BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO: Order/SD/KS/2021-22/14534]

UNDER SECTION 15I 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:

SHUKLA PACKGING INDUSTRIES PRIVATE LIMITED
PAN: AADCS1835M

24 37 GOPAL BHAWAN BIRHANA ROAD
KANPUR UTTAR PRADESH 208001

In the matter of
Dealings in illiquid stock options at BSE

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') observed large scale reversal of trades in the Stock Options segment of Bombay Stock Exchange (hereinafter referred to as '**BSE**') leading to alleged creation of artificial volume in the stock options segment. In this regard, SEBI conducted an investigation into the trading activity in the illiquid Stock Options Segment at BSE for the period April 01, 2014 to September 30, 2015 (hereinafter referred to as "**Investigation Period**").

2. It was observed during the course of investigation that a total of 2,91,643 trades comprising 81.38% of all the trades executed in the Stock Options Segment by various entities at BSE during the investigation period were trades which involved reversal of buy and sell positions by the clients and counterparties in a contract on the same day. It was also observed that the aforesaid trades resulted into alleged creation of artificial

volume to the tune of 826.21 crore units in the Stock Options segment of BSE during the investigation period. In view of the large scale reversal of trades that were observed in the illiquid Stock Options segment at BSE, it is alleged that these trades were non-genuine in nature.

3. It was observed that M/s Shukla Packging Industries Private Limited (hereinafter referred to as "**Noticee**") was one of the various entities who indulged in the execution of non-genuine trades in the Stock Options Segment at BSE during the above referred investigation period. It was observed that Noticee had entered into reversal trades with it's counterparty which involved squaring off transaction with significant difference in sell value and buy value of the transaction. Therefore, it is alleged that Noticee had executed the reversal trades which were non-genuine in nature and have created false or misleading appearance of trading in terms of creation of artificial volume in the Stock Options segment at BSE and therefore, it is alleged that the Noticee has violated the provisions of Regulations 3 (a), (b), (c), (d) and Regulation 4(1), 4(2) (a) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Markets) Regulations, 2003 (hereinafter referred to as "**PFUTP Regulations**"). In view of the above reasons, adjudication proceedings have been initiated against the Noticee under the provisions of section 15HA of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act'**).

APPOINTMENT OF ADJUDICATING OFFICER

4. The undersigned was appointed as the Adjudicating Officer, vide communique dated July 06, 2021 under Section 19 read with Section 15-I of the SEBI Act read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as '**Adjudication Rules**') to inquire into and adjudge under the provisions of section 15HA of the SEBI Act for the aforementioned alleged violation of the provisions of law by the Noticee.

SHOW CAUSE NOTICE, HEARING AND REPLY

5. Show Cause Notice ref. SEBI/HO/EFD1/EFD1_DRA5/P/OW/17121/1/2021 dated July 29, 2021 (hereinafter referred to as '**SCN'**) was issued to the Noticee in terms of Rule

4 of the Adjudication Rules requiring the Noticee to show cause as to why an inquiry should not be held against him and why penalty, if any, should not be imposed on the Noticee under the provisions of section 15HA of the SEBI Act. The SCN was sent to the Noticee vide Registered Post AD and was duly served on the Noticee as per the Tracking details obtained from the India Post website. The SCN issued to the Noticee, *inter alia*, mentioned the following-:

i. *It is noted that Noticee was one of the various entities which were indulged in execution of such alleged non-genuine trades in Stock Options Segment of BSE during the Investigation period. Following points deal with the dealings of Noticee during the Investigation period and allegations against it for execution of non-genuine trades.*

Date	Buyer	Seller	Buy Order Time	Sell Order Time	Trade Time	Trade Rate (Rs.)	Trade Quantity
29/07/2015	MANI HEART CARE PRIVATE LIMITED	SHUKLA PACKGING INDUSTRIES PRIVATE LIMITED	09:51:43.531149	09:51:43.437152	09:51:43.531149	2.5	100000
29/07/2015	SHUKLA PACKGING INDUSTRIES PRIVATE LIMITED	MANI HEART CARE PRIVATE LIMITED	09:51:37.624565	09:51:38.218445	09:51:38.218445	1.05	100000

ii. *It is observed from the table above that the trades entered by the Noticee in the contract of "APLT15SEP170.00PE" on July 29, 2015, with its counterparty viz. MANI HEART CARE PRIVATE LIMITED were reversed between the Noticee and the same counterparty on the same day resulting in reversal of trades which are, prima facie, considered to be non-genuine. Therefore, in the process artificial volume in the stock option contract at BSE has been generated by the Noticee through such non-genuine trades. From the table above, it is observed that the artificial volume created as no. of units reversed in non-genuine trades is 200000 comprising both volume of initial trade and volume of reversal trade, while not considering the volume which is not reversed.*

iii. It is further observed from the trade data of the Noticee that it has allegedly entered into non-genuine trades in 1 contract wherein it executed a total of 2 trades all of which were, prima facie, non-genuine trades. In view of this, it is alleged that such fraudulent trades of the Noticee had resulted into creation of artificial volume of total 200000 units.

