BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

ADJUDICATION ORDER NO: Order/VV/AS/2023-24/28810

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

In respect of

MEHTA AND MEHTA ASSOCIATES

(PAN: AAHFM8197K)

In the matter of trading in Illiquid Stock Options on BSE

BACKGROUND OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") observed large scale reversal of trades in stock options segment of Bombay Stock Exchange (hereinafter referred to as "**BSE**"). SEBI observed that such large scale reversal of trades in stock options lead to creation of artificial volume at BSE. In view of the same, SEBI, conducted an investigation into the trading activity in illiquid Stock Options at BSE for the period between April 1, 2014 to September 30, 2015 (hereinafter referred to as, "**Investigation Period"**) after observing large scale reversal of trades in 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 14,720 entities were involved in executing non-genuine trades in BSE's stock options segment during the investigation period and also 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. It was observed that, Mehta and Mehta Associates (herein after referred to as "**Noticee**") was one such various entities whose reversal trades involved squaring off transactions with significant difference in the sell value and buy value of the transactions. 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 SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as "**PFUTP Regulations**").

3. 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 (hereinafter referred to as the "**SEBI Act**") and SEBI (Procedure for Holding and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the "**Adjudication Rules**") and pass appropriate order on merits. It was also recorded therein that SEBI has decided to take appropriate action against all 14,720 entities in phases.

4. In the meantime, the Hon'ble Securities Appellate Tribunal ("**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".

5. Accordingly, 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 did not avail the opportunity of settlement.

6. It was observed that 13,186 entities did not avail 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 were being conducted in a phased manner that required adequate time to complete the proceedings against all entities. The Adjudicating officers had passed Orders with respect to certain entities in a phased manner.

7. It was observed, that some of the entities against whom Orders were passed in the adjudication proceedings appealed before the SAT. During the course of the hearing in a group of appeals, SAT, vide its Order dated May 13, 2022, inter alia observed that *"SEBI should reconsider and seriously give a thought in coming out with a fresh Scheme under Clause 26 of the Settlement Regulations, 2018. Such scheme can be a onetime scheme for this class of person. The terms of settlement should be attractive so that it could attract the noticees/entities to come forward and settle the matter which will ameliorate the harassment of penalty*

proceedings to the noticees and at the same time would help to clear the backlog of these pending matters before various AOs".

8. Accordingly, SEBI introduced a Settlement Scheme i.e. SEBI Settlement Scheme, 2022 (hereinafter referred to as "**Scheme 2022**") in terms of Regulation 26 of the SEBI (Settlement Proceedings) Regulations, 2018 (hereinafter referred to as "**Settlement Regulations**"). The Scheme provided a onetime opportunity to the entities against whom proceedings had been initiated and/or appeals against the said proceedings are pending before any forum or authority.

9. I note that SEBI framed the Scheme in accordance with the provisions of the Settlement Regulations and issued a Public Notice dated August 19, 2022 about the Scheme and the modalities for availing the benefit of the Scheme. The Notice was also made available on the website of the BSE. The Scheme was initially kept open for a period of three months commencing from August 22, 2022 to November 21, 2022 (both days inclusive). Considering the interest of a large number of entities to avail the Scheme, SEBI extended the period of the Scheme till January 21, 2023 vide public notice dated November 22, 2022. A total of 10,980 Noticees availed the benefit of the Scheme and remitted the specified settlement amount respectively. Accordingly, a settlement order was passed on March 08, 2023, settling the matter with respect to 10,980 Noticees.

10. I note that Noticee did not avail settlement under the Settlement Scheme in 2020 or 2022 and therefore Adjudication proceedings have been revived against the Noticee

APPOINTMENT OF ADJUDICATING OFFICER

11. SEBI had appointed CGM, Maninder Cheema as Adjudicating Officer (hereinafter referred to as "**AO**") under section 15-I (1) of the SEBI Act read with rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter be referred to as the "Adjudication Rules") to inquire into and adjudge under Section 15HA of the SEBI Act, the alleged violations of the aforesaid provisions of the PFUTP Regulations, 2003, by Noticee. Due to internal structuring, Dr. Anitha Anoop and thereafter, the undersigned has been appointed as Adjudicating Officer. The appointment of the undersigned was communicated vide communiqué dated September 19, 2022.

