BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
ADJUDICATION ORDER NO. Order/MA/AS/2021-22/15505

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:

Ashok Kumar Agarwal
[PAN: ACZPA9007E]
Ashirwad Apartment, 3rd Floor
29B, Ramkrishna Samadhi Road
Kankurgachi, Kolkata – 700054
West Bengal

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 Ashok Kumar Agarwal (*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 him 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 Noticee had allegedly executed total of 2 non-genuine trades, which resulted in artificial volume of total 1,04,000 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	ANBK15FEB100.00CEW2	0.05	52000	2.05	52000	100	13.20

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

   a) During the Investigation Period, 2 trades for 1,04,000 units were executed by the Noticee in the said contract on February 09, 2015.

   b) That while dealing in the said contract during the Investigation Period, Noticee executed total 2 reversal trades (1 sell trade + 1 buy trade) with same counterparty viz Tarang Stock Broking Services Pvt Ltd on the same day.

   c) Thus, Noticee through dealing in the contract viz, "ANBK15FEB100.00CEW2" during the Investigation Period, executed 2 non genuine trades and thereby allegedly generated artificial volume of 1,04,000 units which is 13.20% 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/17602/1/2021 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 September 20, 2021 submitted the copy of letter dated September 18, 2021 along with a copy of the PAN Card. Vide the said reply, the Noticee also requested for personal hearing and *inter alia*, submitted as under:

    "

    3. *……………..I am an individual investor and have been investing money in a variety of investment vehicles (one of which is the stock market) with an expectation of receiving financial returns on the invested amount. I am not aware of nitty gritties of share market and had authorized my stockbroker to manage my funds and in that manner, the said stockbroker had undertaken trades in the share market with*

a view to make some profits for me. To my knowledge, the said stockbroker had undertaken trades on my behalf without any ill design or ill motives.

4. *I respectfully state that matching of merely one trade (includes buy and sell position of one same trade) may not be considered as artificial and fraudulent in any manner. It could be just a matter of chance that one trade gets matched on either side of buy and sell with same party. Neither the amount of profit is so substantial to attract any adverse inference. Merely 52,000 units were bought and sold by me for a profit of Rs 2/- per unit thereby giving me profit of Rs 1,04,000/- which is too miniscule and from one off trade with contra positions. Therefore, no adverse inference be drawn for the same qua me.*

5. *Without prejudice to all that is stated above, I submit that it is alleged that the trades I executed were in illiquid Stock Options at Bombay Stock Exchange Limited. However, I submit that these scripts, in which I traded, were at no time banned and hence there was no bar on trading in the said scripts. Therefore, it would be too far-fetched for me to assume that these stocks are so called "illliquid". The mere fact that BSE allowed trading in these stocks renders my bonafide in trading in these stocks. Moreover, in absence of any warnings, estoppels from BSE, I am at a loss to understand how I could gather the awareness of the stocks being ill liquid.*

6. *I further submit that the said trades were executed in the normal course of business and I was in no way related to the alleged counter party Tarang Stock Broking Services Pvt Ltd. Also, the said SCN has failed to establish any connection between us and the alleged counter party except for matching of 2 trades (and that too two legs of same trade i.e buy and sell) which could also be a chance without any intent and much less malafide. Hence, allegations against me are based on mere surmises and conjectures.*

7. *I submit that till date no investor complaints have been received for trading in the said illiquid scripts/stocks.*

8. *I submit that there was no bar on trading in the said illiquid scripts/stocks and therefore I continued to trade in this scrip in the normal course of business. I have been trading in various scrips and the purported "ill liquid" scrips for me were normal scrips in which I could undertake trades. All my trades have been backed up with appropriate pay in pay outs which establishes my bonafides in carrying out genuine trades on the floor of the Exchange.*

9. *I further submit all the trades executed by me are well recognised, legal and permitted by BSE and carried out on the floor of exchange. There were no wrongful gains made by me out of the alleged trades even for sake of assumptions. Therefore, no motive is established qua me for the presumptions of non-genuine trades by me.*

