BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
ADJUDICATION ORDER NO. Order/PM/NS/2022-23/16121

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

In respect of:
Rishab Sarawgi
PAN: BRAPS4516D

In the matter of *Dealings in Illiquid Stock Options at the BSE*

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter be referred to as, the "***SEBI***") conducted investigation into the trading activity in illiquid stock options on BSE Limited (hereinafter be referred to as, the "***BSE***") for the period April 01, 2014 to September 30, 2015 (hereinafter be referred to as, the "***Investigation Period***") after observing large scale reversal of trades in the Stock Options segment of the BSE.

2. The investigation revealed that during the Investigation Period, a total of 2,91,744 trades comprising 81.40% of all the trades executed in the BSE Stock Options Segment were trades which involved reversal of buy and sell positions by the clients and counterparties in a contract. It was observed that **Rishab Sarawgi**, (hereinafter be referred to as, the "***Noticee***") was one such client whose reversal trades involved squaring off open positions with a significant difference without any basis for such change in the contract price. The aforesaid reversal trades allegedly resulted into generation of artificial volumes, leading to allegations that the Noticee had violated the provisions of Regulation 3(a), (b), (c), (d) and Regulation 4(1), 4(2) (a) of the SEBI (Prohibition of Fraudulent and Unfair Trading Practices related to Securities Markets) Regulations, 2003 (hereinafter be referred to as, the "***SEBI PFUTP Regulations***").

APPOINTMENT OF ADJUDICATING OFFICER

3. SEBI initiated adjudication proceedings and appointed the undersigned as Adjudicating Officer under Section 15-I of the Securities and Exchange Board of India Act, 1992 (hereinafter be referred to as, the "***SEBI Act***") read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter be referred to as, the "***SEBI Adjudication Rules***") *vide* order dated June 21, 2021 to inquire into and adjudge under Section 15HA of the SEBI Act, against the Noticee for the alleged violation of aforesaid provisions of SEBI (PFUTP) Regulations. The appointment of the AO was communicated *vide* order dated July 27, 2021.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. A Show Cause Notice dated September 21, 2021 (hereinafter be referred to as, the "***SCN***") was served upon the Noticee under Rule 4(1) of the SEBI Adjudication Rules to show cause as to why an inquiry should not be held and penalty be not imposed against it under Section 15HA of the SEBI Act for the alleged violation of the provisions of Regulations 3(a),(b),(c),(d) and 4(1), 4(2)(a) of the PFUTP Regulations.

5. The allegations levelled against the Noticee in the SCN are summarized as below:

a) That the Noticee was one of the entities who indulged in reversal trades which allegedly created false and misleading appearance of trading, generating artificial volumes in Stock Options segment of the BSE during the Investigation Period.

b) That the Noticee engaged in 4 instances in 1 unique contract which led to generation of artificial volume in the unique contract.

c) The trades entered by the Noticee were reversed on the same day with the same counterparty at a substantial price difference without any basis for significant change in the contract price, which indicates that these trades are artificial and are non-genuine in nature.

d) A summary of dealings of the Noticee in the 1 Stock Options contract in which the Noticee executed non-genuine reversal trades during the Investigation Period are as under:

Table 1: Summary of trading of the Noticee in Illiquid Stock Options on BSE

Sl. No.	Contract Name	Avg. Buy Rate (₹)	Total Buy Volume (no. of units)	Avg. Sell Rate (₹)	Total Sell Volume (no. of units)	% of Artificial trades of the Noticee in the contract to Total trades in the contract	% of Artificial Volume generated by Noticee in the contract to Total Volume in the Contract
1.	RCOM15MAR60.00PEW3	0.1	224000	*2.57*	224000	6.25	2.85

e) By indulging in execution of aforesaid non-genuine reversal trades, the Noticee has violated Regulations 3(a),(b),(c),(d) and 4(1), 4(2)(a) of the SEBI (PFUTP) Regulations, text of which is reproduced as under:

*"**SEBI (Prohibition of Fraudulent and Unfair Trading Practices Related to Securities Markets) 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 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 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 or 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;

…..”

6. The Noticee vide the aforesaid letter dated December 13, 2021 submitted its reply to the charges alleged in the SCN, which are summarized hereunder:

a) *In this regard, I would like to put on record my submissions in subsequent paragraphs for your kind and sympathetic consideration as under:At the outset and without prejudice to anything stated hereinafter, I deny all the allegations and findings made against me in the said notice, except to the extent specifically admitted by me.Further, I state that nothing contained in the SCN may be deemed to be admitted by me by reason of non traverse or otherwise, save and except what is expressly admitted herein. Additionally, I deny all the allegations and averments contained in the captioned SCN that are contrary to and/ or inconsistent with what is stated herein below;*

b) *You will please appreciate that any investor does not have direct access to deal on the online trading platform of the B.S.E., and hence I dealt through ONLY SEBI REGISTERED STOCK BROKERS AS SHOWN IN ANNEXURE B ATTACHED WITH THE CAPTIONED SCN. I further respectfully submit that SEBI has not provided any evidence or proof to show that my trades were fraudulent. None of the ingredients of the said PFTUP Regulations are attracted in the present case essentially because*

- *The SCN fails to appreciate that when SEBI itself has not discharged its obligations of quick investigation, seeking explanation of the parties at that time, declaring trades in stock options as illegal at the relevant time, subjecting us to adjudication proceeding at such a belated stage of Approx. 7years is unfair and unreasonable.*
- *Even though limitation act does not specify time limit in such case, still as per judicial pronouncements by the SAT and SC, a reasonable period has to be complied with. In support of the submission reliance is placedupon the very recent decision of Securities Appellate Tribunal (SAT) in Ashok Shivlal Rupani vs SEB/ and other companion*

appeals in Appeal No. 417 of 2018 decided on August 22, 2019 wherein the order of penalty was set aside on account of an inordinate delay in the initiation of the proceedings.

