BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
ADJUDICATION ORDER NO. Order/MA/AS/2021-22/15590

UNDER SECTION15-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:

Ashlar Tours & Travels Private Limited
[PAN: AAKCA4873A]
A 38, Sector 67, Noida – 201 301
Uttar Pradesh

In the matter of Illiquid Stock Options at BSE Limited

BACKGROUND

1. Securities and Exchange Board of India (*hereinafter* referred to as '***SEBI***') observed large scale reversal of trades in Stock Options segment of BSE Limited (*hereinafter*, referred to as '***BSE***') leading to creation of artificial volume. Accordingly, 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. It was observed that during the Investigation Period, total 2,91,643 trades comprising substantial 81.38% of all the trades executed in Stock Options Segment of BSE were found to be non-genuine trades. The aforesaid non-genuine trades resulted into creation of artificial volume to the tune of 826.21 crore units or 54.68% of the total market volume in Stock Options segment of BSE during the investigation period.

3. It was observed that the said non-genuine trades were not restricted to any specific contract or between any specific set of entities. It was observed that Ashlar Tours & Travels Private Limited (*hereinafter* referred to as '***Noticee***') was one of the various entities who indulged in execution of non-genuine trades in Stock Options Segment of BSE during the investigation period. The following points narrate the dealings of the Noticee during the investigation period and the allegations against it for execution of non-genuine trades.

4. As regards the dealings of Noticee in the Stock Options segment of BSE during the Investigation Period, it was observed that the Noticee had traded in 1 unique contract, in which the entity had allegedly executed total of 2 non-genuine trades, which resulted in artificial volume of total 40,000 units.

5. Summary of dealings of the Noticee in the Stock Options contract in which the Noticee allegedly executed non genuine trades during the investigation period 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 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	EXID15JUN170.00PE	14.10	20000	16.55	20000	100	100

6. From the above table, the following is observed as regards the dealings of the Noticee:

   a) During the Investigation Period, 2 trades for 40,000 units were executed by the Noticee in the said contract on 28/05/2015.

   b) That while dealing in the said contract during the Investigation Period, Noticee executed total 2 reversal trades (1 buy trade + 1 sell trade) with same counterparty viz Shaveta Stock & Securities Private Limited on the same day.

   c) Thus, Noticee through dealing in the contract viz, "EXID15JUN170.00PE" during the Investigation Period, executed 2 non-genuine trades and thereby allegedly generated artificial volume of 40,000 units which is 100% of the total volume traded in the said contract in the market during the Investigation Period.

7. In view of the foregoing, it was alleged that the Noticee, indulged in execution of reversal of trades in Stock Options with same entity on the same day. Such trades are non-genuine in nature and have created false and misleading appearance of trading in terms of artificial volumes in stock options and therefore alleged to be manipulative and deceptive in nature. Thus, it was alleged that the Noticee had violated the provisions of Regulation 3(a), 3(b), 3(c), 3(d), 4(1) and 4(2) (a) of the 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

8. Pursuant to investigation, SEBI, after being satisfied that there are sufficient grounds to inquire into the affairs and adjudicate upon the alleged violations as mentioned above, *inter-alia*, in respect of the Noticee, had appointed the undersigned as the Adjudicating Officer vide Order dated June 28, 2021, under section 19 read with section 15I(1) of the Securities and Exchange Board of India Act, 1992 (*hereinafter* referred to as "***SEBI Act, 1992***" and Rule 3 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (*hereinafter* referred to as "***Adjudication Rules, 1995***") to conduct adjudication proceedings in the manner specified under Rule 4 of Adjudication Rules, 1995 read with section 15I (1) and (2) of the SEBI Act, 1992 and if satisfied that penalty is liable, impose such penalty as deemed fit in terms of Rule 5 of the Adjudication Rules, 1995 and Section 15HA of the SEBI Act, 1992.

SHOW CAUSE NOTICE, REPLY AND HEARING

9. A Show Cause Notice (*hereinafter* referred to as '***SCN***') bearing ref. no. SEBI/IVD-ID1/SCN/AO-MAA/AS/17594/1/2021 dated August 03, 2021 was served upon the Noticee under Rule 4 of the Adjudication Rules,1995 to show cause as to why an inquiry be not held against the Noticee in terms of Rule 4 of the adjudication Rules, 1995 and penalty be not imposed under Section 15HA of the SEBI Act, 1992 for the violations alleged to have been committed by the Noticee. The SCN was sent to the Noticee vide Speed Post AD and was duly served on the Noticee as per the tracking details obtained from the India Post website.

10. In reply to the SCN, the Noticee vide email dated August 17, 2021 submitted the copy of letter dated August 17, 2021 along with a copy of the PAN Card. Vide the said reply, the Noticee requested for personal hearing and in this regard, the Noticee authorised a representative ('***AR***') Mr Ravi Ramaiya (Chartered Accountant) for attending the hearing. The signed letter was received by SEBI on August 20, 2021 and the same has been taken on record. Vide the said letter, the Noticee, *inter-alia*, submitted as under:

    *"…………….**BACKGROUND:***

    3. The Noticee is a law-abiding citizen and has always complied with all the applicable laws in letter and spirit.

4. *The Noticee had traded in the stock options segment of the BSE Ltd. only once and because of these trades executed, the captioned SCN has been issued to the Noticee.*
5. *It has been alleged that the Noticee has executed a total of 2 trades (one buy and one sell) in 1 contract, which were non genuine and fraudulent and resulted into creation of artificial volume of total 40,000 units.*
6. *It is submitted that the trades executed by the Noticee in the stock options segment of the BSE Ltd. were genuine and were executed on the platform provided by the stock exchange.*
7. *The Noticee was also subjected to various charges and taxes on the transactions inter alia including Exchange Turnover Charges, Service Tax, STT, SEBI Turnover Fee, Stamp Duty etc.*
8. *All these transactions have been perfectly recorded in the regular books of accounts, records and Income Tax Returns.*
9. *It is untenable to suddenly label these transactions as artificial and non-genuine after a period of 6 to 7 years from the date of the transactions on completely untenable grounds and unjustified reasons. Therefore the SCN is liable to be set aside on this reason alone, leave apart other valid reasons and explanation herein below.*
10. *It may kindly be noted that all submissions in this reply are without prejudice to one another.*

ABOUT THE TRADES:

11. *The Noticee understood that BSE has launched Weekly Expiry Options Contracts, which are short-term contracts, and one can invest and get good returns.*
12. *So to try and see how it operates, the Noticee for the first time placed an order in BSE Options segment to sell 20000 units of EXID - 15 JUNE 170 PE at 13:23:51 at Rs. 14.10/-. This being the first time the Noticee thought it would be better to square off the trade and therefore executed a buy trade which got traded at Rs. 16.55/- and in the process the Noticee made approximate Rs. 49,000 in few moments.*
13. *The Noticee was surprised at the speed with which the trades took place and though there was a profit, it was a bit frightening that is profits of such amounts can come in minutes, then losses can also occur with equal speed.*
14. *As a result the Noticee decided to never transact again.*
15. *It is only from SEBI that the Noticee has understood that the trades matched with the same counter party, which the Noticee was oblivious at the relevant time of trade.*

