BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO: Order/SD/KS/2021-22/14220]

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

In respect of:

SHUBHAM AGARWAL
PAN: BJMPA9734P

5302 Gali No. 1 Dr. M.C. Verma Tower
Jarhabhatha Nehru Chowk
Bilaspur M. Corp Bilaspur
Chhattisgarh 495001

In the matter of
Dealings in illiquid stock options at BSE

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') observed large scale reversal of trades in the Stock Options segment of Bombay Stock Exchange (hereinafter referred to as '**BSE**') leading to alleged creation of artificial volume in the stock options segment. In this regard, SEBI conducted an investigation into the trading activity in the illiquid Stock Options Segment at BSE for the period April 01, 2014 to September 30, 2015 (hereinafter referred to as "**Investigation Period**").

2. It was observed during the course of investigation that a total of 2,91,643 trades comprising 81.38% of all the trades executed in the Stock Options Segment by various entities at BSE during the investigation period were trades which involved reversal of buy and sell positions by the clients and counterparties in a contract on the same day.

It was also observed that the aforesaid trades resulted into alleged creation of artificial volume to the tune of 826.21 crore units in the Stock Options segment of BSE during the investigation period. In view of the large scale reversal of trades that were observed in the illiquid Stock Options segment at BSE, it is alleged that these trades were non-genuine in nature.

3. It was observed that Mr. Shubham Agarwal (hereinafter referred to as "**Noticee**") was one of the various entities who indulged in the execution of alleged non-genuine trades in the Stock Options Segment at BSE during the above referred investigation period. It was observed that Noticee had entered into reversal trades with his counterparty which involved squaring off transaction with significant difference in sell value and buy value of the transaction. Therefore, it is alleged that Noticee had executed the reversal trades which were non-genuine in nature and have created false or misleading appearance of trading in terms of creation of artificial volume in the Stock Options segment at BSE and therefore, it is alleged that the Noticee has violated the provisions of Regulations 3 (a), (b), (c), (d) and Regulation 4(1), 4(2) (a) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Markets) Regulations, 2003 (hereinafter referred to as "**PFUTP Regulations**"). In view of the above reasons, adjudication proceedings have been initiated against the Noticee under the provisions of section 15HA of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act'**).

APPOINTMENT OF ADJUDICATING OFFICER

4. The undersigned was appointed as the Adjudicating Officer, vide communique dated July 06, 2021 under Section 19 read with Section 15-I of the SEBI Act read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as '**Adjudication Rules**') to inquire into and adjudge under the provisions of section 15HA of the SEBI Act for the aforementioned alleged violation of the provisions of law by the Noticee.

SHOW CAUSE NOTICE, HEARING AND REPLY

5. Show Cause Notice ref. SEBI/HO/EFD1/EFD1_DRA5/P/OW/16703/1/2021 dated July 28, 2021 (hereinafter referred to as '**SCN**') was issued to the Noticee in terms of Rule 4 of the Adjudication Rules requiring the Noticee to show cause as to why an inquiry should not be held against it and why penalty, if any, should not be imposed on the Noticee under the provisions of section 15HA of the SEBI Act. The SCN was sent to the Noticee vide Registered Post AD and was duly served on the Noticee as per the Tracking details obtained from the India Post website. The SCN issued to the Noticee, *inter alia*, mentioned the following-:

i. *It is noted that Noticee was one of the various entities which were indulged in execution of such alleged non-genuine trades in Stock Options Segment of BSE during the Investigation period. Following points deal with the dealings of Noticee during the Investigation period and allegations against it for execution of non-genuine trades.*