SHOW CAUSE NOTICE, REPLY AND HEARING

12. Show Cause Notice dated October 27, 2021 and Supplementary Show Cause Notice dated August 04, 2022 (hereinafter both are collectively referred to as the "**SCN**") was issued to Noticee under Rule 4 of the Adjudication Rules read with section 15-I of the SEBI Act, to show cause as to why an inquiry should not be held and penalty be not imposed against Noticee under Section 15HA of the SEBI Act for the alleged violations of Regulations 3(a), (b), (c), (d), 4(1), and 4(2)(a) of the PFUTP Regulations via digitally signed email on the email id available on record. Thus, SCN was served to Noticee via digitally signed email on the email id and SPAD available on record in terms of Rule 7 of the Adjudication Rules.

13. In the aforesaid SCN, it was alleged that Noticee, by indulging in execution of aforesaid non-genuine reversal trades, had violated Regulation 3(a), (b), (c), (d), 4(1), 4(2)(a) of PFUTP Regulations, which are reproduced as follows:

    *"**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"

14. The aforesaid SCN served to Noticee indicated not only the nature and details of the violation alleged to have been committed by Noticee but also intimated Noticee regarding the SEBI Settlement Scheme, 2022. However, I note from records that Noticee did not avail the SEBI Settlement Scheme. Further, Noticee failed to file a reply to the SCN

within the prescribed timelines *i.e.* 14 days of the receipt of the SCN. I note from the records that Noticee did not file any reply to the SCN yet.

15. Considering the facts and circumstances of the case and in the interest of natural justice, vide hearing notice ("**HN**") dated March 03, 2023 served on Noticee through digitally signed email and SPAD, Noticee was granted an opportunity of personal hearing in the matter on March 16, 2023 through video conferencing on the Webex platform. Subsequently, another hearing scheduled on May 03, 2023 by second hearing notice dated April 21, 2023. However, Noticee had failed to respond/attend the hearing as directed under said Hearing Notice.

16. I am of the view that the principles of natural justice have been adhered to, as the SCN and the Hearing Notice was duly served upon the Noticee, which is on record and sufficient opportunity was granted to Noticee to reply to the SCN and appear for the personal hearing. Considering the fact that the Noticee has neither filed any reply nor has availed the opportunity of personal hearing despite service of notices upon it, I am of the view that Noticee has nothing to submit and in terms of Rule 4(7) of the Adjudication Rules the matter is being proceeded ex-parte in its regard on the basis of material available on record. As the Noticee did not file any reply to the SCN, it can be presumed that Noticee has admitted the charges levelled against her.

17. In this regard, it is pertinent to note that the Hon'ble Securities Appellate Tribunal (SAT) in the matter of Classic Credit Ltd. vs. SEBI (Appeal No. 68 of 2003 decided on December 08, 2006) has, inter alia, held that, *"...the appellants did not file any reply to the second show-cause notice. This being so, it has to be presumed that the charges alleged against them in the show cause notice were admitted by them"*.

18. Further, the Hon'ble SAT in the matter of **Sanjay Kumar Tayal & Others vs SEBI** (Appeal No. 68 of 2013 decided on February 11, 2014), has also, inter alia, held that: *".... appellants have neither filed reply to show cause notices issued to them nor availed opportunity of personal hearing offered to them in the adjudication proceedings and, therefore, appellants are presumed to have admitted charges leveled against them in the show cause notices..."*

19. Additionally, the same position reiterated by the Hon'ble Securities Appellate Tribunal (SAT) in the matter of **Dave Harihar Kirtibhai vs SEBI** (Appeal No. 181 of 214 dated December 19, 2014), wherein it has been stated that:
"...further, it is being increasingly observed by the Tribunal that many persons/entities do not appear before SEBI (Respondent) to submit reply to SCN or, even worse, do not accept notices/letters of Respondent and when orders are passed ex-parte by Respondent, appear before Tribunal in appeal and claim non-receipt of notice and do not appear and/or submit reply to SCN but claim violation of principles of natural justice due to not being provided opportunity to reply to SCN or not provided personal hearing. This leads to unnecessary and avoidable loss of time and resources on part of all concerned and should be eschewed, to say the least. Hence, this case is being decided on basis of material before this Tribunal..."

