BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/BM/DS/2024-25/30835]

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

Narendra Kumar Maheshwari

(PAN: AAVPM1433A)

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 activities of certain entities in illiquid stock options at BSE for the period April 1, 2014 to September 30, 2015 (hereinafter referred to as "**IP**").

2. Pursuant to investigation, it was observed that total of 2,91,744 trades comprising 81.40% of all the trades executed in stock options segment of BSE during the IP were allegedly non genuine trades. The aforesaid alleged non-genuine trades resulted into creation of artificial volume in stock options segment of BSE during the IP. It was observed that Narendra Kumar Maheshwari (PAN – AAVPM1433A)

(hereinafter referred to as the "**Noticee**") was one of the various entities who indulged in execution of reversal trades in stock options segment of BSE during the IP. Such trades were alleged to be non-genuine in nature and created false or misleading appearance of trading in terms of artificial volumes in stock options and therefore were alleged to be manipulative, deceptive in nature. In view of the same, SEBI initiated adjudication proceedings against the Noticee for alleged 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) Regulations, 2003 (hereinafter referred to as "PFUTP Regulations, 2003").

APPOINTMENT OF ADJUDICATING OFFICER

3. The undersigned was appointed as Adjudicating Officer in the matter, conveyed vide order dated November 12, 2021, under Section 19 read with Section 15-I(1) of the SEBI Act, 1992 (hereinafter referred to as "SEBI Act, 1992") and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as "**Adjudication Rules**") to conduct adjudication proceedings in the manner specified under Rule 4 of Adjudication Rules read with Section 15-I(1) and (2) of SEBI Act, 1992, and if satisfied that penalty is liable, impose such penalty as deemed fit in terms of Rule 5 of Adjudication Rules and Section 15HA of SEBI Act, 1992.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. A Show Cause Notice dated March 25, 2022 (hereinafter referred to as "SCN") was issued to the Noticee under Rule 4(1) of the Adjudication Rules to show-cause as to why an inquiry should not be initiated against him and why penalty should not be imposed under section 15HA of the SEBI Act, 1992 for the violations alleged to have been committed by the Noticee.

5. It was *inter alia* alleged in the SCN that the Noticee had executed 8 non-genuine trades in 4 Stock Options contract which resulted in artificial volume of total 348000 units. Summary of dealings of the Noticee in the said Options contracts, in which the Noticee allegedly executed non-genuine trades during the I.P, is as follows:

S. No.	Contract Name	Avg. Buy Rate (Rs)	Total Buy Volume (No. of units)	Avg. Sell Rate (Rs)	Total Sell Volume (No. of units)	% of Non Genuine trades of Noticee in the contract to Noticee's Total trades in the Contract	% of Non Genuine trades of Noticee in the contract to Total trades in the Contract	% of Artificial Volume generated by Noticee in the contract to Noticee's Total Volume in the Contract	% of Artificial Volume generated by Noticee in the contract to Total Volume in the Contract
1	PFCL15APR260.00PEW1	0.55	45000	3	45000	100	50	100	47.87
2	PFCL15APR280.00PEW1	6.5	41000	10.25	41000	100	50	100	49.4
3	RECL15APR310.00PEW1	0.25	46000	2	46000	100	50	100	53.49
4	RECL15APR340.00PEW1	10.55	42000	14	42000	100	50	100	48.28

6. From the above table, following was noted as regard to dealings of the Noticee:
   (a) The Noticee had executed alleged non genuine trades in 4 contracts, wherein all the trades of Noticee in the said contract were allegedly non-genuine trades.
   (b) No. of alleged non-genuine trades of the Noticee had significantly contributed to total no. of trades from the market in the above contract, as 50% of the trades that happened in the said contract were due to non-genuine trades executed by the Noticee.

(c) 100% of volume generated by Noticee in the above contracts was alleged to be artificial volume, and further, the percentage of alleged artificial volume generated by the Noticee in the above contracts to the total volume from the market in said contract was in the range of 47.87% to 53.49%. Therefore, the Noticee allegedly generated artificial volume in the above contracts.

