BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/ST/K/2022-23/15808]

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

Shiv Kumar Sarda HUF (PAN: AAEHS5944R) having address at N S B Road, 77/1, Raniganj, Bardhaman, West Bengal - 713347

In the matter of dealings in Illiquid Stock Options at BSE

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") observed large scale reversal of trades in stock options segment of Bombay Stock Exchange (hereinafter referred to as "**BSE**") leading to the alleged creation of artificial volume in the stock options segment. In view of the same, 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. Pursuant to investigation, it was observed that during the investigation period, a 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 positions by the clients and counterparties in a contract. The reversal trades

involved squaring off transactions, but with significant difference in the sell value and buy value of the transactions. In view of the large scale reversal of trades executed in illiquid Stock Options segment at BSE, it is alleged that these trades were non-genuine in nature and also led to generation of artificial volumes.

3. Shiv Kumar Sarda HUF (PAN: AAEHS5944R) (hereinafter referred to as the "**Noticee**") was one of the various entities who indulged in execution of alleged non-genuine trades in the stock options segment of BSE during the investigation period. It was observed that Noticee had entered into reversal trades with its counterparty which involved squaring off transactions with significant difference in the sell value and buy value of the transactions. The aforesaid reversal trades allegedly resulted into generation of artificial volumes, leading to allegations that the Noticee had violated Regulation 3(a),(b),(c),(d) and Regulation 4(1), 4(2)(a) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter, referred to as "**PFUTP Regulations, 2003**").

APPOINTMENT OF ADJUDICATING OFFICER

4. SEBI initiated adjudication proceedings and appointed the undersigned as Adjudicating Officer (hereinafter referred to as "**AO**") under Section 15-I(1) of the SEBI Act, 1992 read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter be referred to as the "**Adjudication Rules**") vide order dated April 30, 2021 to inquire into and adjudge under Section 15HA of the SEBI Act, 1992, the alleged violations of the aforesaid provisions of the PFUTP Regulations, 2003, by the Noticee. The appointment of the AO was communicated vide order dated June 28, 2021.

SHOW CAUSE NOTICE, REPLY AND HEARING

5. A Show Cause Notice No. AO/ST/2021/19005/1 dated August 11, 2021 (hereinafter referred to as '**SCN**') was issued to the Noticee under rule 4(1) of the Adjudication Rules to show-cause as to why an inquiry should not be held and

penalty be not imposed against the Noticee under section 15HA of the SEBI Act, 1992 for the alleged violations of Regulations 3(a), (b), (c), (d) and 4(1), 4(2)(a) of the PFUTP Regulations, 2003.

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

   a. The Noticee was one of the entities which indulged in non-genuine trades which allegedly created false and misleading appearance of trading, generating artificial volumes in the Stock Options Segment of BSE during the investigation period.
   b. The Noticee is alleged to have engaged in 2 such trades in 1 unique contract on March 10, 2015, which led to generation of artificial volume of 4,64,000 units. These trades of the Noticee involved reversal with the same counterparty on the same day, but at different prices.
   c. The trade entered by the Noticee was 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 Noticee in 1 Stock Options contract in which the Noticee allegedly executed non-genuine trades during the investigation period, provided in the SCN is reproduced below:

S. No.	Contract Name	Avg. Buy Rate (Rs.)	Total Buy Volume (no. of units)	Avg. Sell Rate (Rs.)	Total Sell Volume (no. of units)	Total volume in the contract	% of Artificial Volume generated by Noticee in the contract to Noticee's Total Volume in the Contract	% of Artificial Volume generated by Noticee in the contract to Total Volume in the Contract
1	IBRL15MAR55.00PEW3	0.05	232000	2.4	232000	1960000	100%	23.67%

7. Noticee by indulging in execution of aforesaid non-genuine trades, was alleged to have violated Regulation 3(a),(b),(c),(d), 4(1), 4(2)(a) of PFUTP Regulations, 2003, which are reproduced as under:

PFUTP Regulations, 2003:

*"**3. Prohibition of certain dealings in securities***

No person shall directly or indirectly—

> ***(a)*** *buy, sell or otherwise deal in securities in a fraudulent manner;*
>
> ***(b)*** *use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;*
>
> ***(c)*** *employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;*
>
> ***(d)*** *engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.*

4. Prohibition of manipulative, fraudulent and unfair trade practices

> *(1) Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.*
>
> *(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:—*
>
> *(a) indulging in an act which creates false or misleading appearance of trading in the securities market"*

8. A time period of 14 days from the date of receipt of the SCN was granted to the Noticee to submit its reply to the SCN. Noticee submitted the reply to the SCN vide letters dated August 31, 2021 and November 2, 2021.

9. The Noticee was granted an opportunity of hearing scheduled for November 9, 2021. The authorized representative of the Noticee, Mr. Bharat Redij, Advocate, reiterated the submissions made vide aforesaid letters, during the course of hearing. Further, vide letter dated February 1, 2022, Noticee made additional submissions.

10. The key submissions made by the Noticee are reproduced as under:

Reply Letter dated August 31, 2021:

i Only certain selective information and data appears to have been provided with the SCN. SEBI to provide the entire records such as Investigation Report, Complete Trade and Order Log, correspondence exchanged between SEBI and Exchanges/ Depositories/ Brokers, etc., Action Taken/ proposed against BSE, Statement(s) recorded, etc. Further, grant the Noticee an opportunity of inspection of the same to effectively respond to SCN.

ii Noticee also requested to grant cross-examination of the alleged counterparty to the impugned trades.

Reply Letter dated November 2, 2021:

iii Noticee denied the allegations observed in the SCN and stated that without even providing the investigation report or any other cogent evidence, serious allegation of fraud is made against it.

iv Vide letter dated August 31, 2021, Noticee requested to provide investigation report along with entire set of documents referred to and relied upon in the matter, however, no fresh documents were provided by SEBI in its response, vide letter dated October 21, 2021 and Noticee was directed to directly appear for hearing. Such an approach is against the principles of natural justice. In this regard, Noticee made reference to the order of *Hon'ble Securities Appellate Tribunal (SAT) in the case of PWC (Appeal 8 of 2010)* and the *order* *of Hon’ble Supreme Court in the case of Trilok Nath vs. Union of India (1967 SLR 759).*

v The crux of the charge is that Noticee entered into reversal of trade with the same counterparty. SEBI ought to demonstrate that Noticee had any meeting of mind with the said counterparty. The statement of counterparty was not provided and if the investigating team of SEBI has not recorded any such statement or dwelled into this aspect, there is no case to proceed against the Noticee.

vi The request of Noticee for cross examination of the counterparty and BSE officials was not acceded to and the Noticee has been forced to appear for hearing. In this regard, Noticee made reference to order of *Hon’ble SAT in Ramalinga Raju’s case (SAT Appeal 286 of 2014)* and order of *Hon’ble Supreme Court in the case of Andaman Timber Industries vs. Commissioner of Central Excise, Kolkata [(2015) 62 taxmann.com 3 (SC)]* respectively.

vii Noticee also submitted that there is an inordinate delay of around 6 years in the conduct of the proceedings. In this connection, the Noticee placed reliance on the order of *Hon’ble Bombay High Court in the Sambhaji Shripati Bankar* case, order of *Hon’ble Supreme Court in Bhatinda District Co-op Milk P. Union Ltd. case*, and *Hon’ble SAT order in Ashlesh Shah* case.

viii 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 of fact 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.

ix Apparently, SEBI has held that Noticee transacted in '*illiquid option*' on the basis that buy / sell trade allegedly reversed with same counterparty.

