BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER Ref No.: Order/ VV/AS/2021-22/15179]

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

In respect of:

Mr. Baijnath Goel HUF,
(PAN: AAEHB3653G)
166 A, Metropolitan,
Kolkata - 700 105 (West Bengal).

In the matter of dealing in Illiquid Stock Options at BSE

1. Securities and Exchange Board of India ('**SEBI**') observed large scale reversal of trades in the Stock Options Segment of the BSE Limited (hereinafter be referred to as '**BSE**') and, pursuant to this, it conducted investigation into the trading activities of certain entities in illiquid Stock Options at the BSE for the period April 01, 2014 to September 30, 2015 (hereinafter be referred to as '**Investigation Period**'). Investigation revealed that during the Investigation Period, a total of 2,91,643 trades (comprising 81.38% of all the trades executed in the Stock Options Segment of BSE) involved reversal of buy and sell positions by the clients and counterparties in a contract.

2. The reversal trades are considered as non-genuine trades if it involves an entity reversing its buy or sell positions in a contract with subsequent sell or buy positions with the same counterparty during the same day. In this regard, artificial volume is considered as the volume (no. of units) reversed in non-genuine trades, comprising both original volume and reversed volume while keeping out the volume which is not reversed. These alleged non genuine trades resulted into creation of artificial volume to the tune of 826.21 crore units or 54.68% of the total market volume in Stock Options segment of BSE during the Investigation Period. It was further noted that said alleged non genuine trades were not restricted to any specific contract or between any specific set of entities. Mr. Baijnath Goel HUF (hereinafter referred to as '**Noticee**') was one of the several entities which were indulged in execution of such alleged non-genuine trades.

3. It was observed from the trade log that the Noticee had executed a total of 4 such trades in 2 unique contracts which allegedly led to creation of artificial volume of total 1,58,000 units. It is further observed that the Noticee, by executing non genuine trades during the relevant period, registered a positive close out difference of ₹2,90,800/- approx. The trades entered by the Noticee were reversed on the same day within a very short span of time with 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. The summary of dealings of Noticee in such 2 Stock Options contracts is as follows:

Table 1 – Summary of dealings of the Noticee in contracts wherein he executed non-genuine trades

S. No.	Contract Name	Avg. Buy Rate (₹)	Total Buy Volume (no. of units)	Avg. Sell Rate (₹)	Total Sell Volume (no. of units)	% of Non Genuine trades of Noticee in the contract to Noticee's Total trades in the Contract	% of Non Genuine trades of Noticee in the contract to Total trades 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	HULL15APR940.00CE	3.00	15000	13.00	15000	100%	7.14%	100%	1.85%
2	HULL15APR940.00CE	2.40	64000	4.60	64000	100%	12.5%	100%	19.05%

4. From the above table it was observed that: -
   a. The alleged non-genuine trades have contributed significantly when compared with the total number of trades from the market in the above contracts. The non-genuine trades of the Noticee were in range of 7.14% to 12.5% of the total trades that had happened in the aforementioned contract.

   b. The whole volume of 1,58,000 generated by the Noticee in all of the above contracts due to its non-genuine trades were artificial volume, and further this artificial volume, generated by the Noticee, also contributed significantly to the extent of 1.85% to 19.05% of the total volume in said contracts in the market.

   c. These alleged non genuine trades, executed by Noticee in above contracts, had significant differential in buy rates and sell rates considering that the trades were reversed on same day.

d. The Noticee has allegedly engaged in the non-genuine transactions in the option segment of BSE for the purpose creating false appearance of trading.

5. Based on above findings of the investigation, the competent authority in SEBI *prima facie* felt satisfied that there are sufficient grounds to inquire and adjudicate the alleged violations of the provision of Regulation 3(a), (b), (c), (d), 4(1) and 4(2)(a) of SEBI (Prohibition of Fraudulent and Unfair Trading Practices related to Securities Markets) Regulations, 2003 (hereinafter be referred to as, the "**PFUTP Regulations**") by the Noticee and appointed Shri Amit Pradhan, Chief General Manager as Adjudicating Officer ('**erstwhile AO**') vide *communication order* dated April 26, 2021 to inquire and adjudge under Rule 5 of SEBI (Procedure for Holding Inquiry and imposing penalties) Rules, 1995 (hereinafter be referred to as "**Adjudication Rules**") and under section 15HA of the SEBI Act, the alleged violations by the Noticee. Thereafter, vide *communication order* dated June 21, 2021, this case has been transferred to undersigned with advise that except for the change of the Adjudicating Officer the other terms and conditions of the original orders *'shall remain unchanged and shall be in full force and effect'* and that the "*Adjudicating Officer shall proceed in accordance with the terms of reference made in the original orders".* The text of these provisions of PFUTP Regulations are as under:

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.