7. The SCN with reference no. SEBI/EAD-3/BM/UR/12610/2022 was sent to the Noticee via SPAD and digitally signed email dated March 25, 2022. The SCN was duly delivered through digitally signed email. As the SCN could not be delivered through SPAD, it was sent for affixture, along with cover letter dated April 13, 2022. The Noticee replied to the email vide letter dated May 09, 2022. The response of the Noticee is summarized as under:

   7.1. *There has been inordinate delay, as the SCN has been issued after more than 7 years of the trades. In this regard, the Noticee referred and quoted from various judgements of Hon'ble SAT, including Order dated January 31, 2020 in the matter of Ashlesh Gunvantbhai Shah & Several Others versus Securities and Exchange Board of India (Appeal No. 169 of 2019). Further, SEBI has failed to give any explanation or justification for the inordinate delay in issuing SCN.*

   7.2. *When Stock Exchanges and Member- brokers are required to maintain books of account and records for 5 years, then SEBI should not raise an issue to client after 7 Years.*

   7.3. *Noticee denied the allegations and submitted that Submissions of Ms. SURABHI MUNDHARA in ADJUDICATION proceedings decided vide ORDER NO. Order/RJ/VS/2021-22/14708 dated 06.01.2022, Ms. Neha Sethi in Adjudication Proceedings disposed of vide ORDER NO. Order/PB/2021-22/14749 dated 20.01.2022, Mr. Arpit Khandelwal in Adjudication Proceedings disposed of vide ORDER NO. Order/AK/RA/2021-22/15701 dated 30.03.2022* *and Agra Capitals Pvt. Ltd. in Adjudication Proceedings disposed of vide ORDER NO.OIAE/IGRD/AO/MS/GK/2021-22/15778 dated 31.03.2022 – should be read as Noticee's submissions.*

7.4. *Noticee traded only through the broker in the ordinary course.*

7.5. *It is beyond the realms of possibility that only 8 trades in 4 Contracts can influence or tantamount to have influenced the market.*

7.6. *The observations are clearly exceedingly vague and sweeping in nature.*

7.7. *The impugned trades have been executed by me through my broker on the platform of the Stock Exchange within the permissible price bands. Post execution of the trades, the same have been settled as per the norms of the Exchange and the broker has issued contract notes for the impugned trades. Therefore, the impugned trades executed by me cannot be alleged to be non-genuine trades.*

7.8. *Neither BSE nor SEBI had raised any grievance in public domain about the execution of reversal trades and non- genuine trades in the option segment at that point of time. All the trades in the stock options were settled through the stock exchange mechanism.*

7.9. *Only from the SCN, the Noticee came to know about the name of my trades' counterparty i.e. R P Computer Forms Pvt Ltd., against whom, it has now been noticed that, vide SEBI AO order dated 28.02.2019, a penalty of Rs.5,00,000/- was imposed under Section 15HA of the SEBI Act, for indulging in execution of reversal trades in Stock Options with the same entities on the same day, thereby creating artificial volume, leading to false and misleading appearance of trading in the illiquid stock options at BSE*

7.10. *There was no intention to match / reverse the trades with same counterparties. The orders languished in the system and anybody in the market could have picked them up.*

7.11. Noticee is not related or connected in any manner whatsoever to the alleged counterparty. He does not have any link / nexus / relationship / connection / dealing / collusion / arrangement or agreement with the counterparty. It is well settled that in order to establish the allegation of reversal trades nexus between the parties has to be brought on record. Unless some connection between the parties is established, it cannot be alleged that the alleged reversal trades were carried out with a view to generate artificial volume in the market.

7.12. Merely because of very few trades, no adverse inferences can be drawn against the Noticee. He has traded in the ordinary course and his trading was bonafide, without any intent to create artificial trade. Further, merely because others were not trading in particular stock options on the day, when he traded, cannot be ground for drawing adverse inference.

7.13. There is no allegation that as a result of my trading in stock options, Noticee has increased or depressed the price of the underlying shares in the Cash Segment.

7.14. The trades have all traits of being genuine and therefore cannot be categorized as non-genuine. These trades were executed on the anonymous platform of the Exchange, without any knowledge of the counterparty, at the price ranges that were permitted by the Exchange and SEBI and the obligations arising out of it have been settled through the clearing mechanism of the Exchange.

