BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/BM/DS/2021-22/14790]

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

Rajendra Kumar Agrawal

(PAN: ACJPA9793K)

In the matter of Trading in Illiquid Stock Options on BSE

BACKGROUND OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as “SEBI”) observed large scale reversal of trades in stock options segment of Bombay Stock Exchange (hereinafter referred to as “BSE”). SEBI observed that such large scale reversal of trades in stock options lead to creation of artificial volume at BSE. In view of the same, SEBI conducted an investigation into the trading activities of certain entities in illiquid stock options at BSE for the period April 1, 2014 to September 30, 2015 (hereinafter referred to as "IP").

2. Pursuant to investigation, it was observed that total 2,91,744 trades comprising substantial 81.40% of all the trades executed in stock options segment of BSE during the IP were non genuine trades. The aforesaid non-genuine trades resulted into creation of artificial volume in stock options segment of BSE during the IP. It was observed that Rajendra Kumar Agrawal (PAN - ACJPA9793K) (hereinafter referred to as the “Noticee”)

was one of the various entities who indulged in execution of reversal trades in stock options segment of BSE during the IP. Such trades were observed to be non-genuine in nature and created false or misleading appearance of trading in terms of artificial volumes in stock options and therefore were alleged to be manipulative, deceptive in nature. In view of the same, SEBI initiated adjudication proceedings against the Noticee for violation of the provisions of Regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003 (hereinafter referred to as "PFUTP Regulations, 2003").

APPOINTMENT OF ADJUDICATING OFFICER

3. The undersigned was appointed as Adjudicating Officer in the matter, conveyed vide communique dated September 27, 2021, under Section 19 read with Section 15-I(1) of the SEBI Act, 1992 (hereinafter referred to as "SEBI Act, 1992") and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as "Adjudication Rules") to conduct adjudication proceedings in the manner specified under Rule 4 of Adjudication Rules read with Section 15-I(1) and (2) of SEBI Act, 1992, and if satisfied that penalty is liable, impose such penalty deemed fit in terms of Rule 5 of Adjudication Rules and Section 15HA of SEBI Act, 1992.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. A Show Cause Notice dated October 20, 2021 (hereinafter referred to as 'SCN') was issued to the Noticee under Rule 4(1) of the Adjudication Rules to show-cause as to why an inquiry should not be initiated against him and why penalty should not be imposed under section 15HA of the SEBI Act, 1992 for the violations alleged to have been committed by Noticee.

5. It was *inter alia* alleged in the SCN that the Noticee had executed 2 non genuine trades in 1 Stock Options contract which resulted in artificial volume of total 1,48,000 units. Summary of dealings of the Noticee in the said Options contracts, in which the Noticee allegedly executed non genuine trades during the I.P, is as follows:

S. No.	Contract Name	Avg. Buy Rate (Rs)	Total Buy Volume (No. of units)	Avg. Sell Rate (Rs)	Total Sell Volume (No. of units)	% of 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	UBIL15JUL140.00CEW4	7	74000	11	74000	100	50	100	45.12

6. From the above table, following was noted as regard to dealings of the Noticee:
   (a) The Noticee had trades in 1 contract, wherein all trades of Noticee in the said contract were allegedly non-genuine trades.
   (b) No. of such non-genuine trades of the Noticee had significantly contributed to total no. of trades from the market in the above contract, as 50% of the trades that happened in the said contract were due to non-genuine trades executed by the Noticee.
   (c) 100% of volume generated by Noticee in the above contract was allegedly artificial volume, and further, the percentage of such artificial

volume generated by the Noticee in the above contract to the total volume from the market in said contract was 45.12%. Therefore, the Noticee allegedly generated artificial volume in the above contract.

