale Rate	Price Diff.	Trade Date	Time Gap	% of Trade
1	JPPW	26/06/14	24.00	CE	403000	0.05	1.05	1.00	24/06/2014	6 mins	43.36
2	IBRL	05/02/15	75.00	PE	40000/8000	0.05	1.30	1.25	03/02/2015	144 Mins	4.88
3	RPow	05/03/15	75.00	CE	24000	0.30	2.30	2.00	27/02/2015	71mins	2.42

We enclose herewith a chart showing the price fluctuation of the said scripts in cash segment on the trade day as well as one day before and one day after. Please note that the data for the OPTION trading for the said dates are not available on public domain as such we cannot produce the same for comparison. It would have been of great help if SEBI could provide the said information as requested in our letter dated 14/12/2021 The Chart is annexed as "Annexure-C"

From the said charts it is amply clear that in case of JPPW the price fluctuation on the trade day in the cash segment was Rs. 1.10 per share and on the day before it was 0.95. So the difference is on the line of Cash segment. Pertinent to note that, the script in question is a power sector company and the Coal Mines allocation to different private players was sub-judice with the Supreme Court which eventually cancelled the Coal Block Allocation vide its judgement dated 25'h August 2014 and the said trade was executed on 24/06/2014 i.e. just after the change in the Central Government. Since coal and Power are interlinked, there used to be volatility in the price of the Power sector Scripts.

In case of IBRL the price fluctuation on the Trade date was Rs.4.95 whereas the buy and sell margin is only Rs.1.25. Just to mention the price fluctuation on the day before was Rs.4.00 and on subsequent date it was Rs.5.10/- The net margin on the trade so reversed with the same party was a meagre Rs.10,000/-(8000 Units * 1.25)

In case of RPOWER the price gap in cash segment on the day after trade was Rs.3.35 and on the trade day as well as on day before it was Rs.1.6 while we squared off with a difference of Rs.2.00.

From the above facts it is evident that the price gap of the squared off trades are not significant and the time gap of the trades stretches upto 144 minutes. In case of two trades IBRL (4.88%) and Rpower (2.42%) is a miniscule portion of the entire trade of the day.

From the above facts it is clearly evident that the above trades are not synchronized trading and the square off are mere matter of chance.

As you are aware that since the introduction of Screen based trading, the Buyer and seller do not know who the other party is, alleging that the transaction is non-genuine is trying to shift the onus of proof. All trades are genuine unless proved otherwise. We reiterate that we have entered into genuine trades as per the underlying market conditions. There is not even an iota of evidence to suggest that the trades were executed wrongly and to harm any investor or any other entity. As you have mentioned in your SCN that the Square off Trades are non-genuine, in this case, you agree that there are GENUINE Square off Trades also. Moreover, your attention is invited to the SAT order dated 21/01/2021 in Appeal Nos 198, 199, 200, 276 and 283 of 2020 disposed off together by the Honourable SAT. The Order inter alia refer to certain issues which are as enumerated below:

a) The show cause notice was issued on February 6, 2014 to 60 entities on the charge of synchronized trading and there being no change in real beneficial ownership resulting in artificial increase in the volume of trades which were fraudulent and manipulative in nature.

b) 16. This Tribunal while allowing the appeals of the said appellants by its earlier order dated June 22, 2016 found as under: - "8. In the Table set out in para 16 of the impugned order. it is recorded that the appellant-Dhvani Kothari is related to her husband Darshan Kothari. Apart, from the above, nowhere in the impugned order it is stated that the appellant was connected with Bahar Paper Pvt. Ltd. or any of the entities set out in the impugned order. Fact that the appellant purchased shares of RIL from Bahar Paper Pvt. Ltd. in off market and sold the said shares on market, wherein, Bahar Paper Pvt. Ltd. happens to be the counter party. no doubt raises strong suspicion that the said trade may not be a genuine trade. However, without recording any reasons as to how the said trade could be said to be fraudulent and manipulative trade or the basis on which the appellant could be said to be connected to Bahar Paper Pvt. Ltd., merely on the basis of certain general observations the AO could not have arrived at a conclusion that the trades executed by the appellant were fraudulent and manipulative trades.

From the para a) above from the SAT order referred to, it appears that the trades should result in real beneficial ownership to test the case of not being a synchronised trading. It is important to note that till recently Indian stock market one could not take or make deliveries of Stocks against the Open interest in a stock on expiry. Thereby, meaning that no derivative trading could change real beneficial owner and by the said yardstick, all derivative trades in those time shall be classified as SYNCRONISED TRADING.

