BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/GR/PU/2023-24/26041]

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

ALANKIT IMAGINATIONS LTD

[PAN: AABCA1078L]

(FORMERLY ALANKIT ASSIGNMENTS LTD)

(PAN: AAACA9483E)

In the matter of Trading Members in Illiquid Stock Options

A. BRIEF BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as, "**SEBI**") has examined trading in illiquid stock options at BSE for possible violation of the provisions of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as, "**SEBI Act**") and various rules and regulation made thereunder.

2. An Interim Order No. WTM/RKA/ISD/106/2015 dated August 20, 2015 was passed by SEBI in the matter of Illiquid Stock Options restraining 59 persons/entities from buying, selling or dealing in the securities market, either directly or indirectly, in any

manner, till further directions. Confirmatory orders dated July 30, 2016, August 22, 2016 and August 24, 2016 ("**Confirmatory orders**") in this regard, were passed by SEBI confirming the directions issued vide aforementioned Interim order against all 59 persons/entities.

3. The modus operandi that was identified in the Interim order and Confirmatory orders was that certain entities (clients) had continuously made profits and certain entities (clients) had continuously made losses by reversing their trades or executing reversal trades in various individual Stock Options contracts on BSE's Stock Options segment. In the Interim order, these reversal trades were also referred to as "non-genuine trades". Reversal trades executed by clients through broker have been classified as those trades in which an entity (client) reverses its buy or sell positions in a contract with subsequent sell or buy positions with the same counterparty during the same day.

4. Subsequent to passing of aforementioned Interim order against 59 persons/entities, SEBI passed an Interim order dated February 17, 2016 against 22 Trading Members (“Brokers”) in the same matter of Illiquid Stock Options. However, the said order was set aside by Hon’ble Securities Appellate Tribunal (“**SAT**”) vide its orders dated February 25, 2016, March 04, 2016, March 09, 2016, March 14, 2016, March 15, 2016, March 18, 2016 and April 05, 2016. Pursuant to appeal, in terms of order of Hon’ble Supreme Court dated July 01, 2016, SEBI passed order no. WTM/RKA/ISD/94/2016 dated August 12, 2016 in the matter stating, inter alia, that a final view for appropriate action be taken after completion of ongoing investigation in the matter.

5. Investigation was carried out in the instant matter for the period April 01, 2014 – September 30, 2015 (hereinafter referred to as “**IP/ Investigation Period**”), which is same as the examination period referred in the Interim Order dated February 17, 2016 in respect of Brokers in the matter of Illiquid Stock Options.

6. Trade data of BSE's Stock Options segment during the I.P. for the Illiquid Stock Options was analyzed to identify reversal trades. Pursuant to analysis it was

observed that a total of 2,91,744 non-genuine trades were executed by 14,720 entities through 192 Brokers that resulted in reversal trades during the I.P. Trade data pertaining to these 2,91,744 non-genuine trades formed the source data for the case against brokers.

7. Subsequently, SEBI had initiated Adjudication Proceedings in respect of Alankit Imaginations Ltd (Formerly known as: Alankit Assignments Ltd) (hereinafter referred to as **"Noticee"**) under Section 15HB of SEBI Act, 1992 for not exercising care and diligence in the conduct of its business while dealing with its clients in violation of Schedule II A (2) of Code of Conduct for Stock Brokers r/w Regulation 9 (f) of the SEBI (Stock Brokers) Regulations, 1992 (hereinafter referred to as "**Broker Regulations**").

B. APPOINTMENT OF ADJUDICATING OFFICER

8. In this regard, the undersigned was appointed as Adjudicating Officer under Section 15-I of the SEBI Act read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as "**Adjudication Rules**"), vide order dated August 13, 2021, communicated vide communique dated September 20, 2021 to inquire into and adjudge under section 15HB of SEBI Act, for the aforesaid alleged violations by the Noticee.

C. SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

9. A Show Cause Notice No. SEBI/HO/EAD/EAD4/P/OW/2022/0000026974/1 dated July 01, 2022 (hereinafter referred to as ***SCN***) was issued to the Noticee in terms of Section 15-I of the SEBI Act, 1992 read with Rule 4 of the Adjudication Rules to show cause as to why an inquiry should not be held against it and why penalty, if any, under Section 15HB of the SEBI Act, be not imposed upon it.