16. *It can be treated as a one off case of sheer luck and co-incidence and was no way manipulative.*
17. *One possible reason of the trade matching with the same counter party could be the lack of liquidity and the same has been appreciated by SEBI through issuance of its Risk Disclosure Document, which is discussed at length hereinafter.*
18. *Upon understanding the counter party details from SEBI, the Noticee checked the details of the counter party and understands that Shweta Stock & Securities Pvt. Ltd. (hereinafter "SSSPL") is a company based out of 1324/11 Badshahi Bag Ambala Haryana 134003 and is managed by some Gauravjit Singh Bhambri, Rajinder Kumar, Baljinder Singh and Kuldeep Wadhwa as per MCA website.*
19. *The Noticee humbly submits that it neither knows SSSPL nor had any of its directors nor has never had any relationship, financial or otherwise with SSSPL.*
20. *Further the settlement of the transaction has taken place through the Exchange approved by SEBI and there is absolutely no reason why the SSSPL will allow unknown and unrelated Noticee to make profits at its own cost and consequences.*
21. *Therefore, it is most humbly submitted that the transaction is merely a co-incidence and was not intentional, non-genuine or manipulative as alleged in the SCN.*

RESPONSE TO SCN:

22. *The SCN alleges that the Noticee has generated artificial volume by executing non-genuine trades and creating false and misleading appearance of trading, which was manipulative and deceptive. It is submitted that the alleged trades are wrongly categorised as non-genuine, for the reasons recorded hereunder:*
    a. *The word "non-genuine" is not defined in PFUTP Regulations or any of the Acts /Regulations of SEBI. This leaves us to rely on dictionary meaning of the word to test whether the alleged trades fall under the categories of artificial volume through non-genuine trades.*
    b. *The term "non-genuine" is opposite of "genuine" which is defined as "really coming from its reputed source etc; not sham; properly so called; pure bred."*
    c. *The alleged trades have all traits of being genuine and therefore cannot be categorised as non-genuine. These trades were executed on the anonymous platform of the Exchange, without any knowledge of counter party, at 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.*
    d. *Since the trades do not fall under the definition of non-genuine transactions, they cannot be categorised to be creating artificial volume and effectively*

cannot be said to be creating false and misleading appearance of trading or cannot be categorised as manipulative or deceptive trades.

e. *If the intention was to carry out artificial volume and create a false and misleading appearance of trading or execute manipulative and deceptive trades, the frequency of such trades would have been much higher. No one can achieve the alleged manipulative goals with such infrequent non-genuine trades, which is a one off case of 1 buy trade and 1 sell trade.*
f. *In the current case the Noticee executed only one buy and one sell trade which was squared off on the same day. The Noticee understood that it's a very risky segment and therefore has not traded ever again on BSE Stock Options Segment. Further as aforesaid the counter party has absolutely no relationship with the Noticee and therefore can have never executed non-genuine transitions that have financial impact.*

23. *The SCN fails to highlight any possible reason for executing the alleged non-genuine trades and what has been achieved by executing such trades. Without even having indicated any purpose for carrying out non-genuine trades, there is no reason to categorise them as non-genuine, artificial, manipulative, deceptive or creating false and misleading appearance of trading as wrongly alleged in the SCN.*

24. *The SCN completely ignores several critical facts and has wrongly categorise the trades as artificial and non-genuine:*
    a. *The SCN is issued based on imaginary and presumptive grounds. It categorises trades of the Noticee as non-genuine in spite of the fact that these transactions were carried out on the platform provided by the BSE Ltd. and have been settled through the clearing corporation by way of movement of funds. If at all there was a fault in the platform provided by the stock exchange, SEBI should have taken action against the Stock Exchange and as SEBI has not taken any action against stock exchange till date, it is clear that trades executed on the stock exchanged should also not be termed as non-genuine or fraudulent. Surely there can be no fault in the trading of such huge number of market participants, which comprised of 81.38% of all trades on Exchange and if it is so, then SEBI cannot take action on the investors without taking any action on the Exchange, which allowed such huge number of non-genuine transactions.*
    b. *The SCN ignores the fact that options are derivative contracts based on certain underlying and the total trades in the underlying and all its derivative contracts is to be compared to identify the % volume. It is submitted that the volume in stock options was extremely negligible when compared with the*

total volume of the underlying and all the derivatives contract in the underlying and such small quantity of trading is completely incapacitated to create any kind of artificial volume.

c. *For manipulating any security, the entire series of its derivatives contracts has to be manipulated, but that it not the case in the current SCN. It is an admitted position that the Noticee did not carry out any manipulative transactions in the underlying securities and merely carrying out few trades in options contracts cannot create any false and misleading appearance of trading or result in a manipulative or deceptive device as falsely alleged.*

d. *The SCN fails to take into consideration that the anonymous systems of the Stock Exchange does not allow a transacting party to know the details of the counter party and therefore the allegation of executing reversal trades cannot hold good. It is humble submitted that the transactions were in the nature of reversal trades was not known to the Noticee before being informed by SEBI.*

e. *Though the SCN claims that the trades were reversed at significant price difference, it has only compared the value of premium of the contracts. However, in case of options contract the notional value i.e. the value of Strike Price plus the premium is to be considered. The Noticee submits that when the price difference is compared with the notional value its change normal and similar changes are observed in multiple contracts on the Exchange including the ones having higher volumes than the alleged contracts of the Noticee. Therefore, the Noticee submits that the allegation that there was a significant price difference is incorrect and untenable.*

f. *Further SEBI has issued Risk Disclosure Document that records risks of trading on the stock options segment of the Exchange. Clauses 1.2 and 1.3 deal with Risk of low liquidity and Risk of wider spreads, which quote as under:*

> *"1.2 Risk of Lower Liquidity:*
> *Liquidity refers to the ability of market participants to buy and/or sell securities / derivatives contracts expeditiously at a competitive price and with minima/ price difference. Generally, it is assumed that more the numbers of orders available in a market, greater is the liquidity. Liquidity is important because with greater liquidity, it is easier for investors to buy and/or sell securities /derivatives contracts swiftly and with minimal price difference, and as a result, investors are more likely to pay or receive a competitive price for securities / derivatives contracts purchased or sold. <u>There may be a risk of lower liquidity in some securities / derivatives contracts as compared to active securities /</u>*

<u>derivatives contracts. As a result your order may only be partially executed, or may be executed with relatively greater price difference or may not be executed at all.</u>

1.2.1 Buying or selling securities / derivatives contracts as part of a day trading strategy may also result into losses, because in such a situation, securities / derivatives contracts may have to be sold / purchased at low / high prices, compared to the expected price levels, so as not to have any open position or obligation to deliver or receive a security / derivatives contract.

