BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

ADJUDICATION ORDER NO. Order/RJ/PG/2021-22/14940

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

In respect of:
Suraj Mal Manoj Kumar HUF
[PAN: AAFHS1397K]
98, OLD CHINA BAZAR STREET
KOLKATA WEST BENGAL
PIN: 700 001

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. Suraj Mal Manoj Kumar

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 dealings of the Noticee during the investigation period and the allegations against the Noticee for execution of non-genuine trades are narrated in the following paragraphs.

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 has allegedly executed total of 2 non-genuine trades, which resulted in artificial volume of total 1,64,000 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	KARB15MAR140.00CEW2	0.5	82000	2.3	82000	100%	6.75%

6. From the above table, the following is observed as regards the dealings of the Noticee:
   a) During the Investigation Period, 2 trades for 1,64,000 units were executed by the Noticee in the said contract on February 23, 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, Chakradhar Treders Private Limited on the same day.

c) Thus, Noticee, through its dealing in the contract viz, "KARB15MAR140.00CEW2" during the Investigation Period, executed 2 non genuine trades and thereby allegedly generated artificial volume of 1,64,000 units which is 6.75% 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 Securities and Exchange Board of India (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 July 02, 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 the 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. PD1/AO/RLJ/PG/19894/1/2021 dated August 17, 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 it 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 it. The SCN was sent to the Noticee vide Speed Post AD and was duly served on the Noticee.

10. In reply to the SCN, the Noticee submitted the letter dated September 02, 2021. Vide the said letter, the Noticee also sought some documents and authorised its representative to attend hearing and make written as well as oral submissions in the instant matter. The said letter, *inter alia,* reads as under:

"………..

We vehemently deny and refute the allegation made in the Show Cause Notice. We further deny and refute that our HUF have violated the provision of Regulation 3(a), (b), (c), (d), 4(1) and 4(2) (a) of the SEBI PFUTP Regulations, 2003 as alleged in the SCN. Before we file our detailed submissions to the SCN, we request your goodself to provide us copy of the Investigation Report, Original Trade and Order Log (In Excel file) and Price Volume Data relied by your goodself while issuing the SCN. The copy enclosed with the SCN (Annexure B) is not legible.

Since in the SCN, an allegation has been made against our HUF for execution of one reversal trade only (one buy and one sell trade), we request your goodself to provide the prima facie grounds recorded by the Ld. WTM for holding the inquiry against our HUF.

………"

11. In reply to the aforesaid letter, vide letter dated September 14, 2021, the Noticee was communicated that all the documents that have been relied upon in respect of the allegation made against it vide the SCN have already been provided to the Noticee as Annexures enclosed therein and no additional document was relied upon. Further, Noticee's attention was drawn to the findings of the Hon'ble

Securities Appellate Tribunal (hereinafter referred to as '**SAT**'), made in its order dated February 12, 2020, in the matter of **Shruti Vora vs. SEBI**:

"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."

12. It was also brought to the attention of the Noticee that the aforesaid finding have also been reaffirmed by the Hon'ble SAT in its order dated July 17, 2020, in the matter of **Anant R. Sathe vs. SEBI**. Vide the aforesaid letter dated September 14, 2021, the Noticee was also granted an additional time to file its reply to the SCN and an opportunity of hearing was also granted on October 08, 2021. However, the Noticee failed to submit reply and also failed to avail the opportunity of hearing.

13. Subsequently, vide telephonic request, Authorised Representative ('**AR**') of the Noticee requested for additional time to file reply to the SCN. Vide email dated October 08, 2021, in the interest of justice, the Noticee was granted additional time of 1 week to submit reply to SCN and another opportunity of hearing was granted on October 22, 2021.Further, excel sheet of the trade log was provided to the AR vide the said email.

14. In reply to SCN, the Noticee vide email dated October 21, 2021 submitted the copy of letter dated October 08, 2021. The signed letter was received on October 21, 2021 and the same has been taken on record. Vide the said letter, the Noticee, *inter alia,* submitted as under:

"……………

With reference to the above, our HUF i.e. SURAJ MAL MANOJ KUMAR HUF (Noticee) has received the Show Cause Notice dated 17-08-2021 (hereinafter referred to as the "SCN") in the captioned matter. In response to the SCN- the Noticee vide letter dated 02-09-2021 denied the allegation made in the SCN against the Noticee and further requested to provide the copy of the Investigation Report, Original Trade and Order Log (In Excel file) and Price Volume Data relied by your goodself while issuing the SCN. Vide Email dated 08-10-2021. I was provided copies of Trade Log. However, my request to provide copy of Investigation Report and Price Volume Data has not been acceded. Please note that as per the provisions of Regulations 9 of the Securities Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as "PFUTP Regulations"), the investigating authority is to submit a report to the appointing authority on the completion of investigation taking into account all the relevant facts. Thereafter, under Regulation 10 of the PFUTP Regulations, the Board, on considering the report under Regulation 9 of the PFUTP Regulations, if it is satisfied that there has been a violation of the regulations and after giving a reasonable opportunity of hearing to the person concerned, is empowered to issue directions. Hence, it is urged that the Investigation Report under Regulation 9 is the foundation of the action which is initiated under Regulation 10 and hence, a copy of the investigation report must be supplied. Since, the copy of the Investigation Report and other requisite documents has not been supplied, the principle of natural justice has not been followed in the present proceeding. On this ground alone the SCN should be disposed-off without passing any adverse order.

Without prejudice to the aforesaid, the Noticee is submitting its reply on the basis of available documents and data. The reply of the Noticee to the captioned SCN as follows:

1. *At the outset, the Noticee denies and refutes each and every allegation contained in the captioned SCN against the Noticee unless it is specifically admitted by the Noticee in its Reply. Nothing should be deemed as admitted by the Noticee for reason of any non-specific traverse of any allegation contained in the SCN.*
2. *In the captioned SCN, it is alleged that the Noticee had executed as many as 2 non genuine trades (1 buy and 1 sell trades) in 1 Unique Contact in the Option segment of the BSE and therefore generated artificial volume of 1,64,000 shares / units during the period of 01-04-2014 to 30-09-2015.*
3. *In the captioned SCN, the Noticee has been called upon to show cause as to why an inquiry should not be held against the Noticee in terms of Rule 4 of the SEBI (Procedure for Holding Inquirv and Imposine Penalties by Adjudicating Officer) Rules, 1995 read with Section 15- I of the SEBI Act, 1992 and why penalty should not be imposed under section 15HA of the SEBI Act, 1992 for the alleged violation of Regulation 3(a),(b),(c),(d) and 4(1), 4(2)(a) of SEBI PFUTP Regulations.*
4. *In the captioned SCN it is alleged that SEBI had observed large scale reversal of trade in option segment of BSE leading to creation of artificial volume and SEBI had conducted an investigation into the trading activities of certain entities in illiquid stock option at BSE during the Investigation Period i.e. 01-04-2014 to 30-09-2015. The Noticee wishes to submit that the Trades of the Noticee in the Option Segment of BSE during the Investigation Period comprising of 18 months was restricted to 1 day only.*
5. *In the captioned SCN it is further alleged that during investigation it had observed total 2,91,643 Tradescomprising substantial 81.40% of all trades executed in Stock Option Segment of BSE during the Investigation Period the Noticee's trades found to be non-genuine. In this connection, it is very pertinent to mention that SEBI itself is disputing the said figure. In couple of Notices issued to various entities by SEBI,*

SEBI mentioned the total alleged trades were 2,91,744 (81.41 %).Please clarify which figure is correct. The Noticee wishes to submit that the Noticee has not been provided any material/ data of total market volume in Stock Option Segment of BSE during the Investigation Period. The Noticee has also not been provided Trade and Order Log for total 2,91.643 Trades comprising 81.40% of all trades executed in Stock Market Segment of BSE during the Investigation Period which The Noticee's 2 trades (l buy and I sell trade) allegedly found to be non- genuine trades. The Noticee, however, refutes that the Noticee had executed any non-genuine trades which resulted into creation of artificial volume.

