BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/NS/DK/2022-23/15823]

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:
DAZY JAIN
(PAN: ACSPJ9964A)
37, PANDITYA ROA TOWER – II,
KOLKATA - 700029

In the matter of dealings in Illiquid Stock Options at the BSE Limited

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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 BSE Limited (formerly known as Bombay Stock Exchange Limited-hereinafter referred to as "**BSE)** leading to creation of artificial volume at BSE. In view of the same, SEBI conducted an investigation into the trading activities of certain entities in Illiquid Stock Options at BSE for the period April 1, 2014 to September 30, 2015 (hereinafter referred to as "**Investigation period or IP**").

2. It was observed that, during the Investigation period, total of 2,91,643 trades comprising 81.38% of all the trades executed in stock options segment of BSE were non-genuine trades i.e. trades which involved reversal of buy and sell positions by the clients and counterparts in a contract. The reversal trades involved squaring off transactions but with significant difference in the sell value and buy value of the transaction. The aforesaid reversal trades allegedly resulted into creation of artificial volumes. It was observed that **Dazy Jain** (hereinafter referred to as the "**Noticee**") was one among the various entities who indulged in execution of reversal trades in Stock Options segment of BSE during the

Investigation period. Such trades were observed to be non-genuine in nature and created false or misleading appearance of trading resulted into generation of artificial volumes in Stock Options segment of BSE. In view of the same, SEBI initiated adjudication proceedings against the Noticee for violation of the provisions of regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003 (hereinafter referred to as "**PFUTP Regulations, 2003**").

APPOINTMENT OF ADJUDICATING OFFICER

3. The undersigned has been appointed as the Adjudicating Officer in the matter, vide order dated July 02, 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 (hereinafter referred to as '**SCN**') bearing reference no. SEBI/HO/CDMRD/DMP/P/OW/24323/1 dated September 16, 2021 was issued to the Noticee under Rule 4(1) of the Adjudication Rules to show-cause as to why an inquiry should not be held against the noticee and penalty should not be 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 3,52,000 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	TATP15MAR75.00PEW2	0.05	176000	1.85	176000	100%	8.30%

6. From the above table, the following is noted as regard to the dealings of the Noticee:
    a. The Noticee had executed trades in one unique contract, wherein all her trades were non-genuine.
    b. The non-genuine trades of the Noticee had contributed to the generation of 8.30% of the artificial volumes in the contract.
    c. The non-genuine trades executed by the Noticee in the above contract had noticeable difference in the buy and sell rates considering that the trades were reversed on same day.

7. The SCN dated September 16, 2021 was served to the Noticee via Speed Post Acknowledgement Due (SPAD). Thereafter, the Noticee, vide email dated October 01, 2021 submitted a reply to SCN and physical copy of the said reply was received on October 7, 2021. The main contentions of the Noticee are as follows:

    (a) There is considerable delay in the issuance of notice (16.09.2021) and the date of alleged transaction (s) (11.03.2015). Due to lapse of a long time, the noticee is not in a position to rebut the allegations effectively in the absence of documentary evidences which has not been preserved. The Noticee is required to preserve the documents relating to the financial transactions for three years only as provided in section 149 of the Income Tax Act, 1961. As such, it has not preserved the related documents, if any.

    (b) The modus operandi adopted by the Noticee while trading in stocks is by way of placing orders telephonically to the stock broker. Therefore, there

is a possibility that the broker might have committed an error as far as the transaction in question is concerned by routing the transactions through the noticee's account. Further, the noticee cannot be held responsible for the mistake/fraud committed by the broker using the account of the noticee, if any.

(c) *The Noticee's few trades out of 2.92 lakh trades are few drops in the ocean. In the absence of multiple transactions and / or voluminous transactions, inference of fraud and / or undue trade practices cannot be drawn*.

(d) *The notice is not aware of the identity of the counterparty*.

(e) The Noticee has always done transactions in the stock market and / or otherwise in a genuine manner and in good faith. There is no question of the Noticee having created any artificial volume in the market and / or made any undue profit.

(f) The proceedings initiated against her may be dropped and in case adverse view is sought to be taken, opportunity of personal hearing in virtual mode may be granted.

(g) Noticee has also submitted an analysis of following court rulings in support of contentions made in the written reply: Labhu Gohil Vs. Securities and Exchange Board of India [2020], Nisith M Shah HUS Vs. SEBI [Appeal No. 97 of 2019], Jagruti Securities Ltd. Vs Securities and Exchange Board of India [Appeal No. 102 of 2006], Ramod Kumar Agarwal Vs. Adjudicating Officer [2009], Kishore V Gandhi Vs. SEBI [Appeal No. 516 of 2019], Shubhkam Securities Private Limited Vs. Securities and Exchange Board of India [Appeal no. 73 of 2012], Dhvani Darshan Kothari & Anr Vs. Securities and Exchange Board of India [Appeal no. 276 of 2020], Ashok Shivlal Rupani Vs. SEBI [Appeal no. 440 of 2018], Rakesh Kathotia & Others Vs. SEBI [Appeal no. 07 of 2016]. The Noticee has also placed reliance on adjudication order dated July 29,2021 against Usha Kothari & Others in the matter of Pincon Lifestyle Ltd.

