BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/ST/K/2021-22/14756]

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

In respect of

Shiv Kumari Devi (PAN: AHSPD1248G) having address at MAHURI Mandal School Lane, Gosai Bag, Gurudwara Road, Gaya, Bihar – 823002

In the matter of dealings in Illiquid Stock Options at BSE

BACKGROUND

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**") leading to the alleged creation of artificial volume in the stock options segment. In view of the same, SEBI conducted an investigation into the trading activities of certain entities in illiquid stock options at BSE for the period April 1, 2014 to September 30, 2015 (hereinafter referred to as **"Investigation Period**").

2. Pursuant to investigation, it was observed that during the investigation period, a total of 2,91,643 trades comprising 81.38% of all the trades executed in BSE Stock Options Segment were trades which involved reversal of buy and sell positions by the clients and counterparties in a contract. The reversal trades involved squaring off transactions, but with significant difference in the sell value

and buy value of the transactions. In view of the large scale reversal of trades executed in illiquid Stock Options segment at BSE, it is alleged that these trades were non-genuine in nature and also led to generation of artificial volumes.

3. Shiv Kumari Devi (PAN: AHSPD1248G) (hereinafter referred to as the "**Noticee**") was one of the various entities who indulged in execution of alleged non-genuine trades in the stock options segment of BSE during the investigation period. It was observed that Noticee had entered into reversal trades with its counterparty which involved squaring off transactions with significant difference in the sell value and buy value of the transactions The aforesaid reversal trades allegedly resulted into generation of artificial volumes, leading to allegations that the Noticee had violated Regulation 3(a),(b),(c),(d)and Regulation 4(1), 4(2)(a) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter, referred to as "**PFUTP Regulations, 2003**").

APPOINTMENT OF ADJUDICATING OFFICER

4. SEBI initiated adjudication proceedings and appointed the undersigned as Adjudicating Officer (hereinafter referred to as "**AO**") under Section 15-I(1) of the SEBI Act, 1992 read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter be referred to as the "**Adjudication Rules**") vide order dated April 30, 2021 to inquire into and adjudge under Section 15HA of the SEBI Act, 1992, the alleged violations of the aforesaid provisions of the PFUTP Regulations, 2003, by the Noticee. The appointment of the AO was communicated vide order dated June 28, 2021.

SHOW CAUSE NOTICE, REPLY AND HEARING

5. A Show Cause Notice No. AO/ST/2021/18537 dated August 9, 2021 (hereinafter referred to as '**SCN**') was issued to the Noticee under rule 4(1) of the Adjudication Rules to show-cause as to why an inquiry should not be held and penalty be not imposed against the Noticee under section 15HA of the SEBI Act, 1992 for the

alleged violations of Regulations 3(a), (b), (c), (d) and 4(1), 4(2)(a) of the PFUTP Regulations, 2003.

6. The allegations levelled against the Noticee in the SCN are summarized as below:

   a. The Noticee was one of the entities which indulged in non-genuine trades which allegedly created false and misleading appearance of trading, generating artificial volumes in the Stock Options Segment of BSE during the investigation period.
   b. The Noticee is alleged to have engaged in 2 such trades in 1 unique contract on March 30, 2015, which led to generation of artificial volume of 76000 units. These trades of the Noticee involved reversal with the same counterparty on the same day, but at different prices.
   c. The trade entered by the Noticee was reversed on the same day with the same counterparty at a substantial price difference without any basis for significant change in the contract price which indicates that these trades are artificial and are non- genuine in nature.
   d. A summary of dealings of Noticee in 1 Stock Options contract in which the Noticee allegedly executed non-genuine trades during the investigation period, provided in the SCN is reproduced below:

S. No.	Contract Name	Avg. Buy Rate (Rs.)	Total Buy Volume (no. of units)	Avg. Sell Rate (Rs.)	Total Sell Volume (no. of units)	Total volume 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	FEDB15APR110.00CEW2	22.2	38000	30.1	38000	808000	100%	9.41%

7. Noticee by indulging in execution of aforesaid non-genuine trades, was alleged to have violated Regulation 3(a),(b),(c),(d), 4(1), 4(2)(a) of PFUTP Regulations, 2003, which are reproduced as under:

PFUTP Regulations, 2003:

*"**3**. **Prohibition of certain dealings in securities***

No person shall directly or indirectly—

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

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

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

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

4. Prohibition of manipulative, fraudulent and unfair trade practices

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

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

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

8. A time period of 14 days from the date of receipt of the SCN was granted to the Noticee to submit its reply to the SCN. Noticee submitted the reply to the SCN vide letters dated August 17, 2021, October 7, 2021 and October 18, 2021.