7. The SCN with reference no. SEBI/HO/EAD/EAD-3/BM/DS/OW/2021/ 29083/1 was served on the Noticee via Speed Post Acknowledgement Due (SPAD) and via email dated October 21, 2021. The proof of service is on record. Vide letter dated November 08, 2021, Noticee requested inspection of Investigation report, order placement records of the Noticee, voice recording of the Noticee, KYC of the Noticee, Order and trade logs and various other details relied upon by SEBI. The Noticee also requested for cross-examination of counter party, BSE, broker, counter party broker and made following contentions:
   - *The SCN has been issued after an inordinate delay of 6 years, which is beyond the limitation period of 3 years. Hence, the SCN is bad in law, illegal and void ab initio.*
   - *The stock options were liquid and freely marketable, and were listed on the exchange.*
   - *Noticee submitted that SEBI had permitted stock exchanges to introduce liquidity enhancement schemes for illiquid securities in the equity derivatives segment, BSE launched a series of liquidity enhancement incentive. Thus, the Noticee contended that the BSE had invited and incentivised trading members and their clients to execute trades in illiquid securities. In relation to the above contention, the Noticee has placed reliance on the SEBI order dated April 5, 2018, and the Noticee submitted that structural flaw of BSE cannot be saddled upon the Noticee who is a lay investor.*
   - *The Noticee has not traded in the contract "UBIL15JUL140.00CEW4", dated June 30, 2015, as alleged in the SCN. He denied all allegations.*

- *The Noticee informed that he is in the process of preparing a detailed reply in the captioned matter.*

8. Vide letter dated November 12, 2021, received by SEBI via mail on November 15, 2021, the Noticee submitted detailed reply to the SCN. All the contentions made by the Noticee have been taken into consideration. They are as summarized below:
    - *The Noticee contended that the SCN has been issued after an inordinate delay of 6 years, which is beyond the limitation period of 3 years. Hence, the SCN is bad in law, illegal and void ab initio. In this regard, the Noticee quoted from Hon'ble Supreme Court's decision in the matter of Mohamad Kavi Mohamad Amin v Fatmabai Ibrahim [(1997) 6 SCC 71] and also from various decisions of Hon'ble SAT, including Rajeev Bhanot & Others v SEBI [Appeal No. 396 / 2018] and Rakesh Kathotia & Others v SEBI in Appeal No. 7 of 2016 decided by SAT on May 27, 2019.*
    - *The Noticee contended that BSE and the trading member are necessary party to the proceedings and hence, it has filed an impleadment application dated November 11, 2021 against BSE with SEBI, and requested SEBI to provide a reasonable Order with respect to the same. Noticee also asked for details of actions taken by SEBI against BSE and its officials in the matter of trading in illiquid stock options. In this regard, the Noticee quoted from decision by Hon'ble Madras High Court in the matter of Madras Stock Exchange Ltd. V S R Rajkumar and also from Hon'ble SAT's decision in Religare Securities Ltd. V SEBI.*
    - *Noticee reiterated his request for provision of Investigation Report, and certain other documents and also for cross-examination of certain entities in regard to the matter. In this regard, the Noticee relied on and quoted from various case laws including Hon'ble Supreme Court's*

decision in Andaman Timber Industries v CCE – [2015] 62 taxmann.com 3 (SC) and also Hon'ble SAT's decision in the matter of Smitaben N Shah v SEBI (decided on July 30, 2010)

- *No adverse inference could be drawn against the Noticee as BSE and SEBI had permitted trading in options for 'far months' with a strike price which are at large variance to current market price.*
- *Noticee had made only one reversal trade, and the intention of the trades in the matter was not malafide. Noticee has not acted to the detriment of the securities market and has conducted all its operations with integrity. Noticee contended that he has not made any disproportionate gain or gained any unfair advantage.*
- *The scrip was liquid in nature. BSE had not issued any list of illiquid scrips of stock options contracts, like it does in cash segment.*
- *Noticee contended that the trading member didn't collect margin with respect to the trade, and SEBI has not relied upon any order placement proof for the allegations made in the SCN.*
- *BSE is the first level regulator and BSE and the Clearing Corporation had not objected to the trades at the time they were executed, and the trades were cleared.*
- *Noticee stated that he is unable to trace from records whether the trades were undertaken by Noticee or on Noticee's behalf.*
- *Noticee contended that the SCN issued by SEBI is unconstitutional and against the object clause of SEBI Act, 1992, as it has initiated investigation against an investor, based on pure conjectures and surmises.*
- *Noticee contended that even if it is assumed that the trades were synchronized, it was in nature of negotiated deals, and hence, permissible. The doctrine of preponderance of probabilities should not be applied in such a way that an innocent person suffers.*