6. *It is further pertinent to mention that Trades of the Noticee in option segment of BSE were only in well-known Company. All the Trades in option segment of BSE executed by the Noticee on the anonymous screen based trading platform provided by BSE wherein identity of the counter parties remain undisclosed. Hence, the question of any non-genuine trade does not arise at all unless it is proved that such Trades executed by the Noticee.in connivance with any counter party. However, the counter party whose name has been disclosed now in the captioned SCN is completely unknown to the Noticee.*
7. *The Noticee further wishes to submit that BSE has a sophisticated surveillance system and if there had been any reversal of trade, the system could have alarmed BSE to take corrective measures to restrain any non-genuine trades happening in its trading platform. However, the Noticee has not received any warning or caution letter from BSE for any of the trades executed by the Noticee in its option segment during the period ofinvestigation. Thus, the allegation of execution of non-genuine trades by the Noticee in option segment of BSE which purportedly resulted into creation of artificial volume is totally farfetched and is based on presumptions, assumptions, surmises and conjectures.*
8. *The Noticee further wishes to submit that the Noticee had meticulous track record oftrading in the securities market and except the captioned SCN the Noticee has not received even a warning letter prior to the issue of the captioned SCN.*
9. *It is further submitted that it is a matter of common knowledge that the option trading platform of the BSE has not been as vibrant as NSE. In such a situation it is just coincidence that the Orders placed by the Noticee might have been matched. However, nowhere in the entire SCN it is alleged that the Noticee had any connection/association relationship with the counter party. The Noticee has heard the name of the counterparty for the first time after receipt of captioned SCN. In absence of any such connection/ association/ relationship with the counter party totrades of the Noticee (whose namethe Noticee has come to know only after receipt of the captioned SCN), it is totally illogical and irrational to allege that trades of the Noticee with the said counter partyare non-genuine trades which resulted into creation of any artificial volume.*
10. *The Noticee draws your kind attention towards Annexure A i.e. copy of Order communicating appointment of Adjudicating Officer. Vide letter dated 03-09-2021 the Noticee has requested to provide prima facie reason recorded by the Competent Authority. However, the request of the Noticee has been totally overlooked.*
11. *It is further submitted that complete materials documents in support of the allegation contained in the captioned SCN have not been made available to the Noticee. Hence, the Noticee is not in position to file a proper Reply effectively answering the charges levelled against the Noticee in the Captioned SCN. Moreover, not providing complete materials documents to the Noticee is in violation of Principles of Natural Justice.*

12. *It is submitted that in Para 3 of the Captioned SCN it is alleged that SEBI had observed large scale of reversal of trades in Stock Options segment of BSE leading to creation of artificial volume. However, it is not made clear as to what constitutes a reversal trade or what the definition of reversal trade is. No document or information has been provided in this regard.*
13. *In Para 4 of the SCN, it has been alleged that total of 2, 91,643 trades comprising 81.38% of all the trades executed in BSE Stock Options Segment were trades which involved reversal of buy and sell position by the clients and counterparties in a contract..." In this context the Noticee wishes to submit that no material whatsoever has been provided to the Noticee to show such artificial volume of 81.38% of the total trades executed in the BSE Stock Option Trading segment during the Investigation Period. Thus, the allegation made in this Para of the SCN are vague, bald and devoid of any substance.*
14. *It is also submitted that the trades executed by the Noticee in the BSE Stock Option Segment were in the normal course of business devoid of any fraudulent intentions. In the derivative segment, only those stock and indices are permitted which are very liquid and there is a robust risk mitigation mechanism is in place. Since the Noticee had traded in the Options of very well-known Company which has tradeable position in the market, there was no reason to doubt credibility of the platform provided by the Exchange as approved by SEBI. The allegation of trades being non-genuine has no basis as your goodself has failed to provide any evidence to prove that there was a misleading appearance created in the market by the trades executed by the Noticee.*
15. *In Paras5 to 8 of the Captioned SCN it is stated that the Noticee had executed trades in I Unique Contract, wherein 2 trades (1 buy and 1 sell trades only) of the Noticee were non-genuine trades. The Noticee says and submits that it is beyond the comprehension of the Noticee that how an allegation of fraud can be alleged against the Noticee for execution of mere 1 buy and 1 sell trades. It is very pertinent to state that the said trades were matched with one entity only. In this connection I would like to place reliance on the Adjudication Order dated 24-12-2019 in the matter of Richa Industries Limited wherein Ld. Adjudicating Officer has observed that*

    "42. The Group entities are also alleged to have indulged in reversal trades for 2, 09, 716 shares (2.61% of the total traded volume), synchronized trades for 17,410 shares (2.61% of the total traded volume) in total 13 trades, and structured trades for 2, 58, 185 (3.22% of the total traded volume). Further 9 group entities are alleged to have executed 101 self-trades for 32257 shares (0.40% of the total traded volume) in 17 days. In this regard, Noticees have submitted that only 8 trades of the Noticees Were alleged as reversal trades, and 144 trades of the Noticees Were alleged as structured trades. It has been further contended that there was huge order price gap between the both legs orders. There was also huge order time gap between the both legs of orders placed by the Noticees and his counter parties. In most of the instances (more than 90% of orders) there were time gap of 10 second to 5 minutes. Thus the structured trades could not have been said to be intentional. In this regard, while 10 seconds is a very small time difference between orders, I find the argument on difference in order prices acceptable, as a trade cannot be intended to match in a structured manner with difference in order prices. Regarding self-trades, Ifind that the Noticees indulged in total 25 self-trades for 5087 shares which cannot be said to be a significant quantity as compared to the total traded volume or the Noticees traded volume.