1.3 Risk of Wider Spreads:
Spread refers to the difference in best buy price and best sell price. It represents the differential between the price of buying a security / derivatives contract and immediately selling it or vice versa. <u>Lower liquidity and higher volatility may result in wider than normal spreads for less liquid or illiquid securities / derivatives contracts. This in turn will hamper better price formation.</u>
From the above clauses recorded in the RDD issued by SEBI it can be construed that SEBI was aware of the possible (significant as per SCN but not actually significant) price difference and losses / profits due to lower liquidity and wider spreads. The SCN itself records that the contracts in which the Noticee dealt were illiquid and therefore the spreads were bound to be wide resulting in so called significant price difference in view of SEBI, which is also appreciated by the RDD issued by SEBI. However this knowledge has been ignored while issuing the SCN and the SCN wrongly goes on to allege that these trades are non-genuine. Such a conclusion is absolutely untenable in light of the fact that SEBI itself recognises that significant price difference may occur in contracts with lower liquidity and wider spreads.

g. *The SCN fails to appreciate that though SEBI and Exchanges had put in place a mechanism of price band in Capital Market Segment to control extreme volatility, which may result in trades taking place at unrealistic prices. No such price band mechanism was in place for options segment. This in itself means that all prices at which our trades were executed were genuine.*
h. *The SCN fails to appreciate that pricing of options is a complex arithmetical calculation based on several variables most of which are subjective and presumptive thus making a huge range of price to be completely valid and genuine. The price of an option is derived based on complex formulas*

dealing with the strike price, price of the underlying, time to expiry, expected volatility, rate of interest etc., all of which are dynamic thus resulting in exponential increase in the lower and upper valid prices of options as a result of which SEBI and Exchanges in their wisdom did not stipulate any price band for options. After having failed to put in place such a mechanism due to complexity of such a product in spite of having infinite wherewithal with SEBI and Exchanges, it cannot be expected of common investors and traders to know the correct range of option prices.

i. *The SCN does not provide an iota of evidence as to how the Noticee was related or connected to the counter party. Therefore it is submitted that without the theory of collusion or meeting of minds between the two parties being established, the allegations in the SCN do not hold good. Further there is no reason for unknown people to deliberately allow profits or losses to one another without being related and the SCN failed to highlight any relationship between buyers and sellers.*
j. *It is also not a case in the SCN that other investors have got carried away or have been misled due to the trades carried out by the Noticee. Further it is not even alleged that third parties suffered any loss due to the transactions carried out by the Noticee. So no other party has been affected by these trades as it got reversed with same party (which the Noticee understand only through SEBI) and no impact what so ever has been caused to anyone because of these trades.*
k. *Above all there is no charge of price manipulation in the SCN and without manipulating price of a security or contract no person can gain anything from artificial trades.*

25. *Reliance is placed on various decisions of the Hon'ble Securities Appellate Tribunal:*
    a. *In Jagruti Securities vs SEBI. [2008 SCC Online SAT 184 : 2008 SAT 184], it was inter held as under:*
    "…we are of the view that in an artificial trade there has to be collusion between the buyer and the seller and in the absence of any collusion, the trade cannot be termed as 'artificial'."
    b. *In S.P.J. Stock Brokers Pvt. Ltd. vs Securities and Exchange Board of India [2013 SCC Online SAT 67: [2013] SAT 17] it was inter alia held as under:*
    "13. Unless some connection between appellant and counterparties with whom appellant traded is established, it is difficult to hold that trades in question were carried out with a view to manipulate market by creating false volumes resulting in upsetting market equilibrium."

c. *In HB Stockholdings Limited vs SEBI [2013 SCC Online SAT 56 : [2013] SAT 44] it was inter alia held as under:*

   "17….It may be noted that synchronization of trades is not per se illegal. It is actionable only if it is illegitimate and is the outcome of a mischievous meeting of minds among certain parties. For this purpose, the counter party, namely, Gloria Investment Limited has already been exonerated by the Respondent. Moreover, no cogent and convincing reasons are forthcoming from a reading of the SCN or the impugned order to sustain such a charge of synchronization or creation of artificial volumes against the Appellants. In this connection, we may also pertinently note that the mere factum of one or two Appellants sharing common address or one of the Appellants being the promoter of the other group at some point in time are not in themselves sufficient to bring home the residual charge against the Appellants. There has to be sufficient evidence on record to clearly prove connivance on the part of the Appellants with a counter party to prove the charge in question against the Appellants. In the absence of any such evidence and unambiguous findings by the learned WTM to this effect, we have no option but to quash the impugned order in question"

d. *In the matter of R.K. Global vs. SEBI (Appeal No. 158 of 2008, Date of decision 16th September, 2010) it was inter alia held that:*

   "…Let us not forget that the Appellant has been charged for executing fraudulent trades which is, indeed, a serious charge and cannot be established on mere suspicion and should have firmer ground to stand upon. A higher degree of probability must exist before such a charge could be found to have been established..."

e. *Above all there have been several judgements of SEBI and SAT wherein it has given benefit of doubt to Noticees and such a one off instance of trade matching with same counter party surely deserves benefit of doubt in light of other facts like no relationship with counter party, its directors, promoters etc.*

26. *The SCN does not allege that the Noticee colluded with the counter parties and in absence of any such allegation or material, the allegation of carrying out fraudulent or artificial trades does not hold good. At best it surely deserves benefit of doubt in favour of the Noticee.*

27. *The SCN alleges that by executing the trades mentioned in the SCN, the Noticee has violated Regulation 3(a), (b), (c), (d), 4(1), 4(2)(a) of PFUTP Regulations, the same is denied for the reasons stated hereinunder:*

    Regulation 2(1)(c) quotes as under:

    "fraud" includes any act, expression, omission or concealment committed whether in a deceitful manner or not by a person or by any other person with

his connivance or by his agent while dealing in securities in order to induce another person or his agent to deal in securities, whether or not there is any wrongful gain or avoidance of any loss, and shall also include —

(1) a knowing misrepresentation of the truth or concealment of material fact in order that another person may act to his detriment;

(2) a suggestion as to a fact which is not true by one who does not believe it to be true;

(3) an active concealment of a fact by a person having knowledge or belief of the fact;

(4) a promise made without any intention of performing it;

(5) a representation made in a reckless and careless manner whether it be true or false

(6) any such act or omission as any other law specifically declares to be fraudulent,

(7) decptive behaviour by a person depriving another of informed consent or full participation,

(8) a false statement made without reasonable ground for believing it to be true.

(9) the act of an issuer of securities giving out misinformation that affects the market price of the security, resulting in investors being effectively misled even though they did not rely on the statement itself or anything derived from it other than the market price.

There is nothing on record to substantiate that the Noticee knowingly misrepresented the truth or concealed material fact, suggested a fact that the Noticee believed is untrue, concealed any fact required to be disclosed. Further the Noticee never made any promise or representation, and has not omitted any obligation under other law. Even further the Noticee's behaviour was no way deceptive, nor has the Noticee made any false statement. Lastly the Noticee has not issued any securities and the question of giving misinformation in relation thereto does not arise.

As none of the Noticee's acts fall under the definition of 'fraud' as provided under Regulation 2(1)(c), the Noticee cannot be charged of having violated PFUTP Regulations.

28. *Now dealing with the Judgment passed by the Hon'ble Securities Appellate Tribunal in the matter of Global Earth Properties Ltd. vs. SEBI (Appeal No. 212 of 2020, Date of decision 14th September, 2020), wherein it was inter alia held as under:*

    "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 naive 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."