- *Noticee stated that he has not been charged for price manipulation, hence allegations for causing artificial volume are inconsequential. Also, he is not a habitual or repetitive defaulter.*
- *SEBI has not alleged 'inducement' or 'intent' for it to be considered as 'fraudulent'. In this regard, the Noticee relied upon and quoted from Hon'ble Supreme Court's judgement in Union of India v Chaturbhai M Patel & Co. [AIR 1976 SC 712] and Hon'ble SAT's judgement in the case of KSL & Industries Limited v SEBI [2005 (59) SCL 1 SAT] among others.*
- *Noticee contended that Provisions of PFUTP Regulations do not apply to investors and SEBI is not empowered to punish investors.*
- *Noticee has no connection and has not colluded with the Counter-party, and there is no evidence showing connection. As the counterparty was unknown, there was no meeting of minds. The Noticee has relied upon and quoted Hon'ble SAT's judgements in the matter of Nishit M Shah HUF v SEBI dated January 16, 2020 (Appeal No. 97 of 2019) and also the cases of S P J Stock Brokers Private Limited and H B Stockholdings Limited*
- *Besides recording common generic allegations against the Noticee, no observation on Noticee's specific role in alleged reversal has been mentioned in the Show Cause Notice. That this approach is bad in law.*
- *BSE, vide Notice No. 20160308-33 dated March 08, 2016, announced that it has introduced measure for prevention of reversal trades in Equity Derivative Segment w.e.f. from March 14, 2016. Thus, in case of potential reversal trade, second leg (latest leg) of a reversal trade shall automatically be cancelled by exchange in an on-line real time basis on trading system. The Noticee submitted that because on-line preventive measure and check & balance did not exist at relevant point of time to avoid inadvertent reversal trades, the reversal trades could not be considered as unlawful at the time when trades were executed.*

9. Hearing Notice dated November 12, 2021 was issued to the Noticee, along with reply to Noticee's letter dated November 08, 2021. Noticee was conveyed the following:

- *…that all the information relied upon in the SCN have already been provided to you in the annexures to the said SCN.*
- *Further, your attention is drawn to the Hon'ble SAT Order in the matter of Mayrose Capfin Private Limited Vs. SEBI (decided on 30.03.2012) held that: "....the principles of natural justice require that the inquiry officer should make available such document and material to the delinquent on which reliance is being placed in the inquiry. It is not necessary for the inquiry officer to make available all the material that might have been collected during the course of investigation but has not been relied upon for proving charge against the delinquent. No prejudice can, therefore, be said to have been caused to the appellant on this count...."*
- *You may also note that Hon'ble SAT, in its order dated February 12, 2020, in the matter of Shruti Vora vs. SEBI had held that: "Reliance was also made of a decision of the Supreme Court in Union of India and Others vs E. Bashyan (1988) 2 SCC 196 which has no bearing to the controversy involved in the present context, in as much as, the said decision relates to a disciplinary proceedings wherein the Supreme Court observed that the inquiry report was required to be made available to the delinquent. An inquiry report is totally distinct and different from an investigation report. The inquiry report considers all the materials in the inquiry proceedings which form the basis of the final order and therefore the said report is required to be made available to the delinquent. In the instant case, the show cause notice relies upon certain documents which have been made available. Thus the investigation report is not required to be supplied".*

- *"The learned counsel has also placed reliance upon a minority view of this Tribunal in Price Waterhouse vs Securities and Exchange Board of India decided by this Tribunal in Appeal No. 8 of 2011 on June 1, 2011 wherein it was observed that fairness demands that the entire material collected during the course of investigation should be made available for inspection to the person whose conduct was in question and that said material should also be supplied. In our opinion, the said minority view is directly against the decision of the Supreme Court in Natwar Singh case (supra)".*
- *"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."*
- *In view of the above, your request for provision of copy of investigation report and other details does not hold any merit and hence cannot be acceded to.*

10. Vide Hearing Notice dated November 12, 2021, Noticee was advised to appear for the hearing on November 17, 2021. The personal hearing was conducted on scheduled date and time through video conferencing. During the course of hearing, the Authorized Representative (herein after referred to as "AR"), on behalf of the Noticee reiterated submissions made by him vide letter dated November 12, 2021. The AR requested for time till November 27, 2021 to make his final submissions, which was granted by

the undersigned. The personal hearing in the matter was completed and hearing minutes are on record.