43. *Considering the tenuous connection between the Noticees and the other group entities and the small proportion of their contribuĺion to circular trades, reversal trades, self-trade and structured trades, I find merit in the submissions of the Noticees that they have contributed 0.74% to 1.62% of the volume in the said scrip and their trading was no/ such as to induce other entities to trade in the scrip. I also note that their trades cannot be said to non-genuine.*

44. *In view of the facts placed before me, I find that there is insufficient material to conclude that the Noticees contributed significantly to the trading volume in the scrip, or that they created artificial volume by means of circular, reversal, structured and synchronized trades. I also find that the LTP contribution of the Noticees to the price was negative, whereas the price manipulation was allegedly for upward price movement in the scrip.*

45. *In view of the above, I find that it is not established that the Noticees are in violation of the provisions of Section 12A(a), , (b), (c) of the SEB/ Act, 1992, Regulation 3(a), (b), (c), (d), 4(1), 4(2)(a), (b), (e) & (g) of the PFUTP Regulations. Hence I find that this is not a fit case for imposition of penalty."*

In the present case, the Noticee is not facing allegation of price manipulation, synchronized trade, self-trade. The Noticee had no connection of whatsoever nature with the counterparty to the alleged 1 buy and 1 sell trades of the Noticee. According to the SCN, total artificial volume generated due to alleged 1 buy and 1 sell trades were 1,64,000 shares/units only. Thus, the ratio laid down by Ld. AO in the aforesaid Order squarely applies in the case of the Noticee.

16. *It is alleged in para 8(d) of the SCN by referring Annexures enclosed with the SCN that the Noticee had generated 6.75% of the volume in I Unique Contract. It is submitted that these allegations are merely an eyewash as it does not take into consideration the number of trades and volumes generated in complete Option Segment in BSE in a particular Scrip on a particular day. It may be noted that the stock exchange platform at the relevant point of time gave a choice to write options at various strike prices as per the suitability of the trader. What has been considered in the SCN is only an option with a particular strike price and not the total trading on Option Segment in a particular scrip at the relevant point of time. Thus, the percentages shown in the SCN are misleading and cannot be relied upon.*

17. *It is submitted that the alleged 1 buy and 1 sell trades executed by the Noticee have all traits of being genuine and therefore cannot be categorized as non-genuine. These trades were executed on the anonymous platform of the Exchange, without any knowledge of counter party, at price ranges that were permitted by the Exchange / SEBI and the obligations arising out of it have been settled through the clearing mechanism of the Exchange.*

18. *The Noticee further submits that the buy order quantity and sell order quantity in both the buy and sell trades were not matched and there were huge difference in the between the same. However, the said fact is totally overlooked in the SCN. Indeed, it further strengthen the argument of the Noticee that the buyer and seller were not conniving with each other.*

19. *It is also submitted that, as none of the acts or trades executed by the Noticee fall under the definition of fraud as provided in regulation 2(1)(c)of PFUTP Regulation, the genuineness of the trades executed by the Noticee cannot be questioned and therefore, the Noticee cannot be alleged to have violated any PFUTP Regulations.*

……"

15. In support of its argument, the Noticee placed reliance on the following Judgements of the Hon'ble SAT:

    1. **KSL & Industries Ltd. vs. SEBI** (Appeal No. 9 of 2003, Date of decision 30th September, 2003)
    2. **Vintel Securities Pvt. Ltd. vs. SEBI** (Appeal No. 219 of 2009, Date of decision 23rd November, 2009)
    3. **Dhvani Darshan Kothari & Anr.** (Appeal No. 276 of 2020, Order dated 21-01-2021)

16. Noticee further submitted that like synchronized trades or self-trades, reversal trade is also, *per se*, not illegal and in this regard, the Noticee placed reliance on the Order passed by the Hon'ble SAT in **Narendra VallabhjiBahuva v/s SEBI** (Order dated 14-07-2021, Appeal No. 516 of 2019).