6. After receipt of records of these proceedings, the notice to show cause no. EAD – 9/ADJ/SCN/VKV/AKS/22288/2021 dated September 02, 2021 (hereinafter be referred to as '**SCN'**) issued to the Noticee in terms of Rule 4(1) of the Adjudication Rules read with section 15I of the SEBI Act calling upon it to show cause as to why an inquiry should not be held against it in terms of Rule 4 of the Adjudication Rules and penalty be not imposed under Section 15HA of the SEBI Act for the aforesaid alleged violations. The SCN was duly served upon the Noticee *via* Speed Post Acknowledgement Due on September 09, 2021. Vide e-mail dated September 16, 2021, the Noticee has sought additional time for filing proper reply in lieu of covid situation in his family. Considering the same, the Noticee was allowed time upto October 15, 2021 to file written reply in the matter. Further, on considering the material available on record and in terms of Rule 4(3) of the Adjudicating Rules, the Noticee was granted an opportunity of personal hearing on October 20, 2021. However, vide e-mail dated October 18, 2021, the Noticee requested for further time to file reply on the ground of festival season across Kolkata. In this regard, the reason stated by the Noticee was not found cogent, however, in the interest of principal of natural justice the Noticee was allowed time upto October 31, 2021 and hearing was adjourned for November 12, 2021. However, on schedule date of hearing the Noticee failed to appear before me and also failed to file any reply.

7. Thereafter, vide e-mail dated November 15, 2021, the Noticee forwarded his reply to the SCN dated November 13, 2021 and authorized Mr. Vikas Bengani, Advocate to make written or oral submissions in the instant proceedings on behalf of the Noticee. Accordingly, in the interest of principal of natural justice the Noticee was granted final opportunity of hearing on December 21, 2021. On scheduled date of hearing, Mr. Vikas Bengani, Advocate appeared before me and made submissions on the basis of the Noticee's written submission dated December 21, 2022 and accordingly, hearing concluded in the matter.

8. The replies/submissions of the Noticee made vide letter dated November 13, 2021 and oral submissions made during hearing *inter alia* are as follows:

   a. The relied upon documents and data i.e. Original Trade and Order Logs, Price Volume Data and copy of the Investigation Report have not been annexed with the SCN. In this way the principle of Natural Justice has not been followed in the present proceeding. In couple of Notices issued to other entities by SEBI, the total alleged trades were mentioned 2,91,744 (81.41%), while in SCN it is mentioned as 2,91,643 trades comprising substantial 81.38%. The Noticee has not been provided any material/ data of total market volume in Stock Option Segment of BSE during the Investigation Period. The Noticee has also not been provided Trade and Order Log for total 2,91,643 Trades comprising 81.38% of all trades executed in Stock Market Segment of BSE during the Investigation Period.

b. The trades of the Noticee in the Option Segment of BSE during the Investigation Period comprising of 18 months was restricted to 2 days only. Trades of the Noticee in option segment of BSE were only in well-known Companies. He had meticulous track record of trading in the securities market and except the captioned SCN the Noticee has not received even a warning letter prior to the issue of the captioned SCN.

c. The alleged 4 non-genuine trades (2 buy and 2 sell trades) in option segment of BSE were executed by the Noticee on the anonymous screen based trading platform provided by BSE wherein identity of the counter party remain undisclosed. the counter party whose name has been disclosed now in the captioned SCN is completely unknown to the Noticee.

d. BSE has a sophisticated surveillance system and if there had been any reversal of trade, the system could have alarmed BSE to take corrective measures to restrain any non-genuine trades happening in its trading platform. However, the Noticee has not received any warning or caution letter from BSE for any of the trades executed by the Noticee in its option segment during the period of investigation. Further, the trades were executed on the anonymous platform of the Exchange, without any knowledge of counter party, at price ranges that were permitted by the Exchange / SEBI and the obligations arising out of it have been settled through the clearing mechanism of the Exchange.

e. Option trading platform of the BSE has not been as vibrant as NSE. In such a situation it is just coincidence that the Orders placed by the Noticee might have been matched. However, nowhere in the entire SCN it is alleged that the Noticee had any connection / association / relationship with the counter party. In absence of any such connection/ association/ relationship with the counter party to trades of the Noticee, it is totally illogical and irrational to allege that trades of the Noticee with the said counter party are non-genuine trades which resulted into creation of any artificial volume.

f. The Captioned SCN it is alleged that SEBI had observed large scale of reversal of trades in Stock Options segment of BSE leading to creation of artificial volume. However, it is not made clear as to what constitutes a reversal trade or what the definition of reversal trade is. No document or information has been provided in this regard.

g. It is beyond the comprehension of the Noticee that how an allegation of fraud can be alleged against the Noticee for execution of mere 2 buy and 2 sell trades. It is very pertinent to state that the said trades were matched with 2 separate entities. The Noticee has placed reliance upon the adjudication order dated December 24, 2019 of Adjudicating Officer, SEBI in the matter of *Richa Industries Limited*.