11. Vide letter dated November 18, 2021, the Noticee made his final submissions. The main contentions made in the aforesaid submissions are summarized below:
    - Noticee submitted a copy of the Contract Note issued by the broker. He contended that SCN has alleged trade in contract "UBIL15JUL140.00CEW4", whereas contract note issued by the broker shows trade in "UBIL23JUL140.00CEW4". He suggested that the proceedings have been started wrongly, and should be set aside on this ground.
    - Noticee contended that it was responsibility of brokers to stop any manipulative trades and has enclosed SEBI Circular ISD/CIR/RR/AML/1/06 dated January 18, 2006; Subject: Guidelines on Anti Money Laundering Standards, for reference. The Noticee relied upon and quoted Hon'ble SAT's judgement in the case of Marwadi Shares & Finance Limited v SEBI
    - Noticee submitted that SEBI has failed to protect the interest of investors by not charging BSE and the broker.
    - Noticee contended that Regulations 3(a), (b),(c),(d) and 4(1), 4(2)(a) of the SEBI (Prohibition of Fraudulent and Unfair Trading Practices relating to Securities Markets) Regulations, 2003 did not apply to the investors before the 2019 amendment of Section 11B of SEBI Act, 1992. Hence, the same are also not applicable to the Noticee.
    - Noticee reiterated some of the submissions made by him vide letter dated November 12, 2021.

12. Vide letter and mail dated January 27, 2022, the Noticee, while referring to SEBI AO Order dated January 20, 2022 in the case of Neha Sethi, contended that no penalty should be imposed on the Noticee.

CONSIDERATION OF ISSUES AND FINDINGS

13. I have carefully perused the charges levelled against the Noticee, his reply and the documents / material available on record. The issues that arise for consideration in the present case are:
    - ISSUE 1: Whether the Noticee has violated provisions of Regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of PFUTP Regulations, 2003?
    - ISSUE 2: Does the violation, if any, attract monetary penalty under section 15HA of the SEBI Act, 1992?
    - ISSUE 3: If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in section 15J of the SEBI Act, 1992?

14. Before proceeding further, I would like to refer to the relevant provisions of the PFUTP Regulations, 2003 as below:

    PFUTP Regulations, 2003

    3. Prohibition of certain dealings in securities

    No person shall directly or indirectly—

    (a) buy, sell or otherwise deal in securities in a fraudulent manner;

    (b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;

    (c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;

(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed 0on 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;

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

15. I note that allegation against the Noticee is that, while dealing in the stock option contracts at BSE during the IP, he had executed reversal trades which were allegedly non-genuine and the same had resulted in generation of artificial volume in stock option contracts at BSE. Reversal trades are considered to be those trades in which an entity reverses its buy or sell positions in a contract with subsequent sell or buy positions with the same counterparty during the same day. The said reversal trades are alleged to be non-genuine trades as they are not executed in the normal course of trading, lack basic trading rationale, lead to false or misleading appearance of trading in terms of generation of artificial volumes and hence are deceptive and manipulative.

16. Noticee has *interalia* contended that the instant SCN has been issued after 6 years of the execution of impugned trades, and does not state the reasons

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

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

A Settlement Scheme was framed under the SEBI (Settlement Proceedings) Regulations, 2018, which provided one-time opportunity for settlement of proceedings in the Illiquid Stock Options matter. The said scheme was kept open from August 01, 2020 till December 31, 2020. Adjudication proceedings were initiated against those entities who had not availed of the opportunity of settlement.

As can be seen from the narration of facts in the foregoing paragraphs, pursuant to appointment of AO on September 23, 2021, SCN was issued on October 20, 2021. In compliance with principles of natural justice, after receipt of reply, an opportunity of personal hearing was scheduled on November 17, 2021 and upon conclusion of hearing, additional written submissions were received from the Noticee on November 18, 2021.

17. Secondly, I note that there are no timelines prescribed in the SEBI Act, 1992 for the purpose of identifying trades as non-genuine. In this regard, I feel it is pertinent to note that, in the matter of **SEBI Vs Bhavesh Pabari** (2019) SCC Online SC 294, the Hon'ble Supreme Court of India has, inter alia, held that:

"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."