iv. From the perusal of the trade data of the alleged non-genuine trades of the Noticee, it is observed that Noticee has allegedly executed non-genuine trades in 1 contract. The total volume of 200000 units generated by the Noticee in this 1 contract. Due to its alleged non-genuine trades, an Artificial Volume was generated by the Noticee in the Stock Option Segment of BSE. These alleged non-genuine trades, executed by Noticee in above contract, had significant differential in buy rates and sell rates considering that the trades were reversed on same day.

v. In view of the foregoing, it is alleged that the Noticee, by indulging in execution of reversal trades in Stock Options with same entities on the same day, which were non-genuine in nature, has created false or misleading appearance of trading in the aforementioned contracts traded in the option segment of BSE. In view of the fact that these options contracts were illiquid in nature, having very small volume in trading, the Noticee allegedly created artificial volumes in stock options which was manipulative and deceptive in nature. Therefore, in view of above, it is alleged that the Noticee has violated Regulation 3(a), (b), (c), (d), 4(1) and 4(2)(a) of PFUTP Regulations, 2003

6. The Noticee vide it's reply dated September 29, 2021, inter alia submitted the following:

<u>Reply dated September 29, 2021</u>

i. The allegations framed in the SCN relate to the Illiquid Stock Options (ISO), which was more than six years ago. The SCN does not provide any explanation to justify the inordinate and unconscionable delay in initiation of proceedings against Noticee. It is respectfully submitted that the initiation of proceedings by SEBI after such a long delay, severely prejudices. The Noticee submits that much water has flowed since then. In this regard, attention of the Hon'ble Adjudicating Officer is drawn to the fact that the requirement to preserve documents under various legislations is not more than seven to eight years.

ii. Noticee submitted various Orders/ judgments of SAT/SC/HC with regard to delay in the proceedings.

a. Supreme Court in the matter of Mohamad Kavi Mohamad Amin v. Fatmabai Ibrahim ((1997) 6 SCC 71. Also, see Ram Chand v. Union of India (1994) 1 SCC 44)
b. SAT Order dated November 14, 2019 in the matter of Sanjay Soni v. SEBI
c. SAT Order dated May 27, 2019 in the matter of Mr. Rakesh Kathotia & Ors. vs SEBI
d. Hon'ble SAT Order in respect of Appeal No. 169 of 2018in the matter of Ashlesh Gunvantbhai Shah vs SEBI
e. Hon'ble SAT Order dated March 3, 2008 in the matter of ibord Finance Ltd. v. Whole Time Member, SEBI.

iii. Noticee submitted that on the ground of inordinate delay alone, the SCN stands vitiated and is liable to be set aside for violation of the principles of natural justice.

iv. Noticee submitted that the SCN is silent as to how PFUTP Regulations have been violated by the Noticee. Besides recording common generic allegations against it, not a single instance or observation on specific role in alleged reversal is delineated in the SCN.

v. The so-called irregularities alleged in the SCN do not point to the facts or evidence on the basis of which such draconian conclusions were drawn by SEBI. It is respectfully submitted that in absence of a specific charge being spelt out with respect to the alleged non-compliance of the SEBI laws against the Noticee in alleged reversal trades, the SCN stands vitiated and is liable to be set aside. Noticee also submitted the judgment of Hon'ble SAT dated March 8, 2010 in the matter of Vikas Bengani v. SEBI

vi. In absence of a specific charge(s) being carved out, Noticee is constrained from addressing SEBI's grievance accurately. It is stated in the SCN that SEBI observed large scale reversal of trades in stock options segment of BSE leading to creation of artificial volume. Pursuant to this, SEBI conducted an investigation into the trading activities of certain entities in illiquid Stock Options at BSE for the period April 01, 2014 to September 30, 2015. However, at no place is it mentioned as to what was examined by SEBI against the Noticee and how the statements made in the SCN against the Noticee can be attributed to the Noticee for the same violations. Noticee submitted the judgment of Hon'ble SAT dated 20th April 1999 in the matter of Dhanalakshmi Bank Ltd. v. SEBI.

vii. Noticee Submitted that inspection of documents stands incomplete till date as the documents requested and primarily relied upon by SEBI before initiating the present proceedings have not been provided.

viii. Further, without prejudice, SEBI has also not submitted the call and voice logs referred to and relied upon by it between the trading member and the Noticee which confirm that the orders were in fact placed by the Noticee in its accounts.