8. Further, vide hearing notice no. SEBI/HO/CDMRD/DMP/P/OW/2021/29894/1 dated October 25, 2021, it was communicated to the Noticee that an opportunity

of personal hearing is granted to the Noticee, in accordance with Rule 4(3) of the Adjudication Rules, on November 12, 2021.

9. A personal hearing was conducted on virtual mode on November 12, 2021 wherein Shri Siddharth Agarwal, the authorized representative of the Noticee made reference to the earlier submissions of noticee and made additional submissions vide letter dated November 12, 2021, received through email dated November 13, 2021.

10. The additional submission puts forth the following contentions in addition to those made earlier:

    a) *There is no documentary / otherwise proof of causal connection established between the Noticee and the counterparty.*
    b) *No data has been provided in the show cause notice issued to show the price behavioural pattern of particular scrip after the alleged transaction. No adverse impact is shown to have been caused to third party due to alleged transaction.*
    c) *As per the Risk Disclosure Document issued by SEBI, the possibility of a wide spread price difference in illiquid options contract prevails. Also, SEBI or the respective exchange platforms have not put in place any price band mechanism in the options segment, thereby, leading to an inexorable conclusion that the prices, at which the alleged trades took place and were executed, are genuine.*
    d) *There may persist several benign reasons for the occurrence of the alleged reversal trade such as the broker committing an error due to the fat finger syndrome or entering into the alleged transactions with an ulterior motive against the Noticee.*

CONSIDERATION OF ISSUES

11. I have taken into consideration, the facts and circumstances of the case, the material available on record and the reply submitted by the Noticee. It was alleged that the Noticee had executed reversal trades, which were non-genuine

and the same has resulted in the generation of artificial volume in the stock options contract at BSE. In view of the same, it was alleged that Noticee has violated the provisions of Regulations 3(a), (b), (c), (d) and Regulation 4(1), 4(2)(a) of PFUTP Regulations and therefore, liable for penalty under the provisions of Section 15HA of the SEBI Act.

12. Before dealing with the issues on merit, I would deal with the issue raised by the Noticee with respect to delay in issuance of the SCN. The Noticee has contended that there is considerable delay in issuance of SCN from the date of alleged transaction, which took place more than six years ago in the year 2015, and it has not been issued within a reasonable time period, thus causing serious prejudice to the Noticee.

13. The Noticee was provided with all relevant and relied upon documents along with Show Cause Notice and the Noticee was provided sufficient time to file its detailed reply and submissions and therefore, no prejudice was caused to the Noticee due to delay. Notwithstanding the same, I also note that there is no provision with prescribed time limit in the SEBI Act which may have the effect of prohibiting SEBI from taking action by issuing Show Cause Notice or passing any order beyond a particular period of time in a given case. Further, as per Section 11C of the SEBI Act, 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. I feel it is pertinent to note that, in the matter of **SEBI Vs. Bhavesh Pabari** (2019) SCC Online SC 294, the Hon'ble Supreme Court of India has, inter - alia, observed as follows:

"There are judgements which hold that when the period of limitation is not prescribed, such power must be exercised within a reasonable time. What should be the 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."

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

    During the course of hearing in the case of **R. S. Ispat Ltd Vs. SEBI**, the Hon'ble Securities Appellate Tribunal, 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*".

    Thereafter, 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.

15. It can be seen from the foregoing paragraphs that pursuant to appointment of AO on July 02, 2021 and communication vide Order dated July 06, 2021, SCN was issued on September 16, 2021. In compliance with principles of natural justice, after receipt of reply, an opportunity of personal hearing was conducted on November 12, 2021 and upon conclusion of hearing, additional written submissions (if any) were received from the Noticee on November 13, 2021.

16. I also note that, this aspect, in the matter of **Pooja Vinay Jain Vs. SEBI** [Appeal No. 152 of 2019 dated March 17, 2020], Hon'ble Securities Appellate Tribunal

has inter alia made the following observations –

"12. The decision would show that the power to initiate the proceedings must be exercised by the authorities within a reasonable time. This would depend upon the facts and circumstances of the case, nature of the default / statute and prejudice caused to the noticee.......

13. In the present case, the appellant neither put a plea of prejudice before the AO nor before us. It was simply stated that since the proceedings were launched by respondent SEBI after a period seven years, the same should be quashed on the ground of delay. 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. Further, as explained by the learned counsel for the respondent as recorded in paragraph No. 6.4 above, large numbers of entities and transactions were analyzed by SEBI which took some time. In the result, the following order....