11. The said SCN was delivered to the Noticee via SPAD and also vide email dated July 06, 2022.The proof of service is on record. In response, the Noticee vide its letter dated July 12, 2022 communicated the details of its Authorized Representative(AR). In the interest of natural justice and in order to conduct an inquiry in terms of Rule 4(3) of the Adjudication Rules, an opportunity of personal hearing was granted on July 25, 2022 vide Hearing Notice served through email dated July 14, 2022 with a further advise to file reply on or before July 22, 2023. In response to this, the Noticee vide letter dated July 15, 2022 sought for inspection of the documents relied upon in the matter in respect of the Noticee. However, from the material available on record, it is conspicuous that all the relevant documents have already been provided to the Noticee along with the SCN and during the course of proceedings.

12. Subsequently, Noticee vide application dated July 23, 2022 requested for impleading various SEBI officials in the matter. However, it is noted that the instant proceedings are against the Noticee and that SEBI is already a party to the proceedings.

13. The AR of the Noticee vide email dated July 25, 2022 requested for the adjournment of the aforesaid scheduled hearing. Accordingly, vide email dated July 25, 2022, Noticee was granted another opportunity of hearing on August 02, 2022.In response to the aforesaid email, the AR of the Noticee vide letter dated August 01, 2022 submitted its reply to the SCN.The said hearing was attended to by AR of the Noticee.

14. The key submissions of Noticee through its reply dated August 01, 2022 are as under:

    a) There is a delay in initiation of proceedings and that the allegations framed in the SCN relate to the trades of April 2015, which are more than 7 years ago and that brokers are required to preserve/maintain record for a period upto 5 years. So, no broker including the Noticee is obliged to give any documents to SEBI or investor.

b) The SCN is bad in law and illegal since it is violative of the Article 137 of the Limitation Act, 1963.

c) Cross examination of counter parties BSE and counter party broker not provided by SEBI.

d) SEBI did not provide with call and voice logs referred to and relied upon by it.

e) It is unable to trace from its records any details of the transactions alleged in the SCN as to whether those transactions were undertaken by the Noticee.

f) There is no evidence or even a preponderance probability of prior meeting of minds, collaboration, and co-ordination between the Noticee and counterparties.

g) It is erroneous to allege that the trades created artificial volume on BSE.The impugned trades constituted a miniscule percentage of overall trades and that there was no major movement in price of the underlying scrip which proves that the trades had no impact on the market.

h) In the absence of any warnings or estoppels or system restrictions from BSE, the Noticee was unable to gather awareness of the shares being Illiquid and that the trades were executed on a screen based trading system.

i) The trades of the Noticee have not been alleged to contribute to the price rise and therefore the violation of PFUTP as alleged can't be sustained.

j) Noticee denies any charges of fraudulent inducement to cause loss to the counter party and that mere intermediation is not a fraud and that it didn't earn any profit or incurred loss at the cost of others and no loss was caused to any investor. Further, element of fraud is missing and that there is no evidentiary basis for alleging fraud

k) It also requested to share the details of the action taken by SEBI against Stock Exchange and its officials.

l) The SCN is bad in law as it violates Article 14 of the Constitution since SEBI has not taken any action against the BSE for same PFUTP violations and is penalizing only brokers.

m) There was not any motive or any manipulative intention on part of the Noticee as alleged in the SCN and that there was no mens-rea or guilty intent in Noticee's pattern of trading and conducts.

n) The trading which was done in Illiquid stock options is illegal and unfair as alleged by SEBI. However, the stock options were freely marketable, listed on the exchange and that SEBI vide its notification dated June 02, 2011 had decided to permit the exchanges to enhance liquidity of the illiquid securities by introducing Liquidity Enhancement Scheme(LES).

o) It further submitted that the effectiveness LES was to be reviewed by the exchange every six months which in turn would submit half yearly report to SEBI and subsequently no alarm was raised by SEBI inspecting team.

