BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

ADJUDICATION ORDER NO. Order/MA/AS/2021-22/15506

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

In respect of

Ashok Kumar Gang and Sons (HUF)

(PAN: AABHA1946C)

Jain Stores, East Market

Karimganj - 788711, Assam

In the matter of Trading in Illiquid Stock Options on BSE

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 Gang and Sons (HUF) (*hereinafter* referred to as '***Noticee***') was one of the various entities who indulged in execution of non-genuine trades in Stock Options Segment of BSE during the investigation period. The following

points narrate the dealings of the Noticee during the investigation period and the allegations against it for execution of non-genuine trades.

4. As regards the dealings of Noticee in the Stock Options segment of BSE during the Investigation Period, it was observed that the Noticee had traded in 1 unique contract, in which the entity had allegedly executed total of 2 non-genuine trades, which resulted in artificial volume of total 1,76,000 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	IFCI15JUN18.00CEW3	5	88000	8.10	88000	100	6.43

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

   a) During the Investigation Period, 2 trades for 1,76,000 units were executed by the Noticee in the said contract on 17/06/2015.

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

   c) Thus, Noticee through dealing in the contract viz, "IFCI15JUN18.00CEW3" during the Investigation Period, executed 2 non genuine trades and thereby allegedly generated artificial volume of 1,76,000 units which is 6.43% 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/17598/1/2021 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. The Noticee did not reply within the time line prescribed in the SCN, Accordingly, vide Hearing Notice dated October 22, 2021, Noticee was granted an opportunity of personal hearing on November 09, 2021. In response, the Noticee through its Authorised Representative (***AR***) Ms Anjali Agarwal, Advocate, submitted that it did not receive the SCN and requested for adjournment of personal hearing until November 18, 2021 and sough extra time to submit response to the SCN. Acceding to the request, vide email dated November 08, 2021, Noticee was granted final opportunity of personal hearing on November 18, 2021.

11. The Noticee vide email dated November 12, 2021 submitted its response to the SCN and the same is summarised below:

- All impugned trades were executed initially in some other Client Code, and that code was modified by the Trading Member eventually, with client code of the Noticee viz. A306. As the client code modification was done without Noticee's knowledge, the responsibility of explanation lies on the trading member.

- Annexure B to the SCN contains only the integrated trade log of all trades of the Noticee, and not the entire order book at the time of execution of trades. In such a situation, Noticee is unable to defend its case effectively.

- As per Rule 3 of Adjudication Rules, 'Board' is required to form an opinion that there are grounds for adjudging under any provision of Chapter VI A of the SEBI Act, 1992, before appointment of Adjudicating Officer (AO). However, in the instant matter, such opinion has been formed mechanically.

- On the basis of multiple features of the impugned trades, *inter-alia* including non-matching of time and quantity between orders and counterparty orders, it can be inferred that the impugned trades were genuine and executed in normal course of business.

- The impugned trades were subject to regulatory supervision of BSE and were cleared by the Clearing Corporation, which indicates the trades were genuine.

- Execution of reversal trades in itself does not indicate non-genuineness of such trades. There was no bar by SEBI or BSE for execution of such trades. Noticee relied upon the judgement of the Hon'ble SAT in the matter of *SEBI vs Ketan Parekh* in this regard.

- There is absence of proper degree of proof required to establish the impugned violations. Factors including connection between counterparties, trading patterns etc must be considered for establishing the charges. Noticee relied upon the judgement of the Hon'ble Supreme Court in the matter of *SEBI vs Kishore R Ajmera* in this regard.

- Noticee was not connected to counterparties to the impugned trades.

- There was no mechanism to deter, nor there was any note of caution by BSE as regards to the impugned trades.

- The allegations made in the SCN are general, and no specific point in regulation 4 of the PFUTP Regulations, 2003 has been alleged.

- Unfair trade practice as judicially interpreted by the Hon'ble Supreme Court in the matter of *SEBI vs Kanaiyalal Baldevbhai Patel & Ors* (2017 15 SCC 1) implies that there has to be violation of ethical standards or absence of good faith between the parties. Both these ingredients are absent in the instant matter.