ix. The Noticee had called for certain documents and data from SEBI vide its email dated 15th September 2021. However, SEBI vide its email dated 28th September 2021 has not acceded Noticee's request.

x. The Noticee states that on account of not making available these orders data, call and voice logs, the analysis of data furnished would remain one sided, incomplete, incorrect, inconclusive and hence the answers to the charges could not be proper, complete thus resulting *into violations of principles of natural justice. Executed /unexecuted / modified / cancelled orders and order placement records would throw light on the total number of orders keyed-in into the system, the history of each order that got eventually fully executed into trades, partly executed and not executed at all and circumstances in which the such orders were placed. In order to establish meeting of minds, one has to consider executed, non-executed (pending, modified, deleted) orders and executed within the so-called group and executed outside such group along with order placement. This trade data has not been made available to the Noticee.*

xi. The Noticee submits that SEBI has alleged that Noticee transacted in 'illiquid options' on the basis that the trades were in far-off strike prices and therefore very few entities were trading in such strike rates. However, in that case, it may also be concluded that said trades could have had no effect on other investors or market at large

xii. It is pertinent to mention that stock exchanges regularly come out with list of illiquid scrips in cash segment. However, no such list is issued by exchanges or regulator for dealing in stock options contracts. Thus, to fasten the responsibility or allege a single entity that it traded in illiquid option is unwarranted and unfair. Pertinently, BSE issued the Reversal Trade Prevention Check (RTPC) in the equity derivatives segment in March 2016. The Noticee craves leave to refer to and rely upon the BSE Ltd. circular no. 20151218-30, dated 18th December 2015 and circular no. 20160308-33, dated 08th March 2016.

xiii. In derivative trading, traders often make profit or loss over a period of time since the market does not always behave as per their prediction/expectation. Thus, profit and loss is concomitant to trading in derivative segment. The mere fact that the Noticee traded in option segment cannot be a ground to rope us into present proceedings

xiv. Noticee traded in the stock market in ordinary course consequent to the bona fide trading in option segment. Thus, it is erroneous to allege that the trades created artificial volume on BSE

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

xvi. Noticee submitted that he has not indulged in any manipulative, fraudulent or deceptive transaction or scheme as alleged et al.

xvii. SEBI has failed to establish as to how a single unique contract of 2 trades of the Noticee lead to fraud . where fraud and collusion are alleged, it would be incumbent on the authority to set out the nature of the fraud along with full particulars. The SCN is however lacking in material particulars. Noticee had submitted the order of Hon'ble Supreme Court ((2005) 10 SCC 465) in Chief Engineer, MSEB and Anr. v. Suresh Raghunath Bhokare

xviii. Noticee submitted that allegations of fraud cannot be based on wild allegations without any convincing evidence. Charges of fraud are of serious in nature and should not be made casually by regulators. The judicial precedents indisputably hold that fraud is a serious offence and, therefore, the standard of proof must be of a higher degree and mere conjectures and surmises will not be sufficient to hold a person liable for fraud and Noticee referred Judgement of Hon'ble SAT (2005 (59) SCL 1 SAT) in the matter of KSL & Industries Ltd. v. SEBI and Order of Hon'ble Supreme Court in Nandakishore Prasad v. State of Bihar (1978) 3 SCC 366.

xix. Noticee submitted that allegation is entirely baseless and without any evidence on record or otherwise., SEBI has failed to demonstrate how the Noticee has acted in concert with the said counter party to defraud the market. The Noticee also submitted that it did not act in concert or in collusion with anyone and nor were part of any group or connected with anyone for the purpose of influencing price and volume or for any manipulative activity as alleged or otherwise

xx. The Noticee submits that it has not been party to any kind of illegal and unlawful act by virtue of its trading in BSE Option Segment. Trades were executed on an anonymous online trading system of BSE Ltd. which is also displaying all such information relating to trade in public domain on real time basis. The trades in question in the SCN were executed on the anonymous platform of the Exchange, without any knowledge of counter party and at price ranges that were allowed by the Exchange and SEBI

xxi. For investors whether stock options were liquid or illiquid do not matter – as long as BSE permitted trading in Stock options. The Noticee's alleged objectionable trading is only on 1 day and there are only 2 reversal contracts which were to only alleged reversal trades executed in the Noticees account. As SEBI has not provided the entire order and trade logs relied upon by SEBI the Noticee is unable to make any comparison for the purpose of meeting the charge and mitigation

xxii. The Noticee further states that it has no knowledge about the nuances involved in F&O trading. The trades in the Noticee's account originated from that of the trading member. The Noticee had faith in its trading member who was marketing a product approved by BSE (a recognized stock exhange). There was no reason why the Noticee would smell a fraud.