20. In view of the observations made by the Hon'ble SAT, I find no reason to take a different view and accordingly, I deem it appropriate to proceed against Noticee ex parte, based on the material available on record as laid down by SAT in its order dated May 12, 2017 in the matter of Shri. B. Ramalinga Raju vs. SEBI (Appeal no. 286 of 2014), "even *though the Noticees remained ex-parte, I find it relevant that I should be guided by the documents available on record"*. Thus, I hereby proceed with the

matter, based on the material available on record and in absence of response of Noticee, presume that the allegations/charges have been admitted by Noticee.

CONSIDERATION OF ISSUES AND FINDINGS

21. The issues arising for consideration in the instant proceedings are: -
    I. Whether Noticee has violated the provisions of regulations 3(a), (b), (c), (d), 4(1), 4(2)(a) of the PFUTP Regulations, 2003?
    II. If yes, whether Noticee is liable for imposition of monetary penalty under Section 15HA of SEBI Act?
    III. If yes, what would be the monetary penalty that can be imposed upon Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act?

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

22. It has been alleged in the SCN that Noticee had executed reversal trades which involved squaring off transactions with significant difference in the sell value and buy value in the illiquid Stock Options segment at Bombay Stock exchange. It has been alleged that the aforesaid reversal trades resulted into generation of artificial volumes in the illiquid stock options contracts traded by Noticee.

23. In this regard, I note that the allegation that Noticee carried out reversal trades is directly supported by evidence from the BSE trade log records which were provided to Noticee along with the SCN. I note from the BSE trade log that, Noticee is seen to have indulged in 18 reversal trades in 9 unique contracts as illustrated below:

Table No 1

S. N.	TRADE_DATE	clnt_name	cp_name	TRADE_TIME	TRADE_RATE	TRADED_QTY	SCRIPNAME
1	08/01/2015	VAIBHAV JAIN	MEHTA AND MEHTA ASSOCIATES	13:02:31.843674	61	4500	HULL15JAN740.00CEW2
2	08/01/2015	MEHTA AND MEHTA ASSOCIATES	VAIBHAV JAIN	13:12:37.100136	84	4500	HULL15JAN740.00CEW2
3	08/01/2015	MEHTA AND MEHTA ASSOCIATES	YASH BHUSHAN JAIN	13:45:57.605133	114	5000	CESC15JAN580.00CEW2
4	08/01/2015	YASH BHUSHAN JAIN	MEHTA AND MEHTA ASSOCIATES	13:38:16.581416	91.5	5000	CESC15JAN580.00CEW2
5	12/01/2015	MEHTA AND MEHTA ASSOCIATES	YASH BHUSHAN JAIN	14:02:31.224993	115	4500	CESC15JAN600.00CEW3
6	12/01/2015	YASH BHUSHAN JAIN	MEHTA AND MEHTA ASSOCIATES	13:44:21.011450	84	4500	CESC15JAN600.00CEW3
7	12/01/2015	MEHTA AND MEHTA ASSOCIATES	VAIBHAV JAIN	14:21:50.374774	43	4000	CANB15JAN400.00CEW3
8	12/01/2015	VAIBHAV JAIN	MEHTA AND MEHTA ASSOCIATES	14:16:32.755139	31.5	4000	CANB15JAN400.00CEW3
9	16/01/2015	MEHTA AND MEHTA ASSOCIATES	VAIBHAV JAIN	12:54:22.380130	62.3	7000	TITA15JAN330.00CEW4
10	16/01/2015	VAIBHAV JAIN	MEHTA AND MEHTA ASSOCIATES	12:34:27.194101	48	7000	TITA15JAN330.00CEW4
11	16/01/2015	MUKESH GARG HUF	MEHTA AND MEHTA ASSOCIATES	14:02:01.690145	52	6000	INGL15JAN400.00CEW4
12	16/01/2015	MEHTA AND MEHTA ASSOCIATES	MUKESH GARG HUF	14:20:02.085155	69	6000	INGL15JAN400.00CEW4
13	02/02/2015	MEHTA AND MEHTA ASSOCIATES	FIRDOSH	14:29:26.628722	68	7500	HPCL15FEB600.00CEW1
14	02/02/2015	FIRDOSH	MEHTA AND MEHTA ASSOCIATES	14:43:25.097559	35	7500	HPCL15FEB600.00CEW1
15	16/03/	RAJWADI RETAIL	MEHTA AND	13:02:48	115	500	WOCK15M