However, in that case, it may also be concluded that said trade could have had no effect on other investors or market at large and hence the allegation of creating ‘misleading *appearance’* must fail.

x Stock exchanges regularly come out with list of illiquid scrip(s) 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 individual investor that they traded in illiquid option is unwarranted and unfair.

xi Pursuant to SEBI Circular CIR/DNPD/5/2011 dated June 2, 2011, permitting stock exchanges to introduce liquidity enhancement schemes for illiquid securities in the equity derivatives segment, BSE launched a series of liquidity enhancement incentive programs ("LEIPS") to enhance liquidity in its equity futures and options segment from September 2011 to March 31, 2016 and also offered volume based and open interest based cash incentives to stock brokers. From the public domain, it is understood that the said product, introduced by BSE had design and structural flaws and was eventually discontinued with effect from March 3, 2016. Pertinently, it is only recently, BSE vide Notice dated March 8, 2016 announced that it has introduced measures for prevention of reversal trades in Equity Derivatives Segment. Merely because on-line preventive measures and checks & balances did not exist at relevant point of time to avoid inadvertent reversal trades, no adverse inference be drawn in the matter.

xii 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. No proceedings has been initiated against BSE as well.

xiii Noticee traded in the stock exchange in ordinary course consequent to bonafide trading in its option segment. In fact, the impugned trade(s) constituted around 0.001% of the total alleged artificial trades (2,91,744 trades as per the Show Cause Notice) during investigation period, thereby constituting only a miniscule percentage of overall trades in the stock market. Thus, to allege that the same created misleading appearance is erroneous. There is no question of transfer of beneficial ownership in option segment since at the end of settlement cycle only net loss/profit is adjusted. Therefore, allegation of creation of 'misleading appearance' or 'reversal' trade is of no consequence in option segment of exchange.

xiv Noticee did not act in concert or in collusion with anyone and nor was 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 Noticee and counterparty. Neither has been SEBI able to furnish any statement or cross examination of such counterparty. The analysis of buy / sell orders brought out in the SCN demonstrates that there cannot be any meeting of mind since the buy trade is at 12:48:04. Thereafter, the sell trade is after almost 18 minutes i.e. at 13:06:43 and there is a clear time difference in trades and hence the allegations of deliberate ' reversal' must fail.

xv All the transactions were carried out on the floor 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. Hence, the Show Cause Notice is misdirected towards Noticee. In this regard, Noticee referred to the case of *Sanjay Agrawal (decided on May 18, 2011)*, wherein, the Hon'ble SAT is stated to have 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 the present case, no such connection is established in SCN since none exist. Noticee also made reference to orders of SAT in the *Smitaben N. Shah case (decided on July 30, 2010), Amaresh Pathak case (decided on February 16, 2021) and Almonds Entertainment case.*

xvi Noticee submitted that the trade(s) were accepted by BSE for settlement, and they were settled between brokers and stock exchange on one hand and between brokers and their clients on the other. There was no infirmity nor was there any lacuna. No alert was issued by BSE at the relevant time as there was no irregularity in the trading. Had there been any wrongdoing, BSE would have cancelled the trades at that point in time only. All trades in option segment were within prudential norms of exchange and as per procedures and guidelines as prescribed by regulator (BSE). Hence, the trades executed by the Noticee were genuine and fair.

xvii Noticee submitted that for the transaction to be termed as 'fraudulent', there has to be an element of 'inducement' and SEBI has not even explicated any inducement in the entire Show Cause Notice. None of the impugned trades were deceptive in nature or had any impact on the investors or their investment decision which is a sine qua non to establish 'fraud '. It is a settled position that SEBI ought to demonstrate that there was indeed some synchronization between parties. In this regard, Noticee placed reliance on the orders of SAT in *Jagruti Securities case (2008 SCC online SAT 184) and S.P.J Stockbroker Pvt. Ltd. Case (2013 SCC Online SAT 67).*