xxiii. Without prejudice, the Noticee submits that the same counter party does not mean anything adverse or negative as in an on-line, anonymous trading model, names of counter party do not get revealed to the Trading Members and Trading Members, in turn, could not inform them to their clients. Further in the absence of any evidence of unholy nexus being pointed out, matching of orders by BSE's systems cannot be termed as having resulted into artificial volume. Noticee's orders were genuine, valid, accepted, system matched and settled at the relevant time. Noticee relied upon the various case laws of SAT viz., Nishit M Shah HUF v SEBI and Saroj & Co. proprietor Sanjay Agrawal v SEBI

xxiv. The Noticee submits that there is a basic presumption that - BSE, being 1st level regulator, will follow and act as per law. Just because BSE did not cater to do anything about the said objectionable trades at the relevant time or even thereafter, SEBI cannot ignite any cause of action belatedly out of such trades. We, investor, cannot be punished in any manner because of the negligent approach of BSE.

xxv. The SCN is not all-encompassing, composite and does not mention the upfront surveillance measures (including price bands) and that trading in F&O segment was subject to close regulatory oversight - BSE has ISO certified surveillance - that were in vogue at the relevant time.

xxvi. The Noticee submits that the very fact that BSE subsequently introduced 'Reversal Trade Prevention Check' feature in its system, mean that at the relevant time, Trading Members were not aware of names of counter Trading Members and then they keyed-in orders of clients in the normal course as per their instructions. BSE then did not think to introduce this functionality RTPC because in its wisdom it did not think to introduce the same at the relevant time. — so, the Noticee cannot be blamed for that.

xxvii. The Noticee states that the objectionable trades executed in the so-called illiquid stock options on BSE were initiated and executed by Trading Members/intermediary. BSE introduced option trading with a 5-day settlement period for the first time and invited the trading members to engage their clients to trade for this 5-days settlement, option product [National Stock Exchange of India Limited had a minimum period of 30 days for Futures and Options (F&O) settlement]. Moreover, BSE was providing the trading members with incentives for marketing and engaging its clients for trading in the new F&O product that had a settlement period of 5 days. These incentives were revised w.e.f. October 2015. Also, margin for such trades, which is an essential component for such trade, was never collected. The orders were never place by the Noticee and the same is not shown.

xxviii. The Noticee submits that it is categorically stated in Stock Exchange rules under the caption of market integrity that stock exchanges shall have system and defined procedures in place to monitor collusion between stock Trading Members including those trades by the stock Trading Members which are pitched to the client solely for the purpose of seeking incentives. It is pertinent to mention that BSE Ltd. as an Exchange ought to have been brought under the scanner which is completely missing in the entire episode. The Noticee submits that until BSE Ltd.'s version is not taken by SEBI the matter cannot be adjudicated upon.

xxix. The Noticee states that as a general rule of construction, the amended definition of dealing in securities as introduced by the SEBI (PFUTP) (Amendment) Act, 2018, the said definition among other substitutions introduced by the SEBI (PFUTP) (Amendment) Act, 2018 shall come into force form February 2019 and cannot be applicable to the objectionable trades of the Noticee which were executed back in 2015. The Noticee's case shall be governed by the erstwhile provisions of the SEBI (Prohibition on Fraudulent and Unfair Trade Practices) Regulations, 2003 which existed during 2015

xxx. Noticee also relied upon various circulars of BSE and NSE in the submissions.

xxxi. The Noticee is guided by the Hon'ble Supreme Court order in the matter of SEBI v Bhavesh Pabari wherein the court harmoniously interpreted Section 15J and observed that Section 15A never intended to limit the discretionary power of the AO rather it only prescribed minimum penalty and thus, technically allowed the AO to grant even the denomination of one rupee as a penalty.The Noticee also referred to the judgement of the Hon'ble Securities Appellate Tribunal in P. G. Electroplast Ltd. & Ors. V. SEBI in Appeal no. 281 of 2017, order dated 02nd February 2019.

xxxii. Noticee also submitted that an opportunity may be granted to cross examine BSE and the Trading Member.

7. In terms of adjudication rules, the Noticee was provided with an opportunity of personal hearing in the matter on November 26, 2021, through the online Cisco webex platform. Advocate. Mr. Pratham Masurekar (R V Legal Advocates), appeared as the Authorized Representative ('**AR**') on behalf of the Noticee on the stipulated date of hearing. During the course of hearing, the AR reiterated the submissions made by the Noticee in its reply dated September 29, 2021 during the hearing AR has also quoted various judgments and circulars provided by her emails dated November 26, 2021.

