BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO.: Order/PR/KD/2022-23/16003]

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

In respect of:

Bina Gupta

(PAN: ACZPG5098D)

In the matter of dealings in Illiquid Stock Options at the Bombay Stock Exchange

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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 (this period is hereinafter referred to as "**IP**").

2. Pursuant to investigation, it was observed that total of 2,91,744 trades comprising a substantial 81.40% of all the trades executed in stock options segment of BSE during the IP were non-genuine trades. These non-genuine trades resulted in the 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 IP. It was observed that **Bina Gupta** (PAN- ACZPG5098D) (hereinafter referred to as the "**Noticee**") was one among the various entities who indulged in execution of reversal trades in the 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. I was appointed as the Adjudicating Officer in the matter, conveyed vide communique dated July 06, 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 bearing reference no. SEBI/HO/16789/1 dated August 03, 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 enquiry proceedings should not be initiated against her and penalty imposed under section 15HA of the SEBI Act, 1992 for the violations alleged to have been committed by her.

5. It was, *inter-alia,* alleged in the SCN that the Noticee had executed two non-genuine trades in one Stock Option contract which resulted in artificial volume of total 50,000 units. The summary of dealings of the Noticee in the Stock Option contract, in which the Noticee allegedly executed trades that were not genuine during the IP 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 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	DIVI15APR1800.00PE	40	25000	50	25000	100	38.76

6. From the above table, the following is noted as regard to the dealings of the Noticee:
   a. The Noticee had executed non-genuine trades in one unique contract, wherein all the trades of Noticee in the said contract were non-genuine trades.

b. The non-genuine trades of the Noticee had significantly contributed to the total of number of trades from the market in the above contract i.e. 38.76% of the trades that happened in the contract was due to non-genuine trades executed by the Noticee.
c. The non-genuine trades executed by the Noticee in the above contract had significant difference in the buy and sell rates considering that the trades were reversed on same day within around four seconds without any significant change in the price of the underlying which indicates that these trades were non-genuine in nature.
d. The entire volume generated by the Noticee in the above contract was artificial volume, and further, the artificial volume generated by the Noticee also contributed to the 38.76% of the total volume in the market in said contracts.

7. The SCN vide reference no. SEBI/HO/16789/1 dated August 03, 2021 was served on the Noticee via Speed Post Acknowledgement Due (SPAD). The same was received by Noticee on August 25, 2021 and the acknowledgement receipt is on record. I note that no reply was received from the Noticee within the time stipulated in the SCN for submission of reply viz. 14 days from the receipt of the SCN. Since no reply was received, in the interest of natural justice, a reminder letter vide ref no. SEBI/DDHS-1/AO/PR/2021/23219/1 dated September 08, 2021 (hereinafter referred to as "Reminder letter") was served on the Noticee via SPAD. As per the track consignment report downloaded from website of India Post, item delivery was confirmed on September 18, 2021. The Noticee, vide email dated September 16, 2021, *inter- alia* requested for inspection of various documents including cross-examination of broker,

BSE, etc. The Noticee, also requested additional time for filing detailed reply to SCN. Thereafter, vide email and letter dated October 15, 2021, the Noticee *inter-alia* submitted the following reply to SCN:

a. *The findings and allegations set out in the SCN do not conclusively establish any breach by the Noticee of the SEBI Act and/ or SCRA. Consequently, it was urged that the SCN be set aside wholly, without any adverse observation being made against the Noticee.*

b. *SEBI had relied upon the BSE Ltd. (BSE), who has issued the options product (LEIPS-S&P BSE- SENSEX-Option Index) and which is the only subject matter to the present issue. However, BSE has not been made a party to the present proceedings. It was BSE who introduced option trading with a 5 day settlement period for the first time.*