7.15. SEBI has not provided any evidence or proof to show that the Noticee's trades were fraudulent or non- genuine in nature. All it shows is a mere reversal of few trades which is reiterated to be a matter of utter coincidence or may be some foul play by the counterparty by matching with / picking up Noticee's orders and executing the trades.

7.16. For the transaction to be termed fraudulent, as per the definition of "fraud", there has to be an "inducement" and SEBI has not even alleged inducement; therefore, the onus of proving that fraud was involved or was committed, falls *upon the party alleging so, with regard to an act. Nothing such has been evidenced by the SEBI in its SCN.*

7.17. *It is pertinent to mention that the Stock Exchanges regularly come out with list of illiquid scrips in cash segment. However, no such list is issued by the Exchanges or Regulator i.e. SEBI for dealing in stock options contracts. Thus, to fasten the responsibility or allege the investor that he traded in illiquid stock options is unwarranted and unfair. Further even after the purported transaction, no alert was ever issued by the Exchange.*

8. Subsequently, Post Show Cause Intimation (PSI) dated August 03, 2022 was issued to the Noticee vide digitally signed email dated August 05, 2022. Vide the PSI, the Noticee was also intimated regarding the SEBI Settlement Scheme, 2022. However, the Noticee did not avail the SEBI Settlement Scheme, 2022 and also did not submit his response to the SCN.

9. In the interest of natural justice, the Noticee was provided an opportunity of hearing vide hearing notice dated March 21, 2023 via SPAD and digitally signed email, which was duly delivered to the Noticee. The Noticee was advised to appear before the undersigned on April 19, 2023 through video conferencing mode. However, the Noticee did not appear for hearing. In the interest of natural justice, the Noticee was provided another opportunity of personal hearing on May 03, 2023. The Noticee appeared through his authorized representative (AR) for the scheduled hearing. The AR appeared for the hearing and reiterated the submissions already made vide letter dated May 09, 2022. The AR also requested to make additional submissions. Vide letter dated May 04, 2023, the Noticee requested for availing settlement scheme.

10. Thereafter, Post Show Cause Intimation Notice (PSI) dated March 07, 2024 was issued to the Noticee through digitally signed email dated March 07, 2024, which was duly delivered, to intimate to the Noticee regarding the SEBI Settlement Scheme, 2024. The intimation regarding settlement scheme given to the Noticee is as follows:

10.1. Pursuant to the Order dated May 13, 2022 passed by the Hon'ble Securities Appellate Tribunal, SEBI had framed the SEBI Settlement Scheme, 2022 which was open from August 22, 2022 to January 21, 2023. Pursuant to the closure of the SEBI Settlement Scheme, 2022, adjudication proceedings continued against the remaining entities. During the adjudication proceedings, significant number of the remaining entities, at the time of personal hearing, expressed their interest in availing of settlement. Accordingly, SEBI has decided to introduce another Settlement Scheme ("ISO Settlement Scheme, 2024") in terms of Section 15JB of the SEBI Act, 1992 read with Regulation 26 of the Securities and Exchange Board of India (Settlement Proceedings) Regulations, 2018 in the matter of Illiquid Stock Options. The said scheme proposes payment of Settlement Amount as per the details given below:

S No	***Number of Contracts****	***Settlement Amount (Rs.)***
1	*1-5*	*1,20,000/-*
2	*6-50*	*2,40,000/-*
3	*51 and above*	*6,00,000/- base amount + 12,000 per contract*

** You may refer to the relevant Annexure/table of the SCN which contains a summary of the contracts you entered to determine the applicable slab for settlement.*

10.2. The period of the ISO Settlement Scheme, 2024 will commence on March 11, 2024 and will close on May 10, 2024, so as to provide an opportunity for settlement to the entities who have executed reversal trades in the stock options segment of BSE during the period April 01, 2014 to September 30, 2015, against whom enforcement proceedings have been initiated and are *pending. In case you wish to avail the benefit of the said Scheme, you may access the details of the said Scheme, which would be available on the website of SEBI i.e. www.sebi.gov.in, during the said period.*

10.3. *Necessary application for settlement may be filed within the validity period of the scheme and payment of the settlement amount shall be made online. Additionally, for any clarification in regard to settlement scheme, you may refer to the FAQs at SEBI website or send email to isoscheme2024@sebi.gov.in.*