"…………..

22. Furthermore, SCN is bad in law as the same has been issued more than 6 years later from the date of execution of trades by the Noticee. BSE is a first stage Regulator and claims that it has most scientific and surveillance mechanisms. Similarly, SEBI as Regulator of Regulators of all Stock Exchanges, of all intermediaries and of all the entities who deal in securities market has also a sophisticated Surveillance System. The Noticee had not received a single Caution Letter either from BSE and/or SEBI in this matter. Hence, the issue of SCN more than 6 years later from the date of execution of trades by the Noticee has caused extreme mental agony and highly prejudices the case of the Noticee as justice delayed is justice denied. Recently, the Hon'ble Supreme Court of India and the Hon'ble Tribunal took a tough stand against inordinate delay and latches in quasi-judicial proceedings initiated by SEBI.

23. The Noticee further denies that the Noticee has violated the Regulation 3(a), (b), (c), (d) and 4 (1), 4 (2)(a) of the PFUTP Regulations. In this context it is submitted as follows:

a. It has neither directly nor indirectly bought or sold or otherwise dealt in securities in any fraudulent manner. As mentioned above the trades of the Noticee were completely genuine and are without any malafide intention of creating any false or misleading appearance of trading in the market.

b. It has not used or employed any manipulative or deceptive devise or contrivance in contravention of the provisions of the SEBI Act or the rules or the regulations made there under, the same has also not been specifically brought out in the captioned SCN.

c. It has not employed any device, scheme or artifice to defraud anyone in the market and the same has also not been alleged in the captioned SCN.

d. *It has not engaged in any act, practice, course of business which operated or would have operated as a fraud or deceit upon any person with any dealing in the market in contravention of the provision of the SEBI Act or the rules and the regulations made there under, it has also not been alleged in the captioned notice that the trades executed by the Noticee has operated or would have operated as a fraud or deceit upon any person.*

e. *It has not dealt in securities in a fraudulent manner or as indulged in unfair trade practice in the securities market. It is again reiterated that the trades executed by the Noticee were in its normal course of business and were completely genuine.*

f. *As submitted above the trades of the Noticeewere completely genuine and has not created any false or misleading appearance of trading in the securities market as alleged in the captioned notice.*

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

<u>*Without prejudice to whatever stated hereinabove, the Noticee further wishes to make submissions on the quantum of penalty. The Noticee says and submits that in case, your goodself is not convinced with the submissions made hereinabove, the Noticee requests your goodself to consider below mentioned submissions on the quantum of penalty:*</u>

I. *The Noticee says and submits that it is the discretion of the Adjudicating Officer to decide the quantum of penalty which is need to be imposed in a case where charges are proved. There is no restriction or bar in the SEBI Act which prohibits an Adjudicating Officer to impose lesser penalty than Rs. 5,00,000/- under Section 15HA of the SEBI Act. In this connection, the Noticee place reliance on the Judgement of Hon 'ble Apex Court dated 2802-2019 in Civil Appeal No. 11311 of 2013 in the matter of Actjudicating Officer, SEBI v/s Bhavesh Pabari….."*

"…….The Noticee further place reliance on the Order dated 22-06-2016 in Appeal No. 390 of 2015 (DhvaniDarshan Kothari v/s SEBI)

"Apart from the above, treating the appellant who has executed a single trade on market could not be treated on par with others who had executed multiple trades and impose uniform penalty, especially when the AO by exercising discretion has deemed it fit not to impose maximum penalty prescribed under Section 15HA of SEBI Act. <u>In other words, the A O is not justified in treating the persons who are not similarly situated as one class and impose uniform penalty. "</u>

17. The opportunity of hearing was availed by the Noticee on October 22, 2021 through its AR. The hearing was conducted at the office of SEBI located at Nariman Point, Mumbai 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 October 08, 2021 and submitted that they have no further submissions to make and hearing was concluded accordingly.

18. 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 for consideration of Issues.

CONSIDERATION OF ISSUES AND FINDINGS

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

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

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

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

FINDINGS

20. Before advancing into the merits of the case, I would like to deal with the issue pertaining to the delay and violation of principles of natural justice, as contended by the Noticee.

21. In this regard, I 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. 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."

22. 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*".