xviii There is no reason for any allegation that Noticee has violated the provisions of the PFUTP Regulations. Besides recording common generic allegations against Noticee, not a single instance or observation on specific role of Noticee in alleged reversal is delineated in the SCN. Such an approach is bad in law. Noticee, in this regard, has referred to the order of Hon’ble Supreme Court in the case of *Commissioner of Central Excise, Bangalore vs Mls Brindavan Beverages (P) Ltd. and Ors [Civil Appeal 3417 of 2002] (decided on June 15, 2007.*

xix The Noticee in its additional submission dated February 1, 2022 relied upon the Adjudication Order dated January 20, 2022 passed in the case of Neha Sethia in the matter of dealing in illiquid stock options at BSE while also repeating its previous submissions and sought to drop the proceedings initiated against it,.

CONSIDERATION OF ISSUES AND FINDINGS

11. I have carefully perused the charges levelled against the Noticee, the documents/material available on record and the reply submitted by the Noticee. The issues that arise for consideration in the present case are:
    I. Whether the Noticee has violated provisions of Regulations 3(a), (b), (c), (d), 4(1) and 4(2) (a) of the PFUTP Regulations, 2003?
    II. If yes, whether Noticee is liable for imposition of monetary penalty under Section 15HA of the SEBI Act, 1992?
    III. If so, what would be the monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in Section 15J of the SEBI Act, 1992 read with Rule 5(2) of the Adjudication Rules?

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

12. The allegation against the Noticee is that it had executed reversal trades in illiquid stock option contracts at BSE and generated artificial volumes which created false and misleading appearance of trading. Reversal trades are those trades in which an entity reverses it’s buy or sell positions in a contract with subsequent sell or buy positions with the same counterparty during the same day. Reversal trades are alleged to be non-genuine trades as they lack basic trading rationale and lead to false or misleading appearance of trading and hence are deceptive and manipulative.

13. The Noticee in its reply contended that there is an inordinate delay of around 6 years in the conduct 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.

14. 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".*

15. 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.

16. As can be seen from the narration of facts in the foregoing paragraphs, pursuant to appointment of AO on April 30, 2021, the appointment of the AO was communicated vide order dated June 28, 2021. SCN was subsequently issued on August 11, 2021. After receipt of reply, an opportunity of personal hearing was scheduled for November 9, 2021.

17. Hence, I note there is no delay in the initiation of proceedings. Further, I note that there are no timelines prescribed in the SEBI Act, 1992 for the purpose of identifying trades as non-genuine. Secondly, there is no provision with prescribed time limit in the SEBI Act, 1992 which may have the effect of prohibiting SEBI from taking action by issuing SCN or passing any order beyond a particular

period of time in a given case. In this regard, I note that in the case of **Ravi Mohan & Ors. Vs. SEBI and other** connected appeals decided on August 8, 2013, Hon'ble SAT while referring to its own decision in HB Stockholdings Ltd. vs. SEBI (Appeal no. 114 of 2012) decided on August 27, 2013 and decision of Hon'ble Supreme Court in Collector of Central Excise, New Delhi v. Bhagsons Paint Industry (India) reported in 2003 (158) ELT 129 (S.C.), held as under:

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

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

19. I am also inclined to rely upon the decision of Hon'ble SAT in the matter of **Bipin R Vora vs. SEBI** wherein it was held that, *"As regards the plea of delay and latches and submission that the show cause notice is barred by limitation, I do not find any merit in these contentions as the time and efforts involved in an investigation though may vary from case to case, generally investigations per-se is a time consuming process which invariably involve collection, scrutiny and careful examination of voluminous records/ order-trade details of all the concerned including the exchanges/recording of statements etc., and therefore*

no time limit can be fixed in this regard to enable a regulator to take appropriate disciplinary action for the safeguard and improvement of the system/market."

20. Therefore, I conclude that there is no merit in the preliminary objections made by the Notice regarding delay in initiating/ concluding the proceedings.