18. Thirdly, SEBI is the apex regulator in the securities market with overarching authority over all market intermediaries and persons trading in the securities market. In this regard, I note that the Hon'ble SAT in the matter of Pooja Vinay Jain vs SEBI (Appeal No. 152 of 2019 decided on March 17, 2020) held that,

"*The record would show that all the documents concerning the defense of the appellant were filed by her before the AO. Therefore, for want of any prejudice the proceedings cannot be quashed simply on the ground of delay in launching the same*"

I also note that the Hon'ble SAT in the matter of Bipin R Vora vs SEBI (decided on March 22, 2006) 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*".

I note that there was no delay the way it has been argued by the Noticee and he has also not specified what prejudice has been caused to him, so the contentions of Noticee in this regard are without merits.

19. Noticee has contended that the derivative contract were highly liquid on the date of trades, so that as the contracts were liquid, matching with same counterparties in buy and sell trades was possible. I note that the market volume only in the impugned contract is relevant as regards instant considerations, so that the artificial volume generated by Noticee as a proportion of total market volume in the contract was 45.12%. I note that Noticee's trades, although few in number, contributed substantially to total market volume in said contract indicating that the stock options segment of BSE was illiquid as regards the aforesaid contracts.

20. I note from the trade log of the Noticee that he had traded in one contract in the stock options segment of BSE during the IP. It is observed that the Noticee had executed 2 non-genuine trades in 1 contract. I further note that the above mentioned trades of the Noticee had resulted in the creation of artificial volume of 148000 units in the said contract. Summary of non-genuine trades of the Noticee is as follows:

S. No.	Contract Name	Avg. Buy Rate (Rs)	Total Buy Volume (No. of units)	Avg. Sell Rate (Rs)	Total Sell Volume (No. of units)	% of 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	UBIL15JUL140.00CEW4	7	74000	11	74000	100	50	100	45.12

21. It is noted that the Noticee had executed non-genuine trades in said contract, wherein the percentage of non-genuine trades of the Noticee in stock options contract to total trades in the contract was 50% in the aforesaid contract. Further, artificial volume generated by Noticee in the contract amounted to 100% of total volume generated by him in the contract. It is also noted that artificial volume generated by the Noticee contributed 45.12% of the total volume from the market in the said contract.

22. I note from the trade log that the trades executed by the Noticee in a contract were squared up within a short span of time with his counterparties. To illustrate, the Noticee on June 30, 2015 at 13:22:01 hrs (Order time of Noticee: 13:22:01 and Counterparty Order time: 13:22:01) entered into 1 buy trade with counterparty viz. Excell Steel for 74000 units at the rate of Rs 7.00 per unit in the contract 'UBIL15JUL140.00CEW4'. Thereafter, on the same day, Noticee at 13:22:09 hrs. (Order time of Noticee: 13:22:09 and Counterparty Order time: 13:22:09) entered into 1 sell trade with same counterparty for 74000 units at the rate of Rs. 11 per unit in the same contract, which resulted in Noticee's profit of Rs. 4 per unit, i.e. Rs. 2,96,000 on total of 74000 units. It is noted that while dealing in the said contract during the I.P., the Noticee executed reversal trades with same

counterparty viz. Excell Steel on the same day and with significant price difference in buy and sell rate. Thus, the Noticee, through his dealing in the contract viz. 'UBIL15JUL140.00CEW4' during the I.P., executed non genuine trades which was 50% of the total trades from the market in the said contract during the I.P., and thereby, Noticee generated artificial volume of 148000 units which was 45.12% of the volume traded in the said contract from the market during the I.P.

23. The Noticee submitted that BSE and SEBI have themselves permitted trading in options for far months with a strike price which may be at large variance to current market price. The Noticee also submitted that his trades in stock options segment were executed on scrips which were not illiquid, if one were to observe the trade volume in the underlying scrip in which the Noticee had traded. He further contended that even if it is assumed that the trades were synchronized, it was in nature of negotiated deals, and hence, permissible. The non-genuineness of these transactions executed by the Noticee is evident from the fact that there was no commercial basis as to why, within a short span of time, the Noticee reversed the position with his counterparties with significant price difference. I note from the trade log of the Noticee that the time taken by the Noticee for reversing the non-genuine trades was 08 seconds, on the same day. Such a short span of time taken for reversing the trades in an illiquid stock option contract suggests the non-genuineness of these trades executed by the Noticee. The fact that the transactions in a particular contract were reversed with the same counterparties indicates a prior meeting of minds with a view to execute the reversal trades at a pre-determined price. Since these trades were done in illiquid option contract, there was negligible trading in the said contract and hence, there was no price discovery in the strictest terms. The wide variation in prices of the said contract, 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 his counterparties in the stock options segment of BSE and the same were non-genuine trades.