c. *BSE had invited the trading members to engage their clients to trade for this 5 days settlement, option product [National Stock Exchange of India Limited had a minimum period of 30 days for Futures and Options {F&O) settlement]. Moreover, BSE was providing the trading members with incentives for marketing and engaging its clients for trading in the new F&O product that had a settlement period of 5 days. These incentives were revised w.e.f. October 2015. The Noticee enclosed the copy of the said circular revising the incentives for the LEIPS-S&P BSE-SENSEX- Option Index (Annexure A). The Noticee further stated that these promotions were within the public domain and no objection was taken by SEBI or even BSE (who itself was indirectly responsible for the marketing of this product).*

d. *The constituents were lured to invest in the scheme through SEBI and BSE registered intermediaries who at the relevant time convinced the clients to participate in such transactions and executed trades in the name and code of the constituents, like the Noticee.*

e. *The number of orders executed by the Noticee's trading member in the Noticee's account were 2 and the same originated from the mind of the trading member. The Noticee was under the impression that the transactions executed by the Noticee were within the four corners of the law. The Noticee acted in good faith based on the representations of the broker. Pertinently, no objection till date has been taken by BSE for such trades.*

f. *The same model/practice was followed by all the trading members at the relevant time and the Noticee was one of such constituents for whom the trading member executed such transactions. The alleged violation are not an instance, but a market vide phenomenon. However, BSE have not been called upon to show cause qua their involvement in the episode.*

g. *The trading member did not collect any margin from the Noticee, and no order placement proof of any nature has been referred to and relied upon by SEBI in the SCN while alleging the charges against the Noticee.*

h. *The profile of the Noticee has not been taken into consideration. The Noticee does not understand the nitty gritties of the stock market let alone the intricacies involved in F&O trading.*

i. *BSE is the first level regulator and obligations of the transactions having been fulfilled at the relevant time it is not proper to question the validity of the transactions after a period of 6 years.*

j. The Noticee cited the observations of "Madras Stock Exchange Ltd. V S. R. Rajkumar, the Madras High Court" judgment that the profession of stock broking is regulated through the agency of the stock Exchange. Through after the enactment of the SEBI Act, 1992 and the framing of the SEBI Rules, 1992, every stock broker must be registered with the SEBI and should in addition be a member of a registered stock exchange. The Exchange is to regulate the functioning of member stock brokers and ensures that they possess all the qualifications prescribed and that the conduct of their business does not at any time fall short of the high standards expected, as it is only the maintenance of such standards, that will ensure the retention of the confidence of the public in the activities of the exchange.

k. The Noticee requested that SEBI may implead BSE as a party to the present proceedings as it is a necessary party without whose version a proper order cannot be passed in the matter.

l. The Noticee also requested that SEBI may implead the trading member of the Noticee in the present proceedings as it is a necessary party without whose version a proper order cannot be passed in the matter.

m. In this regard, the Noticee cited the observations of the following judgments:

i. Religare Securities Ltd. vs. SEBI, wherein SAT observed that providing internet based trading platform is not akin providing STD booth facility to a customer. SAT noted that in the STD Booth facility, the service provider is not expected to know the purpose for which the STD facility is being used by the customer. SAT stated that," however, in case of internet- based trading platform, in spite of the fact that the trades are executed by the client directly, the stock broker is required to monitor the trades and ensure that the trades executed by the client through the internet-based trading platform are in conformity with the rules and regulations framed by SEBI. SAT further observed that the fact that stock broker has installed requisite parameters n the surveillance system cannot be a ground for the stock broker to be a complacent. SAT observed that "It is the duty of the stock broker under the Brokers Regulations to constantly monitor the trades executed by the client through the internet based trading platform so as to ensure that the trade are executed in accordance with law and do not disturb the market equilibrium."