- The instant SCN was issued after a delay of more than 6 years, and such delay is solely attributable to SEBI which has caused serious prejudice to the Noticee. Noticee relied upon the judgement of the Hon'ble Supreme Court in the matter of *SEBI vs Ashok Shivlal Rupani & Anr*.

- SEBI has not initiated any enquiry or proceedings against BSE or the trading members despite the Order of the Hon'ble Supreme Court dated July 01, 2016, which indicates bias against the Noticee.

- Section 15 HA of the SEBI Act, 1992 applies only if a person indulges both in fraudulent and unfair trade practices relating to securities, which have not been committed in the instant matter.

- Appointment of the Adjudicating Officer has not been made to inquire and adjudge fraudulent and unfair trade practices. No specific charge has been made against the Noticee vide the instant SCN. In this regard, Noticee relied upon the judgement of the Hon'ble Supreme Court in the matter of *Commissioner of Central Excise vs M/s Brindavan Beverages (P) Ltd and Ors*.

12. The personal hearing in the matter was held on November 18, 2021 and was availed online by the Noticee, through its AR. The hearing was conducted through video conference mode using Webex platform and the contents of the SCN and the allegations levelled against the Noticee were explained to the AR. The AR reiterated the submissions of the reply dated November 12, 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.

13. 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.

14. 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

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

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

    (b) Does the violation, if any, attract monetary penalty under section 15HA of the SEBI Act, 1992?

    (c) If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in section 15J of the SEBI Act, 1992?

FINDINGS

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

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

SEBI Act, 1992 which provides a time limit for taking cognizance of a breach of the provision of the SEBI Act, 1992 and Rules and Regulations made thereunder. In this regard, it is pertinent to note that, in the matter of ***SEBI Vs Bhavesh Pabari*** {(2019) SCC Online SC 294}, the Hon'ble Supreme Court of India has, inter alia, held as follows:

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

18. Further, I note that the Hon'ble SAT in the matter of ***Pooja Vinay Jain vs. SEBI*** (Appeal No. 152 of 2019, Date of Decision - March 17, 2020) held that,

    "The record would show that all the documents concerning the defense of the appellant were filed by her before the AO. Therefore, for want of any prejudice the proceedings cannot be quashed simply on the ground of delay in launching the same".

19. I also note the following ruling of the Hon'ble SAT in the matter of ***Rajendra Aggarwal v. SEBI***, decided on September 17, 2021, in which the appellant's contention regarding 4 years time taken in issuance of SCN was rejected and it was held –

    "The investigation was against a large number of entities which apparently took time and ultimately notices were issued to 35 entities. Consequently, we do not find any inordinate delay in the issuance of the show cause notice nor do we find any merit in the contention that there was an inordinate delay."

20. In this background, I also note that a total of 14,720 entities were involved in the generation of artificial volume by executing non-genuine / reversal trades in the illiquid Stock Options segment at BSE during the investigation period. Initiation of proceedings against the said 14,720 entities is a humungous task and therefore, considering the available resources, the proceedings were initiated against the entities in a staggered manner. I also note that SEBI had framed a settlement scheme in accordance with the provisions of the SEBI (Settlement Proceedings) Regulations, 2018 which provided a onetime opportunity to the concerned entities to settle the proceedings in the matter of dealings in illiquid Stock Options at BSE. I observe that the said scheme was kept open for a period of, initially, 3 months (commencing from August 01, 2020) and then extended till December 31, 2020 to enable the entities to avail the benefit of the scheme in view of the disruptions caused due to the Covid-

19 pandemic. Subsequently, adjudication proceedings against the entities who did not opt for the settlement in terms of the scheme (including the Noticee) were initiated and, accordingly, the SCN was issued against the Noticee on August 03, 2021.

21. In view of the aforesaid and considering the facts of the present matter, I do not find any merit in the submission of the Noticee that SCN was issued after a delay of more than 6 years.