h. Like synchronized trades or self-trades, reversal trade is also *per se* not illegal. In catena of cases, SEBI itself exonerated several entities wherein the quantum of purported reversal trades was lesser. The Noticee has placed reliance upon the orders of Hon'ble Securities Appellate Tribunal ("**SAT**") in the matter of *Mr. Narendra Vallabhji Bahuva v/s SEBI* (Order dated 14-07-2021, Appeal No. 516 of 2019) and *Dhvani Darshan Kothari v/s SEBI* (Appeal No. 390 of 2015).

i. There is huge quantity difference in between the buy order and sell order placed by the Noticee herein and counterparty in first unique contract.

j. It is alleged that the Noticee had generated 1.85% and 19.05% of the volume in 2 separate Unique Contracts. It is to be noted that no price volume data has been annexed with the SCN. It is further submitted that these allegations are merely an eyewash as it does not take into consideration the number of trades and volumes generated in complete Option Segment in BSE in a particular Scrip on a particular day. It may be noted that the stock exchange platform at the relevant point of time gave a choice to write options at various strike prices as per the suitability of the trader. What has been considered in the SCN is only an option with a particular strike price and not the total trading on Option Segment in a particular scrip at the relevant point of time. Thus, the percentages shown in the SCN are misleading and cannot be relied upon.

k. The trades were executed on the anonymous platform of the Exchange, without any knowledge of counter party, at price ranges that were permitted by the Exchange / SEBI and the obligations arising out of it have been settled through the clearing mechanism of the Exchange.

l. SCN is bad in law as the same has been issued after a period of more than 6 years from the date of execution of trades by the Noticee. The issue of SCN after a period of more than 6 years from the date of execution of trades has caused extreme mental agony and highly prejudices the case of the Noticee as justice delayed is justice denied.

m. None of the acts or trades executed by the Noticee fall under the definition of fraud as provided in regulation 2(1) (c) of PFUTP Regulation, the genuineness of the trades executed by the Noticee cannot be questioned and therefore, the Noticee cannot be alleged to have violated any PFUTP Regulations. The Noticee has placed reliance upon the several judgements of the Hon'ble SAT - *KSL & Industries Ltd. vs. SEBI* (Appeal No. 9 of 2003, Date of decision 30th September, 2003), *Vintel Securities Pvt. Ltd. vs. SEBI* (Appeal No. 219 of 2009, Date of decision 23rd November, 2009), *Dhvani Darshan Kothari & Anr.* (Appeal No. 276 of 2020, Order dated 21-01-2021).

n. In view of the facts stated, arguments advanced and authorities cited, it is humbly prayed that the present proceedings be quashed since no primary violation of any PFUTP Regulations is made out against the Noticee and the genuineness of the trades has also been explained hereinabove.

o. There is no restriction or bar in the SEBI Act which prohibits an Adjudicating Officer to impose lesser penalty than Rs. 5,00,000/- under Section 15HA of the SEBI Act. In this connection, the Noticee place reliance on the judgement of Hon'ble Apex Court dated 28-02-2019 in Civil Appeal No. 11311 of 2013 in the matter of Adjudicating Officer, *SEBI v/s Bhavesh Pabari* and on the judgement of Hon'ble SAT in the matter of *Dhvani Darshan Kothari*.

9. I have considered the allegation levelled in the SCN, reply / submissions of the Noticee and the relevant material brought on record. From the reply of the Noticee, I note that the Noticee has not disputed the execution and subsequent reversal trades as alleged in the SCN. However, the Noticee has raised technical objection of delay in issuance of SCN after 6 years

of the impugned transactions and stated that delay has caused extreme mental agony and highly prejudices the case. In this regard, SEBI has investigated large scale reversal of trades in stock options which were entered into by large number of entities. 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. I further note that during the course of hearing in the case of *R. S. Ispat Ltd Vs SEBI*, the Hon'ble SAT, vide its Order dated October 14, 2019, *inter alia* held that "*SEBI may consider holding a Lok Adalat or adopting any other alternative dispute resolution process with regard to the Illiquid Stock Options*". Subsequently, 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. The public notice was also made available on the website of the BSE. In addition to the same, all the entities including the Noticee were intimated through email and letters. In terms of the scheme, any entity desirous of availing the benefit of the scheme could avail the same by filling up the respective requisite details and paying the applicable settlement amount through the online platform made available on SEBI's website. However, the Noticee has not availed the aforesaid scheme of SEBI. Thereafter, vide communique dated April 26, 2021 the erstwhile AO was appointed as the Adjudicating Officer in the instant proceedings, however, pursuant to his deputation, this case has been transferred to me and thereafter, on receipt of records, the SCN to the Noticee has been issued on September 02, 2021, informing the Noticee about the detailed charges/allegations against it.