10.4. *In case you do not wish to avail of the facility under the ISO Settlement Scheme, 2024, the adjudication proceedings initiated vide SCN shall stand automatically revived and the proceedings shall continue, from the stage at which the said proceedings were kept pending. In such case, you are advised to file your reply within 14 days of receipt of this Intimation, if not filed earlier.*

10.5. Pursuant to that, vide public notice dated May 08, 2024, it was advertised/informed that "*Considering the interest of entities in availing the Scheme, the competent authority has extended the period of the Scheme till June 10, 2024.*"

11. However, it was observed that Noticee did not avail the SEBI Settlement Scheme. In view of the same, the adjudication proceeding against the Noticee was resumed.

12. In the interest of natural justice, the Noticee was provided another opportunity of hearing vide hearing notice dated September 12, 2024 via SPAD and digitally signed email, which was duly delivered to the Noticee. The Noticee was advised to appear before the undersigned on September 24, 2024. However, the Noticee did not appear for the hearing.

CONSIDERATION OF ISSUES AND FINDINGS

13. Upon perusal of the charges levelled against the Noticee, his reply and the documents / material available on record, following issues arise for consideration in the present case:
    (a) Whether the Noticee has violated provisions of Regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of PFUTP Regulations, 2003?
    (b) Does the violation, if any, attract monetary penalty under section 15HA of the SEBI Act, 1992?
    (c) If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in section 15J of the SEBI Act, 1992?

14. Before proceeding further, reference is made to the relevant provisions of the PFUTP Regulations, 2003 as below:

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;

Issue No 1 : Whether the Noticee has violated provisions of Regulations 3(a), (b), (c), (d) and Regulation 4(1) & 4(2)(a) of PFUTP Regulations, 2003?

15. Before proceeding to the merits of the case, the contention of delay is being dealt here. It is noted 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.

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".*

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.

Further, another settlement scheme was introduced pursuant to the order of Hon'ble SAT dated May 12, 2022. Subsequently, another settlement scheme was introduced vide public notice dated March 10, 2024. The details of SEBI settlement scheme, 2024 is given at paragraph 10 above.

16. It is further noted that there are no timelines prescribed in the SEBI Act, 1992 for the purpose of identifying trades as non-genuine. In this regard, it is pertinent to note that, in the matter of **SEBI Vs Bhavesh Pabari** (2019) SCC Online SC 294, the Hon'ble Supreme Court of India has, inter alia, held that:

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

17. As can be seen from the narration of facts in the foregoing paragraphs, pursuant to appointment of AO on November 12, 2021, SCN dated March 25, 2022 was issued to the Noticee. Upon closure of SEBI Settlement scheme, 2022 on January 21, 2023, and in compliance with principles of natural justice, an opportunity of

personal hearing was scheduled on April 19, 2023 and again on May 03, 2023. During the hearing, the Noticee had informed that he wanted to avail settlement scheme. Thereafter, post show cause intimation dated March 07, 2024 was issued to the Noticee, informing him regarding the third SEBI Settlement Scheme, 2024. However, the same was not availed by the Noticee. In the interest of natural justice, the Noticee was provided another opportunity of hearing on September 24, 2024. However, the Noticee did not appear for the hearing. Hence, there has been no delay as alleged by the Noticee.

18. The transactions executed by the Noticee in the alleged non-genuine trades are dealt below.

19. It is noted that allegation against the Noticee is that, while dealing in the stock option contracts at BSE during the IP, he had executed reversal trades which were allegedly non-genuine and the same had resulted in generation of artificial volume in stock option contracts at BSE. Reversal trades are considered to be those trades in which an entity reverses its buy or sell positions in a contract with subsequent sell or buy positions with the same counterparty during the same day. The said reversal trades are alleged to be non-genuine trades as they are not executed in the normal course of trading, lack basic trading rationale, lead to false or misleading appearance of trading in terms of generation of artificial volumes and hence are deceptive and manipulative.