22. Before proceeding further, I would like to refer to the relevant provisions of the PFUTP Regulations, 2003 as below:

PFUTP Regulations, 2003

3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

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

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

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

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

4. Prohibition of manipulative, fraudulent and unfair trade practices

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

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

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

23. I note that the allegation against the Noticee is that, while dealing in the stock option contracts at BSE during the IP, it had executed reversal trades which were allegedly non-genuine trades and the same had resulted in generation of artificial volume in one stock option contract at BSE. Reversal trades are

considered to be those trades in which an entity reverses its buy or sell positions in a contract with subsequent sell or buy positions with the same counterparty during the same day. The said reversal trades are alleged to be non-genuine trades as they are not executed in the normal course of trading, lack basic trading rationale, lead to false or misleading appearance of trading in terms of generation of artificial volumes and hence are deceptive and manipulative.

24. Further, Noticee contended that Annexure B to the SCN contained only the integrated trade log of all trades of the Noticee, and not the entire order book at the time of execution of trades, so that Noticee was unable to defend its case effectively. In this regard, I note that the documents relied upon in the SCN were provided as Annexures to the SCN as per the following details:

S.No.	Particular	Annexures to SCN
1	Details of all the trades of Noticee in Stock Option Segment of BSE during relevant period.	B
2	Details of all the alleged non-genuine trades of Noticee in	C
3	Summary of dealings of the Noticee in contracts wherein	D

I also rely on the judgement of the Hon'ble SAT in the matter of ***Mayrose Capfin Private Limited Vs. SEBI*** (decided on 30.03.2012) wherein it was held that:

"....................the principles of natural justice require that the inquiry officer should make available such document and material to the delinquent on which reliance is being placed in the inquiry. It is not necessary for the inquiry officer to make available all the material that might have been collected during the course of investigation but has not been relied upon for proving charge against the delinquent. No prejudice can, therefore, be said to have been caused to the appellant on this count...."

25. Further, the Hon'ble SAT, in its order dated February 12, 2020, in the matter of ***Shruti Vora vs. SEBI*** held that:

"Reliance was also made of a decision of the Supreme Court in Union of India and Others vs E. Bashyan (1988) 2 SCC 196 which has no bearing to the controversy involved in the present context, in as much as, the said decision relates to a disciplinary proceedings wherein the Supreme Court observed that the inquiry report was required to be made available to the delinquent. An inquiry report is totally distinct and different from an investigation report. The inquiry report considers all the materials in the inquiry proceedings which

form the basis of the final order and therefore the said report is required to be made available to the delinquent. In the instant case, the show cause notice relies upon certain documents which have been made available. Thus the investigation report is not required to be supplied".

"The learned counsel has also placed reliance upon a minority view of this Tribunal in Price Waterhouse vs Securities and Exchange Board of India decided by this Tribunal in Appeal No. 8 of 2011 on June 1, 2011 wherein it was observed that fairness demands that the entire material collected during the course of investigation should be made available for inspection to the person whose conduct was in question and that said material should also be supplied. In our opinion, the said minority view is directly against the decision of the Supreme Court in Natwar Singh case (supra)".

"A bare reading of the provisions of the Act and the Rules as referred to above do not provide supply of documents upon which no reliance has been placed by the AO, nor even the principles of natural justice require supply of such documents which has not been relied upon by the AO. We are of the opinion that we cannot compel the AO to deviate from the prescribed procedure and supply of such documents, which is not warranted in law. In our view, on a reading of the Act and the Rules we find that there is no duty cast upon the AO to disclose or provide all the documents in his possession especially when such documents are not being relied upon."

26. I also note that the Hon'ble SAT in the matter of ***Anant R Sathe Vs SEBI*** (Appeal No. 150 of 2020) vide Order dated July 17, 2020 reaffirmed the principle elucidated in the judgment of Shruti Vora's case, which has been reproduced above and held 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".

    Therefore, I note that documents relied upon in the matter were duly provided to the Noticee along with SCN dated August 03, 2021 in the matter, so that principles of natural justice have been complied with and the contentions of Noticee in this regard are without merits. Noticee has also contended that there is absence of proper degree of proof required to establish the impugned violations. I note that the evidences relied upon in the instant matter were provided as Annexures to the SCN, which have been relied upon to allege the charges framed in the matter.