24. The Noticee submitted that the broker and the stock exchange had invited and incentivized trading members and their clients to execute trades in F&O segment of the stock exchange which had illiquid securities. The Noticee stated that as a result of such incentives, lay investors such as the Noticee were lured to invest in the scheme through SEBI registered intermediaries who at the relevant time convinced the clients to participate in such transactions. I note that the Noticee's contentions imply that there is no dispute that the impugned trades were definitely executed by the Noticee. Thus, the Noticee's contentions do not establish any denial of the charges made in the SCN.

25. The Noticee has contended that the Noticee should not be penalized for the structural flaws on the part of the stock exchange and has filed an impleadment application against BSE and the trading member and asked for Order against it. It may be noted that the remit of the current proceedings are in terms of the adjudication order already made available to the Noticee. Given the above the proceedings cannot travel beyond the authority granted therein. Thus, impleading BSE or taking action against BSE or stock broker is not within the authority of the current proceedings

26. Noticee's contentions also imply that merely because other entities in the securities market may or may not have been involved in violating PFUTP Regulations, 2003, initiating a particular proceeding against the Noticee should necessarily be treated as unfair. I note that even if there are numerous violators in the securities market, it does not follow that SEBI must proceed against all entities in a single proceeding. Similarly,

Adjudication proceedings are not vitiated merely because each violator is proceeded against in separate and distinct proceedings.

27. Noticee has contended that he has made only one reversal trade, and the intention of the trades in the matter was not malafide. I note that the Noticee's contentions imply that there is no dispute that the impugned trades were definitely executed by the Noticee.

28. Noticee contended that Regulations 3(a), (b), (c), (d) and 4(1), 4(2)(a) of the SEBI PFUTP Regulations, 2003 did not apply to the investors before the 2019 amendment of Section 11B of SEBI Act, 1992. I note that the amendment by the Finance Act, 2018 w.e.f. March 08, 2019 pertains to imposition of penalty under Section 11B of the SEBI Act, 1992. The imposition of penalty for violations of the SEBI (Prohibition of Fraudulent and Unfair Trading Practices relating to Securities Markets) Regulations, 2003, under Adjudication proceedings has already been prescribed under Section 15HA of the SEBI Act, 1992 and applicable for all persons dealing in the security market. Hence, contention of the Noticee that the SCN issued by SEBI is unconstitutional, as it has initiated investigation against an investor, is untenable.

29. Noticee has further contended that the trades executed were subject to regulatory supervision of BSE, and were not questioned by the BSE at that time, so the impugned trades which were cleared were genuine. I note that stock exchanges merely provide a platform for carrying out the trades and the clearing corporation affiliated with exchange handles the confirmation, settlement and delivery of transactions, however, the obligation to ensure genuineness of trades as regards instant considerations lies squarely on the Noticee and the Noticee is bound to comply PFUTP Regulations, 2003. Thus, the contentions of the Noticee are not tenable.

30. Noticee has also contended that there was neither any mechanism to deter nor a note of caution by BSE about matching trades with same counterparty on the same day during the IP. I note that instant adjudication proceedings levy the impugned allegations against Noticee, and that absence of any preventive mechanism cannot be a ground to absolve Noticee from his obligation to ensure genuineness of trades executed on exchange platform.