S. N.	TRADE_DATE	clnt_name	cp_name	TRADE_TIME	TRADE_RATE	TRADED_QTY	SCRIPNAME
	2015	TRADE SYSTEMS PVT LTD	MEHTA ASSOCIATES	.208344			AR1680.00 CEW3
16	16/03/2015	MEHTA AND MEHTA ASSOCIATES	RAJWADI RETAIL TRADE SYSTEMS PVT LTD	13:04:15.649608	158.95	500	WOCK15MAR1680.00CEW3
17	16/03/2015	MEHTA AND MEHTA ASSOCIATES	RAJWADI RETAIL TRADE SYSTEMS PVT LTD	13:09:12.687000	134	250	AUPL15MAR1050.00CEW3
18	16/03/2015	RAJWADI RETAIL TRADE SYSTEMS PVT LTD	MEHTA AND MEHTA ASSOCIATES	13:08:24.618996	98	250	AUPL15MAR1050.00CEW3

24. Summary of dealings of the Noticee in the said 9 Stock Options contracts, in which it executed non-genuine trades during the investigation period, are as follows:

Table No 2

CONTRACTNAME	Average Buy rate	Buy Quantity	Average Sell rate	Sell Quantity	Number of non genuine trades executed by Noticee in the Contract	Total number of trades executed in the contract	Artificial volume generated by Noticee in the Contract	Total volume 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 Total Volume in the Contract
AUPL15MAR1050.00CEW3	134	250	98	250	2	2	500	500	100	100
CANB15JAN40	43	4000	31.5	4000	2	2	8000	8000	100	100

0.00CEW3										
CESC15JAN580 .00CEW2	114	5000	91.5	5000	2	2	10000	10000	100	100
CESC15JAN600 .00CEW3	115	4500	84	4500	2	2	9000	9000	100	100
HPCL15FEB600 .00CEW1	68	7500	35	7500	2	2	15000	15000	100	100
HULL15JAN740 .00CEW2	84	4500	61	4500	2	2	9000	9000	100	100
INGL15JAN400. 00CEW4	69	6000	52	6000	2	2	12000	12000	100	100
TITA15JAN330. 00CEW4	62.3	7000	48	7000	2	2	14000	14000	100	100
WOCK15MAR1 680.00CEW3	158.95	500	115	500	2	2	1000	1000	100	100

25. For the purpose of illustration, I note that in Stock option contract "WOCK15MAR1680.00CEW3" on 16/03/2015, at 13:02:48 hrs Noticee executed a sell trade for total 500 units at the sell rate of Rs 115 per unit with counterparty *viz*. Rajwadi Retail Trade Systems Pvt Ltd. Simultaneously, at 13:04:15 hrs, Noticee executed 1 buy trade for 500 units at the rate of Rs. 158.95 per unit, in the said contract with the same counterparty. The aforesaid reversal trades generated volume to the extent of 1000 units in the said contract which was 100% of the total market volume in the said contract during the IP.

26. I note that buy order and sell order for 1000 units (500 units each) in the WOCK15MAR1680.00CEW3 contract were placed within time gap in the range of around a minutes from each other by Noticee and counterparty. Similarly, in other stock option contract (refer table no 1& 2), I also note that there is wide variation in the sell and buy prices of the reversal trades, without there being any significant movement in the price of the underlying scrip in the cash segment. Thus, I note that there was minimal trading activity in the aforesaid stock options contracts traded by Noticee. Therefore, I note from the number of trades and trading volume in the

aforesaid stock option contracts that these contracts were illiquid in nature.