29. *In the cases disposed off by SAT as aforesaid or any other case, the Noticees had carried out multiple reversal trades. In the present case it is to be noted that only 1 buy and 1 sell trade was carried out and therefore it is only on instance of reversal. This is a case of sheer luck and co-incidence and cannot be said to be manipulative. Taking into account preponderance of probability also, it cannot be alleged that a one of case was intentional and non-genuine.*

30. *In the appeal of Dhvani Darshan Kothari & Anr. vs Securities and Exchange Board of India (Appeal No. 276 of 2020 decided on January 21, 2021) the Hon'ble SAT held that purchasing off market and selling online to the same counter party may raise a strong suspicion that the transfer may not be genuine, but further held that reasons have to be recorded to show as to how the trades were manipulative or fraudulent and that one transfer cannot make it circular/reversal or synchronized nor execution of one trade would be treated at par with the trades executed by other entities which was large in number. The said finding of this Tribunal is squarely applicable in the instant case.*

31. *So in the current case even is SEBI has a suspicion that my trades were allegedly non-genuine the fact that it is only 1 instance and the SAT has decided the matter in favour of the Appellant, the same principle should be accepted by SEBI and the SCN against the Noticee may be dropped without any adverse inference.*

32. *Such one instance of reversal cannot be alleged to be creating artificial volume of trading in the market as compared to the overall trading in the stock options segment. As per SCN more than 1500 Crores units were traded in the stock options segment of BSE Ltd.*

33. *Without prejudice to the aforesaid, if at all it is held that the Noticee violated the aforesaid PFUTP Regulations, then in that case it is submitted that no penalty should be imposed on the Noticee taking into consideration the mitigating circumstances and factors under Section 15 J of the SEBI Act.*
    i. *The Noticee was under the belief that since the transactions executed were under the stock exchange mechanism and were therefore genuine;*
    ii. *No illegal gain has been made by the Noticee while trading in the stock options segment;*
    iii. *No loss has been caused to any investor or group of investor as a result of the Noticee's trading nor the same has been alleged against the Noticee in the SCN;*
    iv. *This is the first time, SEBI has taken any kind of action against the Noticee.*

34. *Reliance is also placed on the following judgments:*
    a. *The Hon'ble Bombay High Court in the matter of Securities & Exchange Board of India v. Cabot International Capital Corporation, 2004 SCC Online Bom 180:*

    38. Thus, the following extracted <u>principles are summarised.</u>

    …

    (G) Though looking to the provisions of the statute, the delinquency of the defaulter may itself expose him to the penalty provision yet despite, that in the statute minimum penalty is prescribed, the authority may refuse to impose penalty for justifiable reasons like the default occurred due to bona fide belief that he was not liable to act in the manner prescribed by the statute or there was too technical or venial breach etc.

    …

    44. Now, the question, of the penalty by the Adjudicating Authority, in the facts and circumstances of the case, was warranted or not. We find that the allotment in question was undoubtedly, covered under the exemption provided in Regulation 3(1). There could not have been insistence by the appellants SEBI to comply with the requirements of Regulation 3(4). It is also clear that when an acquisition is covered under Regulation 3, the acquirer is required to report to the Board under the sub-Regulation 3(4) within the specified time, as referred above. In view of this undisputed position, merely because there was no report filed, that itself cannot be read as serious defect or non-compliances of the said provisions. The Appellate Authority, after considering the material' on record, including the events, referred in the pleadings, found that the respondents company had no intention to suppress any material information from the appellants or the share holders.

b. *In the matter of Yogi Sungwon (India) Ltd. v/s SEBI - Appeal No. 36 of 2000, Order dated May 04, 2001, wherein Hon'ble Securities Appellate Tribunal had inter alia observed that:*

"……On perusal of section 15I it could be seen that imposition of penalty is linked to the subjective satisfaction of the Adjudicating Officer. The words in the section that 'he may impose such penalty' is of considerable significance, especially in view of the guidelines provided by the legislature in section 15J. 'The Adjudicating Officer shall have due regard to the factors' stated in the section is a direction and not an option. It is not incumbent on the part of the Adjudicating Officer, even it is established that the person has failed to comply with the provisions of any of the sections specified in the sub-section (1) of section 15-I, to impose penalty. It is left to the discretion of the Adjudicating Officer, depending on the facts and circumstances of each case….."

c. *In the matter of National Highway Authority of India v/s SEBI - Appeal No. 232 of 2020, Order dated August 27, 2020, wherein it was inter alia observed that:*

"23. In the light of the aforesaid, there is no doubt that if the Regulations require a particular act to be done in a particular manner and within the stipulated period then noncompliance of the said provisions would invite imposition of penalty but the law also provides and gives power to the respondent to relax the strict enforcement of the Regulations. We are of the opinion that the Adjudicating Officer failed to take into consideration the mitigating circumstances as a factor under Sec. 15-J while considering the imposition of penalty.

24. Consequently, for the reasons stated aforesaid, we are of the view that even though there has been a violation of Regulation 52 of the LODR Regulations but in the peculiar facts and circumstances of the present case which should not be treated as a precedent for other matters, we are of the opinion that the imposition of penalty of Rs.7 Lakhs in the given circumstances was harsh and excessive."

35. *Further, SEBI had initially passed an interim order dated 20th August, 2015 in the matter of stock options segment of BSE Ltd. and restrained 59 persons/entities from buying, selling, or dealing in the securities market till further directions. After concluding the investigation in the matter SEBI found that 14,720 entities were involved in executing non-genuine reversal trades on the stock options segment and passed the Order dated 05th April, 2018 inter alia recording thus:*

" 14. In summary,

a) As per the investigation report, 14,720 entities have been found to have executed non-genuine trades.

b) The Hon'ble Supreme Court in the case of Rakhi Trading Pvt. Ltd. has upheld that similar trades are in violation of SEBI (PFUTP) Regulations, 2003.

c) SEBI has decided to take appropriate action against all 14,720 entities in phases.

d) In the 1st Phase, Adjudication Proceedings have been initiated against 567 entities including 56 of the 59 entities (against whom directions were issued vide Interim Order and Confirmatory Order). One entity (out of the 59 entities) would fall in a subsequent phase of action. Two entities (out of the 59 entities) do not meet the criteria as detailed in paragraph 4 of this order.

e) Any person found to be in violation of SEBI (PFUTP) Regulations, 2003, is 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.
f) BSE has taken steps to prevent / significantly reduce the possibility of misuse of the exchange platform in such a manner.

g) There is a need for some similarity of approach in taking action against the various entities even though the difference in amount of profit made / loss incurred through the non-genuine trades varies and can be the basis of some differences."

36. *It is to be noted that the Noticee was not part of the 59 entities against whom the Interim Order was passed and neither part of the first 567 entities against whom the Adjudication Proceedings were initiated. SEBI itself considered the Noticee's trades to be so minuscule, that it initiated Adjudication Proceedings against the Noticee in the last stage and therefore it is prayed that a lenient view be taken in the present matter.*

37. *In this regard your attention is drawn to the judgment passed by the Hon'ble Supreme Court in the matter of Adjudicating Officer, Securities and Exchange Board of India v. Bhavesh Pabari has inter alia held that:*

> *"Sanjiv Khanna, J. — Delay condoned. Two primary questions, in a way interconnected, have been referred by the referral judgment and order dated 14-3-2016 passed in Siddharth Chaturvedi v. SEBI [Siddharth Chaturvedi v. SEBI, (2016) 12 SCC 119] . The correctness of the view expressed on the said two questions by a numerical smaller Bench of this Court in SEBI v. Roofit Industries Ltd. [SEBI v. Roofit Industries Ltd., (2016)*

12 SCC 125] would coincidentally arise. The questions referred can be enumerated and summarised as follows:

1.1. Whether the conditions stipulated in clauses (a), (b) and (c) of Section 15-J of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "the SEBI Act") are exhaustive to govern the discretion in the adjudicating officer to decide on the quantum of penalty or the said conditions are merely illustrative?

