BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

ADJUDICATION ORDER NO. Order/RJ/VS/2021-22/14166

UNDER SECTION15-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:

SURABHI TIMBER PVT LTD
[PAN: AAECS2019L]
7, CHHATAWALA GALI,
KOLKATA, WEST BENGAL- 700 012

In the matter of Illiquid Stock Options at BSE Limited

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') observed large scale reversal of trades in Stock Options segment of BSE Limited (hereinafter referred to as '**BSE**') leading to creation of artificial volume. Accordingly, SEBI conducted an investigation into the trading activities of certain entities in Illiquid Stock Options at BSE for the period April 1, 2014 to September 30, 2015 (hereinafter referred to as "**Investigation Period**").

2. It was observed that during the Investigation Period, total 2,91,643 trades comprising substantial 81.38% of all the trades executed in Stock Options Segment of BSE were found to be non-genuine trades. The aforesaid 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.

3. It was observed that the said non- genuine trades were not restricted to any specific contract or between any specific set of entities. SURABHI TIMBER PVT LTD (hereinafter referred to as '**Noticee'**) was one of the various entities who were

indulged in execution of non-genuine trades in Stock Options Segment of BSE during the investigation period.

4. As regards the dealings of Noticee in the Stock Options segment of BSE during the Investigation Period, it was observed that the Noticee had traded in 1 unique contract, in which Noticee had allegedly executed total of 2 non-genuine trades, which resulted in artificial volume of total 2,36,000 units.

5. Summary of dealings of the Noticee in the Stock Options contract in which the Noticee allegedly executed non genuine trades during the investigation period is as follows:

S. No	Contract Name	Avg. Buy Rate (₹)	Total Buy Volume (no. of units)	Avg. Sell Rate (₹)	Total Sell Volume (no. of units)	Number of non genuine trades executed by Entity in the Contract	Total number of trades executed by the Entity in the Contract	Total number of trades executed 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	FEDB15MAR145.00PEW2	7.00	118000	3.2	118000	2	2	2	100%	8.36%

6. From the above table, the following is observed as regards the dealings of the Noticee:

a) During the Investigation Period, 2 trades for 2,36,000 units were executed by the Noticee in the said contract on 23/02/2015.

b) That while dealing in the said contract during the Investigation Period, Noticee executed total 2 reversal trades (1 buy trade + 1 sell trade) with same counterparty viz MUKESH KUMAR SINHA HUF on the same day.

c) Thus, Noticee, through its dealing in the contract viz, "FEDB15MAR145.00PEW2" during the Investigation Period, executed 2 non genuine trades and thereby allegedly generated artificial volume of 2,36,000 units which is 8.36% of the total volume traded in the said contract in the market during the Investigation Period.

7. In view of the foregoing, it was alleged that the Noticee, indulged in execution of reversal of trades in Stock Options with same entity on the same day. Such trades are non-genuine in nature and have created false or misleading appearance of trading in terms of artificial volumes in stock options and therefore alleged to be manipulative, deceptive in nature. Thus, it was alleged that the Noticee had violated the provisions of Regulation 3(a), 3(b), 3(c), 3(d), 4(1) and 4(2) (a) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as "**PFUTP Regulations**").

APPOINTMENT OF ADJUDICATING OFFICER

8. Pursuant to investigation, SEBI, after being satisfied that there are sufficient grounds to inquire into the affairs and adjudicate upon the alleged violations as mentioned above, *inter-alia*, in respect of the Noticee, had appointed the undersigned as the Adjudicating Officer vide Order dated April 30, 2021, under section 19 read with section 15I(1) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act**") and Rule 3 of the Securities and Exchange Board of India (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 the Adjudication Rules read with section 15I (1) and (2) of the SEBI Act, and if satisfied that penalty is liable, impose such penalty as deemed fit in terms of Rule 5 of the Adjudication Rules 1995 and Section 15HA of the SEBI Act, 1992.