16. Subsequently, vide email dated November 30, 2022, Noticee was apprised about the SEBI Settlement Scheme for Brokers 2022 wherein from the available record, it is observed that it did not avail the said settlement scheme and accordingly, to conclude the current proceedings, the Noticee vide email dated April 05, 2023 was provided with another opportunity to make submissions in the matter, if any, latest by April 12, 2023.However, Noticee has not made any submission till date.

17. In view of the above, I note that principles of natural justice have been duly complied with, as SCNs/Hearing Notices were duly served upon the Noticee and sufficient opportunity was also granted to the Noticee to reply to the SCN and appear for hearing.

D. <u>CONSIDERATION OF ISSUES, EVIDENCE AND FINDINGS</u>

18. The issues that arise for consideration in the present case are:

Issue No.1 Whether Noticee has violated Schedule II A (2) of Code of Conduct for Stock Brokers read with Regulation 9(f) of the Broker Regulations?

Issue No.2 Does the violation, if any, attract monetary penalty under Section 15HBof SEBI Act?

Issue No.3 If the answer to issue no. 2 is in affirmative, then what should be the quantum of monetary penalty?

19. Before proceeding, it is pertinent to refer to the relevant provision of the Broker Regulations which was in force at the time of impugned transactions, which are reproduced as under:

Relevant provisions of Broker Regulations:

Conditions of registration.

9(f) *he shall at all times abide by the Code of Conduct as specified in Schedule II;*

SCHEDULE II

CODE OF CONDUCT FOR STOCK BROKERS

A. General

(2) *Exercise of due skill and care: A stock-broker shall act with due skill, care and diligence in the conduct of all his business*

FINDINGS

18. Considering the facts and circumstances of the case, submission of the Noticee and material available on record, I record my findings hereunder.

19. Before proceeding to deal with the merits of the case, I wish to settle the following three preliminary objections raised in this proceeding by the Noticee:

   a) There is a delay in initiation of proceedings for the trades dating back to April 2015, i.e. almost 7 years old.
   b) Cross examination of counterparties BSE and counter party broker not provided by SEBI.

c) SEBI did not provide call, voice logs and various relied upon documents referred to and relied upon by it.

20. With regard to the aforesaid contention of the Noticee, regarding delay in issuance of SCN, it is to be noted that, there is no provision under SEBI Act which prescribes a time limit for taking cognizance of a breach of the provision of SEBI Act and Rules and Regulations made thereunder as has been contented by the Noticee where it is under a misconception of applicability of Article 137 of the Limitation Act 1963. Further, as per Section 11C of SEBI Act, SEBI can initiate investigation at any point of time, for any period of alleged violation or any period of alleged transactions. In this regard, I note that the investigation relating to instant matter on the role played by the Brokers is complex and time consuming process, as the same has already been mentioned in the para 2 to 6 above. Subsequently, pursuant to the completion of investigation, SCN was issued on July 01, 2022. Thereafter, I note that all the relevant information relied on for crystallizing the allegations against the Noticee had been provided to it and there was no delay the way it has been argued by Noticee. Further, Noticee has also not specified how the delay, if any, has caused prejudice to it. In this regard, I rely on the judgment of 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 defence 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".*

21. 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".

22. In view of the above, and considering the facts and circumstances, I find that the said contention of Noticee in this regard is without merits.

23. With regard to contention of the Noticee seeking cross examination of BSE and counterparty broker, I note that the instant proceedings are against the Noticee for having failed to exercise care and diligence in the conduct of its business while dealing with its clients and that no statement of BSE or counter party broker was relied upon during the course of Investigation. Therefore, in the absence of such statements, no question of cross examination arises and accordingly, I find that the aforesaid contention of the Noticee is devoid of merits.