ii. Chander Kanta Vs. Rajinder Singh Anand wherein, the Supreme Court observed that the 'due diligence' means reasonable diligence; it means such diligence as a prudent man would exercise in the conduct of his own affairs. The Supreme Court stated:
"Therefore, the stock broker's responsibility of due diligence is such that any other reasonable person would apply in his/ her own affairs. It is the duty of the stock broker under the Brokers Regulations to constantly monitor the trades executed by the client through internet based trading platforms so as to ensure that the trades are executed in accordance with law and do not disturb the market equilibrium."

iii. Madhukar Sheth vs SEBI, wherein SAT observed that the broker cannot act his own against the instructions of the client. However, no one can compel broker to be a party to manipulate the market. No doubt the broker is supposed to protect the interest of his Client but the broker is also expected to protect the interest of the securities market in which he operates. It is broker's duty to ensure not to be a party to any market manipulation and that the market in which he operates is run on a healthy and non-

manipulative basis. Even though a stock broker acts on the instructions of his clients, the former cannot be forced to act in ways which contributes to the manipulation of the market."

8. In view of the above submissions, the Noticee requested that the SCN be set aside wholly, without any adverse observation being made against the Noticee.

9. With respect to the request for further documents, the Noticee was informed, vide letter and email dated October 28, 2021, that all the relevant documents had already been provided to the Noticee as annexures to the SCN and since, instant investigation was not based on the statement of any person, the question of granting cross-examination does not arise. Acceding to the request for extension of time, Noticee was granted additional 15 days to submit a detailed response to SCN. Further, the Noticee was also granted an opportunity of personal hearing through Video Conference mode using Webex platform on November 09, 2021.

10. Vide email dated November 09, 2021, Noticee had requested for adjournment of the scheduled hearing and to defer the same by atleast one week. Considering the request, the hearing was rescheduled on November 16, 2021.

11. Vide letter and email dated November 14, 2021, Noticee filed authority letter for the hearing scheduled on November 16, 2021, intimating appointment of Mr. Mahesh Chand Gupta, Practising Chartered Accountant, as Authorized Representative (AR) in the matter.

12. The AR attended the hearing through Video Conference mode using Webex platform on November 16, 2021. The AR reiterated submissions made vide letter dated October 15, 2021. The AR also stated that the Noticee has not committed any fraud or deceptive method as stipulated in rule 3 (a), (b), (c) or (d) of PFUTP Regulations, 2003. The transaction was carried out as per BSE guidelines through registered broker. Considering the facts, AR requested to drop the proceedings. The minutes of the hearing are on record.

<u>**CONSIDERATION OF ISSUES AND FINDINGS**</u>

13. I have perused the charges levelled against the Noticee, her reply and the documents / material available on record. The issues that arise for consideration in the present case are:

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

    b. *Does the violation, if any, attract monetary penalty under section 15HA of the SEBI Act, 1992?*

    c. *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 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 manipulative, fraudulent or an unfair trade practice in securities markets.*

[Explanation.– For the removal of doubts, it is clarified that any act of diversion, misutilisation or siphoning off of assets or earnings of a company whose securities are listed or any concealment of such act or any device, scheme or artifice to manipulate the books of accounts or financial statement of such a company that would directly or indirectly manipulate the price of securities of that company shall be and shall always be deemed to have been considered as manipulative, fraudulent and an unfair trade practice in the securities market.]

(2) Dealing in securities shall be deemed to be a manipulative, fraudulent or an unfair trade practice if it involves any of the following:—

(a) knowingly indulging in an act which creates false or misleading appearance of trading in the securities market"

15. The allegation against the Noticee is that, while dealing in the stock option contracts at BSE during the IP, she had executed reversal trades on the same day within four seconds, which were allegedly non-genuine trades and the same had resulted in generation of artificial volume in stock option contracts at BSE. Reversal trades are those trades in which an entity places its buy or sell positions in a contract with subsequent sell or buy positions with the same counterparty during the same day. These 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. I note from the trade log of the Noticee that she had traded in one unique contract in the stock options segment of BSE during the IP. The Noticee had executed two non-genuine trades in this one contract. I further note that the above mentioned trades of the Noticee had resulted in the creation of artificial volume of a total of 50,000 units in the said contract. A summary of the 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 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	DIVI15APR1800.00PE	40	25000	50	25000	100	38.76