The allegation of Indulging into reversal trade of the Noticee is a baseless and imaginary allegation without any iota of evidence. The Dictionary meaning of the word Indulgence includes "the act of doing something that you enjoy but that is usually thought of as wrong or unhealthy" for example his indulgence in forbidden pleasures. From the said meaning it appears that the transactions should have been done as a pleasure but usually with a thought of wrong or unhealthy. The Noticee neither while entering into the trades had any idea whatsoever as to who is the counter party nor it was his subject matter to know as the trades were made through the BSE platform. In fact the notice first received the details of counterparty in the SCN sent by SEBI

The said trades alleged to be part of about 82% of the entire option trades on the BSE over a span of 18 months as accepted in your SCN are wrong and in violation of the relevant regulations to artificially increase the volume of Trade on BSE. In your own admission you are raising serious credibility questions on the automated online surveillance system and the Monitoring Mechanism of SEBI being run by the money spent from the funds meant for investor protection.

In fact we have not heard any such investigation being conducted on any other Stock Exchange, which perhaps presumes that there are no such square off trades on any other Stock Exchange or if any such transactions have been executed, they are genuine in nature on other stock exchanges.

In fact the Investors are the victim of the surveillance failure at the stock exchange as the BSE has introduced an auto cancel mechanism in March 2016 for any such trade executed on the BSE vide Notice No:. 20160308-33 on 8th March 2016.

As mentioned in the SCN, about 82% of the trades are alleged to be Non Genuine over a period of 18 months (IP) and at the same time the BSE has been running an incentive programme for its Members called Liquidity Enhancement Incentive Programmes — LEIPS from last several years. We Quote herewith, a headnote of a BSE programme issued in 2013 in compliance with a SEBI Circular which inter alia contains:

"LEIPS-XIll

(Effective from September 04, 2013)

Pursuant to SEBI Circular CIR/DNPD/5/2011 dated June 2, 2011 (BSE Notice no-20110602-18, dated June 02, 2011), permitting stock exchanges to introduce Liquidity Enhancement Schemes (LES)for illiquid securities in their equity derivatives segment, the Exchange has launched a series of Liquidity Enhancement Incentive Programmes (LEIPS) with the goal of creating lasting, self-sustaining liquidity in BSE's Derivatives Segment........

With these incentive programmes in the background, the entire episode seems to be for the purpose of unjust enrichment of stakeholders other than the Investors themselves. The only victims of the said investigations seems to be the Investor entities who have entered into the contracts whereas the Broker in the Form of Brokerage and Incentive from the Stock Exchange, the Stock Exchange by way of Fees, The Central Governments in the form of STT and Service tax, the State Government collecting Stamp Duty and SEBI charging Turnover charges.

If at all the square off transactions with the same counterpart), are /were deemed to be non-genuine, why the trading mechanism allowed it to happen for such a long period of time and that too when it constituted about 82% of the entire number of Transactions. Is this not an entrapment for the gullible investor supposed to be guided and protected by SEBI for the petty gains of the Market Intermediaries in the backdrop of such incentive schemes to milk the Investors.

If these square off trades were not allowed per se, why there is no such mention of prohibited transactions and how come an investor entering into a contract through the on screen transactions punched by the Broker is supposed to prevent the square off with the same counterparty if the trade itself is in Illiquid Stock Options and the Bid/Offer is the only available matching bid/offer. Unless there is credible evidence of connivance in the trade, the trade itself cannot be presumed to be non-genuine on the basis of mere suspicion and is against natural justice.

On the one hand Incentive schemes for Brokers is given by the Stock Exchange to increase liquidity in the Illiquid derivative segment, on the Other hand SEBI is trying to fix the blame on the Investors counting in thousands for trading in those very illiquid options. All those options are created by the Stock Exchange as per the prevailing guidelines. So if an entity is not supposed to trade in those options why are they created in the first place? As the marking Illiquid suggests any person who has entered into such contract will have to exit the same and in all probability, the counterparty will be same because of very few takers.

Submitted respectfully for your kind consideration & dropping the proceedings.