31. Noticee has further contended that the counterparties to both buy and sell trades were common by coincidence. I note that it is not mere coincidence that Noticee could match his trades with the same counterparty with whom he had undertaken first leg of the respective trades. This is the outcome of meeting of minds elsewhere and it was a deliberate attempt to deal in such a fashion. Here I would like to rely on the judgment of Hon'ble Supreme Court in SEBI v Kishore R Ajmera (AIR 2016 SC 1079) decided on February 23, 2016, wherein it was held that - "…*in the absence of direct proof of meeting of minds elsewhere in synchronized transactions, the test should be one of preponderance of probabilities as far as adjudication of civil liability arising out of the violation of the Act or provision of the Regulations is concerned. The conclusion has to be gathered from various circumstances like that volume of the trade effected; the period of persistence in trading in the particular scrip; the particulars of the buy and sell orders, namely, the volume thereof; the proximity of time between the two and such other relevant factors. The illustrations are not exhaustive...*"

32. The Hon'ble Supreme Court further held in the same matter that – *"It is a fundamental principle of law that proof of an allegation levelled against a person may be in the form of direct substantive evidence or, as in many cases, such proof may have to be inferred by a logical process of reasoning from the totality of the attending facts and circumstances surrounding the allegations/charges made and levelled. While direct evidence is a more*

certain basis to come to a conclusion, yet, in the absence thereof the Courts cannot be helpless. It is the judicial duty to take note of the immediate and proximate facts and circumstances surrounding the events on which the charges/allegations are founded and to reach what would appear to the Court to be a reasonable conclusion therefrom. The test would always be that what inferential process that a reasonable/prudent man would adopt to arrive at a conclusion."

33. Noticee has *interalia* contended that he was not related to counterparties to the trades or to their brokers, which were different for both the parties to thee trades. I note in this regard that direct evidence is not forthcoming in the present matter as regards to meeting of minds or collusion of the Noticee with other entities. However, I note that the trading behaviour of the Noticee makes it clear that aforesaid non-genuine trades could not have been possible without meeting of minds at some level. In this context, I deem it appropriate to refer to the judgement of the Hon'ble SAT order dated July 14, 2006, in the matter of Ketan Parekh vs. SEBI (Appeal no. 2/2004), wherein the Hon'ble SAT has held that - *"The nature of transactions executed, the frequency with which such transactions are undertaken, the value of the transactions, the conditions then prevailing in the market are some of the factors which go to show the intention of the parties. This list of factors, in the very nature of things, cannot be exhaustive. Any one factor may or may not be decisive and it is from the cumulative effect of these that an inference will have to be drawn."*

34. Further, Noticee has also contended that the essential requirement to constitute fraud is to induce another person or his/her agent to deal in securities, which has not been brought out in the instant SCN. In this regard, I note the following from the judgement of the Hon'ble SAT in the matter of Ketan Parekh vs SEBI (supra):

In other words, if the factum of manipulation is established it will necessarily follow that the investors in the market had been induced to buy or sell and that no further proof in this regard is required. The market, as already observed, is so wide spread that it may not be humanly possible for the Board to track the persons who were actually induced to buy or sell securities as a result of manipulation and law can never impose on the Board a burden which is impossible to be discharged. This, in our view, clearly flows from the plain language of Regulation 4 (a) of the Regulations. Therefore, I reject the contentions of Noticee in this regard.

35. I place my reliance on the judgment of Hon'ble Supreme Court in the matter of SEBI v Rakhi Trading Private Limited (Civil Appeal Nos. 1969, 3174-3177 and 3180 of 2011 decided on February 8, 2018), in which the Hon'ble SC 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….."*

36. Noticee has contended that the decision of investors was not affected because of reversal trades executed by him. Also that, there was no effect on prices of the derivative contract because of Noticee's trades. I note that the impugned reversal trades, which were carried out with prior meeting of minds as inferred from the case facts, affected the price discovery and execution of trades as per market mechanism on the stock options segment

of BSE. In this regard, I further note the following from the judgement of the Hon'ble SC in the matter of SEBI vs Rakhi Trading Pvt Ltd (supra):

"……….According to SAT, only if there is market impact on account of sham transactions, could there be violation of the PFUTP Regulations. We find it extremely difficult to agree with the proposition. As already noted above, SAT has missed the crucial factors affecting the market integrity, which may bedirect or indirect. 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."

Therefore, I note that contentions of Noticee in this regard are not tenable.

37. Further, the Hon'ble SAT in its judgement dated September 14, 2020 in the matter of Global Earth Properties and Developers Pvt Ltd relied upon the aforesaid judgement of Hon'ble SC 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.*"

38. Noticee has also contended that volume contributed by reversal trades to the total contract volume was insignificant, and could not be termed manipulative and deceptive. I note that the impugned stock option contract

was illiquid, as stated in the SCN, and also that Noticee's trades in said contract contributed 45.12% to the total market volume generated during the IP. This points to the contribution of Noticee, irrespective of quantum of reversal trades or volume generated, in the creation of misleading appearance of trading through his impugned trades.