20. It is noted from the trade log of the Noticee that he had traded in 4 contracts in the stock options segment of BSE during the IP. It is observed that the Noticee had allegedly executed 8 non-genuine trades in 4 contracts. It is further noted that the above mentioned trades of the Noticee had resulted in the creation of artificial

volume of 348000 units in the said contracts. Summary of non-genuine trades of the Noticee is as follows:

S. No.	Contract Name	Avg. Buy Rate (Rs)	Total Buy Volume (No. of units)	Avg. Sell Rate (Rs)	Total Sell Volume (No. of units)	% of Non Genuine trades of Noticee in the contract to Noticee's Total trades in the Contract	% of Non Genuine trades of Noticee in the contract to Total trades in the Contract	% of Artificial Volume generated by Noticee in the contract to Noticee's Total Volume in the Contract	% of Artificial Volume generated by Noticee in the contract to Total Volume in the Contract
1	PFCL15APR260.00PEW1	0.55	45000	3	45000	100	50	100	47.87
2	PFCL15APR280.00PEW1	6.5	41000	10.25	41000	100	50	100	49.4
3	RECL15APR310.00PEW1	0.25	46000	2	46000	100	50	100	53.49
4	RECL15APR340.00PEW1	10.55	42000	14	42000	100	50	100	48.28

21. It is noted that the Noticee had allegedly executed non-genuine trades in said contracts, wherein the percentage of alleged non-genuine trades of the Noticee in stock options contract to total trades in the contract was 50% in the aforesaid contract. Further, alleged artificial volume generated by Noticee in the contract amounted to 100% of total volume generated by it in the contract. It is also noted that alleged artificial volume generated by the Noticee contributed in the range of 47.87% to 53.49% of the total volume from the market in the said contract.

22. The details of squaring up done by the Noticee in the contract 'PFCL15APR260.00PEW1' are as given below:

Trade Date	Client Name	CP Client Name	Trade Time	Trade Rate (Rs.)	Traded Quantity	Buy/Sell by the Noticee
23/03/2015	R P COMPUTER FORMS PVT LTD	NARENDRA KUMAR MAHESHWARI	12:31:32	3	45000	Sell
23/03/2015	NARENDRA KUMAR MAHESHWARI	R P COMPUTER FORMS PVT LTD	12:31:49	0.55	45000	Buy

i. As seen from the table above, the trades executed by the Noticee in the contract were squared up within seconds, with the same counterparty. Noticee on March 23, 2015 at 12:31:32 hrs (order time of the Noticee and the Counterparty were same as the trade time) entered into 1 sell trade with counterparty viz. R P COMPUTER FORMS PVT LTD for 45000 units at the average rate of ₹3.00 per unit in the contract ‘PFCL15APR260.00PEW1’. Thereafter, on the same day, Noticee entered into 1 buy trade at 12:31:49 hrs (Order time of the Noticee: 12:31:48; and counterparty order time: 12:31:49) for 45000 units at the average rate of ₹0.55 per unit.

ii. These trades were entered into with the same counterparty in the same contract. It is noted that while dealing in the said contract during the IP, the Noticee executed reversal trades with same counterparty viz. R P COMPUTER FORMS PVT LTD on the same day, with significant price difference. Thus, the Noticee, through its dealing in the contract viz. ‘PFCL15APR260.00PEW1’ during the I.P., executed non genuine trades which was 50% of the total trades from the market in the said contract during the I.P., and thereby, Noticee generated artificial volume of 90000 units which was 47.87% of the volume traded in the said contract from the market during the I.P.

23. In the same way, Noticee also executed another 6 trades in different scrips, viz. PFCL15APR280.00PEW1, RECL15APR310.00PEW1 and

RECL15APR340.00PEW1 with the same counterparty, which resulted in artificial volume of 258,000 units.

24. Noticee has contended that it is not comprehensible as to how few trades of the Noticee can influence the market. It is noted that the market volume only in the impugned contracts is relevant as regards instant considerations, so that the artificial volume generated by Noticee as a proportion of total market volume in the contract was in the range of 47.87% to 53.49%. It is noted that Noticee's trades, although few in number, contributed substantially to total market volume in said contract indicating that the stock options segment of BSE was illiquid as regards the aforesaid contracts.