24. With regard to the another contention of Noticee that call, voice logs and certain documents sought was not provided, I note that the relied upon and relevant documents in the present matter were duly provided to Noticee during the course of instant proceedings which are in line with the principle pronounced via the judgment of Hon'ble Supreme Court in **T.Takano Vs SEB**. It is pertinent to note that the question before the Hon'ble Supreme Court in the aforesaid judgment was whether an investigation report under Regulation 9 of the PFUTP Regulations must be disclosed to the person whom a notice to show cause is issued, when all the relied upon documents have been furnished to the Noticee. In this context, the Apex court has opined at para 39 of the judgment *that "the actual test is whether the material that is required to be disclosed is relevant for the purpose of adjudication".* The Apex Court also relied on test for the standard of 'relevancy' laid down by a four judge Bench of the Hon'ble Supreme Court in **Khudiram Das vs. State of West Bengal** (1975) 2 SCC 81. The test is a two-prong test where; firstly, the material must have nexus with the order and secondly, the material might have influenced the decision of the authority. The Black's Law Dictionary defines "nexus" as "a connection or link, often a casual one". Since, all relevant material relied upon in the instant proceedings have been provided to Noticee, I find that the principle

pronounced by the Hon'ble Supreme Court in the said order has been duly complied with. Further, I would like to refer to the observation of the Hon'ble SAT in the matter of **Anant R Sathe Vs. SEBI** (Appeal No. 150 of 2020) vide Order dated July 17, 2020, reaffirmed the principle elucidated in the judgment of Shruti Vora's case, which has been reproduced herein and held that: *"the Authority is required to supply the documents that they rely upon while serving the show cause notice which in the instant case has been done and which is sufficient for the purpose of filing an efficacious reply in his defence".*

25. Subsequently, exhaustive reply has also been filed by Noticee as already detailed in the preceding paragraphs. Further, Noticee has also not sufficiently demonstrated how the documents sought by it were relevant to the allegation in the present case of not disclosing the fact of the case and how this ground of non-availability of information has caused prejudice to it.

26. In view of the above, I note that the principles of natural justice have been complied with. Now that all the preliminary objections have been dealt with, I am now proceeding with the merits of the case.

Issue No. I- Whether Noticee has violated Schedule II A (2) of Code of Conduct for Stock Brokers read with Regulation 9(f) of the Broker Regulations?

27. I note from the Investigation Report (IR) that BSE had issued notice to all the Brokers casting an obligation upon them to, inter alia, monitor and report reversal of trades in derivatives segment. BSE notice no. 20130307-21 (addressed to all the trading members) dated March 07, 2013 pertaining to "e-Boss", inter alia, indicated the list of alerts that would be generated by BSE which included reversal of trades in derivatives segment. Further, in terms of the aforesaid notice, every Broker was necessarily required to frame a surveillance policy, inter alia, covering suspicious/manipulative activity identification and reporting process.

28. The aforesaid notice of BSE casted an obligation on the Trading Member (Broker) to monitor and report alerts specifically mentioning the following:

"

…..

The trading members are hereby further informed that the aforementioned transactional alerts are indicative in nature and the trading members can derive their own alerts in addition to the said transactional alerts as per their surveillance policy.

….."

"…...

Monitoring and reporting:

1. *For effective monitoring, Trading Member shall:*
   a. Frame a surveillance policy covering: i…. ii….
   iii. Suspicious / Manipulative activity identification and reporting process.
   iv…..

   b. *The surveillance policy of the Trading Member shall be approved by its Board (in case of corporate trading member), Partners (in case of partnership firms) or Proprietor (in case of sole proprietorship firm) as the case may be.*

   c. *A quarterly MIS shall be put up to the Board (in case of corporate trading member), Partners (in case of partnership firms) or Proprietor (in case of sole proprietorship firm) on the number of alerts pending at the beginning of the quarter, generated during the quarter, disposed off during the quarter and pending at the end of the quarter. Reasons for pendency shall be discussed and appropriate action taken. Also, the Board (in case of corporate trading member), Partners (in case of partnership firms) or Proprietor (in case of sole proprietorship firm) shall be apprised of any exception noticed during the disposition of alerts.*

   d. *The surveillance process shall be conducted under overall supervision of its Compliance Officer.*

   e. *Designated directors / partners / proprietor / Compliance Officer would be responsible for all surveillance activities carried out by the Trading Member and for the record maintenance and reporting of such activities.*

2. *Internal auditor of Trading Member shall review the surveillance policy, its implementation, effectiveness and review the alerts generated during the period of audit. Internal auditor shall record the observations with respect to the same in their report."*

…."