10. In terms of aforesaid discussion, I note that, initiating a proceeding under the appropriate provisions of SEBI Act is a regulatory prerogative of SEBI depending upon the outcome of the fact finding exercise, which is the investigation done in this case, and just because the alleged violation was committed in a distant past cannot be a ground to vitiate initiation of these proceedings. Further, for establishing the delay, if any, in the matter, the date when the

violation came to the notice of the SEBI would be the relevant point and not the date of violation. Whether a delay in a particular case is justified or not depends on the facts and circumstances of each case. In this regard, the Hon'ble SAT in the matter of *Ashlesh Gunvantbhai Shah Vs SEBI (*Appeal No. 169 of 2019 Date of Decision: 31.01.2020) made the following pertinent remarks:

> *"It is no doubt true that no period of limitation is prescribed in the Act or the Regulations for issuance of a show cause notice or for completion of the adjudication proceedings. The Supreme Court in Government of India vs, Citedal Fine Pharmaceuticals, Madras and Others, [AIR (1989) SC 1771] held that in the absence of any period of limitation, the authority is required to exercise its powers within a reasonable period. What would be the reasonable period would depend on the facts of each case and that no hard and fast rule can be laid down in this regard as the determination of this question would depend on the facts of each case. This proposition of law has been consistently reiterated by the Supreme Court [..].*

11. I also note that, the Supreme Court recently in the case of Adjudicating Officer, *SEBI vs. Bhavesh Pabari (2019) SCC Online SC 294* held:

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

12. I am also of a view that, Hon'ble SAT has qualified the aforesaid ruling by saying that the reasonable period would depend on the facts and circumstances of each case and that no hard and fast rule can be laid down in this regard. In my view the present proceedings do not suffer from any infirmity on the ground of delay. I, therefore, hold that there is no protracted delay as contended and hence, the contention of the Noticees in this regard is rejected.

13. The Noticee has also contended that the *prima facie* reason recorded by the Competent Authority ordering inquiry against the Noticee has not been provided to him during proceedings. In this regard, I note that such *prima facie* satisfaction of the Competent Authority is based upon the facts and circumstances leading to the allegations as described in the SCN. Further, the content and procedure of issuance of SCN are determined in terms of the Adjudication Rules. Accordingly, the Noticee's contention in this regard is not found tenable.

The Noticee has contended that relied upon documents and data i.e. original trade and order logs, price volume data and copy of the Investigation Report has not been provided to him during the instant proceedings and therefore principle of natural justice has not been followed. In this regard, I note that the relied upon documents in the instant proceedings are - a) details of all the alleged non-genuine trades of Noticee in Stock Option Segment of BSE during relevant period; and b) summary of dealings of the Noticee in contracts wherein he executed non genuine trades, and the aforesaid relied upon documents has been provided to the Noticee as Annexure 3 and 4, respectively, along with the SCN. I also note that the in this case, the basis of the allegations as made in the investigation report has been mentioned in the SCN and it is the findings of the investigation that are basis of charge against the Noticee and are relied upon in these proceedings. Therefore, in my view the principle of natural justice has been complied with in this case and the grievance of the Noticee, in my view, is without any foundation. This view also finds support from the following judgment of Hon'ble SAT on the similar issue in the case of *Manoj Gaur Vs. Securities and Exchange Board of India, in Appeal Number* 64 of 2012 decided on October 03, 2012: -

> *"The investigation report is not the evidence on which reliance was placed by the adjudicating officer. Since the adjudicating officer has complied with the statutory requirements, there is no legal obligation on the Board to furnish the entire investigation report to the appellants. Learned counsel for the parties have relied on certain case law relating to principles of natural justice. We do not consider it necessary to refer to all those details in view of the fact that regulation 9 of the Regulations makes it obligatory to communicate the findings in the investigation report and not the whole report. It is nobody's case that such findings were not made available. If the procedure laid down in the regulations has been followed by the adjudicating officer, the grievance of violation of principles of natural justice is without any foundation."*

14. Further, in the recent ruling of Hon'ble SAT in the case of *Shruti Vora Vs. Securities and Exchange Board of India, in* Appeal Number 28 of 2020 decided on February 12, 2020 held that *"…The contention that the appellant is entitled for copies of all the documents in possession of the AO which has not been relied upon at the preliminary stage when the AO has not formed any opinion as to whether any inquiry at all is required to he held cannot be accepted. A bare reading of the provisions of the Act and the Rules as referred to above do not provide supply of documents upon which no reliance has been placed by the AO, nor even the principles of natural justice require supply of such documents which has not been relied upon by the AO. We are of the opinion that we cannot compel the AO to deviate from the prescribed procedure and supply of such documents which is not warranted in law. In our view, on a reading of the Act and the Rules*

we find that there is no duty cast upon the AO to disclose or provide all the documents in his possession especially when such documents are not being relied upon…"

15. The Noticee has further raised issue of discrepancy in total number of non-genuine trades taken place during the investigation period in Stock Options Segment of BSE mentioned in the SCN and mentioned in other SCNs issued to several other entities in the matter of dealing in Illiquid Stock Options of SEBI. In this regard, I note that, as clarified by the concerned department of SEBI, the total number of non-genuine trades were 2,91,744 trades comprising substantial 81.40% approximately. However, I note that the same is minor discrepancy in overall general facts of this case and same has no effect on the allegations and charge made out in the SCN. Considering the same, I reject such contention of the Noticee.