14. Vide Hearing Notice No. EAD-6/GG/VP/2303/3/2022 dated 19.01.2022, it was communicated to the Noticee that an opportunity of personal hearing on 27.01.2022 is granted to the Noticee in accordance with rule 4 (3) of the Adjudication Rules. The said Hearing Notice was delivered by SPAD on 24.01.2022. Authorized Representative (AR) of the Noticee appeared before me and sought adjournment of hearing on personal grounds. Considering the request, a second opportunity of hearing was granted on 25.02.2022 which was communicated to Noticee vide letter ref. no. EAD6/GG/VP/5719/5/2022 dated February 10, 2022. ARs –Mr. Jagdish Agarwal, Chartered Accountant and Surendra Kumar Bhuwania, Chartered Accountant, appeared before me on the scheduled date and reiterated the submission made vide reply dated 08.02.2022. Hearing was conducted through Web platform due to Covid -19 Pandemic.

CONSIDERATION OF ISSUES AND FINDINGS

15. The issue that arises for consideration is whether the trading in illiquid stock options done by the Noticee during the Investigation Period was in violation of Regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of the PFUTP Regulations? If yes, whether the Noticee is liable for monetary penalty under section 15HA of the SEBI Act and what should be the quantum?

16. I note that SCN dated 06.12.2021 alleged that the Noticee contributed to the generation of artificial volumes by entering reversal trades thereby violated the provisions of Regulations 3(a), (b), (c), (d) and Regulation 4(1) and 4(2) (a) of the SEBI (PFUTP) Regulations, 2003.

Analysis of the one of the contracts traded by the Noticee is tabulated hereunder for illustration. (Ref. Annexure-2 of the SCN):

Table 2: Summary of dealings in contract JPPW14JUN24.00CE

S. No.	Date of transaction	Name of the client	Name of the counter party client	Trade Time (in hrs)	Order Time of Ritudhara	Order time of Noticee i.e. Sanjay Agarwal HUF	Trade Rate (Rs.)	Trade Volume (no. of units)
	(1)	**(2)**	**(3)**	**(4)**	**(5)**	**(6)**	**(7)**	**(8)**
1	24/06/2014	RITUDHARA TRADERS PRIVATE LIMITED	SANJAY AGARWAL HUF	14:57:38.570841	14:57:38.570841	14:57:08.309438	1.05	4,03,000
2	24/06/2014	SANJAY AGARWAL HUF	RITUDHARA TRADERS PRIVATE LIMITED	15:03:59.927192	15:03:59.927192	14:58:21.636634	0.05	4,03,000

17. I note from the trade log that the trades executed by the Noticee in the aforesaid contract were reversed within a short span of time with the same counterparty. To illustrate, the Noticee on 24/06/2014 at 14:57:38.570841 executed one sell trade with counterparty Ritudhara Traders Private Limited for 4,03,000 units at Rs. 1.05 per unit. Order time of the Noticee being 14:57:08.309438 and order time of the counterparty being 14:57:38.570841. The difference in order time of the Noticee and that of counterparty is a few seconds. The attribute tagged with the orders of Noticee and counterparty under 'order type' and 'CP_order Type' column is "L" , as seen from columns 49 & 50 of Annexure 2 to SCN, which implies that Limit orders were placed by both the parties at a prefixed price.

18. Thereafter, within a short span of time, the Noticee reversed the trade by executing buy trade. The Noticee at 15:03:59.927192 (Order time of the Noticee: 14:58:21.636634 and order time of the Counterparty: 15:03:59.927192) executed one buy trade with counterparty Ritudhara Traders

Private Limited for 4,03,000 units at Rs. 0.05 per unit. Both the parties placed Limit orders for their respective orders at exact matching price.

19. I note that while dealing in the said contract during the investigation period, the Noticee executed reversal trades with the same counterparty. The Noticee reversed the trade with same counterparty on the same day and garnered profits. The circumstances surrounding the trades point towards a prior understanding between the two parties to the trades, indicating the trades were not bona fide. Thus, the Noticee, through his dealing in the said contract, generated artificial volume in the contract. In the process, one side intentionally books loss and the other party books gains.

20. Similarly, reversal of trades were observed in other 2 contracts viz. IBRL15FEB75.00PEW1 and RPOW15MAR75.00CEW1 with two different counterparties viz. Rudramala Impex Private Limited and Flute Developers Private Limited, which are mentioned in the Table 1 at paragraph 9 above.