<u>1.2. Whether the power and discretion vested by Section 15-J of the SEBI Act to decide on the quantum of penalty, regardless of the manner in which the first question is answered, stands eclipsed by the penalty provisions contained in Section 15-A to Section 15-HA of the SEBI Act?</u>

…

<u>3. For the purposes of the present reference, we may proceed to consider the provisions contained in Chapter VI-A of the SEBI Act. Sections 15-A to 15-HA are the penalty provisions whereas Section 15-I deals with the power of adjudication and Section 15-J enumerates the "factors to be taken into account by the adjudicating officer" while adjudging the quantum of penalty.</u>

…

<u>5. Insofar as the second question is concerned, if the penalty provisions are to be understood as not admitting of any exception or discretion and the penalty as prescribed in Section 15-A to Section 15-HA of the SEBI Act is to be mandatorily imposed in case of default/failure, Section 15-J of the SEBI Act would stand obliterated and eclipsed. Hence, the question referred. Sections 15-A(a) to 15-HA have to be read along with Section 15-J in a manner to avoid any inconsistency or repugnancy. We must avoid conflict and head-on-clash and construe the said provisions harmoniously. Provision of one section cannot be used to nullify and obtrude another unless it is impossible to reconcile the two provisions. The Explanation to Section 15-J of the SEBI Act added by Act 7 of 2017, quoted above, has clarified and vested in the adjudicating officer a discretion under Section 15-J on the quantum of penalty to be imposed while adjudicating defaults under Sections 15-A to 15-HA. Explanation to Section 15-J was introduced/added in 2017 for the removal of doubts created as a result of pronouncement in Roofit Industries Ltd. case [SEBI v. Roofit Industries Ltd., (2016) 12 SCC 125] . We are in agreement with the reasoning given in reference order dated 14-3-2016 [Siddharth Chaturvedi v. SEBI, (2016) 12 SCC 119] that Roofit Industries Ltd. [SEBI v. Roofit Industries Ltd., (2016) 12 SCC 125] had erroneously and wrongly held that Section 15-J would not be applicable</u>

after Section 15-A(a) was amended with effect from 29-10-2002 till 7-9-2014 when Section 15-A(a) of the SEBI Act was again amended. It is beyond any doubt that the second referred question stands fully answered by clarification through the medium of enacting the Explanation to Section 15-J vide Act 7 of 2017, which also states that the adjudicating officer shall always be deemed to have exercised and applied the provision. We, therefore, deem it appropriate to hold that the provisions of Section 15-J were never eclipsed and had continued to apply in terms thereof to the defaults under Section 15-A(a) of the SEBI Act.

6. Reference order in Siddharth Chaturvedi [Siddharth Chaturvedi v. SEBI, (2016) 12 SCC 119] on the said aspect has observed that Section 15-A(a) could apply even to technical defaults of small amounts and, therefore, prescription of minimum mandatory penalty of Rs 1 lakh per day subject to maximum of Rs 1 Crore, would make the section completely disproportionate and arbitrary so as to invade and violate fundamental rights. Insertion of the Explanation would reflect that the legislative intent, in spite of the use of the expression "whichever is less" in Section 15-A(a) as it existed during the period 29-10-2002 till 7-9-2014, was not to curtail the discretion of the adjudicating officer by prescribing a minimum mandatory penalty of not less than Rs 1 lakh per day till compliance was made, notwithstanding the fact that the default was technical, no loss was caused to the investor(s) and no disproportionate gain or unfair advantage was made. The legislative intent is also clear as Section 15-A(a) was amended by Amendment Act 27 of 2014 to state that the penalty could extend to Rs 1 lakh for each day during which the failure continues subject to a maximum penalty of Rs 1 Crore. This amendment in 2014 was not retrospective and therefore, clarificatory and for removal of doubt Explanation to Section 15-J was added by Act 7 of 2017. Normally the expression "whichever is less" would connote absence of discretion by prescribing the minimum mandatory penalty, but in the context of Section 15-A(a) as it was between 29-10-2002 till 7-9-2014, read along with Explanation to Section 15-J added by Act 7 of 2017, we would hold that the legislative intent was not to prescribe minimum mandatory penalty of Rs 1 lakh per day during which the default and failure had continued. We would prefer to read and interpret Section 15-A(a) as it was between 25-10-2002 and 7-9-2014 in line with Amendment Act 27 of 2014 as giving discretion to the adjudicating officer to impose minimum penalty of Rs 1 lakh subject to maximum penalty of Rs 1 Crore, keeping in view the period of default as well as aggravating and *mitigating circumstances including those specified in Section 15-J of the SEBI Act." (emphasis supplied)*

38. SEBI in view of the aforesaid judgment passed by the Hon'ble Supreme court has in various matters imposed penalty lesser than the minimum prescribed penalty. Two of such cases are mentioned hereinunder:

i. AO Order dated 26th February, 2021 in the matter of Octant Interactive Technologies Limited, wherein it was inter alia held as under:

"35. Therefore, in view of the above, I hold that the Noticee by indulging in reversal/synchronized trades in connivance with others without the intention of transferring beneficial ownership leading to false and misleading appearance of trading in the securities market has violated the provisions of Regulations 3(a), (b), (c), and (d), 4(1), and 4(2)(a) and (g) of PFUTP Regulations.

…

41. Accordingly, taking into account the aforesaid observations and in exercise of power conferred upon me under Section 15 I of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose a penalty of Rs. 2,00,000/- (Rupees Two Lakh Only) under Section 15HA of SEBI Act, 1992 for violation of Regulation 3(a), (b), (c), (d), 4(1), 4(2)(a) and (g) of PFUTP Regulations, 2011 on the Noticee viz. Kishore V Gandhi HUF, which will be commensurate with its violations. "

ii. AO Order dated 29th March, 2019, in the matter of Sangam Advisors Ltd., wherein it was inter alia held as under:

"13.Thus, it is the submission of the Noticee that disclosures for transaction dated November 29, 2013 was made with a delay of 1 working day. It also submitted that it made disclosures for its transactions on December 12, 2013 within 2 working days of the transaction, albeit prematurely and under a different regulation based on an erroneous interpretation of statute. Similarly, it submitted that it made a delayed disclosure by seven working days for its transaction on December 31, 2013, again prematurely under different regulation based on an erroneous interpretation of statute. The Noticee also produced acknowledged receipts of disclosures made to the Company as well as the BSE.

14. The Noticee also stated that filing of disclosures under different regulations and instances of delay in filing by one day and seven days were inadvertent, unintentional and not accompanied with any mala fide intention. It also admitted that it did not make relevant disclosures under Regulation 13(3) of the PIT Regulations for its transactions on December 12, 2013 and December 31, 2013 *but information relating to these disclosures was already made available in its disclosures filed under SAST Regulations.*

…

25.Therefore, taking into accounts the facts and circumstances of the instant matter and presence of mitigating factors as discussed above, I am of the view that a penalty of 1,00,000/- will be commensurate with the violation of provisions of PIT Regulations and SAST Regulations by the Noticee."