39. Noticee submitted a copy of the Contract Note issued by the broker. He contended that SCN has alleged trade in contract "UBIL15JUL140.00CEW4", whereas contract note issued by the broker shows trade in "UBIL23JUL140.00CEW4". I note that the Investigation relied upon details provided by BSE and as per the trade and order log Noticee executed the trades on the day which was reflected in the SCN. Further the details were reconfirmed from BSE and it was found to be accurate. Noticee has not challenged the accuracy of other details of the trade, including trade price, quantity, and time of the trades hence the contention of the Noticee is devoid of any merits.

40. With respect to Noticee's contention that no penalty should be imposed on him for single reversal trade as in the case of Neha Sethi, it may be mentioned that in case of AO Order of Radha Malani dated September 06, 2021, Hon'ble SAT vide Order dated November 24, 2021, has upheld the AO Order wherein penalty was imposed for single reversal trade. Hence, the contention of the Noticee is not tenable.

41. Therefore, the trading behaviour of the Noticee confirms that such trades were not normal indicating that the trades executed by the Noticee were not genuine trades and being non-genuine, created an appearance of artificial trading volumes in respective contracts. 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, 2003 by the Noticee stands established.

ISSUE 2: Does the violation, if any, attract monetary penalty under section 15HA of the SEBI Act, 1992?

42. Considering the findings that the Noticee, as mentioned above, has executed non-genuine trades resulting in the creation of artificial volume, thereby violating the provisions of Regulation 3(a), (b), (c) & (d) & Regulation 4(1) and 4(2)(a) of the PFUTP Regulations, 2003 and in terms of the judgement of Hon'ble Supreme Court of India in the matter of SEBI Vs. Shri RAM Mutual Fund[2006] 68 SCL 216(SC) decided on May 23, 2006 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...*" I am convinced that it is a fit case for imposition of monetary penalty under the provisions of Section 15 HA of 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.

***Issue 3: If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in Section 15J of the SEBI Act, 1992*?**

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

15J. *While adjudging quantum of penalty under [15-I or section 11 or section 11B, the Board or 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 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*.]

I observe, that the material available on record does not quantify any disproportionate gains or unfair advantage, if any, made by the Noticee and the losses, if any, suffered by the investors due to such violations on part of the said Noticee. However, the Noticee has entered into two non-genuine trades which demonstrates the violation of PFUTP Regulations, 2003.

44. Therefore, I note that Noticee indulged in execution of reversal trades in stock options contracts in the IP which were non-genuine and created false and misleading appearance of trading in terms of artificial volumes in stock options, leading to violation of Regulation 3(a),(b),(c),(d) and 4(1),(2)(a) of the PFUTP Regulations, 2003.

ORDER

45. Having considered all the facts and circumstances of the case, the material available on record, the factors mentioned in section 15J of the SEBI Act, 1992 and in exercise of power conferred upon me under section 15-I of the SEBI Act, 1992 read with rule 5 of the Adjudication Rules, 1995, I hereby

impose following penalty under section 15HA of the SEBI Act, 1992 on the Noticee:

Name of the Noticee	**Violation provisions**	**Penalty**
Rajendra Kumar Agrawal PAN: ACJPA9793K	Regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of PFUTP Regulations, 2003	₹ 5,00,000/- (Rupees Five Lakhs only

I am of the view that the said penalty is commensurate with the lapse/omission on the part of the Noticee.

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

47. The aforesaid Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to "The Division Chief (Enforcement Department 1 DRA-2), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C – 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.". The Noticee shall also provide the following details while forwarding DD / payment information:
    - Name and PAN of the Noticee
    - Name of the case / matter
    - Purpose of Payment – Payment of penalty under AO proceedings
    - Bank Name and Account Number
    - Transaction Number

48. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, SEBI may initiate consequential actions including

but not limited to recovery proceedings 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.

49. In terms of the provisions of rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticee viz. Rajendra Kumar Agrawal and also to the Securities and Exchange Board of India.

Date: January 27, 2022	**BARNALI MUKHERJEE**
Place: Mumbai	**ADJUDICATING OFFICER**