Date	Buyer	Seller	Buy Order Time	Sell Order Time	Trade Time	Trade Rate (Rs.)	Trade Quantity
20/05/2015	SHUBHAM AGARWAL	N M IMPEX PRIVATE LIMITED	13:00:18.246198	13:00:18.932642	13:00:18.932642	33	8000
20/05/2015	N M IMPEX PRIVATE LIMITED	SHUBHAM AGARWAL	15:11:42.232730	15:11:41.935757	15:11:42.232730	53.1	8000

ii. *It is observed from the table above that the trades entered by the Noticee in the contract of "*CARN15MAY250.00PEW3*" on May 20, 2015, with his counterparty viz. N M IMPEX PRIVATE LIMITED were reversed between the Noticee and the same counterparty on the same day resulting in reversal of trades which are, prima facie, considered to be non-genuine. Therefore, in the process artificial volume in the stock option contract at BSE has been generated by the Noticee through such non-genuine trades. From the table above, it is observed that the artificial volume created as no. of units reversed in non-genuine trades is 16000 units comprising both volume of initial trade and volume of reversal trade.*

iii. It is further observed from the trade data of the Noticee that it has allegedly entered into non-genuine trades in 1 contract wherein he executed a total of 2 trades all of which were, prima facie, non-genuine trades. In view of this, it is alleged that such fraudulent trades of the Noticee had resulted into creation of artificial volume of total 16000 units.

iv. From the perusal of the trade data of the alleged non-genuine trades of the Noticee, it is observed that Noticee has allegedly executed non-genuine trades in 1 contract. The total volume of 16000 units generated by the Noticee in this 1 contract. Due to its alleged non-genuine trades, an Artificial Volume was generated by the Noticee in the Stock Option Segment of BSE. These alleged non-genuine trades, executed by Noticee in above contract, had significant differential in buy rates and sell rates considering that the trades were reversed on same day

v. In view of the foregoing, it is alleged that the Noticee, by indulging in execution of reversal trades in Stock Options with same entities on the same day, which were non-genuine in nature, has created false or misleading appearance of trading in the aforementioned contracts traded in the option segment of BSE. In view of the fact that these options contracts were illiquid in nature, having very small volume in trading, the Noticee allegedly created artificial volumes in stock options which was manipulative and deceptive in nature. Therefore, in view of above, it is alleged that the Noticee has violated Regulation 3(a), (b), (c), (d), 4(1) and 4(2)(a) of PFUTP Regulations, 2003

6. The Noticee vide his reply dated August 20, 2021, inter alia submitted the following:

<u>Reply dated August 20, 2021</u>

i. Noticee executed the impugned sale trade in stock option referred in the Notice within the available regulatory framework for trading on its anonymous electronic trading platform. This derivative contract was open for trading to all trading participants, and the trade executed therein by him was subject to surveillance and other regulatory supervision of BSE at the first level and SEBI at the next level The sale trade executed by me was cleared by the Clearing Corporation, which was empowered not to clear any trades which were not genuine and not in accordance with law, Rules and Regulations, without any hitch as the same was considered genuine and executed in normal course of trading. Noticee also denied execution of non-genuine reversal sale trade in stock Option, and also denied having created false or misleading appearance of trading, as per reasons set out by me in succeeding paragraphs. Consequently Noticee submitted that no violation of Regulation 3(a), (b), (c) & (d) and 4(1),(2)(a) of PFUTP has occurred on account of his sale trade.

ii. Noticee submitted that the trade executed by him was genuine as it was executed at a price in tune with the cash market price prevailing.

iii. The sole alleged reversal sale trade was executed on 20 March 2015 at a premium of Rs 53.1 on a strike price of Rs 250 PE. The High Low price of the underlying cash scrip, Cairn India Ltd on BSE on 20 March 2015 was Rs 202.3 and Rs 196.6 respectively. If a premium of Rs 53.1, being my trade price, is deducted from the strike price of Rs 250, the resultant value of Rs 196.9 (

Rs 250 strike price -Rs 53.1 premium) corresponds to the price prevailing in cash market between Rs 202.6 and Rs 196.6 on the traded day. As per data provided to me in CD along with the Notice, the Counter Party LTP was also Rs 53. Thus, the traded price reflected the correct value corresponding to prevailing cash market price and the trade cannot be called non genuine as it was traded at market price.