16. Coming to the merit of allegation, it is worth mentioning that reversal trades are considered non-genuine if they involve an entity reversing its buy or sell positions in a contract with subsequent sell or buy positions with the same counterparty during the same day. In this regard, artificial volume is considered as the volume (no. of units) reversed in non-genuine trades, comprising both original volume and reversed volume while keeping out the volume which is not reversed. Admittedly, the Noticee had indulged in 4 such reversal trades in 2 unique contracts during the Investigation Period involving reversal of trades with same entity with whom it had done buy/ sell transaction, in short span of time, respectively, in a synchronized manner. It is noted from the trade log relied upon in the matter that the Noticee and counterparty(ies) both had placed their respective sell-buy and buy–sell orders in same time i.e. within few milliseconds. Further, each trade involved matching of time, price and quantity of units. For example, in respect of the 2 trades in contract "IFCI15MAY28.00CE" dated May 26, 2015. The trades of the Noticee are detailed in the following table:

<u>Table 2: Trades of the Noticee in the contract of "IFCI15MAY28.00CE"</u>

Sl.	Date	Buyer	Seller	Buy Order Time	Sell Order Time	Trade Time	Trade Rate (Rs.)	Trade Quantity
1	26/05/15	Fastner Machinery Dealers Pvt Limited	Baijnath Goel HUF	14:36:33	14:36:33	14:36:33	4.60	64000
2	26/05/15	Baijnath Goel HUF	Fastner Machinery Dealers Pvt Limited	14:36:36	14:36:36	14:36:36	2.40	64000
		Total						**1,28,000**

17. It is observed from the above table that –

    a. The Noticee, at 14:36:33 hrs placed a sell order for 64,000 units of call option of contract "IFCI15MAY28.00CE" at a price of Rs. 4.60 and 64,000 units of this sell order of the Noticee got matched with the buy order of another entity namely, Fastner Machinery Dealers Pvt Limited, which itself had placed a buy order for 64,000 units in the same contract at 14:36:33 hrs i.e. within few milliseconds of the sell order placed by the Noticee.

    b. Thereafter, the Noticee, at 14:36:36 hrs placed a buy order for 64,000 units of call option of contract "IFCI15MAY28.00CE" at a price of Rs. 2.40. This buy order of the Noticee got matched with the sell order of Fastner Machinery Dealers Pvt Limited, which itself had placed a sell order for 64,000 units in the same contract at 14:36:36 hrs i.e. within few milliseconds of the buy order placed by the Noticee.

    Observation: Thus, the sell order placed by the Noticee at Rs. 4.60 was reversed with the same counterparty at Rs. 2.40, within 3 seconds in the same contract. The artificial volume generated through such 2 non-genuine trades was for 1,28,000 units of the said contract.

18. Similar pattern of trading was observed in respect of other 2 trades executed by the Noticee in other illiquid Stock Option contract, wherein trades were reversed in short span of time and buy-sell or sell-buy orders were placed within a time gap of few milliseconds. The buy orders placed by the Noticee were matched with sell orders of counterparties and sell orders placed by the Noticee were matched with buy orders of counterparties in terms of number of units and price and time. Thus, the total volume generated through such non genuine trades was 1,58,000 units of the 2 Stock Options contracts. Such reversal of trades in quick succession with substantial price difference indicate towards employing of a manipulative device in connection with its dealing in said Illiquid Stock Options contracts.

19. The Noticee has raised the issue of difference in between the buy order and sell order placed by the Noticee herein and counterparty in first unique contract. In this regard, I note that, out of two impugned contracts, the aforesaid issue appeared in one of the contract, wherein, the Noticee has placed buy order for 15000 units at Rs 3.00 per unit within few milliseconds of placing of a sell order for 45000 units at Rs 3.00 per unit by the counterparty *viz.* Ask Bhoomi Developers Pvt Ltd. The aforesaid trade gets reversed within 3 seconds with same counterparty at substantial high price of Rs 13.00 in respect to first leg of trade. Considering the fact of reversal of trade within 3 seconds at substantial difference in sell-buy order, I am

not inclined to accept the argument that partial matching of order cannot be part of a non-genuine reversal trades in the said contract and therefore, I found that the said argument is devoid of any merit.

20. The Noticee has further raised the issue of percentage volume of artificial trades generated by the Noticee in a particular contract w.r.t. total volume in contract in absence of price volume data. As per the Noticee, the aforesaid data does not take into consideration the number of trades and volumes generated in complete Option Segment in BSE in a particular Scrip on a particular day. In this regard, I note that Annexure 4 to the SCN provided the details of total number of trades and total volume generated in impugned contracts on a particular day at particular strike price. I further note, that a contract with a particular expiry date and quoted at a particular price is unique in itself and therefore, I found no anomaly or ambiguity, when data pertaining to the Noticee in said unique contract is compared with the trade or volume data of the market in that unique contract on a particular day. In fact, comparing a unique contract data with the data of complete Option Segment in BSE will result into infirmity. Considering the aforesaid, I reject such contention of the Noticee.