- *The trades were executed on the online trading platform of the exchange with due compliance with all the rules and regulations of the exchange;*
- *At no point of time was there any warning or any observation about the scrips in stock Options which were executed by me;*
- *The observations regarding the stock options being illiquid is incorrect;*
- *Even assuming by any stretch of imagination the stock options were illiquid, then any small quantity or volumes would look significant as there are no active traders in the said stock option.*

c) *For the transaction to be termed fraudulent, as per the definition of "fraud", there has to be an "inducement" and SEBI has not even alleged inducement; Further in a recent judgement by honble supreme court it has been held…… that mere allegation of "fraud" without any specific particulars cannot be accepted as"fraud"vide: Case name: Electrosteel Castings Limited vs UV Asset Reconstruction Company Limited Citation: LL 2021 SC 682 case no. and Date: CA 6669 OF 2021 | 26 which reads: "It appears that by a clever drafting and using the words fraud'/'fraudulent' without any specific particulars with respect to the fraud', the plaintiff— appellant herein intends to get out of the bar under Section 34 of the SARFAESI Act and wants the suit to be maintainable. As per the settled preposition of law mere mentioning and using the word 'fraud'/'fraudulent' is not sufficient to satisfy the test of fraud'. As per the settled preposition of law such a pleading/using the word fraud'/ fraudulent' without any material particulars would not tantamount to pleading of fraud'"*

d) *There is no nexus, directly or indirectly with the alleged counter party RJB CONSTRUCTIONS PVT LTD in my case .SEBI has not even alleged this. I crave for cross examination of the alleged counterparty and strict proof as to any exchange of cash for alleged non genuine trades;my trading in option segment was low percentage of overall volume in market. The total number of alleged non-genuine trades were only 4(3 SELL AND I BUY) which if compared with the alleged reversal trades numbering to 2,91,744, during the said i.p. of 1.4.2014 to 30.9.2015 i.e. spanning over one and half year it is miniscule 0.00137%.Hence, it is erroneous to allege that my trade created artificial volume on BSE.*

e) *In para no. 6(a)&(b),page no 3-4 of the captioned scn, you have alleged me to have engaged in I(one)contract containing 4 trades comprising of 3sell but only 1 buy trade my humble submission is that that the breaking down of the one contract into two trades by you is factually and practically wrong in the context in which the s.c.n. has been issued.obviously the plea given in said scn is that the noticee has done reversal trade with the same counter party on the same day. For the sake of argument if it is assumed that there* *is reversal of earlier trade then for holding a trade to be reversal, there has to be an original trade either buy or sell which has been reversed by contra trade i.e sell or buy. Hence the reversal is the only 2nd trade (last leg).thus in one contract reversal trade is one only and not two as alleged in para 7(c) of the scn once my this plea is upheld the observation and verdict of honble SAT cited below holds good for my case too and can not be termed reversal at allI am citing the decision of honble SAT wherein a single trade was held not to be treated as reversal execution of one trade held not to be treated as synchronized/circular or reversal:*

Reliance is place on the Honble SAT verdict on 21.01 9021 in appeal no. 198 of 2020 and appeal no. 199 of 2020 in the case of ALMONDZ ENTERTAINMENT PVT LTD AND OTHER APPELLANTS which is reproduced here………In this regard, we find that the appellant Dhvani and Darshan executed one trade and since it was sold to the same counter party, the AO held that it was fraudulent. There is no finding as to how the trades executed by these appellants were synchronized or circular or reversal. There is no consideration or reasoning given as to how the execution of one trade could make it synchronized, circular or reversal and how they are treated at par with the other entities. We find that the AO has not considered the directions given by this Tribunal in its earlier order. We are further of the opinion that this set of appellants is also entitled for the same relief as other appellants on the basis of contradictory findings. 19. For the reasons stated aforesaid, the impugned order passed by the AO cannot be sustained in so far as the appellants are concerned and is quashed. The appeals are allowed with no order as to costs

f) The trades in question were in the normal course of my share trading and investment activity and there is nothing amiss in the trades executed by me. All the receipts and payments for the trades were made through SEBI registered stock broker and banking channels with appropriate audit trails;None of the trades are deceptive in nature or have any impact on the investors or their investment decisions which is a sine qua non of "fraud";

g) I humbly submit that, upon reading of the Show Cause Notice, it appears that there are various documents and data that are referred to and relied upon by SEBI in the Captioned proceedings to arrive at an allegation of non genuine/ artificial trades,Be that as it may, I hereby submit my explanations and clarifications with the data/information provided by you and reconciled the same with records available with me in the subsequent paragraphs..

h) With respect to observation that I have dealt in stock options contracts which are [were illiquid in nature, I submit that if we observe the underlying scrip in which I traded, it can be established that these scrips are highly liquid in nature i.e. frequently traded in market. I traded in contracts of underlying scrip such as RCOM. In fact, I submit with humility that underlying stock of aforesaid contracts consists of companies which are part of the BSE -200/ BSE- 500 indices of the Bombay Stock Exchange. Thus, to allege that I deliberately traded in only those options which were illiquid in nature is unfair *i) Apparently, SEBI has held that I transacted in 'illiquid options' on the basis that my trades were squared up at substantial price difference without any basis for significant change in the contract price. However, in that case, it may also be concluded that said trades could have had no effect on other investors or market at large and that such illiquidity would be reason for volatility and alleged 'reversal' transactions since variations in option price would be dramatic if the chosen strike price is thinly traded.*

j) I submit that BSE and SEBI have themselves allowed and permitted trading in options for 'far months' with a strike price which are at large variance to current market price. The fact that such parameters are laid down is clearly indicative that options will always be 'in the money' and 'out of money' and since regulators have themselves permitted trading in same, no adverse inference be drawn against me in this regard

k) It is pertinent to mention that stock exchanges regularly come out with list of illiquid scrips in cash segment. However, no such list is issued by exchanges or regulator for dealing in stock options contracts. Thus, to fasten the responsibility or allege a single entity (myself) that it traded in illiquid option is unwarranted and unfair.