23. The Hon'ble SAT in the matter of **Rajendra Aggarwal v. SEBI,** decided on September 17, 2021, while rejecting the contention of appellant therein that there was inordinate delay of frour years in issuance of SCN, has 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."*

24. In this background, I also note that pursuant to a preliminary examination conducted in the Illiquid Stock Options matter, Interim order was passed by SEBI on August 20, 2015 which was confirmed vide Orders dated July 30, 2016 and August 22, 2016. Meanwhile, SEBI initiated a detailed investigation relating to stock options segment of BSE which was completed in the year 2018. The investigation revealed that 14,720 entities were involved in executing non-genuine trades in BSE's stock option segment during the investigation period. The proceedings initiated vide the aforementioned Interim Order were disposed of vide Final Order dated April 05, 2018 and appropriate action was initiated against the said 14, 720 entities in a phased manner.

25. During the course of hearing in the case of **R. S. Ispat Ltd Vs SEBI**, the Hon'ble SAT, vide Order dated October 14, 2019, *inter alia*, observed that *"SEBI may consider holding a Lok Adalat or adopting any other alternative dispute resolution process with regard to the Illiquid Stock Options".*

26. 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 from August 01, 2020 till December 31, 2020. 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.

27. As can be seen from the narration of facts in the foregoing paragraphs, pursuant to appointment of AO on July 02, 2021, SCN was issued on August 17, 2021. In compliance with principles of natural justice, after receipt of reply, an opportunity of personal hearing was granted on October 08, 2021 and October 22, 2021.

28. In view of the aforesaid and considering the facts of the present matter, I do not find any merit in the contentions of the Notice that there has been unreasonable delay and that the proceedings deserves to be dropped.

29. Further, in respect of the submissions of the Noticee requesting for the Investigation Report and seeking other documents. I note that, as communicated to the Noticee vide email dated September 02, 2021, the Judgment of Hon'ble SAT dated February 12, 2020, in the matter of **Shruti Vora vs. SEBI** has cleared the legal position on the same and relying on the same, it was communicated to the Noticee that all the documents that have been relied upon in respect of the allegation made against it vide the SCN had already been provided to the Noticee as Annexures enclosed therein and no additional document was relied upon. The trade log sought by the Noticee were also provided to the Noticee vide the said email. In view of the same, I am of the view that principle of natural justice have been duly complied with in respect of the instant proceedings.

30. Having noted as above, in respect to the issues for consideration before me, I record my findings hereunder taking into consideration, the material available on record, giving regard to the facts and circumstances of the case and submissions of the Noticee.

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

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

Regulation 3: - Prohibition of certain dealings in securities

3. No person shall directly or indirectly—
(a) buy, sell or otherwise deal in securities in a fraudulent manner;
(b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made thereunder;

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

Regulation 4: - Prohibition of manipulative, fraudulent and unfair trade practices

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

(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:-
(a) indulging in an act which creates false or misleading appearance of trading in the securities market;

32. 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.

33. I note that reversal trades have been considered as those trades in which an entity reverses its buy or sell positions in a contract with subsequent sell or buy positions with the same counterparty during the same day. The said reversal trades are non-genuine trades as they are not executed in normal course of trading, lacks basic trading rationale, and lead to false and misleading appearance of trading in terms of generation of artificial volume, hence are deceptive and manipulative. Artificial volume is considered to be the volume (no. of units) reversed in both legs of said reversal trades while keeping out the volume, if any, which is not reversed.

34. I note that the Noticee had executed 2 non-genuine trades in 1 contract on February 23, 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)	% 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	KARB15MAR140.00CEW2	0.5	82000	2.3	82000	100%	6.75%

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

I. Scrip Name: KARB15MAR140.00CEW2, Trade Date: February 23, 2015

CLIENTNAME	CP_CLIENTNAME	TRADE_TIME	TRADE_RATE	TRADED_QTY
SURAJ MAL MANOJ KUMAR HUF	CHAKRADHAR TREDERS PRIVATE LIMITED	11:33:30.769560	0.5	82000
CHAKRADHAR TREDERS PRIVATE LIMITED	SURAJ MAL MANOJ KUMAR HUF	11:33:36.170341	2.3	82000

(a) I note from the above table that during the investigation period, total 2 trades for 1,64,000 units were executed by the Noticee in the "KARB15MAR140.00CEW2" contract on February 23, 2015.