10. *I submit that the impugned trades were executed on the floor of exchange through a registered share broker who has the requisite software as approved by the Exchange. The entire trading process is like blind mechanism as far as buying and/or selling of stocks by a client through a broker is concerned. I had authorized my broker to manage my funds by trading in stocks and I was not aware of the day to day trades as it was only the broker who had been trading on my behalf. It is impossible for me to know who is/are the counter parties to my trades. To the best of my knowledge, even a broker is not aware of the counter party to any trade carried out. Neither I execute trades through my terminal nor am I aware of the mechanism by which a share broker trades in the market for its clients. My paying payout obligations have been regular without any defaults. I submit that the said trading system prevents a member who places any orders from identifying the counter-party member or client and thus ensures anonymity of trades. The system does not even display details of all pending orders; rather it only displays the 5 best pending orders. Therefore, at any given point of time, it is impossible for me to even verify the party & counter party of these transactions. I further state that there was no alert from the broker or the Exchange, which would prompt me to take any caution or create an alarm in me to estop trading. Under these circumstances, it is erroneous to come to a conclusion that I had executed non-genuine trades which resulted in artificial volume.*

11. *I further state that my trades were in the FNO segment. On the positions taken and squared off by me, I had accrued profits. Importantly, I have captured these profits in my Income Tax returns and have duly accounted for the same by paying appropriate taxes. Therefore by no stretch of imagination can I be thrust with any malafide intent of any gains to say the least.*

PARA –WISE REPLY TO SCN

3. *………With reference to para 5 and 6 of the Show Cause Notice, I deny that I have indulged into any artificial trades and repeat & reiterate that I was never indulged in the execution of any non-genuine trades as alleged in the said SCN. I submit that I have traded in the Stock Option segment of BSE in normal course of business. Moreover, I am an individual investor and have been investing money in*

a variety of investment vehicles (one of which is the stock market) with an expectation of receiving financial returns on the invested amount. In no manner would I indulge into any trade wherein losses are incurred to me. The mode and mechanism of Stock market is such that loss and profit cannot be definitely determined. The prices of any shares/stocks vary due to various components including sentiments, market conditions, economic and political development etc. Therefore, only for reasons of huge price variations, my trades cannot be classified as non-genuine. Hence, any matching of trades by a particular counter party could be a matter of chance and not a pre-determined activity for any purpose. Further it is reiterated that the allegations of 1 reversal trade through 2 non genuine trades in 1 unique contract is misplaced because I had only one buy trade of 52,000 quantity of ANBK15FEB100.00CEW2 which was sold for same quantity thus forming only 1 trade on both sides. I sold the scrip because the prices had gone up and I sought to make profits out of my trades. I have duly accounted for these profits in my Income Tax returns.

4. *With reference to para 7 of the Show Cause Notice, I submit that the tables and annexures attached in the Show Cause notice do not reflect the correct interpretation of the trades carried out by me. To put is more appropriately, my trades were at most intraday trades wherein I had purchased some stocks and on huge price variations, I have sold them. For each of such trades there are contract notes generated by the broker for me. The SCN has taken each contract note as if the total volume of trades in that instance and have indicated percentages of non-genuine trades in comparison to each of my contract note. I am not even aware who would be the counter party in the blind mechanism. I once again submit that under the given conditions, it was not possible to even assume that the trades entered by me were non-genuine or done with the intention to create artificial volume.*

5. *With reference to para 8 of the Show Cause Notice, I submit that I have no connections with the alleged counter party Tarang Stock Broking Services Pvt Ltd. Also the SCN has failed to establish any connections between us and the alleged counter party apart from the presumption that the trades between us are matching trades. I submit the trades were executed on the floor of the exchange, which is a blind mechanism wherein the trading system prevents a member who places any orders from identifying the counter-party member or client and thus ensures anonymity of trades. Hence, it is highly unlikely that I was aware about the counter party and matching of 2 trades that too for a miniscule quantity on a given day is coincidental and by no stretch of imagination can the trades be termed as non-genuine or for creating artificial volume as alleged in the SCN. It is pertinent to note*