l) I submit with humility that derivative market is 'zero sum game' and thus in each and every case one party will inevitably make profit and counterparty will make loss. In capital market neither BSE nor SEBI can guarantee profit or loss to any individual/ entity. In derivative trading, traders often make profit or loss over a period of time since the market does not always behave as per their prediction/ expectation. Thus, profit and loss is concomitant to trading in derivative segment. The mere fact that I traded in option segment cannot be a ground to rope me into present proceedings.

m) I submit that I trade & invest in the stock market in ordinary course which includes my bona fide trading in option segment. Thus, it is erroneous to allege that my trades created artificial volume on BSE. Going by the logic of SEBI if these were illiquid stock options, then any trade and transaction would look significant. In fact, the impugned trades constituted a miniscule percentage of overall trades. I submit that there was no major movement in price of underlying scrips which itself proves that my trades had no impact on market. Thus, my transactions neither distorted the equilibrium in market nor caused any loss or prejudice to investors at large.

n) With demurer, I submit that any kind of alleged fictitious/ manipulative trade in cash segment may create distorted impression in minds of investors that price of scrip is rising/falling who may invest/ divest from said scrip. However, in case of option segment there is no such effect since each *contract expires at end of contract period and for every party who makes profit there is counterparty who makes a loss. There is no question of transfer of beneficial ownership in option segment since at end of settlement cycle only net loss/profit is adjusted. Therefore, in my humble opinion, allegation of creation of 'artificial' or 'reversal' trade is of no consequence in option segment of exchange.*

o) *I did not act in concert or in collusion with anyone and nor was I part of any group or connected with anyone for the purpose of influencing price or for any manipulative activity as alleged or otherwise. It is an admitted position that there is no connection whatsoever between me and the counter parties to the impugned trades.From the details annexed in annex.B to the S.C.N I state and assert that 1 have no 'connection' or 'relation' with RJB CONSTRUCTIONS PVT LTD. alleged to be the counterparty to my trade as mentioned in SCN. My trading in stock option segment was independent of any other entities dealing in the same and based on my limited understanding of capital market.All my transactions have been carried out on the online trading platform of stock exchange. Undisputedly, in case of screen-based trading, the automated system itself matches orders on a price-time priority basis and hence it is not possible for anybody to have access over identity of counter party. Since counter party identity is not displayed; one can never have any choice with whom it wants to deal or not to deal.*

p) *I state, declare and assert that I had no prior meeting of minds with broking entities as well as their clients as mentioned in SCN, nor any contemporaneous knowledge about any alleged wrongdoing. I was not guilty of conduct which is contumacious or dishonest or acted in conscious disregard of law.I would like to draw your kind attention to the matter of Jagruti Securities (2008 SCC online SAT 184) and S.P.J Stockbroker Pvt Ltd (2013 SCC Online SAT 67) wherein it was held that such alleged trades cannot be treated as illegal per se unless there is some cogent connection between the counterparties or there is "mischievous meeting of minds amongst certain parties". I submit that such an element is completely absent in my case.Additionally, I would like to draw your kind attention to Order dated 18.05.2012 passed by the Hon 'ble Securities Appellate Tribunal in the matter ofSanjay Agrawal vs. SEBI wherein it was held that in order to establish an allegation of reversal trade between parties a cogent evidence or connection between the parties needs to be established. In omy humble submission, in my case, no such connection is established in Show Cause Notice since none exist.i would like to further submit that all my trades in option segment were within prudential norms of exchange and as per procedures and guidelines as prescribed by regulators & exchanges SEBI & BSE. At the relevant time, none of my trades were questioned by the brokers who are SEBI registered intermediaries and frontline gate-keepers of stock exchange. Had I been alerted by the broker or stock exchange I would have taken prompt and immediate corrective measures, if any, at that point of time itself*

q) *Further, no cautionary warning, advisory, communication or alarm was raised by BSE at any point of time. There was nothing in the public domain that there is anything amiss in the matter. In fact, with a fool proof and state of the art surveillance system BSE could have annulled the trades at that point of time itself in case it considered that the trades were fraudulent. However, this was not the case, which means that the trades executed by me were genuine and fair.It is pertinent to mention that it is only recently that BSE, vide Notice No. 20160308-33 dated 08.03.2016, announced that it has introduced measure for prevention of reversal trades in Equity Derivative Segment effective from 14.03.2016. Thus, in case of potential reversal trade, second leg (latest leg) of a reversal trade shall automatically be cancelled by exchange in an on-line real time basis on trading system. I submit that merely because on-line preventive measure and check & balance did not exist at relevant point of time to avoid inadvertent reversal trades no adverse inference be drawn against me in this regard.*

r) *I submit that there is no reason for any allegation that I have violated the provisions of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Markets) Regulations, 2003 or the SEBI Act. I humbly submit that besides recording common/ generic allegations against me, not a single instance or observation on my specific role in alleged reversal trade is delineated in the Show Cause Notice. Such an approach, in my humble submission is bad in law.Reliance is also placed on judgement of the Hon 'ble Supreme Court in the matter of Commissioner of Central Excise, Bangalore vs M/S Brindavan Beverages (P) Ltd. and Ors [Civil Appeal 3417 of 2002] decided on 15.06.2007 in this regard.*