(b) The Noticee placed a buy order for 82,000 units at a price of ₹ 0.5 per unit and the said order was matched with the sell order (which was for 164000 units, which was also placed at a price of ₹ 0.5 per unit) of counterparty client Chakradhar Treders Private Limited. I note that the said buy order by the Noticee was placed at 11:33:30.769269 almost at the same time as that of the entry of the sell order by the Counterparty i.e. 11:33:30.769560. 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 11:33:30.769560 with the counterparty. Subsequently within 6 seconds from the above trade, at 11:33:36.068812, the Noticee placed a sell order for 82,000 units at a price of ₹ 2.3 per unit and the said order was matched with the same counterparty (i.e. Chakradhar Treders Private Limited), who placed a buy order for the 164000 units at the same price (i.e. ₹ 2.3). I note that the said buy order was placed by the counterparty at 11:33:36.170341 almost at the same time as that of the sell order placed by the Noticee i.e. 11:33:36.068812. 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 immediately.

(c) Therefore, it is noted that while dealing in the said contract on February 23, 2015, the Noticee at 11:33:30.77 hrs entered into 1 buy trade with counter party viz, Chakradhar Treders Private Limited for 82,000 units at a rate of ₹ 0.5 per unit. Thereafter, on the same day, within 6 seconds from the above trade, Noticee, at 11:33:36.17 hrs entered into 1 sell trade with the same counterparty for 82, 000 units at a rate of Rs. 2.3 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 Chakradhar Treders Private Limited, on the same day.

(e) Thus, the Noticee, through its dealing in the contract viz, "KARB15MAR140.00CEW2" during the Investigation Period, executed 2 non genuine trades and thereby, the Noticee generated artificial volume of 1,64,000 units which is 6.75% of the volume traded in the said contract from the market during the investigation period.

36. 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 6 seconds from its 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, within 6 seconds, with a significant difference in buy and sell value of stock options, where order time and order price 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.

37. As noted above, Noticee had executed non- genuine trades in 1 contract viz., KARB15MAR140.00CEW2, where all the trades of Noticee were non genuine trades and the Noticee contributed to 6.75% artificial volumes in the contract. Non genuine trades executed by the Noticee in above contracts had significant difference in buy rates and sell rates considering that the trades were reversed within a 6 seconds on the same day.

38. I note from the above trading pattern of trades that Noticee has 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.

39. The Noticee has contended that the trades were executed through the stock exchange platform and hence genuine. In this regard, I note that the execution of trades on exchange platform, *ipso facto*, 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 (viz. approx. 6 seconds), the Noticee reversed the position with the same

counterparty client with a significant price difference. Such short span of time in reversing the trades in the contract suggests the non-genuineness of these trades executed by the Noticee. The fact that the orders of the Noticee and its counterparty matched with such precision (considering that there was a perfect match of price 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, where there was very little trading in the said contract, there was no price discovery in the strictest terms. Therefore, it is observed that the Noticee had indulged in reversal trades with its counterparty in the stock options segment of BSE and the same were non-genuine trades.

40. The non-genuine and deceptive transactions of these entities 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.

41. It is also the submission of the Noticee that synchronized trades and reversal trades are not, *per se*, illegal and in this regard, the Noticee relied upon the Order passed by the **Hon'ble SAT in Narendra Vallabhji Bahuva v/s SEBI** (Order dated 14-07-2021, Appeal No. 516 of 2019). In this regard, I refer to the pattern of impugned trades and note that the Noticee had bought and sold option contract with the same counter party and also reversed the trades in 6 seconds from its earlier buy trade, at substantial price difference and the orders of the Noticee and its counterparty matched in both price and placement time with such precision that indicates that trades had been executed with a premeditated plan. Such pattern of dealings suggests beyond doubt that they were not driven by market factors. As noted above, trading by the Noticee in the instant matter was abnormal and was designed to create artificial volume in the illiquid stock option contracts, fails to justify any of the normal trade strategies. Therefore, the trades executed by the Noticee were non-genuine and deceptive in nature and

are covered within the ambit of fraudulent transaction as defined under the PFUTP Regulations, 2003.

42. 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 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."*

43. 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*."

44. The Hon'ble SAT has reaffirmed the aforesaid findings in its recent order dated November 24, 2021 in the matter of **Radha Malani vs. SEBI** (appeal no. 698 of 2021) and order dated January 13, 2022 in the matter of **Shruti Saraogi vs. SEBI** (Appeal No. 814 of 2021) while dealing with similar facts involving trading in Illiquid Stock Options during the same Investigation Period as in the instant matter.