9. The Noticee was granted an opportunity of hearing scheduled for October 12, 2021. Vide letter dated October 7, 2021, the Noticee requested for adjournment of hearing. In the interest of natural justice, the request was favourably considered and Noticee was advised to appear for hearing rescheduled for October 28, 2021. The authorized representative of the Noticee, Mr. Meit Shah, Advocate, reiterated the submissions made vide aforesaid letters, during the course of hearing.

10. The key submissions made by the Noticee are reproduced as under:

Reply dated August 17, 2021-

i Noticee denied all the allegations and findings made in the SCN.

ii SCN was issued after a gap of more than 6 years from the date of alleged trades in illiquid stock options. However, no reasons were given in the SCN for belatedly initiating present proceedings. In this connection, Noticee placed reliance on the following judgements:

(a) Hon’ble SAT order dated 22.8.2019 in the matter of Ashok Shivlal Rupani & Anr. Vs. SEBI.

(b) Hon’ble SAT order dated 27.5.2019 in the matter of Rakesh Kathotia vs. SEBI

(c) Hon’ble SAT orders in the matters of Aditi Dalal, HB Stockholdings and Khandwala Securities Ltd., and

(d) Hon’ble Supreme Court order in the case of State of Gujarat vs. Patel Raghav Natha

iii Noticee has no connection / relation with Adarsh Credit C-op Society Ltd., who happened to be the counter party in the alleged trades.

iv Noticee requested for Order book and inspection of documents and copies thereof, such as Investigation Report, summary of its dealings in stock options contracts, correspondences exchanged with broker, Adarsh Credit Co-op Society Ltd., complaints received with respect to the dealings, details of persons/ entities who were induced to trade, documents/ statements showing intention to manipulate the price, alerts / triggers generated w.r.t. dealings., etc.

Reply dated October 7, 2021-

i It is incumbent on the part of SEBI to provide complete inspection of all the documents, however, SEBI rejected the request of Noticee. In this connection, Noticee placed reliance on the following judgements:

(a) Hon'ble Supreme Court order dated 10.1.2017 in the matter of SEBI vs. Price Waterhouse.

(b) Hon'ble Tribunal order dated 12.5.2017 in the matter of Shri B Ramalinga Raju vs. SEBI.

(c) Hon'ble Tribunal order dated 30.7.2010 in the matter of Ms. Smitaben N. Shah vs. SEBI.

ii SEBI has not provided any evidence or proof to show that the trades were fraudulent. None of the ingredients of the said PFUTP Regulations are attracted essentially because:

(a) The trades were executed on the floor of the exchange with due compliance with all the rules and regulations of the exchange.

(b) At no point in time, was there any warning or any observation about the scrips/ stocks which were executed by the Noticee.

(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 were no active traders in the stock.

(e) For the transactions to be termed fraudulent, as per the definition of "fraud", there has to be an "inducement" and SEBI has not even alleged inducement.

(f) There is no nexus, directly or indirectly with the counter party brokers or the clients in the present matter. The automated system in screen-based trading matches orders on a price-time priority basis and hence it is not possible for anybody to have access over identity of counter party. In this regard, the Noticee made reference to Hon'ble SAT orders in the matters of Jagruti Securities, S.P.J. Stockbroker Pvt. Ltd., and Sanjay Agarwal vs. SEBI.

(g) The trades in question were in the normal course of business and there is nothing amiss in the trades executed.

(h) None of the trades are deceptive in nature or have any impact on the investors or their investment decision which is sine qua non of "fraud".