s) *I acted as bona fide trader / investor and have transacted in stock option segment in normal course of my investment/trading activity and my trading in the same was very much within my own financial and risk bearing capacity.I submit that in any business activity in stock market, one can either make profit or loss. I humbly submit that at the relevant time I had no idea of any profit or loss in said transactions and I traded in option segment taking into account my 'risk and reward' parameters.I am not connected to counterparties of my transactions in option segment and neither do I have any relation with promoters / directors/ key management person of underlying scrip in cash segment.I believe there has been no grievance/complaint by any investor, broker, stock exchange or any other agency concerned with respect to my dealing in the option segment on BSE .HENCE IT APPEARS THAT THE SAID SHOW CAUSENOTICE HAS BEEN ISSUED MERELY ON ASSUMPTIONS AND APPREHENSIONS OF TRANSACTION HAVING ATTRIBUTES OF PFUTP REGULATIONS WHEREAS THE H.c. AND S.C HAVE REPEATEDLY HELD THAT ANY ACTION BASED ON APPREHENSION ONLY IS NOT PERMISSIBLE.SEBI has discontinued proceedings against the brokers and intermediaries against whom similar allegations of dealing in illiquid stock options while executing trades on behalf of clients have been levelled. I humbly submit that the same recourse ought to be adopted on an entity like us. Speaking for myself, I state that I had followed and complied with* *all the procedures and requirements of capital market while dealing through SEBI registered intermediary. All the pre-trade, trade and post-trade activities were carried out on the trading, clearing and settlement system of stock exchange-ro which itself has sophisticated on-line surveillance software and systems in place.*

t) *Based on my aforesaid submissions, it is apparent that I was not involved in any 'modus operandi' or manipulations while dealing in option segment of BSE. There is enough material on record to suggest that no further enquiry is required in the matter. It is, therefore, humbly requested that the Show Cause Notice dated21.09.2021 be dropped without imposing any monetary penalty on me.I beg to state that consequent to disruption in economy due to COVID 19 for last 2 years running, my financial position is precarious and any monetary penalty will cause irreparable hardship to me. Since all allegations are based on conjectures and surmises without any proof of exchange of cash, I pray to be given benefit of doubt as contemplated by 'Principles of Natural Justice' It is pertinent to cite the supreme court decision in the context of evidence wherein it was held that the burden of proof lies squarely on prosecutor and that even strongest conjecture or surmise has no evidentiary value:"Digambar Vaishnav V/S State of Chattisgarh 2019CriLJ 1901 : 2019 AIR (SC) 1367:2019 (4) SCC 522 2019 (107) ACrc 619: 2019(2) CCSC 1048 Evidence — Last seen together — Cannot by itself from the basis of holding accused guilty of offence — To constitute last seen together, factor as an incriminating circumstance, there must be close proximity between time of seeing and recovery of dead body.Evidence — Burden of proof —Squarely rests on prosecution and that general burden never shifts. (Para 15) TO Criminal trial — No conviction on basis of surmises and conjectures or suspicion however grave it may be — Strong suspicion, strong coincidences and grave doubt cannot take place of Legal proof. (Para 15)Further in another case the honb/e supreme court has given the verdict about treating any decision of any court as "perverse" in :BABU VS.STATE OF KERALA(2010)SSC189which reads as under;" findings off act recorded by a court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material or if they are against the weight of evidence or if they suffer from the "vice of irrationality" At the most I beg to be pardoned and exonerated of the charges with a 'reprimand' as you are competent to do so as provided under section 151 read with section 15J of the SEBI Act.*

7. After considering the facts and circumstances of the case, an opportunity of personal hearing was granted to the Noticee on December 15, 2021 vide Notice of Hearing dated December 08, 2021 & December 10, 2021. In view of the prevailing circumstances owing to Covid-19 pandemic, the hearing was scheduled through video conferencing on Webex platform. On the scheduled date of hearing, the Authorized Representative of the Noticee appeared before me through video conference and reiterates the submission made by Noticee on December 13, 2021. AR also requested time to make further submission, which was acceded to. Subsequently, vide email dated December 20, 2021 Noticee made additional submission which are as follows:

- *Latest verdict of SAT setting aside penalty proceeding for inordinate delay in initiation of the same:In support of the submission reliance is placed upon the very recent decision of Securities Appellate Tribunal (SAT) in Ashok Shivlal Rupani vs SEBI and other companion appeals in Appeal No. 417 of 2018 decided on August 22, 2019 wherein the order of penalty was set aside on account of an inordinate delay in the initiation of the proceedings.*

- *Execution of one trade held not to be treated as synchronized/circular or reversal: Reliance is place on the Honble SAT verdict on 21.01.2021 in appeal no.198 of 2020 and appeal no.199 of 2020 in the case of ALMONDZ ENTERTAINMENT PVT LTD AND OTHER APPELLANTS which is reproduced here:18. In this regard, we find that the appellant Dhvani and Darshan executed one trade and since it was sold to the same counter party, the AO held that it was fraudulent. There is no finding as to how the trades executed by these appellants were synchronized or circular or reversal. There is no consideration or reasoning given as to how the execution of one trade could make it synchronized, circular or reversal and how they are treated at par with the other entities. We find that the AO has not considered the directions given by this Tribunal in its earlier order. We are further of the opinion that this set of appellants is also entitled for the same relief as other appellants on the basis of contradictory findings.19. For the reasons stated aforesaid, the impugned order passed by the AO cannot be sustained in so far as the appellants are concerned and is quashed. The appeals are allowed with no order as to costs.*

- *our plea that the breaking down of the one contract into two trades by you is factually and practically wrong in the context in which the s.c.n. has been issued.obviously the plea given in said scn is that the noticee has done reversal trade with the same counter party on the same day.for the sake of argument if it is assumed that there is reversal of earlier trade then for holding a trade to be reversal, there has to be an original trade either buy or sell which has been reversed by contra trade i.e sell or buy.Hence the reversal is the only 2nd trade (last leg).thus in one contract reversal trade is one only and not two as alleged. once our this plea is upheld the observation and verdict of honble SAT cited above in para 2 holds good for our case too and can not be termed reversal at all.*