SHOW CAUSE NOTICE, REPLY AND HEARING

9. A Show Cause Notice (hereinafter referred to as '**SCN**') bearing ref. no. PD1/AO/RLJ/VS/14154/2021/1 dated July 01, 2021 was served upon the Noticee under Rule 4 of the Adjudication Rules to show cause as to why an

inquiry be not held against it in terms of Rule 4 of the Adjudication Rules and penalty be not imposed under Section 15HA of the SEBI Act, 1992 for the violations alleged to have been committed by it. The SCN was sent to the Noticee vide Speed Post AD and was duly served on the Noticee as per the Tracking details obtained from the India Post website. However, no reply was received from the Noticee.

10. Since there was no reply filed by the Noticee, vide notice dated August 02, 2021, in the interest of natural justice and in terms of Rule 4 (3) of the Adjudication Rules, the Noticee was granted an opportunity of personal hearing on August 20, 2021. In reply, the Noticee vide email dated August 19, 2021 requested for the postponement of the hearing on the ground that its authorised representative is unable to attend hearing due to personal reasons. In the interest of Justice, vide hearing notice dated September 13, 2021, a final opportunity of hearing on September 30, 2021 was granted to the Noticee along with a final opportunity for filing reply to SCN.

11. In reply to the aforementioned Notice dated September 13, 2021, the Noticee vide email dated September 23, 2021 confirmed the appearance for the hearing through its authorised representative. Further, vide email dated September 30, 2021 Noticee sought another extension to file its reply to the SCN. The same was acceded and the hearing was re-scheduled to October 07, 2021 with another opportunity to file reply to SCN by October 05, 2021 as requested by Noticee.

12. The Noticee vide email dated October 04, 2021 submitted the copy of its reply dated October 04, 2021 to SCN, *inter alia,* stating as under:

"……………..

1. *At the outset, we submit that we have not violated any provisions of Regulation 3(a), (b), (c), (d), and 4(1), 4(2) (a) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as the "PFUTP Regulation, 2003") in the matter of trading in illiquid stock options on BSE Ltd.), or any other law as alleged in the Show Cause Notice.*

2. *We submit that while we shall endeavour to reply to each and every allegation contained in the Show Cause Notice and that non denial or non-replying of any particular allegation may not be treated as our admission in any manner for want of denial.*
3. *Without prejudice to all the above, we wish to make the following submissions on each and every aspect with regard to the findings / observations / allegations highlighted in the said notice.*

   We further submit that during the period indicated in the notice (1st April 2014 to 30th September 2015) we were engaged in business of NBFC. We are not aware about of rules and regulation of share market and undertake trades in the share market with a view to make some gains/loss apart from our regular business of NBFC. We have undertaken trades on consultation of Authorized Brokerage house.

4. *We submit that it is alleged that the trades we executed were in illiquid Stock Options at Bombay Stock Exchange Limited. However, we submit that these scripts, in which we traded, were at no time banned and hence there was no bar on trading in the said scripts. Therefore it would be too farfetched for us to assume that these shares are so called "ill-liquid". The mere fact that BSE allowed trading in these shares renders our bona-fides in trading in these shares. Moreover, in absence of any warnings, estoppels from BSE, we are at a loss to understand how we could gather the awareness of the shares being ill liquid.*
5. *We further submit that the said trades were executed in the normal course of business with the consultation of Brokerage house and we have not made any false and misleading appearance of trading and generating artificial volumes in the Stock options.*
6. *We have not made any artificial and non-genuine in nature.*
7. *We submit that there was no bar on trading in the said illiquid scripts and therefore we continued to trade in these scrip in the normal course of business. We have been trading in various scripts and the purported "ill liquid" scripts for us were normal Page 6 of 18 scripts in which we could undertake trades. All our trades have been backed up with appropriate pay in pay outs which establishes our bona-fides in carrying out genuine trades on the floor of the Exchange.*
8. *We further submit all the trades executed by us are well recognised, legal and permitted by BSE and carried out on the floor of exchange. There were no wrongful gains/Loss made by us out of the alleged trades even for sake of assumptions. Therefore no motive is established qua us for the presumptions of non-genuine trades by us.*
9. *We submit that the impugned trades were executed on the floor of exchange through a registered share broker who has the requisite soft wares as approved by the Exchange, The entire trading process is like blind mechanism as far as buying and/or selling of shares by a client through a broker is concerned. As a client, we had only follow the instruction of authorized broker then after buy or sell of shares made.*