8. Pursuant to the personal hearing, the AR vide letter dated November 27, 2021 made additional submissions, wherein the AR has inter-alia submitted the following:

i. Noticee states that at the outset one single transaction of the Noticee with a single counter party with whom no connection has been established whatsoever cannot be construed as violation of the PFUTP transactions, as more specifically set out in the captioned SCN and Noticee relied upon the Hon'ble Securities Appellate Tribunal's order dated 12th January 2021 in the matter of Vasudev Ramchandra Kamat v SEBI,

ii. Noticee states that SEBI has a power to levy lesser penalty than INR 5,00,000 (as contented in SEBI v. Bhavesh Pabari in Section 15HA of the SEBI Act 1992 or 'Nil' penalty which is clarified in the matter of SEBI v. Bhavesh Pabari in Civil Appeal number 11311 of 2013 vide order dated 28th February 2019). Moreover, the Noticee understands that the minimum penalty imposed by SEBI in matters pertaining to the similar subject matter is INR 5,00,000, but in the Noticee's case it has executed only one reversal trade for a mere profit of INR 1,44,247. Hence the Noticee cannot be visited with a penalty of more than INR 5,00,000. Noticee further submitted the judgment of the Ho'ble Tribunal dated 28th April 2021 in the matter of Snehlata R. Tiwari v. SEBI.

iii. The Noticee states that the Hon'ble Tribunal recently has passed the order dated 05th October 2020 in the matter of Indivar Traders Private Limited v. SEBI in Appeal no. 253 of 2020, wherein, inter alia, it is held that a single transaction cannot lead to either price or volume manipulation. Similarly, in the present case the Noticees single reversal transaction cannot be construed to have manipulated the marked in any way to attract the violation of PFUTP Regulations as alleged in the SCN.

iv. Noticee states that vide its email dated 24th August 2021, the Noticee had sort for certain details including order logs, trades logs and investigation report. No reply has been received w.r.t. to the said email. Therefore, SEBI is called upon to provide a response to the said email dated 24th August 2021. The Noticee craves leave to refer to and rely upon the order dated 19th November 2020 of the Hon'ble Supreme Court of India in the matter of T. Takano v. SEBI in SLP Numbers 13287-13288/2020

CONSIDERATION OF ISSUES AND FINDINGS:

9. I have taken into consideration the facts and circumstances of the case, the material available on record and the reply submitted by the Noticee. It is alleged that the Noticee had executed reversal trades, which were non-genuine trades and the same has resulted in the generation of artificial volume in the Stock Option contracts at BSE. In view of the same, it is alleged that Noticee has violated the provisions of Regulations 3(a), (b), (c), (d) and Regulation 4(1), 4(2)(a) of PFUTP Regulations and, therefore, it is alleged that Noticee is liable for penalty under the provisions of Section 15HA of the SEBI Act.

10. Before proceeding with the matter on merits, I first deal with the preliminary issues raised by the Noticee regarding delay in proceedings., I have seen that Noticee was provided with all relevant and relied upon documents along with Show Cause Notice and the Noticee was provided enough time to file its detailed reply and submissions. Notwithstanding the same, I also note that there is no provision with prescribed time limit in the SEBI Act which may have the effect of prohibiting SEBI from taking action by issuing Show Cause Notice or passing any order beyond a particular period of time in a given case.

11. In this regard, I am inclined to rely upon the decision of Hon'ble SAT in the matter of Bipin R Vora vs SEBI held that, "*As regards the plea of delay and latches and submission that the show cause notice is barred by limitation, I do not find any merit in these contentions as the time and efforts involved in an investigation though may vary from case to case, generally investigations per-se is a time consuming process which invariably involve collection, scrutiny and careful examination of voluminous records/ order-trade details of all the concerned including the exchanges/recording of statements etc. and therefore no time limit can be fixed in this regard to enable a regulator to take appropriate disciplinary action for the safeguard and improvement of the system/market'*.

12. Further, I note that in Ravi Mohan & Ors. v. SEBI and other connected appeals decided on August 08, 2013, Hon’ble SAT while referring to its own decision in HB Stockholdings Ltd. v. SEBI(Appeal no. 114 of 2012) decided on August 27, 2013 and

decision of Hon'ble Supreme Court in Collector of Central Excise, New Delhi v. Bhagsons Paint Industry (India)reported in2003 (158) ELT 129 (S.C.),held as under:

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

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

14. In view of aforesaid Judgments, I conclude that there is no merit in the preliminary objections made by Noticee, regarding the delay in concluding the instant proceedings.

15. I also note that Noticee in its reply contended that investigation report and documents such as order logs, trade logs relied upon by SEBI have not been provided to it. In this regard, I note that in Hon'ble SAT, in its order dated February 12, 2020, in the matter of Shruti Vora vs. SEBI has clearly mentioned that "*the AO is required to supply the documents relied upon while serving the show cause notice. This is essential for the person to file an efficacious reply in his defence*". Thus, I note that all documents relied upon for the present proceedings have been shared with the Noticee along with the SCN as per the ratio mentioned in the Shruti Vora matter in the backlight of principles of natural justice.