21. The Noticee also contended that it had requested to provide investigation report along with entire set of documents referred to and relied upon in the matter and also to provide an opportunity for inspection of the same, however, no fresh documents were provided by SEBI, and Noticee was directed to directly appear for hearing. I note from the records that vide letter dated October 21, 2021, Noticee was informed that all the relevant material that were relied upon in the proceedings have already been provided along with the SCN. I observe from the SCN that the Noticee was provided with details of the alleged reversal trades, summary of dealings of the Noticee in contracts which contains alleged non-genuine trades of the Noticee. I also observe from the records that these are the only documents/ material relied upon in the proceedings.

22. In this regard, I place reliance upon the order of Hon'ble Supreme Court in the matter of **Natwar Singh vs. Director of Enforcement (2010) 13 SCC 255**, wherein it was held that even the principles of natural justice do not require supply of documents upon which no reliance has been placed by the authority to set the law in motion and further held that the concept of fairness is not a one way street and that the principles of natural justice are not intended to operate as a roadblock to obstruct statutory inquiries. The Supreme Court held that the principles of natural justice do not supplant the law of land but supplements it and, therefore, duty of adequate disclosure was only an additional procedural safeguard in order to ensure attainment of fairness which has its own limitations. In this regard, the Supreme Court held:

"31. The concept of fairness may require the adjudicating authority to furnish copies of those documents upon which reliance has been placed by him to issue show-cause notice requiring the noticee to explain as to why an inquiry

under Section 16 of the Act should not be initiated. To this extent, the principles of natural justice and concept of fairness are required to be read into Rule 4(1) of the Rules. Fair procedure and the principles of natural justice are in-built into the Rules. A notice is always entitled to satisfy the adjudicating authority that those very documents upon which reliance has been placed do not make out even a prima facie case requiring any further inquiry. In such view of the matter, we hold that all such documents relied on by the authority are required to be furnished to the notice enabling him to show a proper cause as to why an inquiry should not be held against him though the Rules do not provide for the same. Such a fair reading of the provision would not amount to supplanting the procedure laid down and would in no manner frustrate the apparent purpose of the statute.

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

24. In light of the above, I am of the view that all the relied upon copies of the documents in the matter were provided to the Noticee along with SCN and the contention of the Noticee in this regard has no merit.

25. Noticee also stated that the request of Noticee for cross examination of the counterparty and BSE officials was not acceded to and the Noticee was forced to appear for hearing. In this regard, I note that the question of cross-examining anyone may arise only if the proceeding is based on reliance made upon recorded statements of persons. As no statement of any party or counterparty / stock broker / BSE officials has either been recorded or relied upon in the

proceeding, the right of cross-examination cannot be claimed in the instant proceeding. I also note that in light of the sub-rule (5) of Rule 4 of the Adjudication Rules, Adjudication Proceedings are not bound by the provisions of Indian Evidence Act, 1872. Thus, I note that there is no merit in the contention of the Noticee in this regard.

26. Noticee also submitted that it did not act in concert or in collusion with anyone and nor was part of any group or connected with anyone for the purpose of influencing price or for any manipulative activity as alleged or otherwise. The analysis of buy / sell orders brought out in the SCN demonstrates that there cannot be any meeting of mind since the buy trade is at 12:48:04 and the sell trade is after almost 18 minutes. In this regard, 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. The fact that the orders of the Noticee and the counterparty matched with such precision (considering that there was a perfect match of price, quantity and very close proximity of time) indicates a prior meeting of minds with a view to execute the reversal trades at a predetermined price. Since these trades were done in an illiquid option contract, there was very little trading in the said contract and hence, there was no price discovery in the strictest terms. The wide variation in prices of the said contracts, within a short span of time, is a clear indication that there was pre-determination in the prices by the counterparties while executing the trades.