27. Noticee has also contended that as per Rule 3 of Adjudication Rules, Board is required to form an opinion that there are grounds for adjudicating under any

provision of Chapter VI A of the SEBI Act, 1992, before the matter was conveyed vide communique dated June 28, 2021. The communique mandated the undersigned to adjudicate upon the matter against Noticee as regards to the violation of impugned provisions of the PFUTP Regulations, 2003, so that the contentions in this regards are not relevant to the present proceedings. Therefore, I note that the preliminary contentions raised by Noticee above are liable to be rejected, and I now proceed to consider the matter on merits.

28. I note that the Noticee had executed 2 non-genuine trades in 1 contract on June 17, 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	IFCI15JUN18.00CEW3	5	88000	8.1	88000	2	2	14	100	6.43

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

I. Scrip Name: IFCI15JUN18.00CEW3, Trade Date: June 17, 2015

CLIENTNAME	CP_CLIENTNAME	TRADE_TIME	TRADE_RATE	TRADED_QTY
Ashok Kumar Gang and Sons (HUF)	Sai Ram Services	13:03:19 HRS	5	88000
Sai Ram Services	Ashok Kumar Gang and Sons (HUF)	13:03:25 HRS	8.1	88000

(a) I note from the above table that during the investigation period, total 2 trades for 1,76,000 units were executed by the Noticee in the "IFCI15JUN18.00CEW3" contract on June 17, 2015.

(b) The Noticee placed a buy order for 88,000 units at a price of ₹5 per unit and the said order was matched with the sell order (which was also for 88,000 units at a price of ₹5 per unit) of counterparty client Sai Ram Services. I note that the said buy order by the Noticee was placed at 15:03:19.267338 almost at the same time as that of the entry of the sell order by the Counterparty i.e. 15:03:19.314146. 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 got executed into trade at 15:03:19.314146 with the counterparty. Subsequently within fraction of seconds (i.e.06 seconds) from the above trade, at 15:03:25.157906, the Noticee placed a sell order for 88,000 units at a price of ₹8.10 per unit and the said order was matched at 15:03:25.314304 with the same counterparty (i.e. Sai Ram Services), who placed a buy order for the same quantity (i.e. 88,000) and price (i.e. ₹8.10). I note that the said buy order was placed by the counterparty at 15:03:25.314304 almost at the same time as that of the sell order placed by the Noticee i.e. 15:03:25.157906. 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 June 17, 2015, the Noticee at 15:03:19.314146 entered into 1 buy trade with counter party viz, Sai Ram Services for 88,000 units at a rate of ₹ 5 per unit. Thereafter, on the same day, within fraction of seconds (6 seconds) from the above trade, Noticee, at 15:03:25.314304 entered into 1 sell trade with the same counterparty for 88, 000 units at a rate of ₹8.10 per unit.

(d) From the above, it is noted that while dealing in the said contract during the investigation period, the Noticee executed reversal trades through 1 buy trade and 1 sell trade with the same counterparty viz Sai Ram Services, on the same day for the same quantity.

(e) Thus, the Noticee, through its dealing in the contract viz, “IFCI15JUN18.00CEW3” during the investigation period, executed 2 non genuine trades and thereby, the Noticee generated artificial volume of 1,76,000 units which is 6.43% of the volume traded in the said contract from the market during the investigation period.

30. From the above pattern of trades, I note that the Noticee had bought and sold option contract with the same counter party and also reversed its trade in fraction of seconds (6 seconds) from earlier buy trade, at substantial price difference. Such pattern of dealings suggests beyond doubt that they were not driven by market factors. The buying of illiquid stock options by the Noticee

and subsequent reversal trade with the same counterparty for the same quantity, within 6 seconds, with a significant difference in buy and sell value of stock options, where order time, order price and order quantity were matched by both the parties for both legs of the reversal trades, in itself, exhibits abnormal market behaviour and defies economic rationality. Therefore, I am inclined to note that the aforesaid trades of Noticee were non genuine and have created false and misleading appearance of trading in terms of artificial volume in stock options and therefore the same are manipulative and deceptive in nature.

31. As noted above, Noticee had executed non-genuine trades in 1 contract viz., IFCI15JUN18.00CEW3, where all the trades were non genuine trades and the Noticee contributed to 6.43% artificial volumes. Non genuine trades executed by the Noticee in above contracts had significant differential in buy rates and sell rates considering that the trades were reversed within a short span of time on the same day.