39. In the present matter, it has been alleged that Noticee executed only one reversal transaction comprising of two (one buy and one sell) fraudulent and non-genuine trades in 1 unique contract which created an artificial volume of 40,000 units, comparing the same with the other orders of Illiquid Options passed by SEBI and various orders cited above, it is submitted that a lesser penalty like warning etc. may at most be imposed taking into consideration the mitigating factors and circumstances as mentioned above.

40. Thus in view of the facts stated, arguments advanced and authorities cited, it is humbly prayed that the present proceedings be quashed since no primary violation of any PFUTP Regulations is made out against the Noticee and the genuineness of the trades has also been explained hereinabove. Therefore the question of holding an inquiry against the Noticee in terms of Rule 4 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 and imposing penalty for the alleged violation does not arise….."

11. Vide Hearing Notice dated October 06, 2021, the Noticee was granted an opportunity of personal hearing on October 21, 2021. The opportunity of hearing was availed online by the Noticee on the scheduled date, through its AR. The hearing was conducted through video conference mode using Webex platform and the contents of the SCN and the allegations levelled against the Noticee were explained to the AR. The AR reiterated the submissions of the reply dated August 17, 2021 and submitted that they have no further submissions to make and hearing was concluded after hearing the Noticee at length. Minutes of the hearing was taken on record and was sent to the Noticee through email.

12. Subsequently, vide email dated January 24, 2022, the Noticee was provided another opportunity to submit post hearing submissions, if any. However, no submission was made by the Noticee.

13. In view of the above, noting that sufficient opportunity for submission of reply and personal hearing has been granted to the Noticee, I now proceed further for consideration of Issues.

CONSIDERATION OF ISSUES AND FINDINGS

14. After perusal of the material available on record, I have the following issues for consideration viz.,

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

    II. If yes, whether the Noticee is liable for monetary penalty under Section 15HA of the SEBI Act, 1992?

    III. If so, what quantum of monetary penalty should be imposed on the Noticee?

FINDINGS

15. On perusal of the material available on record and giving regard to the facts and circumstances of the case and submissions of the Noticee, I record my findings hereunder. Before advancing into the merits of the case, I would like to deal with the issue pertaining to the delay, as contended by the Noticee.

16. In this regard, I primarily note that as per Section 11C of the SEBI Act, 1992, SEBI can initiate investigation for any alleged violation of the provisions of Acts and Rules and Regulations made thereunder and no limitation has been provided in this regard. I note that the investigations relating to the PFUTP Regulations, 2003 are complex (considering the volume of transactions, connections and examination of trading of shares, etc.) and time consuming. I note that a large number of entities across the country had committed violation of the PFUTP Regulations, 2003. Therefore, it took reasonable time in ascertaining the violation by each entity as well as taking further actions. In view of the fact that there has not been any inordinate delay in the instant proceedings, the same is factually different from the cases referred by the Noticee in the para above. Further, I note that there is no provision under the SEBI Act, 1992 which provides a time limit for taking cognizance of a breach of the provision of the SEBI Act, 1992 and Rules and Regulations made thereunder. 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 as follows:

"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. Further, I note that the Hon'ble SAT in the matter of ***Pooja Vinay Jain vs. SEBI*** (Appeal No. 152 of 2019, Date of Decision - March 17, 2020) held that, *"The record would show that all the documents concerning the defense of the appellant were filed by her before the AO. Therefore, for want of any prejudice the proceedings cannot be quashed simply on the ground of delay in launching the same".*

18. I also note the following ruling of the Hon'ble SAT in the matter of ***Rajendra Aggarwal v. SEBI***, decided on September 17, 2021, in which the appellant's contention regarding 4 years time taken in issuance of SCN was rejected and it was held - *"The investigation was against a large number of entities which apparently took time and ultimately notices were issued to 35 entities. Consequently, we do not find any inordinate delay in the issuance of the show cause notice nor do we find any merit in the contention that there was an inordinate delay."*

19. In this background, I also note that a total of 14,720 entities were involved in the generation of artificial volume by executing non-genuine / reversal trades in the illiquid Stock Options segment at BSE during the investigation period. Initiation of proceedings against the said 14,720 entities is a humungous task and therefore, considering the available resources, the proceedings were initiated against the entities in a staggered manner. I also note that SEBI had framed a settlement scheme in accordance with the provisions of the SEBI (Settlement Proceedings) Regulations, 2018 which provided a onetime opportunity to the concerned entities to settle the proceedings in the matter of dealings in illiquid Stock Options at BSE. I observe that the said scheme was kept open for a period of, initially, 3 months (commencing from August 01, 2020) and then extended till December 31, 2020 to enable the entities to avail the benefit of the scheme in view of the disruptions caused due to the Covid-19 pandemic. Subsequently, adjudication proceedings against the entities who did not opt for the settlement in terms of the scheme (including the Noticee) were initiated and, accordingly, the SCN was issued against the Noticee on August 03, 2021.

20. In view of the aforesaid and considering the facts of the present matter, I do not find any merit in the submission of the Noticee that there was an inordinate delay in the matter.

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

21. Before moving forward, it is pertinent to refer to the relevant provisions of the PFUTP Regulations, 2003 which reads as under:

Regulation 3: - Prohibition of certain dealings in securities

3. 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 thereunder;
(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 thereunder.

Regulation 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;

22. It has been alleged that the Noticee had indulged in execution of reversal of trades in Stock Options with same entity on the same day. Such trades are non-genuine in nature and have created false or misleading appearance of trading in terms of artificial volume in stock options and therefore alleged to be manipulative and deceptive in nature.

23. I note that reversal trades have been considered as 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 non-genuine trades as they are not executed in normal course of trading, lacks basic trading rationale, and lead to false and misleading appearance of trading in terms of generation of artificial volume, hence are deceptive and manipulative. Artificial volume is considered to be the volume (no. of units) reversed in both legs of said reversal trades while keeping out the volume, if any, which is not reversed.

24. I note that the Noticee had executed 2 non-genuine trades in 1 contract on May 28, 2015. The details of non-genuine trades executed by the Noticee are furnished hereunder:

S. no	Contract Name	Avg. Buy Rate (Rs.)	Total Buy Volume (no. of units)	Avg. Sell Rate (Rs.)	Total Sell Volume (no. of units)	Number of non genuine trades executed by Entity in the Contract	Total number of trades executed by the Entity in the Contract	Total number of trades executed 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	EXID15JUN170.00PE	14.10	20000	16.55	20000	2	2	2	100	100

25. I shall now proceed to deal with the transactions executed by Noticee in the alleged non-genuine trades.

I. Scrip Name: EXID15JUN170.00PE, Trade Date: May 28, 2015

CLIENTNAME	CP_CLIENTNAME	TRADE_TIME	TRADE_RATE	TRADED_QTY
Ashlar Tours & Travels Private Limited	Shaveta Stock & Securities Private Limited	13:23:52 HRS	14.10	20,000
Shaveta Stock & Securities Private Limited	Ashlar Tours & Travels Private Limited	13:24:00 HRS	16.55	20,000

(a) I note from the above table that during the investigation period, total 2 trades for 40,000 units were executed by the Noticee in the "EXID15JUN170.00PE" contract on May 28, 2015.