(i) With respect to observation that Noticee dealt in stock options contracts which are illiquid in nature, Noticee submitted that the underlying scrip in which it traded was highly liquid in nature. Noticee traded in contract of underlying scrip of Federal Bank Ltd. Underlying stock of the company makes up index of the Bombay Stock Exchange. Thus, to allege that Noticee deliberately traded in only that option which was illiquid in nature is unfair.

(j) In the SCN it is held that Noticee transacted in illiquid option, on the basis that its trade was in far-off strike prices and therefore very few entities were trading in 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 reason for volatility and alleged 'reversal' transactions since variations in option price would be dramatic if the chosen strike price is thinly traded.

(k) Noticee submitted that BSE and SEBI have themselves allowed and permitted trading in Options for 'far months' with a strike price which are at large variance to current market price. Such parameters are laid down is clearly indicative of fact that options will always be 'in the money' and 'out of money' and since regulators have themselves permitted trading in same, no adverse inference be drawn against it in this regard.

(l) 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 entity that it traded in illiquid option is unwarranted and unfair.

(m) Derivative market is ‘zero sum game’ and thus in each and every case one party inevitably make profit and counterparty will make loss. 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 or expectation. Thus, profit and loss is concomitant to trading in derivative segment. The mere fact that Noticee traded in options segment cannot be a ground to rope it into present proceedings.

(n) Noticee traded in the stock market in ordinary course consequent to its bonafide trading in option segment. Thus, it is erroneous to allege that its trades created artificial volume on BSE. If these were illiquid stock options, then any trade and transaction would look significant. In fact, the impugned trades constituted a miniscule percentage of overall trades.

(o) There was no major movement in price of underlying scrip which itself proves that its trades had no impact on market. Thus, its transactions neither distorted the equilibrium in market nor caused any loss or prejudice to investors.

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

(q) Noticee did not act in concert or in collusion with anyone and nor part of any group or connected with anyone for the purpose of influencing price or for any manipulative activity as alleged. It is an admitted position that there is no connection whatsoever between Noticee and counter parties to the impugned trades. Noticee submitted details of counterparties to its trades. Further, the counterparties were dealing with different broking entities.

(r) Noticee did not have prior meeting of minds with counter party broking entity as well as their client, nor any contemporaneous knowledge about any alleged wrongdoing. Noticee relied upon judgment of SAT in the matter of Jagrutii Securities (2008 SCC online SAT 184) and S.P.J Stockbroker Pvt Ltd (2013 SCC Online SAT 67) wherein it was held that such alleged trades cannot, be treated as illegal per se unless there is some cogent connection between the counterparties or there is "mischievous meeting of minds amongst certain parties". Such element is completely absent in the present case.

(s) Further, Noticee relied upon Order dated 18.05.2012 passed by the Hon'ble SAT in the matter of Sanjay Agrawal vs. SEBI wherein it was held that in order to establish an allegation of reversal trade between parties a cogent evidence or connection between the parties needs to be established.

(t) In 2016, BSE vide Notice dated 08.03.2016, announced that it has introduced measures for prevention of reversal trades in Equity Derivative Segment w.e.f. 14.03.2016. Thus, in case of potential reversal trade, second leg of reversal trade shall automatically be cancelled by exchange in an online real time basis on trading system. Merely because online preventive measures and check & balance did not exist at relevant point of time to avoid inadvertent reversal trades, no adverse inference be drawn against it in this regard.

(u) There is no reason for any allegation that Noticee has violated the provisions of PFUTP Regulations or the SEBI Act. Besides recording common generic allegations, not a single instance or observation on its specific role in alleged reversal is delineated in the SCN. In this regard. Noticee relied upon the judgment of Hon'ble Supreme Court in case of Commissioner of Central Excise, Bangalore vs. M/s Brindavan Beverages (P) Ltd. and Ors [Civil Appeal 3417 of 2002] decided on 15.06.2007.

iii On the definition of 'Fraud', the Noticee also made reference to the order of Hon'ble Supreme Court in the matter of State of Maharashtra vs. Dr. Budhikota Subharao.

iv Noticee contended that strict proof is required for a serious charge of fraud and also made reference to the following orders, in this regard:

(a) Hon’ble SAT Order dated 16.9.2010 in the matter of R.K. Global vs. SEBI

(b) Hon’ble SAT Order dated 29.7.2011 in the matter of Narendra Ganatra vs. SEBI

(c) Hon’ble SAT Order in the matter of Videocon International vs. SEBI (2002)

(d) Hon’ble SAT Order dated 12.8.2011 in the matter of Parsoli Corporation vs. SEBI

(e) Hon’ble Supreme Court Order in the case of Ram Sharan Yadav vs. Thakur Muneshwar Nath Singh

Reply dated October 18, 2021-

i Reversal trades can only be alleged when the trades i.e. sell and buy order are executed within seconds from one another. Therefore, sell and buy order which are placed around 23 minutes apart from each other cannot be alleged to be reversal trades.

ii SEBI has not provided the Noticee with the market order log file for 30.3.2015 for the contract executed on the relevant date, hence, cannot ascertain as to the number of orders which were placed during 30.3.2015.

iii On perusal of the data, besides matching of the trades of Noticee, the counterparty i.e. Adarsh Credit C-op Society Ltd., executed other contracts (107 contracts) also which got matched with other market participants. Thus, allegation of any meeting of minds with the counterpart client’s is not sustainable on facts and in law.

iv With regard to matching of 1 contract with 1 counterparty client, Notice placed reliance on the Hon’ble SAT order dated 11.10.2010 in the case of M/s. Rakhi Trading Pvt. Ltd. Vs. SEBI.

v Noticee also requested to summon and enforce the attendance of an official from BSE acquainted with the facts and circumstances of the case to give evidence or to produce any document, which may be useful to the subject matter of the inquiry.

vi Noticee, in light of the above, prayed that the proceedings initiated vide SCN be dropped without imposing any penalty.

CONSIDERATION OF ISSUES AND FINDINGS

11. I have carefully perused the charges levelled against the Noticee, the documents/material available on record and the reply submitted by the Noticee. The issues that arise for consideration in the present case are:
    I. Whether the Noticee has violated provisions of Regulations 3(a), (b), (c), (d), 4(1) and 4(2) (a) of the PFUTP Regulations, 2003?
    II. If yes, whether Noticee is liable for imposition of monetary penalty under Section 15HA of the SEBI Act, 1992?
    III. If so, what would be the monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in Section 15J of the SEBI Act, 1992 read with Rule 5(2) of the Adjudication Rules?

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

12. The allegation against the Noticee is that it had executed reversal trades in illiquid stock option contracts at BSE and generated artificial volumes which created false and misleading appearance of trading. Reversal trades are those trades in which an entity reverses it's buy or sell positions in a contract with subsequent sell or buy positions with the same counterparty during the same day. Reversal trades are alleged to be non-genuine trades as they lack basic trading rationale and lead to false or misleading appearance of trading and hence are deceptive and manipulative.

13. The Noticee in its reply contended that SCN was issued after a gap of more than 6 years from the date of alleged trades in illiquid stock options and no reasons were given in the SCN for belatedly initiating the present proceedings.

14. In this regard, I note that pursuant to a preliminary examination conducted in the Illiquid Stock Options matter, Interim order was passed by SEBI on August 20, 2015 which was confirmed vide Orders dated July 30, 2016 and August 22, 2016. Meanwhile, SEBI initiated a detailed investigation relating to stock options segment of BSE which was completed in the year 2018. The investigation revealed that 14,720 entities were involved in executing non-genuine trades in BSE's stock option segment during the investigation period. The proceedings initiated vide the aforementioned Interim Order were disposed of vide Final Order dated April 05, 2018 also considering that appropriate action was initiated against the said 14, 720 entities in a phased manner.

15. During the course of hearing in the case of *R. S. Ispat Ltd Vs SEBI*, the Hon'ble Securities Appellate Tribunal (SAT), vide its Order dated October 14, 2019, *inter alia* observed that "*SEBI may consider holding a Lok Adalat or adopting any other alternative dispute resolution process with regard to the Illiquid Stock Options".*

16. A Settlement Scheme was framed under the SEBI (Settlement Proceedings) Regulations, 2018, which provided one-time opportunity for settlement of proceedings in the Illiquid Stock Options matter. The said scheme was kept open from August 01, 2020 till December 31, 2020. Adjudication proceedings were initiated against those entities who had not availed of the opportunity of settlement.