iv. Looked at from another angle, the settlement price on 20 May 2015 of a similar Rs 250 PE contract available on NSE was Rs 52.4. This corresponds to my traded price of Rs 53.1 executed at 15.11 Hrs. Thus there was both commercial basis and rationale for me to trade at a price that I did and the trade was genuine and trading done in normal course of business. That the pricing was appropriate is further buttressed by a noting in third row of Annexure B to the Notice where just below the Trade Rate of Rs 20.5, the LTP rate (last trade price) is shown as -0.1, meaning Rs 20.60.

v. Noticee also submitted that his sale trade was executed at 15.11.42 Hrs whereas my purchase trade was executed at 13.00.18 Hrs. Thus, it was outstanding for more than 2 hours and it is not a case of ' reversing within a few seconds'.

vi. Noticee executed only a single, solitary alleged reversal trade on 20 May 2015. It has been held by Courts on several occasions that a single trade is to be treated differently than several trades. Noticee also referred to SAT order dated 22 June 2016 in the case of DHVANI DARSHAN KOTHARI v SEBI and order dated 21 January 2021 in case of Almondz Entertainment Pvt Ltd v SEBI. Noticee also submitted that this case of only one alleged reversal trade should be treated differently.

vii. it may be noted that the counter party sale order was for 1, 37,000 units and Noticee purchase trade was for 8000 units only at a price of Rs 33. Thus Noticee purchase order quantity and counter party sale order quantity was different. It means that that this quantity of 1,37,000 units was available for trade to every participant and no one was deprived. This was in conformity with the observations of the Supreme Court that everyone must be allowed to participate. Noticee purchase order was within the price range established for the contract for the day by BSE and there was no bar on putting a bid within such a price range. Such bids are always put up by traders to avail of a good 'chance trade'. If any mispricing has occurred in this trade of Rs 33, it is for the seller to explain the rationale behind its trade at the rate of Rs 33. . Thus, the foundation of this conclusion of 'artificial and non genuine trade' is based on a false premise and once this premise has been rebutted by Noticee with logic and factual price movement of derivative contract and underlying scrip, as above, the whole edifice of the allegation must crumble and fail.

The Noticee inter-alia also submitted that

viii. It transpires from a perusal of Trade data provided to me in CD to the Notice that the sale trade of 8000 units executed by me was matched with the same counter party, namely N M Impex Private Limited with whom the purchase transaction was executed. This was an accidental match only as the impugned derivative contract was a liquid contract being also traded by other participants. The units traded in this CAIRN 250 PE Expiry 21 May 2015 derivative contract on 20 May 2015 were 2,74,000 as against 16,000 units traded by me on this day. This shows that the derivative contract was liquid on this day and there were many other participants also on that day in this contract. My reversal trade of 8,000 units accounted for 2.91% of the total volume for the day, and my both purchase and sale transactions accounted for 5.83% of total volume for the day. This is a very small volume contribution by me and this shows the liquidity in the derivative contract and the extent of participation by other traders in it and my insignificant percentage of volume. A squaring off trade could be matched with the same counter party and this situation has been visualized by BSE in clause 3.17 of BSE's Certification on Derivative Exchange booklet where it states that :

"you need not square up with the same party from whom you bought or sold. You can simply buy or sell through the computerized trading system.".

ix. It is a finding of SEBI itself, as has been recorded in the case of Leaps and Bounds Pvt Ltd in Adjudication Order No MC/HP/2021-22/ 12846 dated 30 July 2021 that accidental matching of transaction is possible in a liquid counter. The contract traded by me has been demonstrated to be liquid on trading day and as such matching with same party is not unusual. Bombay Stock Exchange took steps to prevent matching of trades with the same counter party only in March 2016, clearly implying that such matching was both possible and permissible by Exchange and SEBI before this step was taken in March 2016. In view of this and the fact that the derivative contract so traded by me was fairly liquid, and matching between same parties was possible and not barred by Exchange goes to demonstrate that the squaring off trade by me was not non genuine reversal trade.

x. Noticee also submitted that it cannot be called a non-genuine trade creating false and misleading volume as everyone concerned for Settlement of accounts between the parties and brokers fulfilled its legal obligations. Also, it is within powers of BSE and the Clearing Corporation to cancel non genuine trades but the same was not done in our case for the reason that as the trades were found genuine and not false or misleading.