32. 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.

33. Noticee has contended that execution of reversal trades in itself does not indicate non-genuineness of such trades, and that there was no bar by SEBI or BSE for execution of such trades. Noticee relied upon the judgement of the Hon'ble SAT in the matter of *SEBI vs Ketan Parekh* in this regard. In this regard, I note that all the trades executed by Noticee in the impugned contracts were in the form of reversal trades, in which the buy and sell rates had substantial difference without any trading strategy or significant changes in price of underlying scrip to justify the same as per the records. I note that considering the nature of trades in *toto* along with attending circumstances, it is discernible that the aforesaid reversal trades were non-genuine, and were executed without the intention of mere change in rights to exercise the impugned contracts. Therefore, I note that aforesaid contentions are liable to be set aside on the above grounds.

34. 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."

35. 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."

36. Noticee has *inter-alia* contended that it had no connection with the counterparties to the impugned trades. In this regard, I note that it is not mere coincidence that Noticee could match its trades with the same counterparty with whom it had undertaken first leg of the impugned trades. This is the outcome of meeting of minds elsewhere and it was a deliberate attempt to deal in such a fashion. I note in matters dealing with violation of PFUTP Regulations, 2003, the reason, as regards execution of non-genuine trades might not be forthcoming. However, the correct test instead, is one of preponderance of probabilities. Here I would like to rely on the judgment of Hon'ble Supreme Court in ***SEBI v Kishore R Ajmera*** (AIR 2016 SC 1079) decided on February 23, 2016, wherein it was held that –
"…*in the absence of direct proof of meeting of minds elsewhere in synchronized transactions, the test should be one of preponderance of probabilities as far as adjudication of civil liability arising out of the violation of the Act or provision of the Regulations is concerned. The conclusion has to be gathered from various circumstances like that volume of the trade effected; the period of persistence in trading in the particular scrip; the particulars of the buy and sell orders, namely, the volume thereof; the proximity of time between the two and such other relevant factors. The illustrations are not exhaustive..."*

37. The Hon'ble Supreme Court further held in the same matter that –

"It is a fundamental principle of law that proof of an allegation levelled against a person may be in the form of direct substantive evidence or, as in many cases,

such proof may have to be inferred by a logical process of reasoning from the totality of the attending facts and circumstances surrounding the allegations/charges made and levelled. While direct evidence is a more certain basis to come to a conclusion, yet, in the absence thereof the Courts cannot be helpless. It is the judicial duty to take note of the immediate and proximate facts and circumstances surrounding the events on which the charges/allegations are founded and to reach what would appear to the Court to be a reasonable conclusion therefrom. The test would always be that what inferential process that a reasonable/prudent man would adopt to arrive at a conclusion."

38. Noticee has *inter-alia* contended that the impugned trades were subject to regulatory supervision of BSE and were cleared by the Clearing Corporation, which indicates that the trades were genuine. Noticee has also contended that there was no mechanism to deter, nor there was any note of caution by BSE as regards to the impugned trades. I note that instant allegations pertain to the pattern exhibited by trades carried out by Noticee on the F&O segment of BSE, and non-compliance of Noticee with rules and regulations of BSE *per se* has not been alleged. I also note that the obligation to ensure genuineness of the impugned trades lay on the Noticee notwithstanding any warning, note of caution etc issued to Noticee by BSE. Therefore, I note that contentions of Noticee in this regard are devoid of merits.

39. Noticee has contended that the allegations made in the SCN are general, and no specific point in regulation 4 of the PFUTP Regulations, 2003 has been alleged. Noticee has also contended that appointment of the Adjudicating Officer in the instant matter has not been made to inquire and adjudge fraudulent and unfair trade practices, and that no specific charge has been made against the Noticee vide the instant SCN. In this regard, Noticee relied upon the judgement of the Hon'ble Supreme Court in the matter of *Commissioner of Central Excise vs M/s Brindavan Beverages (P) Ltd and Ors.* I note that the allegations against the Noticee have been cogently spelt out in the SCN, wherein it has been alleged that Noticee executed non-genuine reversal trades in 1 stock options contract leading to generation of artificial volume in the aforesaid contracts, and therefore, resulting in violation of impugned provisions of the PFUTP Regulations, 2003. Therefore, I note that the role of Noticee *qua* execution of reversal trades has been clearly laid out in the SCN, so that contentions of Noticee in this regard are without merits.