27. To illustrate, on March 10, 2015, Noticee at 12:48:04.26 hrs executed 1 Sell trade for 2,32,000 units at the rate of Rs.2.4 per unit with counterparty viz, Naresh Rambilas Kabra, in Stock option “IBRL15MAR55.00PEW3”. At 13:06:43.74 hrs on the same day, the Noticee executed a Buy trade for 2,32,000 units at the rate of Rs.0.05 per unit, with the same counterparty. The aforesaid reversal trade was executed after 18 minutes, generating artificial volumes to the extent of 4,64,000 units in the said contract. I also note that there is a wide variation in the

prices of 2 legs of the reversal trades i.e. Noticee sold 2,32,000 units at Rs.2.4 and then bought the same number of units at Rs.0.05, without there being any justification for the wide variation in prices. This made up 23.67% of the total market volume for this contract, thereby allegedly generating artifical volume of 4,64,000 units. Even the reply of Noticee does not deny the above transactions.

28. In this context, I 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 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.*

29. Further, I rely upon 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..."

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."*

30. Therefore, I conclude that the trading pattern of the Noticee in terms of proximity of buy / sell, perfect match of price / quantity and subsequent reversal of trades evidences the prior meeting of minds with a view to execute the reversal trades at a predetermined price.

31. Noticee further submitted that for the transaction to be termed as 'fraudulent', there has to be an element of 'inducement' and SEBI has not even explicated any inducement in the entire Show Cause Notice. None of the impugned trades were deceptive in nature or had any impact on the investors or their investment decision which is a sine qua non to establish 'fraud'. In this regard, I note the non-genuineness of the transactions is evident from the fact that the trades entered by the Noticee were reversed on the same day with same counterparty at a substantial price difference without any basis for significant change in the contract price which also said to indicate that the trades were artificial and non-genuine in nature. Such short span of time in reversing the trades in the contract suggests the non-genuineness of trades executed by the Noticee. Since these trades were done in illiquid option contracts, there was very little trading in the said contract and hence, there was no price discovery in the strictest terms.

32. The trade reversals in this case points out to the fact that the parties to the transactions, including the Noticee, did not intend to transfer the beneficial ownership. Rather than allowing the market forces to operate in their natural course, the traders carried out the impugned transactions which deprived other market players from full participation. The trade reversals and predetermined arrangement to book profits and losses respectively, made it clear that the parties were not trading in the normal sense and ordinary course. Resultantly, there has

clearly been a restriction on the free and fair operation of the market forces in the instant case. The non-genuine and deceptive transactions of the Noticee are covered under the definition of 'fraud' and the dealings of the Noticee as discussed herein above were “fraudulent”, as defined under regulation 2(1)(c) of the PFUTP Regulations, 2003.

33. In this context, I rely upon the judgement of the Hon’ble Supreme Court in the matter of **SEBI vs. Rakhi Trading Private Ltd.** (supra), wherein the Apex Court recognized that, 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. Further, the market 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. Considering the same, I reject such contention of the Noticee.

34. Noticee stated that pursuant to SEBI Circular dated June 2, 2011, BSE launched a series of liquidity enhancement incentive programs ("LEIPS") to enhance liquidity in its equity futures and options segment from September 2011 to March 31, 2016. It is only recently, BSE vide Notice dated March 8, 2016 announced that it introduced measures for prevention of reversal trades in Equity Derivatives Segment. 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. Since regulators have themselves permitted trading in same, no adverse inference be drawn. 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. No proceedings has been initiated against Stock Broker and BSE.

35. In this regard, I note that permitting trades in options segment, does not entitle anyone to execute artificial and non-genuine trades. Further, the instant allegations pertain only to Noticee who allegedly carried out non-genuine trades

in stock options contracts at BSE. Therefore, the aforesaid contentions made by Noticee are not relevant to the instant allegations. The Noticee's contentions imply that the Noticee executed the impugned trades which were in violation of PFUTP Regulations, 2003. Therefore, I note that the contentions of the Noticee in this regard are devoid of merits.