xi. Noticee further submitted that even though the sale trade may have been matched with the same counter party, this in itself is not sufficient to allege non genuineness of a trade and the *other factors also need to be considered in case of a single trade before any adverse interference can be drawn that the trade is non-genuine.*

xii. It has been judicially held that synchronised trades (which include reversal trades) per se are not illegal. These trades become illegal or non genuine only when certain other parameters are inferred on preponderance of probability or are actually established. In addition, it has been also been judicially held that the proximity of time in matching of a trade in an isolated case per se is not conclusive of violation of PFUTP Regulations unless it is accompanied by other factors such as huge volume of trade, persistent trading by trader, such trading affecting the decision of investors, effect of such trade on prevailing prices, collusion and meeting of mind between related persons etc.

xiii. Noticee submitted that he has executed only one sale trade and not carried out huge volume of trade and not to be treated as non genuine trade.

xiv. Noticee had not persisted in trading by executing such trades after this date ie. 20 March 2015 in this derivative contract or any in other derivative contract or in cash market in any security in a manner which would attract regulatory glare. Being persistent in non genuine trading over a period of time in same scrip is one of the important judicial criteria laid down by Supreme Court to determine whether violation of PFUTP Regulations 2003 has occurred. As Notice's is a solitary instance of such trade, not repeated thereafter, persistent trading label cannot be attached to Notice. Even the RAKHI TRADING judgement was in context of 'repeated' trading and 'consistent profits or losses' and not in context of solitary instance of trade. Thus, the 'persistent trading' criteria in Noticee's case also fails.

xv. Noticee also submitted that there was no manipulative or distortive effect on prices of either the cash market security or the derivative contract traded by Noticee, because of this trade executed on 20 March 2015. It cannot be alleged that Noticee trades were not genuine or that Noticee created false or misleading appearance of trading or that Noticee misled investors into trading in these contracts and this criteria of manipulative or distortive effect on prices in determining non genuineness of the trade also fails.

xvi. Noticee submitted that The names of counter party to trade and the counter party broker to the trade have appeared before Noticee for the first time in the Notice. Noticee categorically state that Noticee is not connected or related to and not aware of the identity of the said counter party and its broker. As collusion is an essential ingredient of a reversal trade to constitute 'meeting of mind', the trade executed by Noticee cannot be called non genuine synchronised or reversal trade in absence of collusion between the counter party and me.

xvii. Noticee submitted that there was neither any mechanism to deter nor a note of caution by BSE about prevention of execution of reversal trades. Noticee sale trade was for Rs 53.1 for a quantity of 8,000 units and the same was within the price range determined for the day by BSE and SEBI. The settlement price of Rs 52.4 on NSE for 20 May 2015 also supported the pricing of Noticee's sale trade. There was, thus, no infringement of any Bye law or Regulation by Noticee in this regard. As a matter of fact, it is only in the month of March 2016 that BSE put in a mechanism to prevent reversal trade, implying that such trades were permissible till then

xviii. Noticee also referred to various judgments viz.,

(a) Judgment of Supreme Court in respect of Commissioner of Central Excise vs. M/s Brindavan Beverages (P) Ltd. and Ors [2007 5 SCC 388)decided on June 15,2007.
(b) Karnataka High Court in CIT v. Manjunatha Cotton and Ginning Factory (359 ITR 565 (Kar)
(c) SAT Order in Almondz Entertainment Pvt Ltd v SEBI (Appeal 198 of 2020 dated 21.01.2021) and SAT Order in the matter of Umang Dhanuka v SEBI (Appeal 102 of 2020 dated 8 June 2021)
(d) SAT Order in the matter of Amaresh Pathak vs SEBI (Appeal no 322/2020 dated 16.02.2021)

xix. Noticee further submitted that the ratio of Supreme Court Judgment in SEBI v Rakhi Trading Pvt Ltd (CA 1969 of 2011) should not be applied to the matrix of my case without distinguishing the same from the facts of our case.

xx. Noticee also submitted that Show Cause Notice has not been issued within a reasonable time period, thus causing serious prejudice to the Noticee as several of my rights and liabilities have crystallized and attained finality.