17. As can be seen from the narration of facts in the foregoing paragraphs, pursuant to appointment of AO on April 30, 2021, the appointment of the AO was communicated vide order dated June 28, 2021. SCN was subsequently issued on August 9, 2021. After receipt of reply, an opportunity of personal hearing was scheduled to be held on October 12, 2021. As Noticee had sought for adjournment of hearing, in compliance with the principles of natural justice, the request was favourably considered and Noticee was advised to appear for hearing rescheduled for October 28, 2021.

18. Hence, I note there is no delay in the initiation of proceedings. Further, I note that there are no timelines prescribed in the SEBI Act, 1992 for the purpose of identifying trades as non-genuine. Secondly, there is no provision with prescribed time limit in the SEBI Act, 1992 which may have the effect of prohibiting SEBI from taking action by issuing SCN or passing any order beyond a particular period of time in a given case. In this regard, I note that in the case of **Ravi Mohan & Ors. Vs. SEBI and other** connected appeals decided on August 8, 2013, Hon’ble SAT while referring to its own decision in HB Stockholdings Ltd. vs. SEBI (Appeal no. 114 of 2012) decided on August 27, 2013 and decision of Hon’ble Supreme Court in Collector of Central Excise, New Delhi v. Bhagsons Paint Industry (India) reported in 2003 (158) ELT 129 (S.C.), held as under:

*“....Based on decision of this Tribunal in case of **HB Stockholdings Ltd. vs. SEBI** (Appeal no. 114 of 2012 decided on 27.08.2013), it is contended on behalf of the appellants that in view of the delay of more than 8 years in issuing the show cause notice, the impugned order is liable to be quashed and set aside. There is no merit in this contention, because, this Tribunal while setting aside the decision of SEBI on merits has clearly held in para 20 of the order, that delay itself may not be fatal in each and every case. Moreover, the Apex Court in case of Collector of Central Excise, New Delhi vs. Bhagsons Paint Industry (India) reported in 2003 (158) ELT 129 (S.C) has held that if there is no statutory bar for adjudicating the matter beyond a particular date, the Tribunal cannot set aside the adjudication order merely on the ground that the adjudication order is passed after a lapse of several years from the date of issuing notice....”*

19. The decision of Hon’ble SAT in the aforesaid case, was reiterated by it, in a subsequent order in the matter of **Kunal Pradip Savla & Ors. vs. SEBI** (Appeal no. 231 of 2017) decided on April 13, 2018.

20. I am also inclined to rely upon the decision of Hon'ble SAT in the matter of **Bipin R Vora vs. SEBI** wherein it was held that, *"As regards the plea of delay and latches and submission that the show cause notice is barred by limitation, I do*

not find any merit in these contentions as the time and efforts involved in an investigation though may vary from case to case, generally investigations per-se is a time consuming process which invariably involve collection, scrutiny and careful examination of voluminous records/ order-trade details of all the concerned including the exchanges/recording of statements etc., and therefore no time limit can be fixed in this regard to enable a regulator to take appropriate disciplinary action for the safeguard and improvement of the system/market."

21. Therefore, I conclude that there is no merit in the preliminary objections made by the Notice regarding delay in initiating/ concluding the proceedings.

22. The Noticee also submitted that it is incumbent on the part of SEBI to provide complete inspection of all the documents but SEBI rejected the request of Noticee. I note from the records that vide emails dated September 29, 2021 and October 12, 2021, Noticee was informed that all the relevant material that were relied upon in the proceedings have already been provided along with the SCN. I observe from the SCN that the Noticee was provided with details of the alleged reversal trades, summary of dealings of the Noticee in contracts which contains alleged non-genuine trades of the Noticee. I also observe from the records that these are the only documents/ material relied upon in the proceedings.

23. In this regard, I place reliance upon the order of Hon'ble Supreme Court in the matter of **Natwar Singh vs. Director of Enforcement (2010) 13 SCC 255**, wherein it was 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.