27. I note that the price of a particular option contract is known as the option premium. In the instant matter, there was a wide variation in the buy/sell price for without any corresponding change in the price of the scrip in the cash segment. Therefore, for a given strike price, the option premium could not have varied widely within such a short period of time in the absence of significant movement in the price of the underlying scrip. Due to the fact that there was no commercial basis as to why, within a short span of time from each other, Noticee reversed the position with its counterparties with significant price difference, in the absence of significant movement in the price of the underlying scrip, I am of the view that the transactions executed by Noticee in the aforesaid contracts were non-genuine. Since these trades were done in illiquid option contracts, there was minimal trading in the stock options contracts traded by Noticee and hence, there was no price discovery w.r.t. the said contracts in the strictest terms. I note that the impugned reversal trades, which were carried out with prior meeting of minds as inferred from the case facts, affected the price discovery and execution of trades as per market mechanism on the stock options segment of BSE. Furthermore, the exactness of the quantity that got reversed between the two parties on a single day, the proximity in the time of the reversal of trades and above all the absence of rationale to justify the variation in the sell and buy price, certainly shows that these are non- genuine trades.

28. In this context, it is relevant to quote 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)***

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

"… 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 nongenuine 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."

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."*

" ….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."

"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 …"

29. Therefore, placing reliance upon the aforesaid judgement, I find that the wide variation in option premium of the said contracts in the trades executed by Noticee, without any significant movement in the price of the underlying scrip, within such a short span of time, is a clear indication that there was prior meeting of minds between the Noticee and the

counterparties while executing such trades. I note that since securities were illiquid, the fact that the transactions in a particular contract were reversed within a short period of time with the same counterparties indicates a prior meeting of minds with a view to execute the reversal trades at a pre-determined price. Thus, it is observed that Noticee had indulged in reversal trades with its counterparties in the stock options segment of BSE and the same were non-genuine trades, and being non-genuine, Noticee's trades created misleading appearance of trading by generating artificial trading volumes in respective contracts.

30. I further note that it is not mere coincidence that, Noticee could match its trades with the same counterparty with whom she had undertaken first leg of the respective trades. The fact that the transactions in a particular contract were reversed with the same counterparty for the same quantity of units, indicates a prior meeting of minds with a view to execute the reversal trades at a pre- determined price. This is the outcome of meeting of minds elsewhere and it was a deliberate attempt to deal in such a manner. I note in matters dealing with violation of PFUTP Regulations, 2003, the reason as regards execution of non- genuine trades might not be immediately forthcoming. However, the correct test instead, is one of preponderance of probabilities. Here I would like to rely on the judgment of Hon'ble Supreme Court in **SEBI v Kishore R Ajmera** (AIR 2016 SC 1079) decided on February 23, 2016, wherein it was held 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 final conclusions on the said basis which overlooks a meeting of minds elsewhere. Direct proof of such meeting of minds elsewhere would rarely be forthcoming...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...".

31. The Hon'ble Supreme Court further held in the same matter that – *"It is a fundamental principle of law that proof of an allegation levelled against a person may be in the form of direct substantive evidence or, as in many cases, such proof may have to be inferred by a logical process of reasoning from the totality of the attending facts and circumstances surrounding the allegations/charges made and* levelled*. While direct evidence is a more certain basis to come to a conclusion, yet, in the absence thereof, the Courts cannot be helpless. 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."*

32. The observations made in the aforesaid judgments of Hon'ble Supreme Court apply with full force to the facts and circumstances of the present case. Therefore, applying the ratio of the above judgments, I am convinced that the execution of trades by Noticee in the illiquid options segment with such precision in terms of order placement, time, price, quantity etc. and also the fact that the transactions were reversed with the same counterparty clearly indicates a prior meeting of minds with a view to execute the reversal trades at a pre- determined price. The only reason for the wide variation in prices of the same contract, within short

span of time was a clear indication that there was pre- determination in the prices by both the counterparty when executing the trades.