29. Therefore, it is evident that in terms of the aforesaid notice, every broker was necessarily required to frame a surveillance policy so as to identify and report suspicious/manipulative activities. However, BSE, vide email dated November 06, 2020, submitted that no broker had reported any suspicious transactions to it being executed on Stock Options segment of BSE during I.P. Further, none of the Brokers generated any alerts or reported any reversal of trades executed by their respective clients. Thus, by not having system in place to identify repeated trade reversals which they were required to do as per the aforesaid notice of BSE, the brokers facilitated those clients in executing fraudulent transactions in the illiquid stock options of BSE, who transferred profits and losses to each other in a premeditated manner.

30. I note that upon analyzing the source data, the data was segregated based on scenarios so as to identify scenario-wise violations by a Broker. Scenarios in which the source data was segregated is as given in Table 1 below:

Table 1: Summary of scenarios

Scenario	**Particulars**	**Count of Brokers**	**Total number of non-genuine trades (both client and counterparty client)**	**Cumulative non-genuine trades through Brokers after removing duplicates (same broker for both clients)**	**As a % of total transactions**
1	Same Broker for both clients on both legs of trade reversal	19	8,528	4,264	0.74
2	Different Broker for both clients on both legs of trade reversal	189	5,74,900	5,74,900	99.25
3	Trade reversals involving three Brokers	8	60	59	0.01
	Total	**192***	**5,83,488**	**5,79,223**	**100**

Note – There are 3 unique brokers appearing in Scenario 1 and the remaining 16 brokers of Scenario 1 are overlapping with 189 unique brokers appearing in Scenario 2. Accordingly, total Brokers through whom 2,91,744 non-genuine *trades have been executed is 3+189 = 192 brokers. Names of 8 brokers appearing in scenario 3 are overlapping with names appearing in either Scenario 1 or Scenario 2*

31. I note that allegation against the Noticee is that it did not exercise due skill, care and diligence in the conduct of its business while dealing with its clients which resulted in reversal trades by its clients which were non-genuine and the same resulted in generation of artificial volume in stock option contracts at BSE. I further note that Reversal trades are the 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.

32. In this regard, I note from the trade data of the Noticee that during the I.P., the clients of the Noticee had engaged in 402 non-genuine reversal trades in 151 unique contracts wherein positions taken were reversed with the same counterparty on the same day, at a substantial price difference. The aforementioned non-genuine reversal trades by the clients of Noticee were falling in the Scenario 2 as described above i.e. different Brokers for both clients on both legs of trade reversal in respective illiquid stock option contract at BSE.

33. The same is illustrated through the dealings of one of the clients of the Noticee viz. Kashi Vishwanath Steels Private Limited, in the contract “ABNV15JUN1860.00CE” executed on April 15, 2015 during the IP is shown in Table 2 below:

Table 2

Sl.	Client Pan	Client Name	CP PAN	CP Client Name	Order Time	CP Order Time	Trade Time	Trade Rate	Traded Qty	Member Name	CP Member Name
1	AFZPA2159J	Nidhi Aggarwal	AAACK2340N	Kashi Vishwanath Steels Private Ltd	15:16:54	15:16:53	15:16:54	63	5000	Sunstar Securities	Alankit Assignments Ltd..
2	AAACK2340N	Kashi Vishwanath Steels Private Ltd	AFZPA2159J	Nidhi Aggarwal	15:17:04	15:17:04	15:17:04	15	5000	Alankit Assignments Ltd..	Sunstar Securities
3	AFZPA2159J	Nidhi Aggarwal	AAACK2340N	Kashi Vishwanath Steels Private Ltd	15:17:15	15:17:14	15:17:15	54	5000	Sunstar Securities	Alankit Assignments Ltd..
4	AAACK2340N	KashI Vishwanath Steels Private Ltd	AFZPA2159J	Nidhi Aggarwal	15:17:22	15:17:22	15:17:22	18	5000	Alankit Assignments Ltd..	Sunstar Securities