- *since sebi has not provided the proof of exchange of cash or call records/cross examination facility with alleged counter party, the allegations of non -genuine trades are treated to be not cogent and only based upon pure conjectures and surmises and hence can not sustain.Reliance is place on the under noted S.C. verdict in the context of" evidence"“DigambarVaishnav V/S State of Chattisgarh 2019CriLJ 1901 : 2019 AIR (SC) 1367:2019 (4) SCC 522 2019 (107) ACrC 619: 2019(2) CCSC 1048 Evidence — Last seen together — Cannot by itself from the basis of holding accused guilty of offence — To constitute last seen together, factor as an incriminating circumstance, there must be close proximity between time of seeing and recovery of dead body.Evidence — Burden of proof —Squarely rests on prosecution and that general burden never shifts. (Para 15) Criminal trial — No conviction on basis of surmises and conjectures or suspicion however grave it may be — Strong suspicion, strong coincidences and grave doubt cannot take place of Legal proof. (Para 15)" Further in another case the honble supreme court has given the verdict about treating any decision of any court as “perverse” in :BABU VS.STATE OF KERALA(2010)SSC189which reads as under;“findings of fact recorded by a court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material or if they are against the weight of evidence or if they suffer from the “vice of irrationality”.*

- *our dealings don’t fall within the definition of “fraud” as per latest SC decision excerpts whereof are reproduced below : Further in a recent judgement by honble supreme court it has been held that mere allegation of “fraud” without any specific particulars cannot be accepted as”fraud”vide: Case name: Electrosteel Castings Limited vs UV Asset Reconstruction Company Limited Citation: LL 2021 SC 682 Case no. and Date: CA 6669 OF 2021 | 26 which reads:"It appears that by a clever drafting and using the words 'fraud'/'fraudulent' without any specific particulars with respect to the 'fraud', the plaintiff – appellant herein intends to get out of the bar under Section 34 of the SARFAESI Act and wants the suit to be maintainable. As per the settled preposition of law mere mentioning and using the word 'fraud'/'fraudulent' is not sufficient to satisfy the test of 'fraud'. As per the settled preposition of law such a pleading/using the word 'fraud'/ 'fraudulent' without any material particulars would not tantamount to pleading of 'fraud'*

CONSIDERATION OF ISSUES AND FINDINGS

8. The issues that arise for consideration in the instant matter are:

Issue No. I Whether the trading in illiquid Stock Options done by the Noticee during the Investigation Period were in violation of Regulations 3(a), (b), (c), (d) and 4(1) & 4(2)(a) of the PFUTP Regulations?

Issue No. II If yes, whether the violation, on the part of the Noticee would attract monetary penalty under Section 15HA of the SEBI Act?

Issue No. III If yes, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5 (2) of the SEBI Adjudication Rules?

Issue No. I **Whether the trading in illiquid Stock Options done by the Noticee during the Investigation Period were in violation of Regulations 3(a), (b), (c), (d) and 4(1) & 4(2)(a) of the SEBI (PFUTP) Regulations?**

9. As stated in preceding paragraphs, the position/trades entered into by the Noticee were squared up within a short span. The striking feature of the trades of the Noticee was that all the positions/trades were squared with the same counterparty with whom Noticee had originally traded/created position. The squaring up of the position/trade was at the substantial variation of price from the original position/trade. Thus, it was alleged that the Noticee had indulged in reversal trades. The said allegation was supported with evidence from the trade log containing records of all trades and reversal trades carried out by the Noticee in the Stock Options segment of the BSE during the Investigation Period and was also provided to the Noticee along with the SCN. On perusal of the details of trades carried out by the Noticee, it is observed that the Noticee took positions and then squared it up in 4 instances in 1 unique option contract during the Investigation Period.

10. To illustrate, On March 18th, 2015, the Noticee sold (i) 2000 units of the contract RCOM15MAR60.00PEW3 at 15:12:54 to Rjb Constructions Private Limited, (ii) 220000 units of the contract RCOM15MAR60.00PEW3 at 15:12:54 to Rjb Constructions Private Limited, (iii) 2000 units of the contract RCOM15MAR60.00PEW3 at 15:12:54 to Rjb Constructions Private Limited at an average price of ₹2.57 (total of 224000 units in 3 different instances). Thereafter, the Noticee reversed its position position by buying 224000 units from the same counterparty (i.e. Rjb Constructions Private Limited,) at 15:24:45 at a price of ₹0.1. Thus, the position of the Noticee was squared up at an average difference of ₹2.47. The entire volume of 448000 units in the said option contract was arising out of the trades done by the Noticee.

11. I note from the trading pattern of the Noticee that the buy order and sell order had been entered in a short span of time. The non-genuineness of these transactions executed by the Noticee is evident from the fact that there was no commercial basis as to why, within a short span of time, the Noticee reversed the position with same counterparties with significant price difference. The time taken for reversing the trades in an illiquid stock option contract suggests the non-genuineness of these trades executed by the Noticee. The fact that the transactions in a particular contract were reversed with the same counterparties indicates a prior meeting of minds with a view to execute the reversal trades at a pre-determined price. Since these trades were done in illiquid option contracts, there was no trading in the said contract and hence, there was no price discovery in the strictest terms. The wide variation in prices of the said contracts, is a clear indication that there was pre-determination in the prices by the counterparties while executing the trades. Thus, it is observed that Noticee had indulged in reversal trades with his counterparties in the stock options segment of BSE and the same were non-genuine trades.

12. Notice has contended that….*our dealings don't fall within the definition of "fraud" as per latest SC decision excerpts whereof are reproduced below : Further in a recent judgement by honble supreme court it has been held that mere allegation of "fraud" without any specific particulars cannot be accepted as"fraud" vide: Case name: Electrosteel Castings Limited vs UV Asset Reconstruction Company Limited Citation: LL 2021 SC 682 Case no. and Date: CA 6669 OF 2021 |*