33. I further note that the impugned reversal trades, which were carried out with prior meeting of minds as inferred from the case facts, affected the price discovery and execution of trades as per market mechanism on the stock options segment of BSE. In this regard, I further note the following from the judgement of the Hon'ble SC in the matter of **SEBI vs Rakhi Trading Pvt Ltd** (*Supra*):

"*According to SAT, only if there is market impact on account of sham transactions, could there be violation of the PFUTP Regulations. We find it extremely difficult to agree with the proposition. As already noted above, SAT has missed the crucial factors affecting the market integrity, which may be direct or indirect. 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.*"

34. 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:

"39. Regulation 2(1)(c) defines fraud. Under Regulation 2(1)(c)(2) a suggestion as to a fact which is not true while he does not believe it to be true is fraud. Under Regulation 2(1)(c)(7), a deceptive behavior of one depriving another of informed consent or full participation is fraud. And

under Regulation 2(1)(c)(8), a false statement without any reasonable ground for believing it to be true is also fraud. In synchronized and reverse dealing in securities, with predetermined arrangement to book loss or gain between prearranged parties, all these vices are attracted.

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."

35. 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."

36. 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."*

37. I also find it relevant to note here that in the matter of **Securities and Exchange Board of India vs. Rakhi Trading Private Limited** (Civil Appeal Nos. 1969, 3174-3177 and 3180 of 2011 decided on February 08, 2018), which was a similar case involving execution of reversal trades in index options, the Hon'ble Supreme Court held that "... *the traders thus 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*..."

38. In view of the foregoing and placing reliance upon the aforesaid judgements, I am, therefore, of the view that the trades executed by the Noticee were not genuine trades and being non-genuine, created an

appearance of artificial trading volumes in respective contracts, were fraudulent/ manipulative, as contemplated in the PFUTP Regulations. In view of the above, I find that the allegation of violation of regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of PFUTP Regulations, 2003 by Noticee stands established.

Issue II: If yes, whether the failure, on the part of Noticees would attract monetary penalty under Section 15HA of the SEBI Act?

&

Issue III: If yes, what would be the monetary penalty that can be imposed upon Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5(2) of the Adjudication Rules?

39. Since the violation of Regulation 3(a), (b), (c), (d), 4(1) and 4(2)(a) of PFUTP Regulations has been established against Noticee, as brought out in the foregoing paragraphs, Noticee is liable for monetary penalty under Section 15HA of SEBI Act which is reproduced as follows:

SEBI Act: 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*

40. While determining the quantum of penalty under Section 15HA of SEBI Act, the following factors stipulated in Section 15J of the SEBI Act have to be given due regard:

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.

41. As established above, the trades by Noticee were non-genuine in nature and created a misleading appearance of trading. I note that the material available on record does not quantify any disproportionate gains or unfair advantage, if any, made by Noticee and the losses, if any, suffered by the investors due to such violations on part of the said Noticee and does not demonstrate any repetitive default on the part of the said Noticee. However, considering that the violation by Noticee led to creation of artificial trading volumes which had the effect of distorting the market mechanism in the illiquid stock options segment of BSE, I find that the aforesaid violations were detrimental to the integrity of securities market and therefore, the quantum of penalty must be commensurate with the serious nature of the aforesaid violations.

ORDER

42. Having considered all the facts and circumstances of the case, the material available on record, the factors mentioned in section 15J of the SEBI Act, 1992 and in exercise of power conferred upon me under section 15-I of the SEBI Act, 1992 read with rule 5 of the Adjudication Rules, 1995, I hereby impose a penalty of **Rs 5,00,000/- (Rupees Five Lakhs only)** on Noticee *i.e.* **Mehta and Mehta Associates** under Section 15HA of the SEBI Act for violation of Regulation 3(a), (b), (c), (d), 4(1) and 4(2)(a) of PFUTP Regulations.

43. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order 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

44. The Noticee shall forward the confirmation of penalty so paid to the Enforcement Department –Division of Regulatory Action –V of SEBI.

In case of any difficulties in payment of penalties, Noticee may contact the support at portalhelp@sebi.gov.in.

45. 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.

46. Copy of this Adjudication Order is being sent to Noticee and also to SEBI in terms of Rule 6 of the Adjudication Rules.

Date: August 21, 2023	**Vijayant Kumar Verma**
Place: Mumbai	**Adjudicating Officer**