21. The Noticee has contended that, in SCN it is not made clear what constitutes a reversal trade or what the definition of reversal trade is. In this regard, I note that in para 3 of the SCN, it was mentioned that '*reversal trades are considered non genuine trades if it involves an entity reversing its buy or sell positions in a contract with subsequent sell or buy positions with the same counterparty during the same day. In this regard, artificial volume is considered as the volume (no. of units) reversed in non-genuine trades, comprising both original volume and reversed volume while keeping out the volume which is not reversed*'. Therefore, the definition of '*reversal trade*' is embedded in aforesaid para of the SCN, which means reversing of '*buy'* or '*sell'* positions by a trader. Considering the same such contention of the Noticee is rejected hereby.

22. The Noticee has further contended that his trades were restricted to 2 days out of 18 months and his trades in option segment of BSE were only in well-known Companies. In this regard, I note 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, hence, it would be appropriate to consider the impact of these transactions between the counterparties in totality. Further, it is matter of common knowledge that the fraudulent trading in illiquid Stock Options cannot be justified merely because the impugned trading by the Noticee in

illiquid Stock Option was in respect of well-known companies or for limited period of time during the investigation period. I, therefore, do not agree with such contentions of the Noticee.

23. The Noticee has contended that he had traded on the anonymous platform of the Exchange, without any knowledge of counter party, at price ranges that were permitted by the Exchange / SEBI and the obligations arising out of it have been settled through the clearing mechanism of the Exchange. Further, option trading platform of the BSE has not been as vibrant as NSE. In such a situation it is just coincidence that the Orders placed by the Noticee might have been matched. However, nowhere in the entire SCN it is alleged that the Noticee had any connection / association / relationship with the counter party. In absence of any such connection/ association/ relationship with the counter party to trades of the Noticee, it is totally illogical and irrational to allege that trades of the Noticee with the said counter party are non-genuine trades which resulted into creation of any artificial volume. In this regard, I note that, impugned trades were done in illiquid option contracts, where 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, 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. Thus, it is observed that Noticee had indulged in reversal trades with it counter parties in the stock options segment of BSE and the same were non-genuine trades. Therefore, the Noticee's contentions are not acceptable and hence rejected

24. I further note that the impugned reversal trades were carried out by the Noticee in an illiquid Stock Options Contracts where there was no participation of public. Reversal trades were undertaken by the Noticee with its 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. Such transactions in illiquid Stock Options cannot be taken as genuine one. Such trading was apparently without any economic rationale. Thus, the Noticee claim of having no connection, association or relationship with the counterparty or prior meeting of mind or any specific role in creating artificial volume through alleged trades is not acceptable.

25. Further, with regard to the reversal trades carried out by the Noticee, I note that the Hon'ble Supreme Court in the matter of *SEBI vs. Rakhi Trading Private Ltd.*, in Civil appeals no., 1969

of 2011 with Civil Appeal Nos., 31743177 of 2011 and Civil Appeal No., 3180 of 2011 decided on February 8, 2018 had observed that *"the price discovery system itself was affected by synchronization and rapid reverse trade, which also had the impact of excluding other investors from participating in the market. The Supreme Court, therefore found that the traders having engaged in a fraudulent and unfair trade practice while dealing in securities, are hence liable to be proceeded against for violation of Regulations 3(a), 4(1) and 4(2)(a) of PFUTP Regulations"*.

26. With regard to reversal transactions, Hon'ble Supreme Court in the matter of *SEBI v Rakhi Trading Private Limited (Supra)*, further 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…..*" In the same matter, Hon'ble Supreme Court further held 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*". In view of said Hon'ble Supreme Court judgment, I see no reason to take a different view in the present case. In view of the foregoing, I hold that the Noticee had indulged in execution of reversal trades in Stock Options with same counterparty (ies) on the same day, which are non-genuine in nature and have created false or misleading appearance of trading in terms of artificial volumes.