(b) The Noticee placed a buy order for 20,000 units at a price of Rs.14.10 per unit and the said order was matched with the sell order (which was also for 20,000 units at a price of Rs.14.10 per unit) of counterparty client Shaveta Stock & Securities Private Limited. I note that the said buy order by the Noticee was placed at 13:23:51.576636 almost at the same time as that of the entry of the sell order by the Counterparty i.e.13:23:52.263997. I also note that there was no modification of either price or quantity by either the Noticee or the counterparty and the sell order of the Noticee got executed into trade at 13:23:52.263997 with the counterparty. Subsequently within fraction of seconds (i.e. 6 seconds) from the above trade, at 13:23:58.670375, the Noticee placed a sell order for 20,000 units at a price of Rs.16.55 per unit and the said order was matched at 13:24:00.654634 with the same counterparty (i.e. Shaveta Stock & Securities Private Limited), who placed a buy order for the same quantity (i.e. 20,000) and price (i.e. Rs.16.55). I note that the said buy order was placed by the counterparty at 13:24:00.654634 almost at the same time as that of the sell order placed by the Noticee. I also note that there was no modification of either price or quantity by either the Noticee or the counterparty and the buy order of the Noticee was executed into trade immediately.

(c) Therefore, it is noted that while dealing in the said contract on May 28, 2015, the Noticee at 13:23:52.263997 entered into 1 buy trade with counter party viz, Shaveta Stock & Securities Private Limited for 20,000 units at a rate of Rs. 14.10 per unit. Thereafter, on the same day, within 6 seconds from the above trade, Noticee, at 13:24:00.654634 entered into 1 sell trade with the same counterparty for 20, 000 units at a rate of Rs. 16.55 per unit.

(d) From the above, it is noted that while dealing in the said contract during the investigation period, the Noticee executed reversal trades through 1 buy trade and 1 sell trade with the same counterparty viz Shaveta Stock & Securities Private, within 6 seconds for the same quantity.

(e) Thus, the Noticee, through its dealing in the contract viz, “EXID15JUN170.00PE” during the investigation period, executed 2 non genuine trades and thereby, the Noticee generated artificial volume of 40,000 units which is 100% of the volume traded in the said contract from the market during the investigation period.

26. From the above pattern of trades, I note that the Noticee had bought and sold option contract with the same counter party and also reversed its trade in fraction of seconds (i.e. 6 seconds) from earlier buy trade, at substantial price difference. Such pattern of dealings suggests beyond doubt that they were not driven by market factors. The buying of illiquid stock options by the Noticee and subsequent reversal trade with the same counterparty for the same quantity, within a short span of time, with a significant

difference in buy and sell value of stock options, where order time, order price and order quantity were matched by both the parties for both legs of the reversal trades, in itself, exhibits abnormal market behaviour and defies economic rationality. Therefore, I am inclined to note that the aforesaid trades of Noticee were non genuine and have created false and misleading appearance of trading in terms of artificial volume in stock options and therefore the same are manipulative and deceptive in nature.

27. As noted above, Noticee had executed non-genuine trades in 1 contract viz., EXID15JUN170.00PE, where all the trades were non genuine trades and the Noticee contributed to 100% artificial volumes. Non genuine trades executed by the Noticee in above contracts had significant differential in buy rates and sell rates considering that the trades were reversed within 6 seconds on the earlier trade.

28. I note from the above trading pattern of trades that Noticee had deliberately made misuse of the trading platform for creating artificial volume in the illiquid stock options. I note that no justifiable reason has been given for entering into such transactions by the Noticee as the behaviour exhibited by the Noticee defies the logic and basic economic sense. The fact that the counterparties are same corroborates that the trades were not genuine and executed for manipulative purpose.

29. With regard to the submission of the Noticee that the trades were executed through the stock exchange platform, does not establish the genuineness of trades or preclude execution of artificial and non-genuine trades. The non-genuineness of these transactions executed by the Noticee is evident from the fact that there was no justifiable reason as to why, within a short span of time (i.e. 6 seconds), the Noticee reversed the position with the same counterparty client with a significant price difference. Such short span of time in reversing the trades in the contract suggests the non-genuineness of these trades executed by the Noticee. The fact that the orders of the Noticee and the counterparty matched with such precision (considering that there was a perfect match of price and quantity as well as a short time difference between placing of the orders by the Noticee and counterparty) 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 contracts, 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 contract, within a short span of time and placing orders at same prices and quantity, is a clear indication that there was pre-determination in the prices by the counterparties while executing the trades. Therefore, it is observed that the Noticee had indulged in reversal trade with its

counterparty in the stock options segment of BSE and the same were non-genuine trades.

30. The non-genuine and deceptive transactions of the noticee are covered under the definition of 'fraud' and the dealings of the Noticee as discussed herein above were "fraudulent", as defined under regulation 2(1)(c) of the PFUTP Regulations, 2003 and prohibited under the provisions of Regulations 3(a), 3(b), 3(c) and 3(d) and 4(1) and 4(2)(a) of the PFUTP Regulations, 2003 thereof.

31. Further, with respect to the reversal of trades carried out by the Noticee, I note that the Hon'ble Supreme Court in the matter of ***SEBI vs. Rakhi Trading Private Ltd***., in Civil appeals no., 1969 of 2011 decided on February 8, 2018 held that the price discovery system itself was affected by synchronization and rapid reverse trade, which also had the impact of excluding other investors from participating in the market. The Hon'ble Supreme Court, therefore found that the traders having engaged in a fraudulent and unfair trade practice while dealing in securities, are hence liable to be proceeded against for violation of Regulations 3(a), 4(1) and 4(2)(a) of the PFUTP Regulations, 2003. The Apex Court also held that *"considering the reversal transactions, quantity, price and time and sale, parties being persistent in the number of such trade transactions with huge price variations, it will be too naïve 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."*

32. The Hon'ble SAT in its judgment dated September 14, 2020 in the matter of ***Global Earth Properties and Developers Pvt Ltd Vs SEBI*** (Appeal No. 212 of 2020) also relied upon the aforesaid judgment of the Hon'ble Supreme Court and held that *"…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."*

33. The Hon'ble SAT has reaffirmed the aforesaid findings in its recent judgment dated November 24, 2021 in the matter of ***Radha Malani vs. SEBI*** (appeal no. 698 of 2021), and held as under:

*"Having heard the learned counsel for the appellant, in our view the controversy involved in the present appeal is squarely covered by a decision of this Tribunal in **Global Earth Properties and Developers Pvt. Ltd. vs. SEBI** (Appeal No. 212 of 2020 decided on September 14, 2020).*

In view of the aforesaid, the appeal is dismissed with no order as to costs."

34. The Noticee has also submitted that its trades are genuine as the Risk Disclosure Document (RDD) issued by SEBI also envisages the possibility of significant price difference and losses / profits due to lower liquidity and wider spreads. In this context, I note that RDD is a document in the nature of general advisory to investors dealing in derivatives markets considering that derivatives products are complex, risky and high leverage products. Such a document in any case does not either implicitly or explicitly permit deliberate structuring of manipulative trades which lack economic rationale and run contrary to the dynamics of price discovery in option trading. Therefore, the said contention of the Noticee is devoid of any merit.

35. It is also the submission of the Noticee, that the noticee was not knowing the counterparty or any of its director or had any relationship, financial or otherwise with the counterparty. In order to buttress its aforesaid submission, Noticee has relied on the following authorities:

    1. Jagruti Securities vs. SEBI [2008 SCC Online SAT 184: 2008 SAT 184],
    2. S.P.J Stock Brokers Pvt. Ltd vs SEBI [2003 SCC Online SAT 67: (2013) SAT 17],
    3. HB Stockholdings Limited vs SEBI [2013 SCC Online SAT 56: [2013] SAT 44] And
    4. R.K. Global vs. SEBI (Appeal No. 158 of 2008, Date of decision 16th September, 2010).