26'',…… I note that the case facts of the instant matter are different from that of the referred matter, and that only reversal trades along with attending circumstances have been relied upon to allege non genuine trades on the noticee*.* The manner of placing buy and sell orders within a short span of time, reversing of the trades with widely varying prices of the two legs of trade in the same contract without any basis for such wide variation proved that the reversal trades executed by the Noticee were *non-genuine* in nature and created a misleading appearance of trading in the securities market. I am of the view that by engaging in such trades, the Noticee has violated provisions of Regulation 4(2) (a) of the PFUTP Regulations, which states that dealing in securities will be deemed to be a fraudulent or unfair trade practice if it involves "*indulging in an act which creates false or misleading appearance of trading in the securities market*". At this juncture, I find it relevant to refer to the decision of the Supreme Court in the matter of ***Securities and Exchange Board of India v. Rakhi Trading Private Limited (Civil Appeal Nos. 1969, 3174-3177 and 3180 of 2011 dated February 08, 2018)*** *wherein held that*, "Regulation 2(1)(c) defines fraud. Under Regulation 2(1)(c)(2) a suggestion as to a fact which is not true while he does not believe it to be true is fraud. Under Regulation 2(1)(c)(7), a deceptive behavior of one depriving another of informed consent or full participation is fraud. And Under Regulation 2(1)(c)(8), a false statement without any reasonable ground for believing it to be true is also fraud. In a reverse dealing in securities, with predetermined arrangement to book loss or gain between pre-arranged parties, all these vices are attracted." 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 contracts at irrational, unrealistic and unreasonable prices, tantamount to fraud on the securities market in as much as it involves non-genuine/manipulative transactions in securities and misuse of the securities market. The non-genuine and deceptive transactions of the Noticee are, prima-facie, covered under the definition of 'fraud'.

13. Noticee had contended that… *Execution of one trade held not to be treated as synchronized/circular or reversal: Reliance is place on the Honble SAT verdict* *on 21.01.2021 in appeal no.198 of 2020 and appeal no.199 of 2020 in the case of ALMONDZ ENTERTAINMENT PVT LTD AND OTHER APPELLANTS …*, In this matter the number of trades executed by the noticee are 4 which includes 3 sell trades and 1 buy trade. I further note that Noticee placed 4 buy/sell order to complete the reversal trade and it was observed that every time noticee managed to match buy/sell trades with the same counter party. The manner of placing buy and sell orders within a short span of time, reversing of the trades with widely varying prices of the two legs of trade in the same contract without any basis for such wide variation proved that the reversal trades executed by the Noticee were non-genuine in nature and created a misleading appearance of trading in the securities market. It is pertinent to note that **Hon'ble SAT in the matter of Radha Malani vs SEBI (Appeal No. 698 of 2021) vide Order dated November 24, 2021** has upheld the Adjudication Order dated September 06, 2021 wherein the case facts involved one reversal trade in one contract.

14. Noticee had contended that…*there is no reason for any allegation that I have violated the provisions of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Markets) Regulations, 2003 or the SEBI Act and placed reliance on judgement of the Hon 'ble Supreme Court in the matter of Commissioner of Central Excise, Bangalore vs M/S Brindavan Beverages (P) Ltd. and Ors [Civil Appeal 3417 of 2002] decided on 15.06.2007* Noticee has further contended that…..*since sebi has not provided the proof of exchange of cash or call records/cross examination facility with alleged counter party, the allegations of non -genuine trades are treated to be not cogent and only based upon pure conjectures and surmises and hence cannot sustain. Reliance is place on the under noted S.C. verdict in the context of" evidence"“DigambarVaishnav V/S State of Chattisgarh 2019CriLJ 1901 : 2019 AIR (SC) 1367:2019 (4) SCC 522 2019 (107) ACrC 619: 2019(2) CCSC 1048 Evidence and further reliance was also placed on :BABU VS.STATE OF KERALA(2010)SSC189…… …….* 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 one stock options contract. Also, the evidences relied upon as regards aforesaid allegations have been provided as annexures to the SCN. I further note that no cross examination and statement have been relied upon. 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.

15. Noticee had *interalia* contended that… *Instant SCN has been issued after an inordinate delay of more than 7 years of the date of impugned trades. Therefore, the SCN should be disposed of on this ground alone. In this regard, Noticee cited judgements of the Hon'ble SAT in the matters of Ashok Shivlal Rupani wherein the order of penalty was set aside on account of an inordinate delay in the initiation of the proceedings….*In this regard I 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 also considering that appropriate action was initiated against the said 14, 720 entities in a phased manner. During the course of hearing in the case of R. S. Ispat Ltd Vs SEBI, the Hon'ble Securities Appellate Tribunal (SAT), vide its 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". A Settlement Scheme was framed under the SEBI (Settlement Proceedings) Regulations, 2018, which provided one-time opportunity for settlement of proceedings in the Illiquid Stock Options matter. The said scheme was kept open from August 01, 2020 till December 31, 2020. Adjudication proceedings were initiated against those entities who had not availed of the opportunity of settlement. As can be seen from the narration of facts in the foregoing paragraphs, pursuant to appointment of AO on June 21, 2021 , SCN was issued on September 21,2021 In compliance with principles of natural justice, after receipt of reply, an opportunity of personal hearing was scheduled on December

15,2021 and upon conclusion of hearing, additional written submissions were received from the noticees on December 20,2021.

16. Noticee had *interalia* contended that……*he had no connection/ relation with the counterparty or broking firm. In this regard, Noticee relied upon the judgements of the Hon'ble SAT in the matters of Jagruti Securities vs SEBI, SPJ Stockbrokers Pvt Ltd vs SEBI and Sanjay Agrawal vs SEBI, and contended that alleged trades could not be treated as illegal unless there was some cogent connection or mischievous meeting of minds between the parties…*..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..."

17. 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."*

18. I note that direct evidence is not forthcoming in the present matter as regards to meeting of minds or collusion of the Noticee with other entities. However, the trading behaviour of the Noticee makes it clear that 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 Hon'ble SAT order dated July 14, 2006, in the case of Ketan Parekh vs. SEBI (Appeal no. 2/2004), wherein the 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."