34. It is observed from the table 2 that:

a) Total 4 trades were executed in the contract "ABNV15JUN1860.00CE" on April 15, 2015. Trade reversals were executed between clients Nidhi Aggarwal and Kashi Vishwanath Steels Private Ltd through Brokers Sunstar Securities and Alankit Assignments Ltd respectively.

b) Total number of non-genuine trades that were executed in the contract "ABNV15JUN1860.00CE" were 4 (trades shown at S. No. 1 to 4 at Table 3) and total artificial volume generated through such non genuine trades was 20,000 units.

c) The Broker-wise contribution to number of non-genuine trades and artificial volume in the above contract is as shown in Table 3 below:

Table 3:

S. No.	Entity Name	Artificial volume through non genuine trades	Number of Non genuine trades
1	Alankit Assignments Ltd..	20,000	4
2	Sunstar Securities	20,000	4

35. Reversal trades were executed by Nidhi Aggarwal. through Broker Sunstar Securities through same modus operandi on 2 instances on a same day. In a similar manner, trade reversals were executed by Kashi Vishwanath Steels Private Ltd through the Noticee on 2 instances on the same day.

36. With regard to the aforesaid transactions, Noticee submitted that it is unable to trace from its records any details of these transactions as to whether these transactions were undertaken it. However, in this regard, I note from the trade log which was also provided as annexure to the Noticee, all the alleged transactions

were carried out by aforementioned client of the Noticee. Accordingly, I find that there is no merit in the contention of the Noticee.

37. The non-genuineness of these transactions executed by the clients of the Noticee is evident from the fact that there was no commercial basis as to why, within a short span of time, the clients of the Noticee reversed the position with their counterparties with significant price differences.

38. Further, I note that such reversal trades, involving identical quantities, with substantial differences in buy and sell rates, were executed in large numbers on Stock Options segment at BSE during the I.P. However, Brokers, including the Noticee, failed to notice them right away or even later, as they lacked a system in place to identify such trade reversals. Even though the Brokers might not have been aware of the counterparty client or counterparty broker in a transaction, the fact that a certain amount transacted by clients was being reversed repeatedly on the same day should have alerted the Brokers, including the Noticee. Therefore, I note that there is clear lapse on part of the Noticee.

39. With regard to the aforesaid, Noticee contented that there is no evidence or even a preponderance probability of prior meeting of minds, collaboration, and co-ordination between the Noticee and the counterparties. However, I note that 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 contracts, there was no trading in the said contract and hence, there was no price discovery in the strictest terms. The wide variation in prices of the said contracts, within a short span of time, is a clear indication that there was pre-determination in the prices by the counterparties while executing the trades. Thus, it is observed that Noticee facilitated the reversal trades for its client in the stock options segment of BSE and the same were non-genuine trades.

40. The Noticee, *inter* alia, contented that in the absence of any warnings or estoppels or system restrictions from BSE, the Noticee was unable to gather awareness of the shares being Illiquid and that the trades were executed on a screen based trading system. In this regard, I note that in the contract i.e. "ABNV15JUN1860.00CE" the sell order placed by the clients of the Noticee matched in a very short time by buy order placed by the counter party. Further, the same counter party, on the same day, placed a sell order at a low price without any market logic or substantial change in price of underlying scrip, which matched the buy order placed by the clients of the Noticee. Also, the allegation against the Noticee is that it facilitated reversal trades for its clients in illiquid stock options segment, with substantial price difference without any material change in fundamentals of the underlying scrip, so that when the attending circumstances were considered in toto, the trades of its clients trades were found to be non-genuine. On that basis, it is observed that such trading pattern, undertaken by its clients were defying market logic and intended to create misleading appearance of trading.

41. Further I note that it is not a mere coincidence that the clients of the Noticee could match their trades with the same counterparties with whom they had undertaken the 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 the 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..."*

42. Further, the Hon'ble Supreme Court had 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."*

43. 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 clients of the Noticee with other entities. However, I note that the trading behaviour of its clients make 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."*.

