BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
ADJUDICATION ORDER NO. ORDER/GG/VV-BS/2021-22/15800

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

In respect of:

Sanjay Rastogi

(PAN: AADPR5522K)

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

BACKGROUND OF THE CASE

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

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

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

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

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

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

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

6. It was observed that **Sanjay Rastogi (PAN: AADPR5522K)** (hereinafter referred to as the "**Noticee**") was one of the entities, who did not seek settlement under the Settlement Scheme in 2020. The reversal trades allegedly contributed to the generation of artificial volumes, leading to allegations that the Noticee had violated the provisions of Regulations 3(a), (b), (c), (d) and Regulation 4(1) and 4(2) (a) of the SEBI (Prohibition of Fraudulent and Unfair Trading Practices relating to Securities Markets) Regulations, 2003 (hereinafter referred to as the "**PFUTP Regulations**").

APPOINTMENT OF ADJUDICATING OFFICER

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

SHOW CAUSE NOTICE, REPLY AND HEARING

8. A show cause notice dated 27.12.2021 (hereinafter referred to as "**SCN**") was served upon the Noticee under rule 4(1) of the SEBI Adjudication Rules to show cause as to why an inquiry should not be initiated against him and why penalty should not be imposed against him under section 15HA of the SEBI Act for the alleged violation of the provisions of regulations 3(a),(b),(c),(d), 4(1) and 4(2)(a) of the PFUTP Regulations.

9. The SCN issued to the Noticee, *inter alia* alleged that the Noticee engaged in 10 non-genuine trades through 5 contracts on 24.03.2015 through one counterparty viz. Dev Commodity Brokers Private Limited which led to generation of artificial volume of 2,96,000 units. The trades executed by the Noticee were reversed on the same day with the same counterparty at a substantial price difference without there being any rationale. The summary of the dealings of the Noticee in the stock option contracts, in which the Noticee allegedly executed the 10 (ten) non-genuine trades during the investigation period is as follows:

Table No.-1

Summary of dealings in contracts wherein the Noticee executed reversal trades as given 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 Vol in the contract	% of Artificial Volume generated by Noticee in the contract to Noticee's Total Volume in the Contract	% of Artificial Volume generated by Noticee in the contract to Total Volume in the Contract
1.	GAIL15APR390.00CEW1	4.2	48,000	0.9	48,000	7,12,000	100	13.48
2.	HDFC15APR1350.00CEW1	23	10,000	13.25	10,000	2,34,000	100	8.55
3.	HERO15APR2650.00CEW1	19	15,000	8.5	15,000	2,25,000	100	13.33
4.	HPCL15APR640.00CEW1	9	40,000	4.25	40,000	4,70,000	100	17.02
5.	HULL15APR900.00CEW1	11.2	35,000	5.75	35,000	3,90,000	100	17.95

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

11. The abovementioned reversal trades creating artificial volumes are illustrated through the dealings of Noticee in the contract viz. "HULL15APR900.00CEW1" (Serial.no. 5 of the above table), *(Annexure- 2 may be referred for the details of the contract given below in the illustration*), which is as follows:-

(a) During the investigation period, in the said contract viz. "HULL15APR900.00CEW1", the Noticee on 24/03/2015 has executed 2 trades for a total volume of 70,000 units with counterparty, viz. Dev Commodity Brokers Private Limited.

(b) While dealing in the said contract on 24/03/2015, the Noticee at 14:38:45.010419 hrs executed one buy trade for 35,000 units at the rate of Rs.11.2 per unit with counterparty, Dev Commodity Brokers Private Limited. In 11 seconds after the aforementioned buy trade, the Noticee reversed the trade by executing one sell trade at 14:38:56.019028 hrs for 35,000 units at the rate of Rs.5.75 per unit with the same counterparty.

(c) From the above, it is noted that while dealing in aforesaid contract (i.e HULL15APR900.00CEW1) during the investigation period, the Noticee executed a total of 2 trades (1 buy trade and 1 sell trade). This made up to 17.95% of the total market volume for this contract during the investigation period. Likewise, in the contracts shown from Sr.nos.1 to 4 of Table 1, the Noticee has executed a total of 8 trades, which constituted to variable percentages of market volume as provided in Table -1.