that there is a time difference between the buy and sell trades. Therefore, any price variation in the meantime, is a market phenomenon on which I do not have any control. The allegation in the SCN about 100% of total trades being non-genuine has been interpreted in an erroneous manner, which is compared to my own trades in my own contract. Furthermore, the percentage of my trades compared to market volume and contracts may have lower in absence of heavy trade volumes on the platform of the Exchange about which I am not aware of nor have the means and resources to find out thereon. It is also submitted that on the sell side the SCN itself alleges 13.20% as non-genuine trades on the sell side when the trades on this leg would have been higher in the market. If the number of days in which my trades are alleged are taken, they are hardly any and that too is purely incidental. For such a small quantity and for the sporadic days, it is too harsh to assume that I had entered into any meeting of minds with the counter party whom I don't even know. I had purchased shares and when the prices started going up, I decided to sell the shares in a bid to gain some profits. No adverse inference be drawn for such intraday trades by me.

6. *With reference to para 9 to para 11 of the Show Cause Notice, I deny that I have violated the provisions of Regulation 3(a), (b), (c), (d), and 4(1), 4(2) (a) of PFUTP Regulations, 2003. Therefore, I humbly request that the present proceedings against me may not be continued and I may be exonerated from all the charges and no penalty be imposed against me under section 15HA of SEBI ACT, 1992, as mentioned in the captioned show cause notice.*

I humbly request that considering all that is stated above the allegations qua me in the Show cause notice be withdrawn and/or I may be exonerated. I crave leave to refer, rely on any other documents and also to make additional submissions in the facts and circumstances of the matter. I further request for a personal hearing to make my representations in the matter."

11. Thereafter, vide email dated October 01, 2021 the Noticee authorised a representative (***AR***) Mr Rajesh Khandelwal, Advocate, M/s Juris Link, for attending the hearing and sent a copy of signed authority letter, the same has been taken on record.

12. Vide Hearing Notice dated October 22, 2021, the Noticee was granted an opportunity of personal hearing on November 09, 2021. In this regard, the noticee sought extra time for additional submissions and personal hearing. Acceding to the request, extra time was provided for additional submissions until November 16, 2021 and opportunity of personal hearing was provided on November 16, 2021.

13. Vide email dated November 16, 2021, the Noticee through its AR *inter-alia* submitted as under:

"…..

b) Further, the Noticee places reliance on the observation of the Hon'ble Securities Appellate Tribunal (SAT) in case of Narendra Vallabhji Bahuva Vs. SEBI (Appel no. 516 of 2019 decided on 14.07.2021) wherein in para 9 of the order, Hon'ble SAT has observed that one single trade cannot lead to a conclusion that the appellant was involved in fraudulent execution of trades with a manipulative intent

c) The impugned trades were executed on the floor of exchange through a registered stock broker who has the requisite software as approved by the Exchange. The entire trading process is like a blind mechanism as far as buying and/or selling of stocks by a client through a broker is concerned. As a client, the Noticee had only instructed broker to buy or sell stocks specifying the quantity and the name of the scrip. Thereafter, it was impossible for the Noticee to know who is/are the counter parties to trades. Even a broker is not aware of the counter party to any trade carried.

d) The trading system prevents a member who places any orders from identifying the counterparty member or client and thus ensures anonymity of trades. The system does not even display details of all the pending orders; rather it only displays the 5 best pending orders. Therefore, at any given point of time, it is impossible to even verify the party & counter party of these transactions. The Noticee further states that there was no alert from the broker or the Exchange, which would prompt him to take any caution or create an alarm to stop trading. Under these circumstances, it is erroneous to come to a conclusion that the Noticee had executed non-genuine trades which resulted in artificial volume.

e) The trades entered into by the Noticee were through his stock broker and that he had a bonafide belief that his stock broker would act within the prescribed parameters of law as applicable.