21. I note from the trading pattern of the Noticee and the manner of placing buy and sell orders resulting in reversal of trades on the same day indicate that the trades executed by the Noticee were not genuine trades. Both the parties to the trades constituted 43.36% of the market volume in one contract and 4.88% & 2.42% in two other contracts and being non-genuine trades, created an appearance of artificial trading volumes and misleading impression of trading in respective contracts. By engaging in such trades, the Noticee violated provisions of Regulation 3(a), (b), (c) and (d) and Regulation 4 (1), 4(2) (a) of PFUTP Regulations, 2003 which states that dealing in securities will be deemed to be a fraudulent and unfair trade practice if it involves “indulging in an act which creates false or misleading appearance of trading in the securities market.

22. The Noticee in his reply dated 08.02.2022 submitted that it appears that the trades should result in real beneficial ownership to test the case of not being a synchronized trading. Further, the Noticee stated that till recently Indian stock

market one could not take or make deliveries of stocks against the open interest in a stock on expiry, thereby, meaning that no derivative trading could change real beneficial owner and by the said yardstick, all derivative trades in those time shall be classified as ‘Synchronized Trading’. This argument of the Noticee is incorrect and misplaced. The trades have happened in illiquid contracts and bears no semblance to genuine trades that are normally executed in the derivative segment following genuine price discovery. Thus, the argument of the Noticee does not hold good. Moreover, this aspect has been considered by the Hon’ble Supreme Court of India in para 37 of the order in Rakhi Trading:

> *“We also find it difficult to appreciate the stand of SAT that the rationale of change of beneficial ownership does not arise in the derivatives segment. No doubt, as in the case of trade in a scrip in the cash segment, there is no physical delivery of the asset. However, even in the derivative segment there is a change of rights in a contract.”*

23. The Noticee in his reply dated 08.02.2022 submitted that in one of the alleged reversal trade of IBRL (IBRL15FEB75.00PEW1), PE sale was done for 40,000 units but a reversal with same party was for only 8,000 units. Thus, the volume stands at 8,70,000 taking buy & Sell Quantity together instead of 9,34,000 as mentioned in SCN. I have verified the trade log and note that the trade for 40,000 units was reversed in the said contract with the same counterparty by the Noticee. Hence, the contention of the Noticee is factually incorrect. Relevant extract from Annexure 2 to SCN is given below:

TRADE_DATE	CLNT_NAME	CP_NAME	TRADE_RATE	TRADE_VALUE	ORDER_RATE	CP_ORDER_RATE	TRADED_QTY	ORDER_QTY	CP_ORDER_QTY
03/02/2015	Rudramala Impex Private Limited	Sanjay Agarwal HUF	1.3	3052000.0	1.3	1.3	**40000**	40000	40000
03/02/2015	Sanjay Agarwal HUF	Rudramala Impex Private Limited	0.05	3002000.0	0.05	0.05	**40000**	40000	40000

24. In the context of artificial trades, it is pertinent to rely on the judgment of the Hon’ble Supreme Court in the matter of Rakhi Trading (SEBI Vs. Rakhi Trading- CANo.1969/2011, Order dated February 8, 2018)

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

“35. Nobody intentionally trades for loss. An intentional trading for loss per se, is not a genuine dealing in securities. The platform of the stock exchange has been used for a non-genuine trade. Trading is always with the aim to make profits. But if one party consistently make loss and that too in pre-planned and rapid reverse trades, it is not genuine; it is an unfair trade practice.”

“38. Their Lordships have considered similar transactions in the same segment, “The repeated reversals and predetermined arrangement to book profits and losses respectively, made it clear that the parties were not trading in the normal sense and ordinary course. Resultantly, there has clearly been a restriction on the free and fair operation of market forces in the instant case.”

“41. The stock market is not a platform for any fraudulent or unfair trade practice. The field is open to all the investors. By synchronization and rapid reverse trade, as has been carried out by the traders in the instant case, the price discovery system itself is affected. Except the parties who have pre-fixed the price, nobody is in the position to participate in the trade. It also has an adverse impact on the fairness, integrity and transparency of the stock market.”

“38. The smooth operation of the securities market and its healthy growth and development depends upon large extent on the quality and integrity of the market. Unfair trade practices affect the integrity and efficiency of the securities market and the confidence of the investors. Prevention of market abuse and preservation of market integrity are the hallmark of securities law …” (Paragraph No.1, 35, 38 and 41 of the part of the judgment authored by His Lordship Mr. Justice Kurian Joseph).