16. Further, the Hon'ble SAT in the matter of Anant R Sathe Vs SEBI (Appeal No. 150 of 2020) vide Order dated July 17, 2020 has reaffirmed the principle elucidated in the judgment of Shruti Vora's case, which was reproduced herein above and ruled that "*the Authority is required to supply the documents that they rely upon while serving the show cause notice which in the instant case has been done and which is sufficient for the purpose of filing an efficacious reply in his defence"*.

17. In view of the above, since all the documents which are relevant and relied upon in the instant proceedings have been provided to the Noticee along with SCN, I am of the opinion that principles of natural justice have been duly complied with in the instant proceedings and no prejudice in filing reply has been caused to the Noticee.

18. Before moving forward, the relevant provisions of law allegedly violated by the Noticee and as mentioned in the SCN are reproduced below:--

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;

19. I note that AR vide email dated September 01, 2021 requested for impleading BSE as a party to the present proceedings. In this regard, I have carefully perused the facts and it is noted that there is *no allegation in the SCN that Noticee has chosen wrong Exchange Platform for trading alleged transactions etc.* It is alleged in the SCN that the Noticee had executed reversal trades, which were non-genuine trades and the same has resulted in the generation of artificial volume in the Stock Option contracts at BSE, Therefore, I do not find any merit in the request of the Noticee to implead BSE as a party to the proceeding. Thus, I do not accept Noticee's request for impleading BSE.

20. Reversal trades are considered as those trades in which an entity reverse it's buy or sell positions in a contract with subsequent sell or buy positions with the same counterparty during the same day. The said reversal trades are alleged to be non-genuine trades as they are not executed in the normal course of trading, lack basic trading rationale, and allegedly lead to false or misleading appearance of trading in terms of generation of artificial volumes, hence these trades are deceptive and manipulative. From the facts/material made available on record, I find that reversal trades executed by the Noticee, which were observed in the present case, were undertaken by the Noticee with it's counterparty with a predetermined arrangement to book profit or losses respectively, and therefore, the parties to the trades were not trading in the normal sense and ordinary course of business. Therefore, it is alleged that the Noticee by indulging in such reversal trades with it's counterparty in the illiquid stock option segment at BSE has managed to generate artificial volume in the Stock Options segment at BSE during the investigation period.

21. In this regard, it is observed from the trade log of the Noticee that he had traded in 1 contract in the Stock Options segment of BSE during the above mentioned investigation period. The examination of the Trade log of the Noticee during the relevant period revealed that it had executed 2 non-genuine trades in 1 contract in the Stock Options segment of BSE. I note that the abovementioned trades of the Noticee had resulted in the creation of artificial volume of a total of 200000 units in the given 1 contract. Further, it is observed that the trade executed by the Noticee was squared up within a short span of time with the same counterparty i.e. trade was reversed within short span of time on the same day. Thus, it is observed that Noticee had indulged in reversal trades with it's counterparty in the stock option segment of BSE and the same were non-genuine trades.

22. Further, it is observed that these trades were squared up by the Noticee with it's counterparty with a significant price difference. The non-genuineness of these transactions executed by the Noticee is evident from the fact that within a matter of short span of time, reverse the position with it's counterparty with significant price difference. The trade reversals in the said case points out to the fact that the parties to the transactions, including the Noticee, did not intend to transfer the beneficial ownership and through these orchestrated transactions, the intention of which was not regular trading, other investors have been excluded from participating in these trades/ contracts. As already mentioned above, there was very little time gap between the buy and sell orders placed by the Noticee with it's counterparty in different trades on the same day. In view of the observations made above, I am convinced that Noticee has entered into reversal/non-genuine trades with it's counterparty and in the process also generated artificial volume in the otherwise illiquid stock option contracts at BSE.

23. To illustrate, it is observed that the Noticee had executed a total of 2 trades during the Investigation period in the contract "APLT15SEP170.00PE". The aforesaid trades were done by the Noticee on July 29, 2015 wherein Noticee bought 100000 units from Mani Heart Care Private Limited at 9:51:38 at the rate of Rs. 1.05 per unit. The Noticee then sold 100000 units to Mani Heart Care Private Limited at 9:51:43 at the rate of Rs. 2.5 per unit this resulted in 2 trades with total trade quantity of 200000 units at a price

of Rs. 1.05 and Rs. 2.5. Thus, in the above manner, the Noticee executed a total of 2 trades in the contract "APLT15SEP170.00PE" and generated artificial volume of 200000 units through such non-genuine and reversal trades. It is also observed that, out of the 2 trades done through 1 unique contract, the Noticee was instrumental in contributing significantly towards the total volume recorded on BSE in the said contracts.