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

PFUTP Regulations

3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

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

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

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

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

4. Prohibition of manipulative, fraudulent and unfair trade practices

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

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

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

………

13. The Noticee submitted his reply to the SCN *vide* letter dated 12.01.2022 (hereinafter referred to as the "**Reply of the Noticee**"). Relevant extract of the reply of the Noticee is reproduced as under:

1. It is categorically and specifically denied that the Noticee had intentionally or malafidely indulged in execution of any non-genuine reversal trades in stock options with the same entities on the same day as alleged or that the Noticee had created any false or misleading appearance of trading in stock options as alleged. It is denied

that the Noticee has violated the provisions of Regulation 3(a),(b),(c), (d), 4(1), 4(2)(a) of PFUTP Regulations as alleged. It is reiterated that the trading is genuine without earning any profits out of it, bonafide and in the ordinary course of business dehors fraudulent/ manipulative intent or design.

2. It is humbly submitted that firstly, the Noticee would like to clarify that the documents annexed by your good self in the show cause notice are not authenticated. Moreover, the noticee was not provided the copy of the 'Investigation Report' based on which the present Notice has been issued, which is in gross violation of principles of natural justice. My client reserves his right to seek copy of Investigation Report along with other documents and details such as correspondences exchanged by SEBI with various parties and reply of the counter-party, relied upon in the Notice, and reserve his right to file additional reply in the matter pursuant to availability of Investigation Report. As such I request you for the same. Further my client seeks permission to cross examine the concerned person/or record relied upon by your good self and requested to provide all material relied upon against my client by your good self.

3. It is humbly submitted that your good self has stated, the trades that are alleged to be in violation with the norms are for the period 2014-15, which shows that there is a clear, inordinate delay of 6+ years and therefore the proceeding should be quashed. Anyway, the delay has severely prejudiced Noticee's ability to respond to the SCN. Hence, it is in violation of principles of natural justice. Furthermore, there is plethora of judgments and rulings and directions passed by Hon'ble SAT, Hon'ble High Courts, and Hon'ble Supreme Court of India holding the aforesaid preposition which we would refer at the time of detailed submission/hearing, if required.

4. It is humbly submitted that in so far as allegations pertaining to reversal trades are concerned, it may be noted that at the relevant time the Noticee was not aware that the trades were in the nature of reversals as alleged. At no point of time, the noticee was aware of any counterparty to alleged trade, or any violation of the provisions/ trades of any other entities. All transactions were made as genuine with bonafide intention. All trades were in the anonymous order matching system of the exchange, wherein it is impossible to know the identity of the counterparties. The alleged matching with the counter parties is by coincidence and not by design.

5. It is specifically denied that the Noticee had indulged in non-genuine trades in the five contracts as alleged. It is reiterated that the trading is genuine, bonafide and in the ordinary course of business dehors fraudulent/ manipulative intent or design.

6. It may be noted that the Noticee is not related or connected in any manner whatsoever to the alleged counter party. The Noticee does not have any link/ nexus/ relationship/ connection/ dealing/ collusion/ arrangement or agreement with the counter party. Even there is nothing in the Notice, to even remotely connect the Noticee to the alleged counter parties to the trades. Same completely destroys the allegation of execution of reversal trades.

7. 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.

8. The Noticee would like to submit that it is next to impossible for a small investor like the Noticee to know such details or manipulate the system, in view of the robust electronic trading software used by the registered brokers and approved by SEBI is in

place. In fact, as per common knowledge, even for the trading broker, it is difficult to ascertain the ultimate buyer.

9. Further, to allege the creation of artificial volume in the market, it is imperative to show that parties carrying out the trades (alleged to be artificial trades) were connected to each other or at least shared a common objective of creating artificial volume. Therefore, it is necessary to prove that two contracting parties had struck a deal beforehand, i.e., there was meeting of minds between the two contracting parties. In view of the aforesaid observations and submissions, it is stated that the aforesaid allegations against noticee are baseless, unjustified and prejudiced and are liable to be vacated. To state further, the anonymous systems of the Exchange do not allow a transacting party to know the details of the counter party and hence the allegation of executing reversal trades cannot hold good. Therefore, it is almost impossible to know the identity of the parties in a screen-based transaction. The position has been accepted and affirmed by SEBI before the Joint Parliamentary Committee (JPC) on Stock Market Scam and matters relating thereto, 2001, which tabled its report in the Parliament in December, 2002. To establish charges of fraudulent trading or violation or PFUTP Regulations, it is a settled principle of law that the parties to these trades should collude amongst themselves. In this context reliance is placed on judgments rendered by the Hon'ble Securities Appellate Tribunal: In the matter of M/s. **Jagruti Securities Ltd. v. SEBI** and **Vintel Securitie Pvt. Ltd. v. SEBI** (Appeal No. 219/2009 order dated November 23, 2009), Hon'ble Securities Appellate Tribunal in the matter of Saroj & Co., proprietor **Sanjay Agrawal vs. Securities and Exchange Board of India** (SAT Order dated 18.05.2012 Appeal No. 213 of 2011)