40. Noticee has contended that its trades created only miniscule volume which comprised low percentage of total market volume and were not sufficient to contribute artificial volume to the market. I note that Noticee's trades in the impugned contracts contributed 6.43% to the total market volume generated

during the IP in the contract. Further, Noticee's trades contributed 6.43% of the artificial Volume generated by Noticee in the contract to total Volume in the Contract, which indicates that the impugned contracts were thinly traded and that Noticee contributed substantially to artificial volume in such contracts during the IP.

41. Noticee has also contended that all impugned trades were executed initially under some other Client Code, and that the Client Code was modified by the Trading member to client code of the Noticee viz. A306 eventually. Noticee has submitted that as the client code modification was done without its knowledge, the responsibility of explanation lies on the trading member. I note that the Client Codes mentioned under heading MODIFIED_CLIENT (column AJ of Annexure C to the SCN) represent the codes corresponding to the client who executed the trades, and which are relevant as regards to the instant considerations. The client codes mentioned under the heading of OLD_CLIENT are irrelevant as regards instant considerations, so that Noticee's submissions represent incorrect understanding of the relevance of the data in the referred column/ heading, and the contentions in this regards are liable to be rejected.

42. Noticee has also contended that section 15 HA of the SEBI Act, 1992 applies only if a person indulges both in fraudulent and unfair trade practices relating to securities, which have not been committed in the instant matter. I note that the Hon'ble SAT has already upheld SEBI Adjudication Orders passed in the matter of illiquid stock options in respect of various entities, so that there cannot be a dispute as regards to the applicability of legal provisions in the instant matter, and the contentions therefore are without merits.

43. Therefore, the trading behaviour of the Noticee confirms that such trades were not normal and wide variation in prices of the trades in the same contract in a short time without any basis for such wide variation, all indicate that the trades executed by the Noticee were not genuine trades and being non-genuine, created an appearance of artificial trading volumes in respective contracts. In view of the above, I find that the allegation of violation of regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of PFUTP Regulations, 2003 by the Noticee stands established. The Hon'ble Supreme Court of India in the matter of ***SEBI Vs. Shri Ram Mutual Fund*** [2006] 68 SCL 216(SC) decided on May 23, 2006 held that - *"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant…".*

44. In view of the same, I am convinced that it is a fit case for imposition of monetary penalty on the Noticee under the provisions of section 15HA of the SEBI Act, 1992 which read 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 [2][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

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

Factors to be taken into account by the adjudicating officer.

15J. While adjudging quantum of penalty under section 15-I, 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.

46. I observe that the material available on record does not quantify any disproportionate gains or unfair advantage, if any, made by the Noticee and the losses, if any, suffered by the investors due to such violations on part of the said Noticee. However, Noticee has entered into 2 non-genuine trades in 1 stock option contract which demonstrates the repetitive nature of default on its part.

47. Therefore, I note that Noticee indulged in execution of reversal trades in stock options contracts in the IP which were non-genuine and created false and misleading appearance of trading in terms of artificial volumes in stock options, leading to violation of regulations 3(a),(b),(c),(d) and 4(1),(2)(a) of the PFUTP Regulations, 2003.

ORDER

48. 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 Gang and Sons (HUF), 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.

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

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

ENFORCEMENT ⟹ Orders ⟹ Orders of AO ⟹ Pay Now

51. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to "The Division Chief (Enforcement Department 1 DRA-6), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C – 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.". The Noticee shall also provide the following details while forwarding DD / payment information:

- Name and PAN of the Noticee
- Name of the case / matter
- Purpose of Payment – Payment of penalty under AO proceedings
- Bank Name and Account Number
- Transaction Number

52. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, SEBI may initiate consequential actions including but not limited to recovery proceedings under section 28A of the SEBI Act, 1992 for

realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties.

53. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticee and to the Securities and Exchange Board of India, Mumbai.

Date: March 23, 2022
Place: Mumbai

MOHAMMAD ATIF ALVI
ADJUDICATING OFFICER