7. In terms of adjudication rules, the Noticee was provided with an opportunity of personal hearing in the matter on September 22, 2021, through the online Cisco webex platform. Further, Advocate, Ms. Anajali Agarwal appeared as the Authorized Representative ('**AR**') on behalf of the Noticee on the stipulated date of hearing. During the course of hearing, the AR reiterated the submissions made by the Noticee in his reply dated August 20, 2021.

CONSIDERATION OF ISSUES AND FINDINGS:

8. I have taken into consideration the facts and circumstances of the case, the material available on record and the reply submitted by the Noticee. It is alleged that the Noticee had executed reversal trades, which were non-genuine trades and the

same has resulted in the generation of artificial volume in the Stock Option contracts at BSE. In view of the same, it is alleged that Noticee has violated the provisions of Regulations 3(a), (b), (c), (d) and Regulation 4(1), 4(2)(a) of PFUTP Regulations and, therefore, it is alleged that Noticee is liable for penalty under the provisions of Section 15HA of the SEBI Act.

9. Before proceeding with the matter on merits, I first deal with the preliminary issues raised by the Noticee regarding delay in proceedings., I have seen that Noticee was provided with all relevant and relied upon documents along with Show Cause Notice and the Noticee was provided enough time to file its detailed reply and submissions. Notwithstanding the same, I also note that there is no provision with prescribed time limit in the SEBI Act which may have the effect of prohibiting SEBI from taking action by issuing Show Cause Notice or passing any order beyond a particular period of time in a given case.

10. In this regard, I am inclined to rely upon the decision of Hon'ble SAT in the matter of Bipin R Vora vs SEBI 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'*.

11. Further, I note that in Ravi Mohan & Ors. v. SEBI and other connected appeals decided on August 08, 2013, Hon'ble SAT while referring to its own decision in HB Stockholdings Ltd. v. 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 in2003 (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 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...."

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

13. In view of aforesaid Judgments, I conclude that there is no merit in the preliminary objections made by Noticee, regarding the delay in concluding the instant proceedings.

14. Before moving forward, the relevant provisions of law allegedly violated by the Noticee and as mentioned in the SCN are reproduced below:--

PFUTP Regulations

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;

15. Reversal trades are considered as those trades in which an entity reverse his buy or sell positions in a contract with subsequent sell or buy positions with the same counterparty during the same day. The said reversal trades are alleged to be non-genuine trades as they are not executed in the normal course of trading, lack basic trading rationale, and allegedly lead to false or misleading appearance of trading in terms of generation of artificial volumes, hence these trades are deceptive and manipulative. From the facts/material made available on record, I find that reversal trades executed by the Noticee, which were observed in the present case, were undertaken by the Noticee with his counterparty with a predetermined arrangement to book profit or losses respectively, and therefore, the parties to the trades were not trading in the normal sense and ordinary course of business. Therefore, it is alleged that the Noticee by indulging in such reversal trades with his counterparty in the illiquid stock option segment at BSE has managed to generate artificial volume in the Stock Options segment at BSE during the investigation period.

16. In this regard, it is observed from the trade log of the Noticee that he had traded in 1 contract in the Stock Options segment of BSE during the above mentioned investigation period. The examination of the Trade log of the Noticee during the relevant period revealed that he had executed 2 non-genuine trades in 1 contract in the Stock Options segment of BSE. I note that the abovementioned trades of the Noticee had resulted in the creation of artificial volume of a total of 16000 units in the

given 1 contract. Further, it is observed that the trade executed by the Noticee was squared up within a short span of time with the same counterparty i.e. trade was reversed within short span of time on the same day. Thus, it is observed that Noticee had indulged in reversal trades with his counterparty in the stock option segment of BSE and the same were non-genuine trades.