24. I also observe that the Hon’ble SAT in the matter of **Anant R Sathe Vs.SEBI (Appeal No. 150 of 2020)** vide Order dated July 17, 2020, reaffirmed the principle elucidated in the judgment of Shruti Vora’s case, wherein it was held that: *“the Authority is required to supply the documents that they rely upon while serving the show cause notice which in the instant case has been done and which is sufficient for the purpose of filing an efficacious reply in his defence”.*

25. In light of the above, I am of the view that all the relied upon copies of the documents in the matter were provided to the Noticee along with SCN and the contention of the Noticee in this regard has no merit.

26. Noticee has also contended that SEBI did not provide any evidence or proof to show that the trades were fraudulent and strict proof is required for a serious charge of fraud. Noticee has also submitted that as per the definition of “fraud”,

there has to be an "inducement" and SEBI has not even alleged inducement. In this regard, I note that the Annexure-2 to the SCN which contains the trade details is nothing but an evidence. SCN besides containing summary of trades also states that the Noticee had allegedly engaged in 2 trades in 1 unique contract which involved reversal with the same counterparty on the same day but at different prices and the same led to generation of artificial volume of 76,000 units. It further states that the trades entered by the Noticee were reversed on the same day with same counterparty at a substantial price difference without any basis for significant change in the contract price which also said to indicate that the trades were artificial and non-genuine in nature. Further, I note that the present Adjudication proceedings has only relied upon the documents/ records which were provided to the Noticee along with SCN.

27. In this context, I rely upon the judgment of the Hon'ble Supreme Court of India in **SEBI vs Kishore R Ajmera** (AIR 2016 SC 1079), wherein it was held that:
"…in the absence of direct proof of meeting of minds elsewhere in synchronized transactions, the test should be one of preponderance of probabilities as far as adjudication of civil liability arising out of the violation of the Act or provision of the Regulations is concerned. The conclusion has to be gathered from various circumstances like that volume of the trade effected; the period of persistence in trading in the particular scrip; the particulars of the buy and sell orders, namely, the volume thereof; the proximity of time between the two and such other relevant factors. The illustrations are not exhaustive..."

The Hon'ble Supreme Court of India further held in the said case 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."*

28. I also 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.

29. Noticee has further submitted that the automated system in screen-based trading matches orders on a price-time priority basis and hence it is not possible for anybody to have access over identity of counter party. In this regard, I note that while synchronized trades may occur by accident in a liquid stock, execution of such synchronized trades in an illiquid market with anonymous trading can only happen, if there is prior meeting of minds with a view to execute trades. The fact that the orders of the Noticee and the counterparty matched with such precision (considering that there was a perfect match of price, quantity and very close proximity of time) indicates a prior meeting of minds with a view to execute the reversal trades at a predetermined price. Since these trades were done in illiquid option contract, there was very little trading in the said contract and hence, there was no price discovery in the strictest terms. The wide variation in prices of the said contracts, within a short span of time, is a clear indication that there was pre-determination in the prices by the counterparties while executing the trades.

30. To illustrate, on March 30, 2015 Noticee at 11:06:28.15 hrs executed 1 Sell trade for 38000 units at the rate of Rs.30.1 per unit with counterparty viz, Adarsh Credit C-Op Society Limited, in Stock option “FEDB15APR110.00CEW2”. At 11:27:35.70 hrs on the same day, the Noticee executed a Buy trade for 38000 units at the rate of Rs.22.2 per unit, with the same counterparty. The aforesaid reversal trade was executed within 21 minutes, generating artificial volumes to the extent of 76,000 units in the said contract. I also note that there is a wide variation in the prices of 2 legs of the reversal trades i.e Noticee sold units at Rs.30.1 at 11:06:28:15 hrs and then bought at Rs.22.2 at 11:27:35:70 hrs, without there being any justification for the wide variation in prices. This made up 9.41% of the total market volume for this contract, thereby allegedly generating artifical volume of 76,000 units. Even the reply of Noticee does not deny the above transactions.

31. Therefore, I conclude that the trading pattern of the Noticee in terms of proximity of buy/sell, perfect match of price/ quantity and subsequent reversal of trades evidences the prior meeting of minds with a view to execute the reversal trades at a predetermined price.