   Thereafter it is impossible for us to know who is/are the counter parties to our trades. To the best of our knowledge, even a broker is not aware of the counter *party to any trade carried out. Neither we execute trades through our terminals nor are we aware of the mechanism by which a share broker trades in the market for its clients.*

We have made due payments for our purchases and have received payments against sale by us. We submit that the said trading system prevents a member who places any orders from identifying the counter-party member or client and thus ensures anonymity of trades. The system does not even display details of all pending orders; rather it only displays the 5 best pending orders. Therefore, at any given point of time, it is impossible for us to even verify the party & counter party of these transactions. We further state that there was no alert from the broker or the Exchange which would prompt us to take any caution or create an alarm in us to stop trading. Under these circumstances, it is erroneous to come to a conclusion that we had executed non-genuine trades which resulted in artificial volume.

We further submit that, we have made only one transaction and face huge loss and stop the trading in share market, so please note that this is not our regular business.

In view of the our above submission, further we deny all allegation imposed on us as per show cause notice and we also not aware of the rules and regulation of SEBI in this regard, we may requested to you please drop all allegation as mention in SCN.

We further submit that, if any penalty arises for the said activity, we may request you please raised minimum penalty as the situation of company is bad in the current COVID - 19 pandemic.

…….……"

13. The hearing scheduled on October 07, 2021 was rescheduled on October 08, 2021 and the opportunity of hearing was availed online by the Noticee on October 08, 2021 through its authorised representative ('**AR**'), Shri Ramesh Kumar Pandey. The hearing was conducted through video conference mode using Webex platform and the contents of the SCN and the allegations levelled against the Noticee were explained to the AR. The AR reiterated the submissions of the reply dated October 04, 2021. The AR stated that they do not have any additional submissions to make and the hearing was concluded.

14. In view of the above, noting that sufficient opportunities for submission of reply and personal hearing has been granted to the Noticee, I now proceed further for consideration of Issues.

CONSIDERATION OF ISSUES AND FINDINGS

15. After perusal of the material available on record, I have the following issues for consideration viz.,

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

    II. If yes, whether the Noticee is liable for monetary penalty under Section 15HA of the SEBI Act?

    III. If so, what quantum of monetary penalty should be imposed on the Noticee?

FINDINGS

16. On perusal of the material available on record and giving regard to the facts and circumstances of the case and submissions of the Noticee, I record my findings hereunder.

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

17. Before moving forward, it is pertinent to refer to the relevant provisions of the PFUTP Regulations which reads as under:

Regulation 3: - Prohibition of certain dealings in securities

3. 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 thereunder;
(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 thereunder.

Regulation 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;

18. It has been alleged that the Noticee had indulged in execution of reversal of trades in Stock Options with same entity on the same day. Such trades are non-genuine in nature and have created false or misleading appearance of trading in terms of artificial volume in stock options and therefore alleged to be manipulative, deceptive in nature.

19. I note that reversal trades have been considered as 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 non-genuine trades as they are not executed in normal course of trading, lacks basic trading rationale, and lead to false or misleading appearance of trading in terms of generation of artificial volume, hence are deceptive and manipulative. Artificial volume is considered to be the volume (no. of units) reversed in both legs of said reversal trades while keeping out the volume, if any, which is not reversed.