17. Further, it is observed that these trades were squared up by the Noticee with his counterparty with a significant price difference. The non-genuineness of these transactions executed by the Noticee is evident from the fact that within a matter of short span of time, reverse the position with his counterparty with significant price difference. The trade reversals in the said case points out to the fact that the parties to the transactions, including the Noticee, did not intend to transfer the beneficial ownership and through these orchestrated transactions, the intention of which was not regular trading, other investors have been excluded from participating in these trades/ contracts. As already mentioned above, there was very little time gap between the buy and sell orders placed by the Noticee with his counterparty in different trades on the same day. In view of the observations made above, I am convinced that Noticee has entered into reversal/non-genuine trades with his counterparty and in the process also generated artificial volume in the otherwise illiquid stock option contracts at BSE.

18. To illustrate, it is observed that the Noticee had executed a total of 2 trades during the Investigation period in the contract "CARN15MAY250.00PEW3". The aforesaid trades were done by the Noticee on May 20, 2015 wherein Noticee bought 8000 units from N M Impex Private Limited at 13:00:18 at the rate of Rs. 33 per unit. The Noticee then sold 8000 units to N M Impex Private Limited at 15:11:41 at the rate of Rs. 53.1 per unit This resulted in 2 trades with total trade quantity of 16000 units at a price of Rs. 33 and Rs. 53.1. Thus, in the above manner, the Noticee executed a total of 2 trades in the contract "CARN15MAY250.00PEW3" and generated artificial volume of 16000 units through such non-genuine and reversal trades. It is also observed that, out of the 2 trades done through 1 unique contract, the Noticee was instrumental in contributing significantly towards the total volume recorded on BSE in the said contracts.

19. The Noticee has contended that there cannot be collusion or meeting of mind unless the buyer and seller are connected, related or known to each other. However, considering the precision at which the reversal transactions had taken place, the quantity, price and time and sale, party in a trade transaction with huge price variation, I am of the view that it will be too naïve to hold that these transactions are through platform of the screen-based trading and such meeting of mind is not possible without both the parties being related or connected to each other. Such conclusion would be over-looking the prior meeting of minds involving synchronization of buy and sell order w.r.t the transactions entered into by the Noticee with his counterparty and such synchronized trading is clearly violative of the transparent norms of trading in the securities market. In view of the above observations, I hold that all the 2 transactions executed by the Noticee in the 1 Option Contract were synchronized trades, which were reversed on same day with same counterparty with prior meeting of mind between the parties to the trade. Needless to mention the fact that these transactions were manipulative/deceptive device with a view to create a desired loss and/or profit in the books of the party to the transactions and in the process, artificial volumes were also generated through such contracts. As per the material available, the Noticee made a profit of Rs. 1,60,800/- as result of these trades.

20. I note that Noticee has submitted that ratio 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) should not be applied to instant case because of vast difference in factual matrix in both cases. However, I do not agree with the contention of the Noticee, because in Rakhi Trading Judgment, the Hon'ble Supreme Court while cumulatively analysing the reversal transactions held that, price discovery system itself was affected by synchronization and rapid reverse trade, which also had the impact of excluding other investors from participating in the market. The Supreme Court, therefore found that the traders having engaged in a fraudulent and unfair trade practice while dealing in securities, are hence liable to be proceeded against for violation of Regulations 3(a), 4(1) and 4(2)(a) of the PFUTP Regulations. The Apex Court also held that *"considering the reversal transactions, quantity, price and time and*

sale, parties being persistent in the number of such trade transactions with huge price variations, it will be too naïve to hold that the transactions are through screen-based trading and hence anonymous. Such conclusion would be over-looking the prior meeting of minds involving synchronization of buy and sell order and not negotiated deals as per the Board's circular. The impugned transactions are manipulative/deceptive device to create a desired loss and/or profit. Such synchronized trading is violative of transparent norms of trading in securities." The Hon'ble Apex Court has also held that in the absence of direct proof of meeting of minds, the test should be one of preponderance of probability and also stated that the conclusion has to be gathered from various circumstances like volume of trade, period of persistence of trading, particulars of buy and sell orders, proximity of time between the two and such other relevant factors.