25. The non-genuineness of these transactions executed by the Noticee is evident from the fact that there was no commercial basis as to why, within a short span of time, the Noticee reversed the position with his counterparties with significant price difference. It is noted from the trade log of the Noticee that the time taken by the Noticee for reversing the non-genuine trades was very short and, on the same day. Such a short span of time taken for reversing the trades in an illiquid stock option contract suggests the non-genuineness of these trades executed by the Noticee. The fact that the transactions in a particular contract were reversed with the same counterparties indicates a prior meeting of minds with a view to execute the reversal trades at a pre-determined price. Since these trades were done in illiquid option contract, there was negligible trading in the said contract and hence, there was no price discovery in the strictest terms. The wide variation in prices of the said contract, 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. Thus, it is observed that Noticee had indulged in reversal trades with his counterparties in the stock options segment of BSE and the same were non-genuine trades.

26. Noticee has further contended that the trades executed were subject to regulatory supervision of BSE, and were not questioned by the BSE at that time, so the impugned trades which were cleared were genuine. It is noted that stock exchanges merely provide a platform for carrying out the trades and the clearing corporation affiliated with exchange handles the confirmation, settlement and delivery of transactions, however, the obligation to ensure genuineness of trades as regards instant considerations lies squarely on the Noticee and the Noticee is bound to comply PFUTP Regulations, 2003. Thus, the contentions of the Noticee are not tenable.

27. Noticee has also contended that there was neither any mechanism to deter nor a note of caution by BSE about matching trades with same counterparty on the same day during the IP. It is noted that instant adjudication proceedings levy the impugned allegations against Noticee, and that absence of any preventive mechanism cannot be a ground to absolve Noticee from his obligation to ensure genuineness of trades executed on exchange platform.

28. Noticee has further contended that he had no knowledge of counterparty to the trades and that he did not engage in any collusion with the counterparty as alleged. In regard to the aforesaid contentions, it is noted that it is not mere coincidence that the Noticee could match his trades with the same counterparty with whom he had undertaken first leg of the respective trades. The fact that the transactions in a particular contract were reversed with the same counterparty indicates a prior meeting of minds with a view to execute the reversal trades at a pre-determined price. This is the outcome of meeting of minds elsewhere and it was a deliberate attempt to deal in such a manner. It is noted that 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 reliance may be made 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..."*

29. 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."*

30. 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, it is observed that the execution of trades by the 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 seconds/minutes was a clear indication that there was pre-determination in the prices by both the counterparty when executing the trades. Thus, the nature of trading, as brought out above, clearly indicates an element of prior meeting of minds and therefore, a collusion of the Noticee with its counterparty to carry out the trades at pre-determined prices.

31. Further, Noticee has also contended that the essential requirement to constitute fraud is to induce another person or his/her agent to deal in securities, which has not been brought out in the instant SCN. In this regard, it is noted the following from the judgement of the Hon'ble SAT in the matter of Ketan Parekh vs SEBI (supra):

In other words, if the factum of manipulation is established it will necessarily follow that the investors in the market had been induced to buy or sell and that no further proof in this regard is required. The market, as already observed, is so wide spread 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 law can never impose on the Board a burden which is impossible to be discharged. This, in our view, clearly flows from the plain language of Regulation 4 (a) of the Regulations.

32. The judgment of Hon'ble Supreme Court in the matter of SEBI v Rakhi Trading Private Limited (Civil Appeal Nos. 1969, 3174-3177 and 3180 of 2011 decided on February 8, 2018) is also being relied upon, in which the Hon'ble SC held that - *"Considering the reversal transactions, quantity, price and time and sale, parties being persistent in number of such trade transactions with huge price variations, it will be too naive to hold that the transactions are through screen-based trading and hence anonymous. Such conclusion would be over-looking the prior meeting of minds involving synchronization of buy and sell order and not negotiated deals as per the board's circular. The impugned transactions are manipulative/deceptive device to create a desired loss and/or profit. Such synchronized trading is violative of transparent norms of trading in securities….."*

34. Further, the Hon'ble SAT in its judgement dated September 14, 2020 in the matter of Global Earth Properties and Developers Pvt Ltd relied upon the Hon'ble Supreme Court judgement in the matter of SEBI v Rakhi Trading Private Limited (Civil Appeal Nos. 1969, 3174-3177 and 3180 of 2011 decided on February 8, 2018), and held that, "*It is not a mere coincidence that the Appellants could match the trades with the counter party with whom it 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.*"

35. Noticee has also contended that volume contributed by reversal trades to the total contract volume was insignificant, and could not be termed manipulative and deceptive. It is noted that the impugned stock option contract was illiquid, as stated in the SCN, and also that Noticee's trades in said contract contributed in the range

of 47.87% to 53.49% to the total market volume generated during the IP. This points to the contribution of Noticee, irrespective of quantum of reversal trades or volume generated, in the creation of misleading appearance of trading through his impugned trades.