20. I note that the Noticee had executed 2 non-genuine trades in 1 contract on February 23, 2015. The details of non-genuine trades executed by the Noticee are furnished hereunder:

S. No	Contract Name	Avg. Buy Rate (₹)	Total Buy Volume (no. of units)	Avg. Sell Rate (₹)	Total Sell Volume (no. of units)	Number of non genuine trades executed by Entity in the Contract	Total number of trades executed by the Entity in the Contract	Total number of trades executed in the contract	% of Non Genuine trades of Noticee in the contract to Noticee's Total trades in the Contract	% of Non Genuine trades of Entity 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	FEDB15MAR145.00PEW2	7.00	1,18,000	3.2	1,18,000	2	2	2	100%	15.38 %	100%	8.36%

21. I shall now proceed to deal with the transactions executed by Noticee in the alleged non-genuine trades.

I. Scrip Name: FEDB15MAR145.00PEW2, Trade Date: 23/02/2015

CLIENTNAME	CP_CLIENTNAME	TRADE_TIME	TRADE_RATE	TRADED_QTY
SURABHI TIMBER PVT LTD	MUKESH KUMAR SINHA HUF	12:28:23.630585	7.00	1,18,000
MUKESH KUMAR SINHA HUF	SURABHI TIMBER PVT LTD	12:28:28.230785	3.2	1,18,000

(a) I note from the above table that during the investigation period, total 2 trades for 2,36,000 units were executed in the "FEDB15MAR145.00PEW2" contract on 23/02/2015 wherein the Noticee was party to both the said trades.

(b) The Noticee placed a buy limit order for 1,18,000 units at a price of ₹ 7.00 per unit and the said order was matched with the sell limit order (which was also for 1,18,000 units at a price of ₹ 7.00 per unit) of counterparty client MUKESH KUMAR SINHA HUF. I note that the said buy limit order by the Noticee was placed at 12:28:23.630585 almost at the same time as that of the entry of the sell limit order by the Counterparty. I also note that there was no modification of either price or quantity by either the Noticee or the counterparty and the buy limit order of the Noticee got executed into trade immediately with the counterparty. Subsequently within 5 seconds from the above trade, at 12:28:28.230785, the Noticee placed a sell limit order for 1,18,000 units at a price of ₹ 3.2 per unit and the said order was matched with the same counterparty (i.e. MUKESH KUMAR SINHA HUF), who placed a buy limit order for the same quantity (i.e. 1,18,000) and price (i.e. ₹ 3.2). I note that the said buy limit order was placed by the counterparty almost at the same time i.e. 12:28:28.230785 as that of the sell limit order by the Noticee. I also note that there was no modification of either price or quantity by either the Noticee or the counterparty and the sell limit order of the Noticee got executed into trade immediately with the buy limit order by the Counterparty.

(c) Therefore, it is noted that while dealing in the said contract on 23/02/2015, the Noticee at 12:28:23.63 hrs entered into 1 buy trade with counter party viz, MUKESH KUMAR SINHA HUF for 1,18,000 units at a rate of ₹ 7.00 per unit. Thereafter, on the same day, within 5 seconds from the above trade, Noticee, at 12:28:28.23 hrs entered into 1 sell trade with the same counterparty for 1,18,000 units at a rate of ₹ 3.2 per unit.

(d) From the above, it is noted that while dealing in the said contract during the investigation period, the Noticee executed reversal trades through 1 buy trade and 1 sell trade with the same counterparty viz MUKESH KUMAR SINHA HUF, on the same day for the same quantity.

(e) Thus, the Noticee, through its dealing in the contract viz, “FEDB15MAR145.00PEW2” during the investigation period, executed 2 non genuine trades which is 15.38% of the total trades from the market in the said contract during the investigation period, and thereby, the Noticee generated artificial volume of 2,36,000 units which is 8.36% of the volume traded in the said contract from the market during the investigation period.

22. From the above pattern of trades, I note that the Noticee had bought and sold option contract with the same counter party and also reversed its trade in 5 seconds from its earlier buy trade, at substantial price difference. Such pattern of dealings suggests beyond doubt that they were not driven by market factors as none of the parameters (underlying stock price, volatility, etc.,) for Option pricing have undergone any change during period of trades. I note that the underlying stock price did not change to substantiate corresponding changes in the option

price in a span of 5 seconds. Therefore, I am inclined to note that the aforesaid trades of Noticee were non genuine and have created false or misleading appearance of trading in terms of artificial volume in stock options and therefore the same are manipulative, deceptive in nature.