21. In the same matter, Hon'ble Supreme Court had 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 had only misleading appearance of trading in the securities market……….*"

> "*35…. Contextually and in simple words, it means a practice which does not conform to the fair and transparent principles of trades in the stock market. In the instant case, one party booked gains and the other party booked a loss. Nobody intentionally trades for a loss. An intentional trading for loss per se, is not a genuine dealing in securities. The platform of the stock exchange has been used for a non-genuine trade. Trading is always with the aim to make profits. But if one party consistently makes losses and that too in a pre-planned manner and rapid trades, it is not genuine……*"

22. Additionally, the Hon'ble Securities Appellate Tribunal (hereinafter referred to as "SAT")in its Order dated September 14, 2020 in the matter of Global Earth Properties and Developers Pvt Ltd Vs SEBI(Appeal No. 212 of 2020) relied upon the aforesaid Order of the Hon'ble Supreme Court and held that *"…It is not a mere coincidence that the Appellants could match the trades with the counter party*

with whom he had undertaken the first leg of respective trade. In our opinion, the trades were non-genuine trades and even though direct evidence is not available in the instant case but in the peculiar facts and circumstances of the present case there is an irresistible inference that can be drawn that there was meeting of minds between the Appellants and the counter parties, and collusion with a view to trade at a predetermined price."

23. In this context, I also find it relevant to refer to the decision of 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 Hon'ble Supreme Court has held that , " ….. *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 final 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…..*"

24. In the same matter, the Hon'ble Supreme Court, has further 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 trade effected; the period of persistence in trading in a particular scrip; the particulars of buy and sell orders, namely the volume thereof; the proximity of time between the two and such relevant factors……..*"

25. The observations made in the aforesaid judgments of Hon'ble Supreme Court apply with full force to the facts and circumstances of the present case. Therefore, applying the ratio of the above judgments, I am convinced that the execution of trades by the Noticee in the illiquid options segment with such precision in terms of order placement, time, price, quantity etc. and also the fact that the transactions were

reversed with the same counterparty clearly indicates a prior meeting of mind with a view to execute the reversal trade at a pre-determined price. It is observed that in respect of these trades executed in the illiquid stock options contract, the only reason for the wide variation in prices of the same contract and execution time within short span of time was a clear indication that there was pre-determination in the prices by both the 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 of the Noticee with his counterparty to carry out the trades at predetermined prices. It is not possible to comprehend the reason for which the Noticee would enter into an option contract with a strike price far away from the current market price of the underlying except for the fact that Noticee wanted to execute non-genuine trades.

26. Such trading also involves an act amounting to manipulation of the price of the security in the sense that the price has been artificially and apparently prefixed. It is also a transaction without any intention of performing it and without any intention of effecting a change of ownership of such securities, ownership being understood in the limited sense of the rights in the contract. By synchronization and reversal trade as has been carried out by the Noticee in the instant case, the price discovery system has been affected. Except the parties who have pre-fixed the price, nobody is in the position to participate in the trade. It also has an adverse impact on the fairness, integrity and transparency of the stock market.

27. Therefore, from the foregoing paragraphs and the observations/findings contained therein, I hold that the Noticee has violated the provisions of Regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of PFUTP Regulations, 2003

28. In view of the above, I conclude that the Noticee is liable for monetary penalty under the provisions of Section 15HA of the SEBI Act, which reads as under :

Penalty for fraudulent and unfair trade practices.

15HA. *If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty 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.*

29. In this regard, the provisions of Section 15J of the SEBI Act and Rule 5 of the Adjudication Rules require that while adjudging the quantum of penalty, the adjudicating officer shall have due regard to the following factors namely :-

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to an investor or group of investors as a result of the default;

(c) the repetitive nature of the default.

30. Clearly, from the above observations, the Noticee was instrumental in the creation of artificial volume in the illiquid stock option contracts at BSE during the investigation period by executing reversal / non-genuine transactions in the illiquid stock options segment at BSE. It is not possible from the material available on record to quantify the amount of loss caused to genuine investors as a result of the reversal trades/ non-genuine trades executed by the Noticee with his counterparty. From the manner in which Noticee executed the above mentioned transactions, the Noticee has violated the statutory provisions of law. In this context, 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*…………...."