"nexus between the parties for establishing reversal trades has not been brought on record in the present case. The reference to mere matching of a few trades may not necessarily point to fraudulent intention of the appellant. Screen based trading functions on the basis of anonymity and sometimes orders may get matched when trades are executed keeping in mind price, time and volume. But it is important to establish the nexus between the parties, especially so in the case of a broker since he acts according to my directions. Even though a detailed analysis of the trades is part of the adjudication order, the adjudicating officer has not been able to establish a pattern of wrong doing aimed at fraudulent practices in the market. The appellant has been able to analyze each trade which took place during the impugned period of 35 days and show that orders were placed in the normal course of business. The adjudicating officer has not established with sufficient supporting material that the appellant was a party to a handful of matching trades which have taken place in the course of the trading as directed by the appellant. So, considering the detailed explanations offered by the appellant and the nature of the transactions we are not able to uphold the charge of reversal/ circular trades in the present case."

10. While levelling allegations with regard to alleged creation of false and misleading appearance of trading, it has been totally ignored and overlooked that there is no allegation in the Notice that as a result of the impugned trading in stock options, the Noticee has increased or depressed the price of the underlying shares in the Cash Segment.

11. With regard to trading in the option segment, it may be pointed out that according to the website of BSE, they have full proof surveillance system in place and according to information given on their website the functions of the surveillance department are as follows: (a) Monitoring price and volume movement (volatility) as well as by detecting potential market abuses (fictitious/artificial transactions, circular trading, false and misleading impression, insider trading etc.) at the nascent stage, with a

view to minimize the ability of market participants to influence the price of any Security in the absence of any meaningful information & (b) Taking timely actions to manage default risk. The website further provides that BSE having three cells under its surveillance department viz. Price monitoring; Investigation & Position monitoring. Further, in addition to fool proof surveillance mechanism at BSE, they have power under Byelaw No 1.46 of Derivatives Segment to annul the trades in future and option segment wherever they observe that the trades were executed for fraud and/or willful misrepresentation. All the option trades executed by the Noticee and the other parties were genuine and in accordance with the Rules, Regulations and Byelaws of BSE so same were cleared by surveillance mechanism of BSE and not investigated by BSE.

12. Lastly, Reference is drawn to the Adjudication Order No. ORDER/BS/AU/2021-22/12610-12611, where the fact of the referred case is very similar with this case since the allegation was regarding reversal trade in illiquid stock resulting in creation of artificial volume. In this order the Noticee had no connection with the counterparty and the Adjudication Authority gave the benefit of doubt to Noticee. Relevant extract of the aforesaid order is

"... In absence of any additional evidence other than trading for clients it is difficult to establish the violation of Code of Conduct of the Stock Broker Regulations by Noticee No. 2. Given the fact that allegations against Noticee No. I are not established, I am inclined to take a lenient view and give benefit of doubt to Noticee No. 2 as well and consider it not a fit case for imposing penalty." Also, a bare perusal of the SEBI Act indicates that it is not mandatory for the Adjudicating Officer to impose a penalty every time he come to conclusion that any person /entity has failed to comply with the specified requirement under the Act and/or the Regulations. Even though Section 15HB of the SEBI Act contain the words *"shall be liable to a penalty"* there is no strict or mandatory obligation on the part of the defaulter to suffer such penalty. In this regard, we would like to draw attention on the judgement passed by the Hon'ble Supreme Court of India in the matter of **Superintendent and Remembrancer Legal Affairs to Government of West Bengal Vs. Abani Maity** (1979).

In the facts and circumstances, any imposition of penalty on my client would be unjustified and unwarranted. In view of the foregoing submissions, it is further requested as above mentioned to provide reply upon material and documents to my client to defend his case and it is reiterated at the cost of repetition that my client has not committed any contravention of SEBI and its regulations hence the Noticee be discharged, and no penalty be imposed. In any case still your goodself desire further information from my client, he is ready to abide and cooperate with your desire information and records.