23. As noted above, Noticee had executed non- genuine trades in 1 contract viz., FEDB15MAR145.00PEW2, where all the trades were non genuine trades and the Noticee contributed to 8.36% artificial volumes. Non genuine trades executed by the Noticee in above contracts had significant differential in buy rates and sell rates considering that the trades were reversed immediately on the same day.

24. The buying of illiquid stock options by the Noticee and subsequent reversal trade with the same entity for the same quantity, within a short span of time with a significant difference in buy and sell value of stock options, in itself, exhibits abnormal market behaviour and defies economic rationality. I note from the above trading pattern of the Noticee that Noticee has deliberately made misuse of trading platform for creating artificial volume in the illiquid stock options. I note that no justifiable rationale has been given for entering into such transactions by the Noticee as the behaviour exhibited by the Noticee defies the logic and basic economic sense. Had market been liquid with large number of investors, the manipulative scheme would not have been possible as the Noticee would not be able to square off its position as there would be no buyers for such contracts. The fact that the counterparties are same corroborates that the trades were not genuine and executed for manipulative purpose.

25. 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 (viz. approx. 5 seconds), the Noticee reversed the position with the same counterparty client with a significant price difference. Such short span of time in reversing the trades in the contract suggests the non-genuineness of these trades executed by the Noticee. The fact that the orders of the Noticee and its counterparty matched with such precision (considering that there was a perfect match of price and quantity as well as a short time difference between placing of

the orders by the Noticee and counterparty) indicates a prior meeting of minds with a view to execute the reversal trades at a predetermined price. Since these trades were done in illiquid option contracts, there was very little trading in the said contract and hence, there was no price discovery in the strictest terms. 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. Therefore, it is observed that the Noticee had indulged in reversal trades with its counterparty in the stock options segment of BSE and the same were non-genuine trades.

26. The non-genuine and deceptive transactions of these entities are covered under the definition of 'fraud' and the dealings of the Noticee as discussed herein above were "fraudulent", as defined under regulation 2(1)(c) of the PFUTP Regulations and prohibited under the provisions of Regulations 3(a), 3(b), 3(c) , 3(d) , 4(1) and 4(2)(a) of the PFUTP Regulations.

27. Further, with respect to the reversal of 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 decided on February 8, 201 held 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 the PFUTP Regulations. The Apex Court also held that "*considering the reversal transactions, quantity, price and time and sale, parties being persistent in the number of such trade transactions with huge price variations, it will be too naïve to hold that the transactions are through screen-based trading and hence anonymous. Such conclusion would be over-looking the prior meeting of minds involving synchronization of buy and sell order and not negotiated deals as per the Board's circular. The impugned transactions are manipulative/deceptive device to create a desired loss and/or profit. Such synchronized trading is violative of transparent norms of trading in securities.*"

28. Additionally, the Hon'ble Securities Appellate Tribunal (hereinafter referred to as "**SAT**") in its judgment dated September 14, 2020 in the matter of **Global Earth Properties and Developers Pvt Ltd Vs SEBI** (Appeal No. 212 of 2020) relied upon the aforesaid judgment of the Hon'ble Supreme Court and held that *"…It is not a mere coincidence that the Appellants could match the trades with the counter party with whom he had undertaken the first leg of respective trade. In our opinion, the trades were non-genuine trades and even though direct evidence is not available in the instant case but in the peculiar facts and circumstances of the present case there is an irresistible inference that can be drawn that there was meeting of minds between the Appellants and the counter parties, and collusion with a view to trade at a predetermined price*."

29. Keeping in mind the dicta of the Hon'ble Supreme Court as reproduced above; 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 entity on the same day, which are non-genuine in nature and have created false or misleading appearance of trading in terms of artificial volumes.

30. Vide its reply, the Noticee has submitted that it was not aware of rules and regulations of share market and undertook trades in the share market with a view to make some gains/loss apart from their regular business of NBFC. It is cardinal rule of law that ignorance of law cannot be an excuse for the violation of any statutory provision and therefore I am not inclined to give any consideration to the said submissions of the Noticee in its favour.