f) The Noticee submits that the stock broker was in a much better and strategic position to understand the technicalities of the stock market and the scrips. Admittedly, the stock broker never alerted/estopped the Noticee from trading in the alleged illiquid scrips. Hence, by any stretch of imagination it was beyond the knowledge of the Noticee about the said scrips being ill-liquid.

g) The Noticee further states that to the best of his knowledge the trading in their account in stock options on the BSE were executed in a legitimate manner.

h) The Noticee submits that these scripts, in which he traded, were at no time banned and hence there was no bar on trading in the said scripts. Therefore, it would be too farfetched for the Noticee to assume that these stocks are so called "ill-liquid".

i) The Noticee submits that the BSE allowing trading in these stocks renders him bonafide in trading in these stocks. No alert or embargo was set by BSE to even give the Noticee an iota of doubt about the said scrips being illiquid.

j) The Noticee submits there was no meeting of mind with the alleged counter party Tarang Stock Broking Pvt Ltd and that matching of trades is a matter of coincidence.

k) The Noticee further submits that the said trades were executed in the normal course of business and they were in no way related to the alleged counter party. Also, the said SCN has failed to establish any connection between the Noticee and the alleged counter party except for matching of a trade, forming only 1 trade on both the sides, which could also be a chance without any intent and much less malafide. Hence, allegations against the Noticee are based on mere surmises and conjectures. Thus, the Noticee was merely a trader/consumer and that he has been made a victim of the trading mechanism.

l) The Noticee submits that the allegation in the SCN about 100% of total trades being non-genuine has been interpreted in an erroneous manner which is compared to the Noticee's own trades in their own contract. Furthermore, the percentage of Noticee's trades compared to market volume and contracts may have lower in absence of heavy trade volumes on the platform of the Exchange about which the Noticee is not aware of nor do they have the means and resources to find out thereon. If the number of days in which the Noticee's trades are alleged are taken, they are hardly any and that too is purely incidental. For such a small quantity and for the sporadic days, it is too harsh to assume that the Noticee had entered into any meeting of minds with the counter party whom the Noticee doesn't even know. The Noticee had only one buy trade of 52,000 quantity of ANBK15FEB100.00CEW2, which was sold for same quantity thus forming only 1 trade on both sides. He sold the scrip because the prices had gone up and he sought to make profits out of his trades. He has duly accounted for these profits in his Income Tax returns. Thus, the Noticee submits that the Noticee had acted like any prudent and rational investor. No adverse inference be drawn for such intraday trades by the Noticee.

m) Even for sake of assumption, trades are very miniscule to attract any adverse inference.

Therefore, the Noticee humbly requests that a lenient view be taken and the present proceedings qua the Noticee may be dropped and the Noticee may be exonerated from all the charges and no penalty be imposed against the Noticee under section 15HA of SEBI ACT, 1992, as mentioned in the captioned show cause notice."

14. Subsequent to the additional submissions, the hearing was availed online by the Noticee on the scheduled date (November 16, 2021), through his 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 September 18, 2021 and November 16, 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.

15. Subsequently, vide email dated February 04, 2022, the Noticee was provided another opportunity to submit post hearing submissions, if any. However, no submission was made by the Noticee.

16. 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

17. I have carefully perused the charges levelled against the Noticee, his replies and the documents / material available on record. The issues that arise for consideration in the present case are:

    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 after taking into consideration the factors mentioned in section 15J of the SEBI Act, 1992?

FINDINGS

18. Before moving forward, I 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.

19. Further, 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;

20. 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.

21. I note that reversal trades have been considered as those trades in which an entity reverses its sell or buy positions in a contract with subsequent buy or sell 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.

22. I note that the Noticee had executed 2 non-genuine trades in 1 contract on February 09, 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	ANBK15FEB100.00CEW2	0.05	52000	2.05	52000	2	2	14	100	13.20

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

I. Scrip Name: ANBK15FEB100.00CEW2, Trade Date: February 09, 2015

CLIENTNAME	CP_CLIENTNAME	TRADE_TIME	TRADE_RATE	TRADED_QTY
Tarang Stock Broking Services Pvt Ltd	Ashok Kumar Agarwal	13:06:45 HRS	2.05	52000
Ashok Kumar Agarwal	Tarang Stock Broking Services Pvt Ltd	13:49:27 HRS	0.05	52000

(a) I note from the above table that during the investigation period, total 2 trades for 1,04,000 units were executed by the Noticee in the "ANBK15FEB100.00CEW2" contract on February 09, 2015.