13. Vide Hearing Notice No. EAD6/GG/VV/5512/4/2022 dated 09.02.2022, it was communicated to the Noticee that an opportunity of personal hearing on 24.02.2022 is granted to the Noticee in accordance with rule 4 (3) of the Adjudication Rules. The aforesaid Hearing Notice was delivered by SPAD on 14.02.2022. Authorized Representative (AR) of the Noticee, Mr. Manish Shukla, Advocate appeared before me on the scheduled date and reiterated the submission made vide reply dated 12.01.2022. AR also sought inspection of

documents and stated that he would make further submissions in the matter. Hearing was conducted through Web platform due to Covid -19 Pandemic. Request for inspection of documents was addressed by providing the relevant part of the investigation report to the Noticee vide email dated March 11, 2022. Documents relied upon for the instant Adjudication proceedings have already been provided to the Noticee as Annexures along with SCN. Noticee was also advised to file additional response, if any, by March 15, 2022. However, I note from the documents available on record that no additional response was filed by the Noticee.

CONSIDERATION OF ISSUES AND FINDINGS

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

15. I note that SCN dated 27.12.2022 alleged that the Noticee contributed to the generation of artificial volumes by entering reversal trades thereby violated the provisions of Regulations 3(a), (b), (c), (d) and Regulation 4(1) and 4(2) (a) of the SEBI (PFUTP) Regulations, 2003.

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

Table No. 2: Summary of dealings in contract HULL15APR900.00CEW1

Sr. No.	Date of transaction	Name of the client	Name of the counter party client	Trade Time (in hrs)	Order Time of Dev Commodity Brokers Pvt Ltd	Order time of Noticee i.e. Sanjay Rastogi	Trade Rate (Rs.)	Trade Volume (no. of units)
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
1	24/03/2015	Sanjay	Dev Commodity	14:38:45.010419	14:38:45.010419	14:38:44.985419	11.20	35,000

		Rastogi	Brokers Pvt Ltd.					
2	24/03/2015	Dev Commodity Brokers Pvt Ltd.	Sanjay Rastogi	14:38:56.019028	14:38:56.019028	14:38:55.896139	5.75	35,000

16. I note from the trade log that the trades executed by the Noticee in the aforesaid contract were reversed with the same counterparty within a short span of time. To illustrate, the Noticee on 24.03.2015 at 14:38:45.010419 executed one buy trade with counterparty Dev Commodity Brokers Pvt. Ltd. for 35,000 units at Rs. 11.20 per unit. Order time of the Noticee being 14:38:44.985419 and order time of the counterparty being 14:38:45.010419. The difference in order time of the Noticee and that of counterparty is a few micro seconds indicating that the trade was executed in synchronized manner. The attribute tagged with the orders of Noticee and counterparty under 'order type' and 'CP_order Type' column is "L" , as seen from columns 49 & 50 of Annexure 2 to SCN, which implies that Limit orders were placed by both the parties at a prefixed price.

17. Thereafter, on the same day i.e. 24.03.2015, the Noticee reversed the trade by executing sell trade with the same counterparty. The Noticee at 14:38:56.019028 (Order time of the Noticee: 14:38:55.896139 and order time of the Dev Commodity: 14:38:56.019028) executed one sell trade with counterparty Dev Commodity Brokers Pvt. Ltd. for 35,000 units at Rs. 5.75 per unit. The trade was executed in a synchronized manner as the difference in order time of the Noticee and that of counterparty is a few micro seconds. Both the parties placed Limit orders for their respective orders at exact matching price.

18. Similarly, reversal of trades were observed in the other contracts viz. GAIL15APR390.00CEW1,HDFC15APR1350.00CEW1,HERO15APR2650.00CEW1, HPCL15APR640.00CEW1 with same counterparty viz. Dev Commodity Brokers Pvt. Ltd. as mentioned in the Table No. 1 at paragraph 9 above

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

20. I note from the trading pattern of the Noticee and the manner of placing buy and sell orders in a synchronized manner, resulting in reversal of trades on the same day indicate that the trades executed by the Noticee were not genuine trades. While dealing in the contract HULL15APR900.00CEW1, the Noticee contributed 17.95% of the artificial volume in the said contract as explained in Table No. 2 at paragraph 15, 16 & 17 above. Similarly, the Noticee generated varied percentage of artificial volume in 4 other contracts as mentioned in Table No. 1 at paragraph 9 above viz. 8.55 % in HDFC15APR1350.00CEW1, 13.33% in HERO15APR2650.00CEW1, 13.48% in GAIL15APR390.00CEW1 and 17.02% in HPCL15APR640.00CEW1. The trades executed by the Noticee being non-genuine trades, created an appearance of artificial trading volumes and misleading impression of trading in respective contracts. I find that by engaging in such trades, the Noticee violated provisions of Regulation 3(a), (b), (c) and (d) and Regulation 4 (1), 4(2) (a) of PFUTP Regulations, 2003 which states that dealing in securities will be deemed to be a fraudulent and unfair trade practice if it involves indulging in an act which creates false or misleading appearance of trading in the securities market.