31. It is also the submission of the Noticee that the trades executed by it were genuine and bona-fide, for the reason that the Noticee is not knowing the counterparty and the trades were executed on Stock Exchange platform. In this regard, I note that in the screen based trading, the manipulative or fraudulent intent can be inferred from various factors such as conduct of the party, pattern of transactions, etc. I note that it is not a mere coincidence that Noticee could

match its trades (with the corresponding price and quantity entered by both the Noticee and counterparty being equal) with the same counterparty with whom Noticee had undertaken first leg of the respective trades. It indicates meeting of minds. In this context, I would like to rely on the judgment of the Hon'ble Supreme Court of India passed in the case of **SEBI Vs Kishore R Ajmera** (AIR 2016 SC 1079), wherein it was held that "…*in the absence of direct proof of meeting of minds elsewhere in synchronized transactions, the test should be one of preponderance of probabilities as far as adjudication of civil liability arising out of the violation of the Act or provision of the Regulations is concerned. The conclusion has to be gathered from various circumstances like that volume of the trade effected; the period of persistence in trading in the particular scrip; the particulars of the buy and sell orders, namely, the volume thereof; the proximity of time between the two and such other relevant factors. The illustrations are not exhaustive...*"

32. The Hon'ble Supreme Court of India further held in the said case that "*…It is a fundamental principle of law that proof of an allegation levelled against a person may be in the form of direct substantive evidence or, as in many cases, such proof may have to be inferred by a logical* process *of reasoning from the totality of the attending facts and circumstances surrounding the allegations/charges made and levelled. While direct evidence is a more certain basis to come to a conclusion, yet, in the absence thereof the Courts* cannot *be helpless. It is the judicial duty to take note of the immediate and proximate facts and circumstances surrounding the events on which the charges/allegations are founded and to reach what would appear to the Court to be a reasonable conclusion therefrom. The test would always be that what inferential process that a reasonable/prudent man would adopt to arrive at a conclusion.*"

33. In the instant matter, I note that though direct evidence regarding meeting of minds or collusion of the Noticee with the counterparty is not forthcoming, the trading behavior of the Noticee makes it clear that the 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 order dated July 14, 2006 passed by Hon'ble

SAT, in the case of **Ketan Parekh vs. SEBI** (Appeal no. 2/2004), wherein, 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, I would like to rely on the judgement of Hon'ble Supreme Court passed in the case of **SEBI vs. Rakhi Trading Private Ltd.** (*supra)*, wherein the Apex Court held that "*the entities were engaged in a fraudulent and unfair trade practice while dealing in Options and hence were liable for violation of SEBI (PFUTP) Regulations".* The Hon'ble Apex Court has also held that in the absence of direct proof of meeting of minds, the test should be one of preponderance of probability and also stated that the conclusion has to be gathered from various circumstances like volume of trade, period of persistence of trading, particulars of buy and sell orders, proximity of time between the two and such other relevant factors.

35. In line with the aforesaid judgements of Hon'ble SAT and Hon'ble Supreme Court, I note from the foregoing findings that the trading pattern of the Noticee in terms of volume of reversal trades, proximity of buy/sell and subsequent reversal evidences the indulgence of the Noticee beyond a reasonable doubt of the manipulative intent in creation of artificial volume. Further, the dealings by Noticee only in such options contracts which was illiquid clearly demonstrates the manipulative intent to use stock exchange platform to carry out non-genuine trades with the aim to execute such trades for manipulative purposes.

36. In this regard, I would like to rely on the judgement of Hon'ble Supreme Court in the matter of **SEBI vs. Rakhi Trading Private Ltd.** (*supra)*, where Apex Court held that, *"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."

37. From the foregoing, it is established that the Noticee by indulging in reversal trades on the stock exchange platform which are manipulative, unfair, fraudulent and non-genuine, in nature, had created artificial volumes in the contracts. In view of above, I conclude that the Noticee had violated the provisions of Regulations 3 (a), 3(b), 3(c), 3 (d), 4 (1) and 4 (2) (a) of PFUTP Regulations.

ISSUE - II: If yes, whether the Noticee is liable for monetary penalty under Section 15HA of the SEBI Act?