24. The Noticee has contended that there cannot be collusion or meeting of mind unless the buyer and seller are connected, related or known to each other. However, considering the precision at which the reversal transactions had taken place, the quantity, price and time and sale, party in a trade transaction with huge price variation, I am of the view that it will be too naïve to hold that these transactions are through platform of the screen-based trading and such meeting of mind is not possible without both the parties being related or connected to each other. Such conclusion would be over-looking the prior meeting of minds involving synchronization of buy and sell order w.r.t the transactions entered into by the Noticee with it's counterparty and such synchronized trading is clearly violative of the transparent norms of trading in the securities market. In view of the above observations, I hold that all the 2 transactions executed by the Noticee in the 1 Option Contract were synchronized trades, which were reversed on same day with same counterparty with prior meeting of mind between the parties to the trade. Needless to mention the fact that these transactions were manipulative/deceptive device with a view to create a desired loss and/or profit in the books of the party to the transactions and in the process, artificial volumes were also generated through such contracts. As per the material available, the Noticee made a profit of Rs. 1,45,000/- as result of these trades.

25. Noticee has contended that the single transaction of the Noticee with a single counter party with whom no connection has been established whatsoever cannot be construed as violation of the PFUTP transactions. I note that the Noticee executed reversal trades which defy market rationality when looked along with attending circumstances in toto. Therefore, Noticee's trades, irrespective of the quantum of such

trades, were manipulative and intended to create misleading appearance of trading. So the contentions of Noticee in this regard are liable to be rejected.

26. At this juncture, it is pertinent to refer to the decision of the Hon'ble Supreme Court of India in the matter of **Securities and Exchange Board of India v. Rakhi Trading Private Limited** (Civil Appeal Nos. 1969, 3174-3177 and 3180 of 2011 dated February 08, 2018) wherein, the Hon'ble Supreme Court while cumulatively analyzing the reversal transactions held that, 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 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. 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."* 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.

27. In the same matter, Hon'ble Supreme Court had further stated that-

> "……..*quantity, time and significant variation of prices, without major variation in the underlying price of the securities clearly indicate that Respondent's trades are not genuine and had only misleading appearance of trading in the securities market……….*"

"35…. Contextually and in simple words, it means a practice which does not conform to the fair and transparent principles of trades in the stock market. In the instant case, one party booked gains and the other party booked a loss. Nobody intentionally trades for a 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 makes losses and that too in a pre-planned manner and rapid trades, it is not genuine……"

28. Additionally, the Hon'ble Securities Appellate Tribunal (hereinafter referred to as "SAT")in its Order dated September 14, 2020 in the matter of Global Earth Properties and Developers Pvt Ltd Vs SEBI(Appeal No. 212 of 2020) relied upon the aforesaid Order 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."*

29. In this context, I also find it relevant to refer to the decision of Hon'ble Supreme Court in the matter of ***Securities and Exchange Board of India v. Kishore R Ajmera*** *{(2016)} 6 SCC 368 : AIR 2016 SC 1079}* wherein, the Hon'ble Supreme Court has held that , " ….. *According to us, knowledge of who the 2nd party/client or the broker is, is not relevant at all. While the screen based trading system keeps the identity of the parties anonymous it will be too naïve to rest the final conclusions on the said basis which overlooks a meeting of minds elsewhere. Direct proof of such meeting of minds elsewhere would rarely be forthcoming. The test, in our considered view, is one of preponderance of probabilities so far as adjudication of civil liability arising out of violation of the Act or the provisions of the Regulations framed thereunder is concerned….."*

30. In the same matter, the Hon'ble Supreme Court, has further 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 trade effected; the period of persistence in trading in a particular scrip; the particulars of buy and sell orders, namely the volume thereof; the proximity of time between the two and such relevant factors*……...*"*

31. The observations made in the aforesaid judgments of Hon'ble Supreme Court apply with full force to the facts and circumstances of the present case. Therefore, applying the ratio of the above judgments, I am convinced that the execution of trades by the Noticee in the illiquid options segment with such precision in terms of order placement, time, price, quantity etc. and also the fact that the transactions were reversed with the same counterparty clearly indicates a prior meeting of mind with a view to execute the reversal trade at a pre-determined price. It is observed that in respect of these trades executed in the illiquid stock options contract, the only reason for the wide variation in prices of the same contract and execution time within short span of time was a clear indication that there was pre-determination in the prices by both the counterparties when executing the trades. Thus, the nature of trading, as brought out above, clearly indicates an element of prior meeting of minds and therefore, a collusion of the Noticee with it's counterparty to carry out the trades at predetermined prices. It is not possible to comprehend the reason for which the Noticee would enter into an option contract with a strike price far away from the current market price of the underlying except for the fact that Noticee wanted to execute non-genuine trades.

32. 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. It is also a transaction 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 in the contract. By synchronization and reversal trade as has been carried out by the Noticee in the instant case, the price discovery system has been

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.