27. I further note that though direct evidence is not available in the present matter as regards to meeting of minds or collusion of the Noticee with other entities. The genuineness of trading has to be determined based upon circumstantial evidence involving multiple factors such as trading pattern, liquidity and volatility in the scrip /contract, etc. In this context, the Hon'ble SAT vide its order dated July 14, 2006, in the case of Ketan Parekh vs. SEBI (Appeal no. 2/2004) observed 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."*

28. Further, in *SEBI v Kishore R Ajmera (AIR 2016 SC 1079)*, Hon'ble Supreme Court 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 further observed 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.*"

29. The trading pattern as found in this case in illiquid Stock Options cannot occur just by accident or coincidence. The trading behavior of the Noticee in this case makes it clear that aforesaid trades of the Noticee could not have been possible without prior meeting of minds. The synchronized trading by the Noticee with same counterparty at same time for same quantity at same price and reversal of transaction with wide variation in price of the reversed trades in the same contract in a short time without any basis, all indicate that the trades executed by the Noticee were not genuine trades and being non-genuine, created an appearance of artificial trading volumes in the contracts in question. In view of the fact that these options contracts were illiquid in nature, having very small volume in trading, the Noticee created artificial volumes in Stock Options which was manipulative and deceptive in nature. Once the Noticee has been found to have indulged in such reversal transactions in illiquid Stock Options it is liable for its acts and omissions. Thus, I reject such contentions of the Noticee.

30. The Noticee has contended that fraud in this case has been alleged for execution of mere 2 buy and 2 sell trades. In this regard, the reliance has placed upon the judgement of *Richa Industries Limited (Supra)*. I have perused the aforesaid judgement and I note that the instant case can be distinguished on the basis of time gap, no difference in order price, illiquid nature

of option, etc. from the relied upon matter. The Noticee has further contended that like synchronized trades or self-trades, reversal trade is also *per se* not illegal. In catena of cases, SEBI itself exonerated several entities wherein the quantum of purported reversal trades was lesser. The Noticee has placed reliance upon the orders of Hon'ble Securities Appellate Tribunal ("**SAT**") in the matter of *Mr. Narendra Vallabhji Bahuva v/s SEBI* (Order dated 14-07-2021, Appeal No. 516 of 2019) and *Dhvani Darshan Kothari v/s SEBI* (Appeal No. 390 of 2015). I have perused both orders and I note that instant case can be distinguished from aforesaid relied upon matters. As in the matter of *Mr. Narendra Vallabhji Bahuva (Supre)* out of 33890 shares only 5000 shares get reversed, however, in the instant matter there were two reversals, wherein all of the 15000 units and 64000 units in two contracts get reversed within 3 seconds. Further, in the matter of *Darshan Kothari (Supra)* there was instance of buying in off-market and selling on market shares of a liquid scrip. As noted above, the instant case can be distinguished from above cases on the basis of facts and circumstances and on the basis of illiquid nature of stock options. Further, the contribution by the Noticee in generating artificial volumes through non-genuine trades in both the options contracts was 1.85% and 19.05%, respectively. I also note that these trades were part of the 81% (approx..) non-genuine trades executed on Stock Options Segment of BSE during the investigation period and law does not allow any allowance for such fraudulent act of creation of misleading appearance of trading due to impugned reversal trades. Therefore, in my opinion less number of trades in a case can be a mitigating factor but same cannot be an exonerating factor and thus, I reject such contentions of the Noticee.

31. The Noticee has submitted BSE has a sophisticated surveillance system and if there had been any reversal of trade, the system could have alarmed BSE to take corrective measures to restrain any non-genuine trades happening in its trading platform. However, the Noticee has not received any warning or caution letter from BSE for any of the trades executed by the Noticee in its option segment during the period of investigation. In this regard, I note that the Hon'ble Supreme Court in *Rakhi Trading (supra)* case held that such undesirable transactions would certainly include unfair practices in trade and thus, orchestrated trades are a misuse of the market mechanism. The Hon'ble Supreme Court further observed that - "*The non-genuineness of these transactions is evident from the fact that there was no commercial basis to suddenly, within a matter of minutes, reverse a transaction when the value of the underlying had not undergone any significant change*". Thus, the Noticee's contention regarding non availability of on-line

preventive measure and checks and balances from BSE and SEBI is devoid of any merit and rejected hereby.

32. In terms of foregoing findings, I further note that the trading pattern of the Noticee in terms of volume of reversal trades, proximity of buy/sell and subsequent reversal evidences the indulgence, clearly demonstrates the manipulative practice by the Noticee by using the stock exchange platform to carry out non-genuine trades with the aim to execute such trades for various manipulative purposes. I note that the Hon'ble Supreme Court in the matter of *SEBI vs. Rakhi Trading Private Ltd.* (*supra*), also held that - *"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 loss and that too in pre-planned and rapid reverse trades, it is not genuine; it is an unfair trade practice". "The stock market is not a platform for any fraudulent or unfair trade practice. The field is open to all the investors. By synchronization and rapid reverse trade, as has been carried out by the traders in the instant case, the price discovery system itself is affected. Except the parties who have pre-fixed the price nobody is in the position to participate in the trade. It also has an adverse impact on the fairness, integrity and transparency of the stock market."*