For this, the Hon’ble Judge also relied on the apex court observations in N.Narayanan Vs. Adjudicating Officer, Securities and Exchange Board of India(2013) 12 SCC 152 wherein it was inter alia observed: “Market abuse” impairs economic growth and erodes investor’s confidence.”

"42. Where certain unscrupulous elements are trying to manipulate the market to serve their own interest, it becomes imperative on the part of SEBI to intervene and to curb further mischief and to take necessary action to maintain public confidence in the integrity of the securities market…" (Paragraph No.42 of the part of the judgment authored by Her Ladyship Ms. Justice R. Bhanumathi).

25. Finally, to answer the question as to whether these trades fall within the ambit of Regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of the PFUTP Regulations, I would like to rely on the following extract of the judgment of the Hon'ble Supreme Court in the matter of **Rakhi Trading:**

"40. *Regulation 3(a) expressly prohibits buying, selling or otherwise dealing in securities in a fraudulent manner. Under Regulation 4(2) dealing in securities shall be deemed to be fraudulent if the trader indulges in an act which creates a false or misleading appearance of trading in the securities market. It is a deeming provision. Such trading also involves an act amounting to manipulation of the price of the security in the sense that the price has been artificially and apparently prefixed. The price does not at all reflect the value of the underlying asset. It is also a transaction in securities entered into without any intention of performing it and without any intention of effecting a change of ownership of such securities, ownership being understood in the limited sense of the rights of the contract." (per His Lordship Mr.Justice Kurian Joseph's findings in paragraph No. 40)*

26. The Hon'ble Appellate Tribunal has summarized the circumstances identified by the Apex court in **Rakhi Trading Judgment** in the case of **Global Earth Properties and Developers Pvt. Ltd. Vs Securities and Exchange Board of India (Appeal No.212 of 2020 decided on September 14, 2020).** In para 14 of the said order, the Hon'ble SAT enlisted the following circumstances:

*"**14 d.** An intentional trading for loss per se, is not a genuine dealing in securities. Trading is always with the aim to make profits. But if one party consistently makes loss and that too in preplanned and rapid reverse trades, it is not genuine and the same is an unfair trade practice.*

e. *….In synchronised and reverse trades, there is no genuine change of rights in the contract. "*

27. Further in paragraph No. 20 of the said order in **Global Earth (supra),** the Hon'ble Tribunal held as below:

"***20.*** *From the aforesaid cumulative analysis of the reversed transactions with the counter party, quantity, time and significant variation of the price clearly indicates that the trades were non-genuine and had only misleading appearance of trading in the securities market without intending to transfer the beneficial ownership. One finds it to be naïve to presume that the perception of the two counter parties to a trade changed within few seconds/minutes and positions were interchanged and the contracts were changed where one party made profit and the other party ended up making losses every time without prior meeting of mind. 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."*

28. Thus from the facts of the matter and the legal position laid down by the Hon'ble Supreme Court, I find that the subject trades are non-genuine and artificial. Taking into consideration the facts & circumstances of the case and being convinced of the generation of artificial volumes in the market, I am of the view that a penalty ought to be imposed on the Noticee which is commensurate to the violation. I find that a penalty of Rs. 5,00,000/- (Rupees Five Lakh only), which is the statutory minimum penalty prescribed for PFUTP under section 15 HA, is appropriate in the instant case.

ORDER

29. In exercise of powers conferred upon me under section 15-I (2) of the SEBI Act read with rule 5 of the Adjudication Rules, I hereby impose a penalty of Rs 5,00,000/- (Rupees Five Lakh only) upon the Noticee i.e., **Sanjay Agarwal HUF (PAN: AATHS0821A)** under section 15HA of the SEBI Act for violation of Regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of the PFUTP Regulations.

30. 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

In case further assistance would be required in payment of penalties, the Noticee may contact the support at portalhelp@sebi.gov.in.

31. The Noticee shall forward the said demand draft or the details / confirmation of penalty so paid through e-payment to the Division Chief, Enforcement Department-I, DRA-I, SEBI, in the format given in table below:

Case name	
Name of payee	
Date of payment	
Amount paid	
Transaction no	
Bank details in which payment is made	
Payment is made for	Penalty

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

Date: March 11, 2022 **GEETHA G.**

Place: Mumbai **ADJUDICATING OFFICER**