33. Therefore, from the foregoing paragraphs and the observations/findings contained therein, I hold that the Noticee has violated the provisions of Regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of PFUTP Regulations, 2003

34. In view of the above, I conclude that the Noticee is liable for monetary penalty under the provisions of Section 15HA of the SEBI Act, which reads as under :

Penalty for fraudulent and unfair trade practices.

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

35. In this regard, the provisions of Section 15J of the SEBI Act and Rule 5 of the Adjudication Rules require that while adjudging the quantum of penalty, the adjudicating officer shall have due regard to the following factors namely :-

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

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

(c) the repetitive nature of the default.

36. Clearly, from the above observations, the Noticee was instrumental in the creation of artificial volume in the illiquid stock option contracts at BSE during the investigation period by executing reversal / non-genuine transactions in the illiquid stock options segment at BSE. It is not possible from the material available on record to quantify the amount of loss caused to genuine investors as a result of the reversal trades/ non-genuine trades executed by the Noticee with it's counterparty. From the manner in which Noticee executed the above mentioned transactions, the Noticee has violated

the statutory provisions of law. In this context, reliance is placed upon the order of the Hon'ble Supreme Court of India in the matter of Chairman, **SEBI Vs Shriram Mutual Fund** { [2006]5 SCC 361 } – wherein the Hon'ble Supreme Court of India held that "*In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant…………....*"

37. Further, AR has submitted that the Noticee has not traded repeatedly and Noticee has executed only one reversal trade for a mere profit of INR 1,44,247. Hence the Noticee cannot be visited with a penalty of more than INR 5,00,000.. However, I do not see any merit in the said argument and would like to rely upon the order of Hon'ble Securities Appellate Tribunal (hereinafter referred to as "SAT") dated September 14, 2020 in the matter of ***Global Earth Properties and Developers Pvt Ltd Vs SEBI (Appeal No. 212 of 2020)*** since, the facts of the case are similar to the instant matter. In the matter of ***Global Earth Properties and Developers Pvt Ltd Vs SEBI***, hon'ble SAT held that "*It was urged by the learned counsel for the Appellants that the penalty awarded is excessive and harsh and, therefore, prayed that in the event the order is affirmed the Tribunal may consider reducing the penalty amount taking into consideration the financial status of the Appellants and the negligible transactions executed by the Appellants.*

In this regard we have perused the orders passed by the AO. We find that the AO has taken into consideration not only the factors contained in Sec. 15J of the SEBI Act but has also taken into consideration the number of total trades, the artificial volume generated, the loss incurred, etc while imposing the penalty. It may be stated here that the minimum penalty under Sec. 15HA is Rs.5Lacs and maximum penalty is Rs. 25 crores or three times the profit made. We find that the AO has excercised its discretion which is neither harsh nor arbitrary. We do not find any error in the quantum of penalty imposed by the AO."

38. Therefore, by considering the profit and creation of artificial volume by the Noticee, I have no hesitation to impose the minimum penalty prescribed under the relevant provisions of the SEBI Act.

ORDER

39. Having considered all the facts and circumstances of the case, the material available on record and the factors mentioned in the preceding paragraphs, I, in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, hereby impose a penalty of Rs.5,00,000/- (Rupees Five Lakh only) on the Noticee viz. M/s Shukla Packging Industries Private Limited under the provisions of Section 15HA of the SEBI Act for the violation of Regulations 3(a), (b), (c), (d), 4(1) and 4(2) (a) of the PFUTP Regulations. I am of the view that the said penalty is commensurate with the default committed by the Noticee.

40. The Noticee shall remit / pay the said amount of penalty within 45 (forty five) days of the receipt of this order either by way of Demand Draft (DD) in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai and the said DD should be forwarded to the Division Chief, Enforcement Department - I (EFD), Division of Regulatory Action - I [EFD1-DRA-3] SEBI Bhavan, Plot No.C4-A,' G' Block, Bandra Kurla Complex (BKC), Bandra (East), Mumbai – 400 051 and also send an email to tad@sebi.gov.in with the following details:

1. Case Name:	
2. Name of Payee:	
3. Date of payment:	
4. Amount Paid:	
5.Transaction No:	
6. Bank Details in which payment is made:	
7. Payment is made for: (like penalties /disgorgement/recovery/Settlement amount and legal charges along with order details)	

OR

41. Payment can also be made online by following the below path at SEBI website www.sebi.gov.in ENFORCEMENT → Orders → Orders of AO → Click on PAY NOW or at https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html.

42. 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 SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

43. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is sent to the Noticee viz. M/s Shukla Packging Industries Private Limited and also to Securities and Exchange Board of India.

Place: Mumbai
Date: December 22, 2021

SANDEEP P DEORE
ADJUDICATING OFFICER