33. The Noticee has contended that the acts or trades executed by the Noticee does fall under the definition of fraud as provided in regulation 2(1)(c) of the PFUTP Regulation, as the genuineness of the trades executed by the Noticee cannot be questioned. The Noticee has placed reliance upon the several judgements of the Hon'ble SAT - *KSL & Industries Ltd. vs. SEBI* (Appeal No. 9 of 2003, Date of decision 30th September, 2003), *Vintel Securities Pvt. Ltd. vs. SEBI* (Appeal No. 219 of 2009, Date of decision 23rd November, 2009), *Dhvani Darshan Kothari & Anr.* (Appeal No. 276 of 2020, Order dated 21-01-2021). I note that, in this case, the charge has been clearly reasoned out by demonstrating the trades executed by the Noticee and allegations are based on the impugned trades executed by the Noticee. Therefore, the principle pronounced in aforesaid judgements of Hon'ble SAT, on which the Noticee has relied upon does not squarely applicable in the instant matter. I further note that in totality of the circumstances as observed above, it is not acceptable that the Noticee has not employed any manipulative and deceptive device in contravention of the SEBI Act or the rules and the regulations made there under. Further, the non-genuine and deceptive trades as found in this case are covered under the definition of '*fraud*' and dealing of Noticee were '*fraudulent*' as defined under Regulation 2(1)(c) of the PFUTP Regulations. Considering the same, I reject such contentions of the Noticee.

34. In view of the aforesaid facts and circumstances, it cannot be ignored that synchronization of trades in pre-determined manner as found in this case had an adverse impact on the fairness, integrity and transparency in the securities market. In view of the above, I find that the allegation of violation of regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of PFUTP Regulations by the Noticee stands established. Thus, I hold that the Noticee liable for penalty under Section 15HA of the SEBI Act which reads as under: -

"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."

35. While determining the quantum of penalty, it is important to consider the factors stipulated in Section 15J of the SEBI Act which reads as follows: -

While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely: -
(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
(b) the amount of loss caused to an investor or group of investors as a result of the default;
(c) the repetitive nature of the default."
Explanation. *—For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section;*

36. Having regard to the factors listed in section 15J, it is noted that it is not possible to determine the consequent loss caused to investors as a result of the default as found in this case. It is worth considering that generally, there is NIL or negligible participation of the public in the trading in such illiquid Stock Option contracts. When the impact of artificial volume created by the two counterparties is seen as a whole, it is not possible from the material on record to quantify the amount of disproportionate gain or unfair advantage resulting from the artificial trades between the counter parties or the consequent loss caused to investors as a result of the default. However, considering the fact that the trades of the Noticee in 2 Stock Option contracts which resulted into artificial volume of 1.85% to 19.05% generated out of the 4 non-genuine trades of the Noticee, I am of the view that such trades had created a misleading appearance of trading in the scrip. Considering these circumstance, I am of the opinion that

for the market abuse and fraudulent practices by the Noticee monetary penalty needs to be imposed under section 15HA of the SEBI Act.

37. I note that on amount of penalty, the Noticee has relied upon the judgement of Hon'ble Apex Court in the matter of *Bhavesh Pabari (Supra)* and on the judgement of Hon'ble SAT in the matter of *Dhvani Darshan Kothari (Supra)*. In this regard, the Hon'ble SAT in the matter of *Shruti Saraogi vs. SEBI* (Appeal No. 814 of 2021) dated January 13, 2022 has *inter alia* held that – *"…the minimum penalty which can be imposed under Section 15HA is Rs. 5 lacs. Therefore, we do not find any reason to reduce the penalty amount."* I further note that the Noticee has contributed to artificial volumes in 2 contracts on 2 days during the Investigation Period. I also note that the violation was not repetitive in nature. In regard to the discretion exercisable by an adjudicating officer for determining penalty depending on facts and circumstances of the case and same can be exercised subject to the minimum penalty prescribed by statute.

38. Taking into consideration all the facts and circumstances of the case including the aforesaid 15J factors and exercising the powers conferred upon me under section 15I of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose, a monetary penalty of **₹5,00,000/-(Rupees Five Lakh only)** upon **Mr. Baijnath Goel HUF** under section 15HA of the SEBI Act. In my view, the said penalty is commensurate with the violation committed by the Noticee in this case.

39. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order in either of the way of demand draft in favour of "*SEBI - Penalties Remittable to Government of India*", payable at Mumbai, or by following the path at SEBI website www.sebi.gov.in, ENFORCEMENT > Orders > Orders of AO > PAY NOW; OR by using the web link https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html. In case of any difficulties in payment of penalties, the Noticees may contact the support at portalhelp@sebi.gov.in

40. The Demand Draft or details and confirmation of e-payment made in the format as given in table below shall be sent to *"The Division Chief, EFD-DRA-I, Securities and Exchange Board of India, SEBI Bhavan, Plot No. C- 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051."* and also to e-mail id:- tad@sebi.gov.in:

1	Case Name	
2	Name of the 'Payer/Noticee'	

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)	

41. 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.

42. In terms of rule 6 of the Adjudication Rules, copies of this order are sent to the Noticee and also to SEBI.

Date: February 25, 2022
Place: Mumbai

Vijayant Kumar Verma
Adjudicating Officer