21. I note that Noticee in his reply dated 12.01.2022 has sought permission for cross examination of concerned person/or record relied upon for in the instant proceedings. In this regard, I note that no statement of any person/entity has been recorded or relied upon in the present matter and the details of the trades is borne out of the trade log which has been duly supplied to the Noticee along with SCN. Thus, the question of cross examination does not arise. Further, vide email dated March 11, 2022, relevant extract of the investigation report was

provided to the Noticee on the request of the Noticee made in his reply dated 12.01.2022 and during the course of hearing on February 24, 2022.

22. The Noticee in his reply while denying the charges levelled against him, argued that there is inordinate delay of more than 6 years in issuing SCN for transactions executed during 2014-15, therefore the proceedings should be quashed as the delay has severely prejudiced his ability to respond to the SCN and it is in violation of principles of natural justice. This contention of the Noticee has already been discussed in paragraphs 2, 3, 4 and 5 of this order.

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

> *"1. Fairness, integrity and transparency are the hallmarks of the stock market in India".*
>
> *"35. Nobody intentionally trades for loss. An intentional trading for loss per se, is not a genuine dealing in securities. The platform of the stock exchange has been used for a non-genuine trade. Trading is always with the aim to make profits. But if one party consistently make loss and that too in pre-planned and rapid reverse trades, it is not genuine; it is an unfair trade practice."*
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> *"38. Their Lordships have considered similar transactions in the same segment, "The repeated reversals and predetermined arrangement to book profits and losses respectively, made it clear that the parties were not trading in the normal sense and ordinary course. Resultantly, there has clearly been a restriction on the free and fair operation of market forces in the instant case."*
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> *"41. The stock market is not a platform for any fraudulent or unfair trade practice. The field is open to all the investors. By synchronization and rapid reverse trade, as has been carried out by the traders in the instant case, the price discovery system itself is affected. Except the parties who have pre-fixed the price, nobody is in the position to participate in the trade. It also has an adverse impact on the fairness, integrity and transparency of the stock market."*
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> *"38. The smooth operation of the securities market and its healthy growth and development depends upon large extent on the quality and integrity of the market. Unfair*

trade practices affect the integrity and efficiency of the securities market and the confidence of the investors. Prevention of market abuse and preservation of market integrity are the hallmark of securities law …" (Paragraph No.1, 35, 38 and 41 of the part of the judgment authored by His Lordship Mr. Justice Kurian Joseph).

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

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

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

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

25. 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 Appellate Tribunal enlisted the following circumstances:

"***14.*** The Supreme Court in Rakhi Trading had found that the trades were fraudulent and manipulative in the following circumstances:

a. *If the trades are synchronized and reversed with the same counterparty within a time span of seconds to minutes during the same day.*

b. *The prices at which the trades are undertaken is such that one party is making profit and other making loss.*

c. *The orders are placed at unattractive prices which does not reflect the value of the underlying asset.*

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 case of trade in a scrip in cash segment, there is a physical delivery of the asset. In the derivative segment there is a change of rights in a contract. In synchronized and reverse trades, there is no genuine change of rights in the contract.*

26. 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."*

27. Thus, from the facts of the matter and the legal position laid down by the Hon'ble Supreme Court of India, I find that the subject trades are non-genuine and artificial. I am, therefore, inclined to levy penalty on the Noticee. Taking into consideration, the facts & circumstances of the case and being convinced of the generation of artificial volumes in the market, I am of the view that a penalty ought to be imposed on the Noticee.

28. In this context, I note that section 15HA of SEBI Act 1992 provides that, 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. In view of the specific mandate contained in Section 15 HA and bearing in mind the factors laid down in Section 15 J of the SEBI Act, 1992, I am of the view that a penalty of Rs. 5,00,000/- (Rupees Five Lakh only) ought to be imposed on the Noticee.

ORDER

29. In exercise of powers conferred upon me under section 15-I (2) of the SEBI Act read with rule 5 of the Adjudication Rules, I hereby impose a penalty of Rs 5,00,000/- (Rupees Five Lakh only) upon the Noticee i.e., **Sanjay Rastogi (PAN: AADPR5522K**) under section 15HA of the SEBI Act for violation of Regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of the PFUTP Regulations.

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

ENFORCEMENT → ORDERS → ORDERS OF AO → PAY NOW

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

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

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

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

Date: March 31, 2022
Place: Mumbai

GEETHA G.
ADJUDICATING OFFICER