31. I note that during the personal hearing and in the reply dated August 20, 2021 AR had reiterated the principle of proportionality which a public authority ought to maintain to achieve it's goal. In this regard, I had gone through the criteria given by the AR. However, these are not applicable in this particular matter. Further, the contention of the AR that the profit of Rs. 1,60,800/- earned by the Noticee is not significant amount

cannot be accepted. Since, the focus has been given on the way and means how it has been earned rather than how much it has been earned.

32. Further, AR has submitted that the Noticee has not traded repeatedly and therefore, penalty under sec 15 HA, which is Rs. 5 lakh minimum would be highly excessive and the objective of these proceedings can be achieved without resorting to Sec 15 HA. However, I do not see any merit in the said argument and would like to rely upon the order of Hon'ble Securities Appellate Tribunal (hereinafter referred to as "SAT") dated September 14, 2020 in the matter of ***Global Earth Properties and Developers Pvt Ltd Vs SEBI (Appeal No. 212 of 2020)*** since, the facts of the case are similar to the instant matter. In the matter of ***Global Earth Properties and Developers Pvt Ltd Vs SEBI***, hon'ble SAT held that "*It was urged by the learned counsel for the Appellants that the penalty awarded is excessive and harsh and, therefore, prayed that in the event the order is affirmed the Tribunal may consider reducing the penalty amount taking into consideration the financial status of the Appellants and the negligible transactions executed by the Appellants.*

In this regard we have perused the orders passed by the AO. We find that the AO has taken into consideration not only the factors contained in Sec. 15J of the SEBI Act but has also taken into consideration the number of total trades, the artificial volume generated, the loss incurred, etc while imposing the penalty. It may be stated here that the minimum penalty under Sec. 15HA is Rs.5Lacs and maximum penalty is Rs. 25 crores or three times the profit made. We find that the AO has excercised its discretion which is neither harsh nor arbitrary. We do not find any error in the quantum of penalty imposed by the AO."

33. Therefore, by considering the profit and creation of artificial volume by the Noticee, I have no hesitation to impose the minimum penalty prescribed under the relevant provisions of the SEBI Act.

ORDER

34. Having considered all the facts and circumstances of the case, the material available on record and the factors mentioned in the preceding paragraphs, I, in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, hereby impose a penalty of Rs.5,00,000/- (Rupees Five Lakh only) on the Noticee viz. Mr. Shubham Agarwal under the provisions of Section 15HA of the SEBI Act for the violation of Regulations 3(a), (b), (c), (d), 4(1) and 4(2) (a) of the PFUTP Regulations. I am of the view that the said penalty is commensurate with the default committed by the Noticee.

35. The Noticee shall remit / pay the said amount of penalty within 45 (forty five) days of the receipt of this order either by way of Demand Draft (DD) in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai and the said DD should be forwarded to the Division Chief, Enforcement Department - I (EFD), Division of Regulatory Action - I [EFD1-DRA-3] SEBI Bhavan, Plot No.C4-A,' G' Block, Bandra Kurla Complex (BKC), Bandra (East), Mumbai – 400 051 and also send an email to tad@sebi.gov.in with the following details:

1. Case Name:	
2. Name of Payee:	
3. Date of payment:	
4. Amount Paid:	
5.Transaction No:	
6. Bank Details in which payment is made:	
7. Payment is made for: (like penalties /disgorgement/recovery/Settlement amount and legal charges along with order details)	

OR

36. Payment can also be made online by following the below path at SEBI website www.sebi.gov.in ENFORCEMENT → Orders → Orders of AO → Click on PAY NOW or at https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html.

37. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

38. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is sent to the Noticee viz. Shubham Agarwal and also to Securities and Exchange Board of India.

Place: Mumbai
Date: November 18, 2021

SANDEEP P DEORE
ADJUDICATING OFFICER