17. I note that the Noticee had executed non-genuine trades in one contract, wherein the percentage of non-genuine trades of the Noticee in stock options contracts to total trades in the contracts was 38.76%. The non-genuine trades executed by the Noticee in the above contract had a significant difference in the buy rate and sell rate considering that the trades were reversed on the same day, in a matter of just four seconds.

18. I note from the trade log that the trades executed by the Noticee in a contract was squared up within a short span of time with the same counter-party. To illustrate, the Noticee, at 15:13:26 hours on March 30, 2015, entered into a buy trade with the counter-party viz. Open Futures and Derivatives Private Limited and for 50,000 units at the rate of Rs.40 per unit in the contract DIVI15APR1800.00CE. Thereafter, on the same day, the Noticee, at 15:13:30 hours entered into a sell trade with same counterparty for 50,000 units at the rate of Rs. 50 per unit in the same contract. Thus, while dealing in the said contract during the IP, the Noticee executed the reversal trade with same counterparty viz. Open Futures and Derivatives Private Limited on the same day and with significant price difference in buy and sell rate without any significant change in the price of the underlying which indicates that these trades were non-genuine in nature. Thus, the Noticee, through her dealing in the contract viz. “DIVI15APR1800.00CE” during the IP, executed non-genuine trades which is 38.76% of the total trades from the market in the said contract during the IP, and thereby, the Noticee generated an artificial volume of 50,000 units.

19. The fact that the transactions executed by the Noticee are not genuine is evident from the fact that the trade log of the Noticee reveals that within a short span of time of only around four seconds, the Noticee reversed the position with the counterparty with a significant price difference. Such a short span of time taken for reversing the trades in an illiquid stock option contract advocates the fact that these trades executed by the Noticee were not genuine. The fact that there was a wide variation in prices of the said contracts and the transaction in a particular contract was reversed with the same counterparty in a few seconds only indicates a prior meeting of minds with a *mala fide* intent to execute the reversal trades at a pre-determined price. Since, these trades were executed in illiquid option contracts, there was no trading in the said contract and hence, there was no price discovery in the strictest terms; this can only lead to a conclusion that the Noticee had indulged in reversal trades with the counterparty in the stock options segment of BSE and the same were not genuine.

20. The Noticee contended it was not proper to question the validity of the transactions after a period of 6 years. With regard to the delay, I note that pursuant to a preliminary examination conducted in the Illiquid Stock Options matter, an 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 the 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".*

21. 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.

22. As can be seen from the narration of facts in the foregoing paragraphs, pursuant to appointment of AO on July 02, 2021, SCN was issued on August 03, 2021. In compliance with principles of natural justice, after receipt of reply, an opportunity of personal hearing was scheduled on November 16, 2021 and upon conclusion of hearing, additional written submissions were received from the Noticee on November 24, 2021.

23. I also note that there is no provision under SEBI Act, 1992, which prescribes a time limit for taking cognizance of a breach of the provision of the SEBI Act, 1992 and Rules and Regulations made thereunder. Further, as per Section 11C of SEBI Act, 1992, SEBI can initiate investigation at any point of time, for any period of alleged violation or any period of alleged transactions. I also note that the investigations relating to the PFUTP Regulations, 2003 are complex (considering the volume of transactions, connections and examination of trading of shares, etc.) and time

consuming. In this regard, I feel it is pertinent to quote 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.*" Further, I note that the Hon'ble SAT in the matter of Pooja Vinay Jain vs SEBI (Appeal No. 152 of 2019, Date of Decision –17.03.2020) 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 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*". In view of the aforesaid and considering the facts of the aforesaid matter, I do not find any merit in the contentions of the Noticee.