36. The submission of the Noticee that the trades were executed on the floor of the exchange with strict adherence to rules/ regulations and the automated screen based system itself matched orders on a price-time priority basis, do not establish genuineness of trades or preclude execution of artificial and non-genuine trades.

37. Therefore, I am inclined to note that the aforesaid trades of Noticee were non-genuine and had created false or misleading appearance of trading in terms of artificial volume in stock options and, therefore, the same are manipulative and deceptive in nature.

38. In view of the above, I find that the Noticee, by engaging in non-genuine transactions which created a misleading impression of trading in respective contracts, dealt in the stock options contracts in a fraudulent manner and therefore, is in violation of Regulation 3(a) and 4(1) and 4(2)(a) of the PFUTP Regulations, 2003.

ISSUE II: If yes, whether the failure, on the part of the Noticee would attract monetary penalty under Section 15HA of the SEBI Act, 1992?

and

ISSUE 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, 1992 read with Rule 5(2) of the Adjudication Rules?

39. Since the violation of Regulation 3(a), 4(1) and 4(2)(a) of PFUTP Regulations, 2003 has been established against the Noticee, as brought out in the foregoing paragraphs, the Noticee is liable for monetary penalty under Section 15HA of SEBI Act, 1992 which is reproduced as follows:

SEBI Act, 1992: 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."*

40. While determining the quantum of penalty under Section 15HA of 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.

41. As established above, the Noticee was instrumental in the creation of artificial volume in the illiquid stock option contract by executing reversal / non-genuine transactions in the illiquid stock options segment at BSE. The trades entered by the Noticee were non-genuine in nature and created a misleading appearance of trading. Considering that the violation by the Noticee is creation of artificial trading volumes through trading between two counterparties and the trades are such that one of the counterparty books a profit while the other counterparty books a loss, 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 made/ taken by the Noticee or losses caused to investors as a result of the violation. At the same time, reliance is placed upon the order of the Hon'ble Supreme Court of India in the matter of Chairman, **SEBI Vs Shriram Mutual Fund**{ [2006]5 SCC 361 } –wherein the Hon'ble Supreme Court of India held that *"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant..............."*

42. Therefore, taking into account the facts and circumstances of this matter, and the proportion of trading by the Noticee as compared to the total volume of reversal trades in the market during the Investigation Period, I am of the view that a penalty of Rs.5,00,000 (Rupees Five Lakh only) under Section 15HA of the SEBI Act, 1992 will be commensurate with the violations committed by the Noticee.

ORDER

43. After taking into consideration all the facts and circumstances of the case, in exercise of powers conferred upon me under Section 15-I of SEBI Act, 1992 read with Rule 5 of the Adjudication Rules, I hereby impose a penalty of Rs.5,00,000/- (Rupees Five Lakh only) on Noticee i.e. Shiv Kumar Sarda HUF under Section 15HA of the SEBI Act, 1992 for violation of Regulation 3 (a), 4(1) and 4(2)(a) of PFUTP Regulations, 2003.

44. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of "SEBI -Penalties Remittable to Government of India", payable at Mumbai, OR through online payment facility available on the SEBI website www.sebi.gov.in on the following path, by clicking on the payment link-

ENFORCEMENT ⟶ Orders ⟶ Orders of AO ⟶ PAY NOW

45. The Noticee shall forward the said Demand Draft or the details / confirmation of penalty so paid to the Enforcement Department –Division of Regulatory Action – I of SEBI.

46. The Noticee shall provide the following details while forwarding DD/ payment information:

a) Name and PAN of the entity (Noticee)

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

47. Copy of this Adjudication Order is being sent to the Noticee and also to SEBI in terms of Rule 6 of the Adjudication Rules.

DATE: April 4, 2022
PLACE: MUMBAI

SRINIVASAN T
ADJUDICATING OFFICER