19. From the reply of the Noticee, I note that the Noticee has not disputed execution and subsequent reversal of trades as alleged in the SCN. However, the Noticee, in its reply, has contended that the transactions were carried out at an anonymous platform provided by the BSE. The Noticee has also contended that there is nothing in SCN to show that he had violated any law and that intraday reversal was legal. Noticee had also contended that he executed his trades on the platform of stock exchange and his trades were cleared by the stock exchange without any alert. The Noticee had also stated that no investor complaints were made pertaining to the impugned trades of the Noticee. Firstly, I note that stock exchange merely provides a platform for carrying out the trades, while the obligation to ensure genuineness of trades as regards instant considerations primarily lies on the Noticee. Secondly, I note that the allegations pertaining to the Noticee's non-genuine trades neither depend nor rely upon the receipt of any investor complaints against the Noticee. Thus, I reject the contentions of the Noticee in this regard.

20. From the available record, I note that the Noticee had executed the trades and subsequent reversal of trades as alleged in the SCN. In this regard, it may be noted that the Noticee was given details of its trades in the BSE options segment and the details of the trades, which are alleged to be reversed and manipulative. The material provided to the Noticee is sufficient to level allegation of non-genuine trades on the Noticee. Further, I find it relevant to refer to the decision of the Hon'ble Supreme Court in the matter of ***Securities and Exchange Board of India v. Kishore R. Ajmera [(2016) 6 SCC 368: AIR 2016 SC 1079]*** *wherein, the Supreme Court has held, "…According to us, knowledge of who the 2nd party / client or the broker is, is not relevant at all. While the screen based trading system keeps the identity of the parties anonymous it will be too naïve to rest the conclusions on the said basis which overlooks a meeting of minds elsewhere. Direct proof of such meeting of minds elsewhere would rarely be forthcoming. The test, in our considered view, is one of preponderance of probabilities so far as adjudication of civil liability arising out of violation of the Act or the provisions of the Regulations framed thereunder is concerned….".* Placing reliance of the observation of the Hon'ble Supreme Court in the aforementioned matter, I cannot accept the submission of the Noticee that transactions were genuine on account of them being carried out on an anonymous platform of the exchange wherein, the Noticee had no knowledge of the counterparty. The manner of placement of the orders in both legs signify that the orders were entered in a premeditated manner and were not genuine in any manner.

21. Noticee has further interalia contended that the quantum of his trades was very miniscule to warrant any adverse inference. I note that as regards instant considerations, the absence of market rationality and other attending circumstances, taken together, clearly establish that the impugned trades of the Noticee were non-genuine, irrespective of the quantum of the said trades. I note that the impugned stock option contracts were illiquid, as stated in the SCN. Therefore, the Noticee's trades, irrespective of the quantum of such trades, contributed subsequently to the volume generated in the aforesaid contract. This points to the contribution of Noticee in the creation of misleading appearance of trading through his impugned trades. Therefore, I cannot accept the aforesaid contention of the Noticee.

22. The Noticee submitted that BSE and SEBI have themselves permitted trading in options for 'far' months with a strike price which may be at large variance to current market price. The Noticee also submitted that his trades in stock options segment were executed on scrip which was not illiquid, because it was permitted by the BSE to be traded in. For these reasons, Noticee contended that allegations against him are unwarranted and unfair Firstly, the liquidity of options is very different from liquidity of the underlying scrip. Former is traded in derivatives segment, in which there are different strike prices, of which some may be illiquid, whereas the latter is traded in cash segment. Hence, the contention of Noticee that the stock options contract was not illiquid because the underlying scrip was liquid is not tenable. Besides, the allegation is not of trading in illiquid stock options, but of executing non-genuine trades. Secondly, I note that the non-genuineness of these transactions executed by the Noticee is evident from the fact that there was no commercial basis as to why, within a short span of time, the Noticee reversed the position with his counterparties with significant price difference. The fact that the transactions in a particular contract were reversed with the same counterparty indicates a prior meeting of minds with a view to execute the reversal trades at a pre-determined price.

23. Noticee has further contended that there is no question of transfer of beneficial ownership in stock options segment since at the end of settlement cycle only net profit/ loss is adjusted, so the allegation of artificial trade is of no consequence in option segment of exchange. I note that in the F&O segment, execution of a trade results in change of rights over the contract, so that the impugned reversal trades, which were executed without intention of actual change in rights over such contracts are non-genuine. I note that the Hon'ble SC in the matter of SEBI vs Rakhi Trading Pvt Ltd (supra) held that,….*No doubt, as in the case of trade in a scrip in the cash segment, there is no physical delivery of the asset. However, even in the derivative segment there is a change of rights in a contract. In the instant case, through reverse trades, there was no genuine change of rights in the contract*…………………From the facts before us, it is clear that the traders in question did not intend to transfer beneficial ownership and therefore these trades are non-genuine. Therefore, I note that contentions of Noticee in this regard are without merits.

24. Noticee has interalia contended that for transaction to be fraudulent, element of inducement should be there. Noticee has also contended that he had traded in far off strike prices, which implied that said trades could have no effect on investors' decisions. I rely on the judgement of the Hon'ble Supreme Court in the matter of SEBI vs Rakhi Trading (supra) in this regard, wherein it was held that…..,*Respondent-Rakhi Trading and Kasam Holding on facts are found to have been engaged in non-genuine transactions creating appearance of trading. If the factum of manipulation is established, it will necessarily follow that the investors in the market have been induced to buy or sell and that no further proof in this regard is required. The market, as already observed, is so widespread that it may not be humanly possible for the Board to track the persons who were actually induced to buy or sell securities as a result of manipulation and the Board cannot be imposed with a burden which is impossible to be discharged*……I note that the case facts in the aforesaid matter were similar, and that in the instant matter, the execution of manipulative reversal trades has been established already. Therefore, the contentions of Noticee in this regard are without merits

25. At this juncture, I find it relevant to refer to the decision of the Supreme Court in the matter of ***Securities and Exchange Board of India*** v. ***Rakhi Trading Private Limited*** (Civil Appeal Nos. 1969, 3174-3177 and 3180 of 2011 dated February 08, 2018) wherein, the Hon'ble Supreme Court while cumulatively analyzing the reversal transactions held that, "*Considering the reversal transactions, quantity, price and time and sale, parties being persistent in number of such trade transactions with huge price variations, it will be too naive to* *hold that the transactions are through screen-based trading and hence anonymous. Such conclusion would be over-looking the prior meeting of minds involving synchronization of buy and sell order and not negotiated deals as per the board's circular. The impugned transactions are manipulative/deceptive device to create a desired loss and/or profit. Such synchronized trading is violative of transparent norms of trading in securities"* The Court further stated that *"……quantity, time and significant variation of prices, without major variation in the underlying price of the securities clearly indicate that Respondent's trades are not genuine and hand only misleading appearance of trading in the securities market…..*".