24. The Noticee has contended that the transactions were carried out by the SEBI Registered Intermediary through BSE and has paid income tax on profit earned on such trade. Moreover, there was no warning/ observation from the exchange/regulator about the contracts which were executed by her.

25. I note that the instant allegations do not pertain to payment of taxes by the Noticee. I also note that the stock exchange merely provides a platform for carrying out the trades, while the obligation to ensure genuineness of the trades as regards instant considerations primarily lies on the notice. So, in the light of the above, the contentions of the Noticee in this regard are without merits.

26. I note that it is not mere coincidence that the Noticee could match her trades in an illiquid scrip with the same counterparty with whom she had undertaken the first leg of the respective trade. This is but an outcome of a meeting of minds and a deliberate attempt to deal in such a fashion.

27. In this context, I deem it appropriate to refer to the Hon'ble SAT order dated July 14, 2006, in the case of **Ketan Parekh vs. SEBI (Appeal no. 2/2004),** wherein the Hon'ble SAT has held that - *"The nature of transactions executed, the frequency with which such transactions are undertaken, the value of the transactions, the conditions then prevailing in the market are some of the factors which go to show the intention of the parties. This list of factors, in the very nature of things, cannot be exhaustive. Any one factor may or may not be decisive and it is from the cumulative effect of these that an inference will have to be drawn."*

28. I also place reliance on the judgment of Hon'ble Supreme Court in the matter in respect 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 Supreme Court 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….."*

29. Further, the Hon'ble Securities Appellate Tribunal, in its judgment dated September 14, 2020 in the matter of **Global Earth Properties and Developers Pvt. Ltd.** relied upon the aforesaid judgement of Hon'ble Supreme Court and held that, *"It is not a mere coincidence that the Appellants could match the trades with the counter party with whom he had undertaken the first leg of respective trade. In our opinion, the trades were non-genuine trades and even though direct evidence is not available in the instant case but in the peculiar facts and circumstances of the present case there is an irresistible inference that can be drawn that there was meeting of minds between the Appellants and the counter parties, and collusion with a view to trade at a predetermined price."*

30. I note that while direct evidence may not be forthcoming in the present matter as regards to meeting of minds or collusion of the Noticee with other entity, there is guidance from the aforesaid order of the Hon'ble Supreme Court where it lays emphasis on the 'preponderance of probabilities' in each case to arrive at a decision considering the following:

    - the isolated trade and reversal in the same option contract,
    - the same counter party being involved in both the trades,
    - the gap between the trade and the reversal being just four seconds,
    - the substantial difference in the buy and sell rate within same day and
    - the high volume of trade in turn creating an artificial volume of 50,000 units,

    I cannot but conclude the trades have been executed with an ulterior motive to create artificial volume and are not genuine.

31. My conclusion, hence, is that, considering the aforesaid factors, the trading behaviour of the Noticee has resulted in creating an appearance of artificial trading volumes in the contract. 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. The Hon'ble Supreme Court of India in the matter of **SEBI Vs. Shri Ram Mutual Fund** [2006] 68 SCL 216(SC) 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…".*

32. In view of the same, I am convinced that it is a fit case for imposition of monetary penalty on the Noticee under the provisions of section 15HA of the SEBI Act, 1992 which read 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.

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

Factors to be taken into account by the adjudicating officer.

15J. Whileadjudging 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.*

34. Therefore, I note that the Noticee has indulged in execution of reversal trades in stock options contracts during 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

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
Bina Gupta **(PAN: ACZPG5098D)**	Regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of PFUTP Regulations, 2003	Rs. 5,00,000/- (Rupees FiveLakh only)

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

35. 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

36. The aforesaid Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to "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

37. 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.

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

Date: April 13, 2022	**PRADEEP RAMAKRISHNAN**
Place: Mumbai	**ADJUDICATING OFFICER**