36. I have carefully considered the submission of the Noticee and the authorities of Hon'ble SAT in the light of the material available on record. I note that in the screen based trading, the manipulative and fraudulent intent can be inferred from various factors such as conduct of the party, pattern of transactions, etc. I note that it is not a mere coincidence that Noticee could match its trades (with the corresponding price and quantity entered by both the Noticee and counterparty being equal) with the same counterparty with whom it had undertaken first leg of the respective trades. It indicates meeting of minds. In this context, I would like to rely on 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..."*

37. 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."*

38. I note that though direct evidence regarding meeting of minds or collusion of the Noticee with the counterparty is not forthcoming, the trading behaviour of the Noticee makes it clear that the aforesaid non-genuine trades could not have been possible without meeting of minds at some level. In this context, I deem it appropriate to refer to the order dated July 14, 2006 passed by the Hon'ble SAT in the case of ***Ketan Parekh vs. SEBI*** (Appeal no. 2/2004), wherein, Hon'ble SAT has held that:

"The nature of transactions executed, the frequency with which such transactions are undertaken, the value of the transactions, the conditions then prevailing in the market are some of the factors which go to show the intention of the parties. This list of factors, in the very nature of things, cannot be exhaustive. Any one factor may or may not be decisive and it is from the cumulative effect of these that an inference will have to be drawn."

39. Further, I would like to rely on the judgement of Hon'ble Supreme Court passed in the case of ***SEBI vs. Rakhi Trading Private Ltd***. (supra), wherein the Apex Court held that *"the entities were engaged in a fraudulent and unfair trade practice while dealing in Options and hence were liable for violation of SEBI (PFUTP) Regulations".* The

Hon’ble Apex Court has also held that in the absence of direct proof of meeting of minds, the test should be one of preponderance of probability and also stated that the conclusion has to be gathered from various circumstances like volume of trade, period of persistence of trading, particulars of buy and sell orders, proximity of time between the two and such other relevant factors.

40. In line with the aforesaid judgements of Hon’ble SAT and Hon’ble Supreme Court, I note from the foregoing findings that the trading pattern of the Noticee in terms of volume of reversal trades, proximity of buy/sell and subsequent reversal evidences the indulgence of the Noticee beyond a reasonable doubt of the manipulative intent in creation of artificial volume. Further, the dealings by Noticee only in such options contracts which was illiquid clearly demonstrates the manipulative intent to use stock exchange platform to carry out non-genuine trades with the aim to execute such trades for manipulative purposes.

41. I am of the considered view that the scheme, plan, device and artifice employed by the Noticee in this case of executing reversal trades in illiquid stock options tantamount to fraud on the securities market in as much as it involves non-genuine and manipulative transactions in securities and misuse of the securities market.

42. In this regard, I would like to rely on the judgement of Hon’ble Supreme Court in the matter of ***SEBI vs. Rakhi Trading Private Ltd*.** (Supra) where Apex Court observed 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.”*

43. It is established that the Noticee by indulging in reversal trades which are manipulative, unfair, fraudulent and non-genuine, in nature, had created artificial volumes in the contracts and therefore, misused the exchange trade platform. In view of above, I conclude that the Noticee had violated the provisions of Regulations 3 (a), 3(b), 3(c), 3 (d), 4 (1) and 4 (2) (a) of the PFUTP Regulations, 2003 and the submission of the Noticee that trades were genuine and executed as per applicable law on the exchange platform is not tenable.

ISSUE - II: If yes, whether the Noticee is liable for monetary penalty under Section 15HA of the SEBI Act, 1992?

44. Pursuant to detailed analysis as brought out above, it is established that reversal trades are not normal transactions and it clearly demonstrates beyond reasonable doubt that the Noticee had intentionally executed these trades and manipulated the volume by artificial trading pattern in the contract EXID15JUN170.00PE where the total of 2 trades executed during the Investigation Period in the said contract were non-genuine trades and the Noticee was part of those trades.

45. I am of the view that the misuse of stock options as shown above not only displays an unreal picture of market activity to other investors but also defeats the basic premise of screen based electronic trading system and price discovery mechanism by repeated execution of pre decided reversal trades at irrational / arbitrary prices. Moreover, the impact of such trading on the traded volume and the price of stock options contracts is huge. Such activity deliberately or otherwise damages market integrity apart from presenting wrong picture of liquidity to gullible investors which could affect their trading/investment decisions. In my view, the abuse of such financial instruments, which are made available to the investors for the purpose of protection of their investment portfolios from the risks of adverse price movement, cannot be tolerated and needs to be dealt with strictly.

46. I find that the Noticee by indulging in execution of reversal trades in Stock Options with same entity on the same day, had created artificial volume, leading to false and misleading appearance of trading in the illiquid stock options at BSE and therefore violated the provisions of Regulations 3 (a), 3(b), 3(c), 3 (d), 4 (1), and 4 (2) (a) of the PFUTP Regulations, 2003. Accordingly, the Noticee is liable for monetary penalty under Section 15HA of the SEBI Act, 1992, which reads as under.

    Section 15HA of SEBI Act, 1992 - Penalty for fraudulent and unfair trade practices

    "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 - III: If so, what quantum of monetary penalty should be imposed on the Noticee?

47. While determining the quantum of monetary penalty under Section 15HA of the SEBI Act, 1992 I have considered the factors stipulated in Section 15-J of the SEBI Act, 1992 which reads as under:

Section 15J - Factors to be taken into account by the Adjudicating Officer

While adjudging quantum of penalty under section 15 - I, the Adjudicating Officer hall 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.

48. I observe that the material and documents made 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, Noticee has entered into 2 non-genuine trades in 1 stock option contract during the Investigation Period.

49. Considering, the facts of the matter as discussed above, I am of the view that imposition of minimum penalty as provided under Section 15 HA of the SEBI Act, 1992 would be commensurate with the violations committed by the Noticee.

ORDER

50. After taking into consideration the nature and gravity of the violations established in the preceding paragraphs and in exercise of the powers conferred upon me 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, I hereby impose a penalty of Rs. 5,00,000 (Rupees Five Lakhs Only) on the Noticee i.e. Ashlar Tours & Travels Private Limited, under Section 15HA of the Securities and Exchange Board of India Act, 1992, for violation of the provisions of Regulations 3(a), 3(b), 3(c), 3(d), 4(1) and (2)(a) of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003.

51. The said penalty imposed on the Noticee, as mentioned above, is commensurate with the violation committed by it.

52. 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

53. The Noticee shall forward said Demand Draft or the details confirmation of penalty so paid to the "The Division Chief, Division of Regulatory – 6, Enforcement Department (EFD1 - DRA VI), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C -4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai -400 051" and shall provide the following details while forwarding DD/ payment information:

    a) Name and PAN of the entity
    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

54. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under Section 28A of the Securities and Exchange Board of India 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.

55. In terms of the provisions of Rule 6 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995, a copy of this order is being sent to the Noticee and to the Securities and Exchange Board of India, Mumbai.

March 25, 2022
Mumbai

Mohammad Atif Alvi
Adjudicating Officer