45. Considering the judgements of the Hon'ble Supreme Court and the Hon'ble SAT as reproduced above, I see no reason to take a different view in the present case. In view of the foregoing, the non- genuineness of these trades is evident from the placement time of the orders and price by the Noticee and the counterparty i.e. approximately same for both the parties, I hold that the Noticee had indulged in execution of reversal trades in Stock Options with same entitiy on the same day, which are non-genuine in nature and have created false and misleading appearance of trading in terms of artificial volumes. In view of the above, I also hold that the Noticee's submission that buy order quantity and sell order quantity in both the buy and sell trades were not matched and there were huge difference between the same is not acceptable as matching of quantity in the transaction is not an exclusive factor in determining the nature of transactions. The other factors such as price of orders, placement timing of orders and time difference in execution of both the legs of trades is also material in determining the nature of transactions. Even though the order quantity placed by counterparty is different but the price and order placement time of both party was almost the same in both the legs of the trades.

46. It is also the submission of the Noticee that it is not knowing the counterparty or any relative of the counterparty and that it does not have any connection with Counterparty. In regard, I note that in the screen based trading, the manipulative and fraudulent intent can be inferred from various factors such as conduct of the party, pattern of transactions, etc. I note that it is not a mere coincidence that Noticee could match its trades with the 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..."*

47. 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."*

48. 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."

49. 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.

50. 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.

51. 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.

52. 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."*

53. 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 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?

54. 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 KARB15MAR140.00CEW2. That all the trades executed by it during the Investigation Period in the said contract were non genuine trades.

55. 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.

56. 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 the provisions of 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?

57. 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 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.

58. With regard to the imposition of penalty amount, Noticee contended that there is no restriction or bar in the SEBI Act, 1992 which prohibits an Adjudicating Officer to impose lesser penalty than Rs. 5,00,000/- under Section 15HA of the SEBI Act, 1992 citing the judgement of the Hon'ble Supreme Court dated February 28, 2019 (Civil Appeal No. 11311 of 2013) in the matter of Adjudicating Officer, **SEBI v/s Bhavesh Pabari**. In this regard I note that Section 15I (2) of the SEBI Act, 1992 provides that adjudicating officer may impose such penalty as he thinks fit in accordance with the penalty provisions. However, the question is whether in exercising his discretion under Section 15I(2) and 15J of the SEBI Act, 1992, adjudicating officer can impose a penalty which is less than the minimum penalty prescribed under the penalty provisions. In this regard, I have perused the said judgment. I find that Bhavesh Pabari matter dealt with the applicability of Section 15J of the SEBI Act, 1992 to the penalty provisions, as existed before the amendments made in the penalty provisions in the year 2014. The Hon'ble Supreme Court made the following observations regarding penalty provisions as amended in the year 2014, as follows:

"7………….We would prefer read and interpret Section 15-A(a) as it was between 25th October, 2002 and 7th September, 2014 in line with the Amendment Act 27 of 2014 as giving discretion to the Adjudicating Officer to impose minimum penalty of Rs.1 lakh subject to maximum penalty of Rs.1 crore, keeping in view the period of default as well as aggravating and mitigating circumstances including those specified in Section 15J of the SEBI Act."

59. Penalty provisions after the amendments made in the year 2014 introduces minimum penalties that too with the use of the words "……. shall be liable to penalty which shall not be less than….." which per se indicates the legislative intent that the provisions are mandatory.
60. In view of the above and after considering the facts and circumstances of the case, I am of the view that discretion available under Section 15J of the SEBI Act, 1992, can be exercised between the minimum and maximum penalty under Section 15HA of the SEBI Act, 1992.

61. 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.

62. 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

63. 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 ₹ 5,00,000 (Rupees Five Lakhs Only) on the Noticee i.e. Suraj Mal Manoj Kumar 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 4 (2)(a) of the Securities and Exchange Board of India (Prohibition

of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003.

64. The said penalty imposed on the Suraj Mal Manoj Kumar HUF, as mentioned above, shall commensurate with the violation committed by it.

65. Suraj Mal Manoj Kumar HUF 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

66. Suraj Mal Manoj Kumar HUF shall forward said Demand Draft or the details / confirmation of penalty so paid to the "The Division Chief, Division of Regulatory Action-3, Enforcement Department (EFD1 – DRA III), 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

67. 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.

68. 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 Suraj Mal Manoj Kumar HUF and also to the Securities and Exchange Board of India, Mumbai.

February 10, 2022 **Ratan Lal Jat**
Mumbai **Adjudicating Officer**