36. With respect to Noticee's contention that no penalty should be imposed on him for the reversal trades as in the case of Neha Sethi, it may be mentioned that facts of the present case are different from the facts of the case of Neha Sethi. Further, it is relevant to refer to the case of AO Order of Radha Malani dated September 06, 2021, against which the appeal was filed and Hon'ble SAT vide Order dated November 24, 2021, has upheld the AO Order wherein penalty was imposed even for single reversal trade. Hence, the contention of the Noticee is not tenable.

37. Therefore, the trading behaviour of the Noticee confirms that such trades were not normal indicating that the trades executed by the Noticee were not genuine trades and being non-genuine, created an appearance of artificial trading volumes in respective contracts. In view of the above, it is observed that the allegation of violation of regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of PFUTP Regulations, 2003 by the Noticee stands established.

Issue No 2: Does the violation, if any, attract monetary penalty under Section 15HA of the SEBI Act, 1992 ?

38. Considering the findings that the Noticee as mentioned above has executed non-genuine trades resulting in the creation of artificial volume, thereby violating the provisions of Regulation 3(a), (b), (c) & (d) & Regulation 4(1) and 4(2)(a) of the PFUTP Regulations, 2003 and in terms of the judgement of Hon'ble Supreme Court of India in the matter of SEBI Vs. Shri RAM Mutual Fund[2006] 68 SCL 216(sc) decided on May 23, 2006 held that '' "*In our considered opinion, penalty is*

attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant..." Therefore, it is a fit case for imposition of monetary penalty under the provisions of Section 15 HA of SEBI Act which reads as under:

Penalty for fraudulent and unfair trade practices.

15HA. If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty which shall not be less than five lakh rupees but which may extend to twenty - five crore rupees or three times the amount of profits made out of such practices, whichever is higher.

***Issue 3: If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in Section 15J of the SEBI Act, 1992*?**

39. While determining the quantum of penalty under Section 15HA of SEBI Act, it is important to consider the factors as stipulated in Section 15J of the SEBI Act which reads as under:

15J. *While adjudging quantum of penalty under [15-I or section 11 or section 11B, the Board or the adjudicating officer] shall have due regard to the following factors, namely:—*

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to an investor or group of investors as a result of the default;

(c) the repetitive nature of the default.

[Explanation*.— For the removal of doubts, it is clarified that the power to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section*

15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.]

It is observed that the material available on record does not quantify any disproportionate gains or unfair advantage, if any, made by the Noticee and the losses, if any, suffered by the investors due to such violations on part of the said Noticee. However, the Noticee has entered into 8 non-genuine trades which demonstrates the violation of PFUTP Regulations, 2003.

ORDER

40. Having considered all the facts and circumstances of the case, the material available on record, the submissions made by the Noticee and also the factors mentioned in Section 15J of the SEBI Act, 1992, and also taking into account judgment of the Hon'ble Supreme Court in SEBI vs. Bhavesh Pabari (2019) 5 SCC 90, in exercise of power conferred under Section 15-I of the SEBI Act,1992 read with Rule 5 of the SEBI Adjudication Rules, 1995, following penalty under section 15HA of the SEBI Act, 1992is hereby imposed upon the Noticee:

Name of the Noticee	**Violation provisions**	**Penalty**
Narendra Kumar Maheshwari PAN:AAVPM1433A	Regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of PFUTP Regulations, 2003	₹ 5,00,000/- (Rupees Five Lakhs only)

The said penalty is commensurate with the lapse/omission on the part of the Noticee.

41. 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 website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link:

ENFORCEMENT → Orders → Orders of AO → PAY NOW

42. 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.

43. In terms of the provisions of rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticee viz. Narendra Kumar Maheshwari and also to the Securities and Exchange Board of India.

DATE: SEPTEMBER 30, 2024	**BARNALI MUKHERJEE**
PLACE: MUMBAI	**ADJUDICATING OFFICER**