32. The submission by the Noticee that the trades were executed on the floor of the exchange with due compliance with all the rules and regulations of the exchange, does not establish genuineness of trades or preclude execution of artificial and non-genuine trades.

33. Noticee has contended that none of the trades are deceptive in nature or have any impact on the investors or their investment decision which is sine qua non of “fraud”. I note, in this regard that the trade reversals in this case points out to the fact that the parties to the transactions, including the Noticee, did not intend to transfer the beneficial ownership. Through these orchestrated transactions, other investors have been excluded from participating in these trades/ contracts. These non-genuine and deceptive trades as found in this case are covered under the definition of ‘fraud’ as defined under Regulation 2(1)(c) of the PFUTP

Regulations, 2003. In this regard, I would like to rely upon the judgement of Hon'ble Supreme Court in the matter of **SEBI vs Rakhi Trading Private Ltd.**, wherein the Apex Court held that:

"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. Therefore, I am inclined to note that the aforesaid trades of Noticee were non-genuine and had created false or misleading appearance of trading in terms of artificial volume in stock options and, therefore, the same are manipulative and deceptive in nature.

35. In view of the above, I find that the Noticee, by engaging in non-genuine transactions which created a misleading impression of trading in respective contracts, dealt in the stock options contracts in a fraudulent manner and therefore, is in violation of Regulation 3(a) and 4(1) and 4(2)(a) of the PFUTP Regulations, 2003.

ISSUE II: If yes, whether the failure, on the part of the Noticee would attract monetary penalty under Section 15HA of the SEBI Act, 1992?

and

ISSUE III: If yes, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act, 1992 read with Rule 5(2) of the Adjudication Rules?

36. Since the violation of Regulation 3(a), 4(1) and 4(2)(a) of PFUTP Regulations, 2003 has been established against the Noticee, as brought out in the foregoing

paragraphs, the Noticee is liable for monetary penalty under Section 15HA of SEBI Act, 1992 which is reproduced as follows:

SEBI Act, 1992: 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."*

37. 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.

38. As established above, the trades entered by the Noticee were non-genuine in nature and created a misleading appearance of trading. I also observe that the Noticee in its reply to the SCN has not denied the fact that he had executed the trades in question. However, considering that the violation by the Noticee is creation of artificial trading volumes by trading between two counterparties and the trades are such that one of the counterparty books a profit while the other counterparty books a loss. Hence, it would be appropriate to consider the impact of these transactions between the two counterparties in totality. When the impact of artificial volumes created by the two counterparties is seen as a whole, it is not possible from the material available on record to quantify the amount of disproportionate gain or unfair advantage made/ taken by the Noticee or losses caused to investors as a result of the violation.

39. Therefore, taking into account the facts and circumstances of this matter, and the proportion of trading by the Noticee as compared to the total volume of reversal trades in the market during the Investigation Period, I am of the view that a penalty of Rs.5,00,000 (Rupees Five Lakh only) under Section 15HA of the SEBI Act, 1992 will be commensurate with the violations committed by the Noticee.

ORDER

40. After taking into consideration all the facts and circumstances of the case, in exercise of powers conferred upon me under Section 15-I of SEBI Act, 1992 read with Rule 5 of the Adjudication Rules, I hereby impose a penalty of Rs.5,00,000/- (Rupees Five Lakh only) on Noticee i.e. Shiv Kumari Devi under Section 15HA of the SEBI Act, 1992 for violation of Regulation 3 (a), 4(1) and 4(2)(a) of PFUTP Regulations, 2003.

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

ENFORCEMENT → Orders → Orders of AO → PAY NOW

42. The Noticee shall forward the said Demand Draft or the details / confirmation of penalty so paid to the Enforcement Department –Division of Regulatory Action – I of SEBI.

43. The Noticee shall provide the following details while forwarding DD/ payment information:

a) Name and PAN of the entity (Noticee)

b) Name of the case / matter

c) Purpose of Payment –Payment of penalty under AO proceedings

d) Bank Name and Account Number

e) Transaction Number

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

DATE: JANUARY 21, 2022	**SRINIVASAN T**
PLACE: MUMBAI	**ADJUDICATING OFFICER**