(b) The Noticee placed a sell order for 52,000 units at a price of ₹2.05 per unit and the said order was matched with the buy order (which was also for 52,000 units at a price of ₹2.05 per unit) of counterparty client Tarang Stock Broking Services Pvt Ltd. I note that the said sell order by the Noticee was placed at 13:06:44.618336 almost at the same time as that of the entry of the buy order by the Counterparty i.e. 13:06:45.246981. 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 13:06:45.246981 with the counterparty. Thereafter, on the same day at 13:49:26.952336, the Noticee placed a buy order for 52,000 units at a price of ₹0.05 per unit and the said order was matched at 13:49:27.670345 with the same counterparty (i.e. Tarang Stock Broking Services Pvt Ltd), who placed a sell order for the same quantity (i.e. 52,000) and price (i.e. ₹0.05). I note that the said sell order was placed by the counterparty at 13:49:27.670345 almost at the same time as that of the buy 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 February 09, 2015, the Noticee at 13:06:45.246981 entered into 1 sell trade with counter party viz, Tarang Stock Broking Services Pvt Ltd for 52,000 units at a rate of ₹ 2.05 per unit. Thereafter, on the same day, Noticee, at 13:49:27.670345 entered into 1 buy trade with the same counterparty for 52, 000 units at a rate of Rs. 0.05 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 sell trade and 1 buy trade with the same counterparty viz Tarang Stock Broking Services Pvt Ltd, on the same day for the same quantity.

(e) Thus, the Noticee, through its dealing in the contract viz, "ANBK15FEB100.00CEW2" during the investigation period, executed 2 non genuine trades and thereby, the Noticee generated artificial volume of 1,04,000 units which is 13.20% of the volume traded in the said contract in the market during the investigation period.

24. From the above pattern of trades, I note that the Noticee had sold and bought option contract with the same counter party and also reversed its trade on same day, at substantial price difference. Such pattern of dealings suggests beyond doubt that they were not driven by market factors. The selling 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 sell and buy 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.

25. As noted above, Noticee had executed non-genuine trades in 1 contract viz., ANBK15FEB100.00CEW2, 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 sell rates and buy rates considering that the trades were reversed within a short span of time on the same day.

26. 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.

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

28. 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.

29. 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.”*

30. Noticee submitted that the allegations of 2 reversal trades is misplaced as merely 52,000 units were bought and sold by him for a profit of Rs 2 per unit thereby giving him profit of Rs 1,04,000/- which is too miniscule and from one off trade with contra positions. The Noticee further put its reliance on the observation of Hon’ble SAT in case of *Narendra Vallabhji Bahuva Vs. SEBI* (Appeal no. 516 of 2019 decided on

14.07.2021) wherein Hon'ble SAT observed that one single trade cannot lead to a conclusion that the appellant was involved in fraudulent execution of trades with a manipulative intent. In this regard, I note that the Investigation has relied upon the details provided by BSE. The trade log clearly indicates that there were 2 trades (1 Sell trade and 1 Buy trade) in the said contract with the same counterparty, I also note that there was no modification of either price or quantity by either the Noticee or the counterparty. Thus, the contention of Noticee is devoid of merit.

31. 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."*

32. 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."

33. 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 his 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..."

34. 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."*

35. 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."

36. 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.

37. 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.

38. 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.

39. 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."*

40. 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?

41. 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 ANBK15FEB100.00CEW2 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.

42. 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.

43. 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?

44. 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.

45. 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.

46. 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

47. 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. Ashok Kumar Agarwal, 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.

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

49. 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

50. 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

51. 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.

52. 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 23, 2022 | **Mohammad Atif Alvi**
Mumbai | **Adjudicating Officer**