44. I further place my 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."

45. 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 judgment 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."*

46. In addition to above, the Noticee has firmly denied any charge of fraudulent inducement that caused any loss to the investor or to the counter party with a further submission that mere intermediation is not a fraud and that it didn't earn any profit or incurred loss at the cost of others and no loss was caused to any investor. Noticee further supplemented that the element of fraud is missing and that there is no evidentiary basis for alleging fraud. In this regard, I note that the scheme, plan, device and artifice employed by the Noticee in this case for facilitating reversal trades for its clients in illiquid stock options contracts at irrational, unrealistic and unreasonable prices, tantamount to fraud on the securities market in as much as it involves non-genuine/ manipulative transactions in securities and misuse of the securities market mechanism. The non-genuine and deceptive transactions of the Noticee 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 PFUTP Regulation and prohibited under the provisions of Regulations 3 (a), (b), (c), (d) and 4 (1), 4 (2) (a) PFUTP Regulations, thereof. In this regard, the observations of the Hon'ble Supreme Court in the case of **Rakhi Trading (supra)** on whether such reversal of trades as has been detailed above, constitutes "fraud" under PFUTP Regulations,

is reproduced herein below: *"Regulation 2(1)(c) defines fraud. Under Regulation 2(1)(c)(2) a suggestion as to a fact which is not true while he does not believe it to be true is fraud. Under Regulation 2(1) (c)(7), a deceptive behaviour of one depriving another of informed consent or full participation is fraud. And under Regulation 2(1)(c)(8), a false statement without any reasonable ground for believing it to be true is also fraud. In a synchronised and reverse dealing in securities, with predetermined arrangement to book loss or gain between pre-arranged parties, all these vices are attracted."*

47. 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. Therefore, I hold that the Noticee had indulged in facilitation of reversal trades for its clients in Stock Options with same entities on the same day, which are non-genuine in nature and had created false or misleading appearance of trading in terms of artificial volumes. Accordingly, in view of the above, the submission of the Noticee is bereft of merits.

48. Noticee also contented that the stock options were freely marketable, listed on the exchange and that SEBI vide its notification dated June 02, 2011 had decided to permit the exchanges to enhance liquidity of the illiquid securities by introducing Liquidity Enhancement Scheme(LES). It further submitted that LES was to be reviewed by the exchange every six months which in turn was responsible to submit half yearly report to SEBI and subsequently no alarm was raised by SEBI inspecting team wrt to the trades as alleged. In this regard, I note that the material available on record does not show any inspection of the Noticee carried out by SEBI as claimed by the Noticee. Further, Noticee has not provided any documentary evidence of its claim of SEBI having conducted its inspection. However, Annexure F provided by the Noticee is a letter dated October 07, 2015 issued by BSE in relation to inspection of book of accounts of the Noticee and not by SEBI. Further, the LES never granted a leeway to the Noticee to facilitate non-

genuine reversal trades as misconstrued by the Noticee.In view of the above, I find that aforesaid contention of the Noticee deserves to be rejected.

49. The Noticee has further contended that it is erroneous to allege that the trades created artificial volume on BSE, the impugned trades constituted a miniscule percentage of overall trades and that there was no major movement in price of the underlying scrip which proves that the trades had no impact on the market and had no loss was caused to the investors. Thus, it is contended that the Noticee's trades did not create artificial volume on BSE. In this regard I note that as established in the preceding paragraphs, total 2,91,643 trades comprising substantial 81.38% 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 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 the clients of the Noticee were one of the various entities who indulged in execution of reversal trades in stock options segment of BSE during the IP. Further almost in all the aforesaid illiquid stock option trades there was negligible participation by the public. Hence, it would be appropriate to consider the impact of these transactions in *toto.*

50. Therefore, the trading behaviour of the clients of the Noticee confirms that such trades were not normal and wide variation in prices of the trades in the same contract in a short time without any basis for such wide variation, all indicate that the trades executed by its clients were not genuine trades and being non-genuine, created an appearance of artificial trading volumes in respective contracts. Accordingly, the aforesaid contention of the Noticee is untenable.