26. Applying the ratio of the Supreme Court in the matter of ***Kishore R. Ajmera*** (*supra*) and ***Rakhi Trading*** (*supra*), I am of the view that execution of trades in an illiquid market with such precision in order placement indicates a prior meeting of mind with a view to execute the reversal trades at a pre-determined price. The Noticee has failed in explaining the rationale for the trading as mentioned in Table 1 wherein it has taken a position at a particular price and squared it up at significant price difference without any substantial variation in the price of underlying. Since, the option contracts were done in illiquid contracts (as the strike price was far away from the market price of underlying), there was no trading in the said contract and hence no price discovery. The only reason for the wide variation in prices of the same contract, within a short span of time, was pre-determination in the prices by both counterparties when executing the trades. Thus, the nature of trading as brought out above clearly indicates an element of prior meeting of minds and therefore, a collusion to carry out trades at pre-determined prices. It is not possible to comprehend the reason for which the Noticee would enter into an option contract with a strike price very far away from the current market price of the underlying except for the fact that it wanted to execute non-genuine trades.

27. I further note that the Supreme Court in the matter of ***Rakhi Trading*** (*supra*), has held that, "*Regulation 2(1)(c) defines fraud. Under Regulation 2(1)(c)(2) a suggestion as to a fact which is not true while he does not believe it to be true is* *fraud. Under Regulation 2(1)(c)(7), a deceptive behavior of one depriving another of informed consent or full participation is fraud. And Under Regulation 2(1)(c)(8), a false statement without any reasonable ground for believing it to be true is also fraud. In a reverse dealing in securities, with predetermined arrangement to book loss or gain between pre-arranged parties, all these vices are attracted."* 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 contracts at irrational, unrealistic and unreasonable prices, tantamount to fraud on the securities market in as much as it involves non-genuine/manipulative transactions in securities and misuse of the securities market. The non-genuine and deceptive transactions of the Noticee are, prima-facie, 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 SEBI (PFUTP) Regulations, 2003 and prohibited under the provisions of Regulations 3(a), (b), (c) and (d) and 4(1) and 4(2)(a) SEBI (PFUTP) Regulations, thereof.

28. I once again find it relevant to place reliance on the decision of the Supreme Court in ***Rakhi Trading*** (*supra*) wherein, the Supreme Court while decision upon a case involving execution of reversal trades in index options, observed, "*the traders thus 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*."

29. In view of the aforesaid findings, I find that the Noticee, by engaging in such non-genuine transactions, created a misleading impression of trading in respective contracts while dealing in Stock Options contracts in a fraudulent manner I am of the considered view that the aforesaid act of the Noticee is in clear violation of Regulation 3(a), (b), (c), (d), 4(1) and 4(2) (a) of the SEBI (PFUTP) Regulations.

Issue No. II If yes, whether the violation, on the part of the Noticee would attract monetary penalty under Section 15HA of the SEBI Act?

&

Issue No. III If yes, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5 (2) of the Adjudication Rules?

30. Since violation of Regulation 3(a), (b), (c), (d), 4(1) and 4(2) (a) of the SEBI (PFUTP) Regulations by the Noticee is established, I am of the view that the same warrants imposition of monetary penalty upon the Noticee under Section 15HA of the SEBI Act, text of which is produced as under :

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

31. While determining the quantum of penalty under Section 15HA of the SEBI Act, the following factors stipulated in Section 15J of the SEBI Act, have to be given due regard:

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.

32. As established in the preceding paragraphs, the trades carried out by the Noticee were non-genuine in nature and created a misleading appearance of trading. As brought out earlier, such trades were carried out by the Noticee in illiquid stock options contracts where there was negligible participation by the public. Investigation has shown amount of profit / loss of the counterparties to the trades as a result of such non-genuine trades. However, considering that the violation by the Noticee is creation of artificial trading volumes by trading between two counterparties and wider market is not involved in the trades, the trades are such that one of the counterparty books a profit while the other counterparty books a loss. Hence, it would be appropriate to consider the impact of these transactions between the two counterparties in totality. When the impact of artificial volumes created by the two counterparties is seen as a whole, it is not possible from the material available on record to quantify the amount of disproportionate gain or unfair advantage resulting from the artificial trades between the counterparties or the consequent loss caused to investors as a result of the default.

ORDER

33. After taking into consideration all the facts and circumstances of the case, in exercise of powers conferred upon me under Section 15I (2) of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose a penalty of ₹5,00,000/- (Rupees Five Lakhs only) upon the Noticee i.e., Rishab Sarawgi., under Section 15HA of the SEBI Act for violation of Regulation 3(a), (b), (c), (d), 4(1) and 4(2)(a) of the SEBI (PFUTP) Regulations.

34. The said penalty imposed on the Noticee, as mentioned above, is commensurate with the violation committed by the Noticee and acts as a deterrent factor for the Noticee and others in protecting the interest of investors.

35. The Noticee shall remit / pay the said amount of penalty within 45 days from the date 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

36. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the Division Chief, Enforcement Department-I, DRA-II, SEBI, in the format as given in table below:

Case Name	
Name of Payee	
Date of payment	
Amount Paid	
Transaction No	
Bank Details in which payment is made	
Payment is made for	Penalty

37. Copies of this Adjudication Order are being sent to the Noticee and to SEBI in terms of Rule 6 of the SEBI Adjudication Rules.

Date: April 26, 2022
Place: Mumbai

PRASANTA MAHAPATRA
ADJUDICATING OFFICER