38. Pursuant to detailed analysis as brought out above, it is established that reversal trades are not normal transactions and it clearly demonstrates beyond reasonable doubt that the Noticee had intentionally executed these trades and manipulated the volume by artificial trading pattern in the contract FEDB15MAR145.00PEW2 where the total of 2 trades executed during the Investigation Period in the said contract were non genuine trades and the Noticee was part of those trades.

39. I am of the view that the misuse of stock options as shown above not only displays an unreal picture of market activity to other investors but also defeats the basic premise of screen based electronic trading system and price discovery mechanism by repeated execution of pre decided reversal trades at irrational / arbitrary prices. Such activity deliberately or otherwise damages market integrity apart from presenting wrong picture of liquidity to gullible investors which could affect their trading/investment decisions. Options as financial instruments, ordinarily, provide hedging avenues to investors. The trading of the Noticee in the instant matter was abnormal and was clearly designed to create artificial volumes in the illiquid stock options, fail

to justify any of the normal strategies of hedging / arbitrage. In my view, the abuse of such financial instruments, which are made available to the investors for the purpose of protection of their investment portfolios from the risks of adverse price movement and needs to be dealt with strictly.

40. I find that the Noticee by indulging in execution of reversal trades in Stock Options with same entity on the same day, had created artificial volume, leading to false and misleading appearance of trading in the illiquid stock options at BSE and therefore violated the provisions of Regulations 3 (a), 3(b), 3(c), 3 (d), 4 (1), and 4 (2) (a) of the PFUTP Regulations. Accordingly, 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, which read as hereunder.

Section 15HA of the SEBI Act - Penalty for fraudulent and unfair trade practices

> *"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 – III: If so, what quantum of monetary penalty should be imposed on the Noticee?

41. While determining the quantum of monetary penalty under Section 15HA of the SEBI Act, I have considered the factors stipulated in Section 15-J of the SEBI Act, which reads as under:

" Section 15J - Factors to be taken into account by the Adjudicating Officer

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."

42. I observe that the material / documents made 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, Noticee has entered into non-genuine trades in nature and created false and misleading appearance of trading volumes in respective contract at pre- mediated price in illiquid stock options.

43. Considering, the facts of the matter as discussed earlier, I am of the view that imposition of minimum penalty as prescribed under section 15 HA of the SEBI Act, 1992 would be commensurate for the present matter.

ORDER

44. After taking into consideration the nature and gravity of the violations established in the preceding paragraphs and in exercise of the powers conferred upon me 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, I hereby impose a penalty of ₹ 5,00,000 (Rupees Five Lakhs Only) on the Noticee i.e., SURABHI TIMBER PVT LTD, under Section 15HA of the Securities and Exchange Board of India Act, 1992, for the violation of the provisions of Regulations 3 (a), 3(b), 3(c), 3 (d), 4 (1), and 4 (2) (a) of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003.

45. The said penalty imposed on the Noticee, as mentioned above, shall commensurate with the violation committed by the Noticee.

46. Surabhi Timber Pvt Ltd shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of "SEBI - Penalties remittable to Government of India", payable at Mumbai, OR through

online payment facility available on the SEBI website www.sebi.gov.in on the following path, by clicking on the payment link:

ENFORCEMENT → Orders → Orders of AO →PAY NOW

47. Surabhi Timber Pvt Ltd shall forward said Demand Draft or the details / confirmation of penalty so paid to the "The Division Chief, Division of Regulatory Action-3, Enforcement Department (EFD1 – DRA III), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C –4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai –400 051". Surabhi Timber Pvt Ltd shall provide the following details while forwarding DD/ payment information:

    a) Name and PAN of the entity
    b) Name of the case / matter
    c) Purpose of Payment – Payment of penalty under AO proceedings
    d) Bank Name and Account Number
    e) Transaction Number

48. 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 Securities and Exchange Board of India 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 Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995, a copy of this order is being sent to Surabhi Timber Pvt Ltd and also to the Securities and Exchange Board of India, Mumbai.

November 10, 2021	**Ratan Lal Jat**
Mumbai	**Adjudicating Officer**