51. Noticee also requested to share the details of the action taken by SEBI against Stock Exchange and its officials and contented that the SCN is bad in law as it violates Article 14 of the Constitution since SEBI has not taken any action against the BSE for same PFUTP violations and is penalizing only the brokers.In this regard, I note that Noticee has misconstrued Article 14 of the Constitution since

Article 14 provides for Equality among equals and Noticee is not on the same pedestal as the exchange. Further, the instant proceedings are against the Noticee and not the exchange. So, the contention of the Noticee is untenable.

52. In conclusion, I note from perusal of the Noticee's trade data, that during the Investigation Period, the clients of the Noticee had executed 402 non-genuine reversal trades in 151 unique contracts wherein positions taken were reversed reversed with the same counterparty on the same day, at a significant price difference.

53. In light of the aforementioned findings and illustration, I note that Noticee had facilitated its clients in executing manipulative reversal trades in the stock market, without having a mechanism in place to recognize the same. Further, I note that Noticee failed to exercise reasonable care and diligence in the conduct of its business when dealing with its clients and failed to put the essential measures in place to detect and stop trade reversals in order to generate alerts.

54. The upshot of the above discussion is that the Noticee has failed to exercise care and diligence in the conduct of business while dealing with its clients, resulting in violation of provisions of Clauses A(2) of Code of Conduct for Stock Brokers mentioned under Schedule II read with Regulation 9 (f) of the Brokers Regulations.

Issue No. 2- Does the violation attract monetary penalty under Section 15HB of SEBI Act?

55. In this regard, I place reliance on the judgement of Hon'ble Supreme Court of India the matter of Chairman, **SEBI Vs Shriram Mutual Fund** {[2006]5 SCC 361} wherein Hon'ble Supreme Court 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. A breach of civil obligation*

which attracts penalty in the nature of fine under the provisions of the Act and the Regulations would immediately attract the levy of penalty irrespective of the fact whether contravention must made by the defaulter with guilty intention or not.''

56. Therefore, in view of the above judgments and considering that Noticee violated the provisions of Schedule II A (2) of Code of Conduct for Stock Brokers read with Regulation 9(f) of the Broker Regulations, as established in the foregoing paragraphs, I find that Noticee would be liable for monetary penalty under Section 15HB of the SEBI Act. The text of Section 15HB of the SEBI Act is reproduced below:

Penalty for contravention where no separate penalty has been provided.

15HB. *Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.*

Issue No.3 - What should be the quantum of monetary penalty?

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

Factors to be taken into account while adjudging quantum of penalty.

Section 15J *- While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-*

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
(b) the amount of loss caused to an investor or group of investors as a result of the default;
(c) the repetitive nature of the default.

> ***Explanation**- For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.*

58. It is noted 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 the part of the said Noticee. However, it is pertinent to note that the role of a Broker/Trading Member(TM) is crucial to the development of the securities market, as broker is the first mile of contact for majority of the investors. In this regard, the role of a Broker is crucial as a facilitator of investors into the securities market. So, it is of the utmost importance that every Broker abides by the relevant regulations, provisions of SEBI/ Stock Exchange circulars and various guidelines issued by SEBI/ Stock Exchanges. The non-compliances on the part of the Noticee as brought out in the preceding paragraphs clearly shows that it has failed to exercise due care and diligence in the conduct of of its business while dealing with its respective clients.

E. <u>ORDER</u>

30. Having considered all the facts and circumstances of the case, the material available on record, the factors mentioned in preceding paragraphs and in exercise of powers conferred upon me under Section 15-I of the SEBI Act 1992 read with Rule 5 of the Adjudication Rules, I hereby impose a penalty of Rs. 2,00,000/-(Rupees Two Lakhs only) on Noticee i.e. Alankit Imaginations Limited (formerly known as: Alankit Assignments Limited), under the provision of Section 15HB of the SEBI Act. I am of the view that the said penalty is commensurate with the lapse/omission on the part of Noticee.

31. Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order 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

32. 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 for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties.

33. Copy of this Adjudication Order is being sent to the Noticee and also to SEBI in terms of Rule 6 of the Adjudication Rules.

Place: Mumbai **G RAMAR**

Date: April 28, 2023 **ADJUDICATING OFFICER**