14. The appeal is hereby dismissed without any order as to costs."

I find that the aforementioned decision of the Hon'ble Tribunal is squarely applicable to the instant case. Considering the above, I note that there is no merit in the preliminary objections made by Noticee, regarding the delay in the instant proceedings.

17. I have perused the charges levelled against the Noticee 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) If yes, whether the Noticee is liable for 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 read with Rule 5(2) of the Adjudication Rules?

FINDINGS

18. Having noted above, in respect of the issues for consideration before me, I record my findings hereunder taking into consideration the material available on record and giving regard to the facts and circumstances of the case

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

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

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 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.

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.

20. The allegation against the Noticee is that, while dealing in the Stock Option contracts at BSE during the Investigation Period, the Noticee had executed reversal trades on the same day within forty-four minutes, 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.

21. I note from the trade log that the Noticee had executed two non-genuine trades traded in one contract in the Stock Options segment of BSE during the Investigation Period. I further note that the above mentioned trades of the Noticee had resulted in the creation of artificial volume of a total of 3,52,000 units in the said contract. A summary of the non-genuine trades of the Noticee is as follows:

SCRIP NAME	**Buy Quantity**	**Sell Quantity**	**Number of alleged non-genuine trades executed by the entity in the contract**	**Total number of trades executed by the entity in the contract**	**Total number of trades executed in the contract**	**Alleged Artificial volume generated by Entity in the contract**	**Total volume generated by entity in the contract**	**Total volume in the contract**	**% of alleged non-genuine trades of entity in the contract to entity's total trades in the contract**	**% of alleged non-genuine trades of entity in the contract to total trades in the contract**	**% of alleged 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**

TATP15 MAR75.0 0PEW2	176000	176000	2	2	24	352000	352000	4240000	100%	8.33%	100%	8.30%

Trade Date	Scrip Name	Strike Price	Buy Client name	Sell client name	Buy Order Time	Sell Order Time	Trade Time	Buy Order Rate	Sell Order Rate	Trade Rate	Buy Order Qty	Sell Order Qty	Traded Qty
11/03/15	TATP 15MAR 75.00PEW2	7500.0	DAZY JAIN	ANJALI AGARWAL	10:52:24.73	10:52:15.77	10:52:24.73	0.1	0.05	0.05	176000	176000	176000
11/03/15	TATP 15MAR 75.00PEW2	7500.0	ANJALI AGARWAL	DAZY JAIN	11:36:51.57	11:33:03.42	11:36:51.57	1.85	1.85	1.85	176000	176000	176000

22. 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 8.33%. Further, percentage of volume generated by the Noticee in the contract to the total volume in the contracts is 8.30%. Non-genuine trades executed by the Noticee in the above contract had a noticeable difference in the buy rate and sell rate considering that the trades were reversed on the same day, in a matter of just forty-four minutes

23. 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 viz. Anjali Agarwal. The Noticee, at 10:52:24 hours on March 11, 2015, entered into a buy trade with the counter-party for 1,76,000 units at the rate of Rs.0.05 per unit in the contract TATP15MAR75.00PEW2. Thereafter, on the same day, the Noticee, at 11:36:51 hours entered into a sell trade with same counterparty for 1,76,000 units at the rate of Rs. 1.85 per unit in the same contract. Thus, while dealing in the said contract during the Investigation period, the Noticee executed the reversal trade with same counterparty viz. Anjali Agarwal on the same day and with noticeable price difference in buy and sell rate. Thus, the Noticee, through her dealing in the contract viz. "TATP15MAR75.00PEW2" during the Investigation period, executed two non-genuine trades which were 8.33% of the total trades from the market in the said contract during the Investigation period, and thereby, the Noticee generated an artificial volume of 3,52,000 units which is 8.30% of the volume traded in the contract.

24. The fact that the transactions executed by the Noticee are not genuine is evident

from the fact that, within a short span of time of around forty-four minutes, the Noticee reversed the position with the counterparty with a noticeable 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 minutes 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.

25. Further, I observe that it cannot only be a coincidence that the Noticee could match her trades with the same counterparty with whom she had undertaken the first leg of the respective trade. This is nothing but an outcome of a meeting of minds and a deliberate attempt to deal in such a fashion. The trading behaviour of the Noticee makes it clear that aforesaid non-genuine trades could not have been possible without meeting of minds at some level. It is noted 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. Further, in the absence of direct proof of meeting of minds, the conclusion can be derived from various circumstances like volume of trade, period of persistence of trading, particulars of buy and sell orders, proximity of time and such other relevant factors. 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."

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

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

28. 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 judgements 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 forty-four minutes,

- 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 3,52,000 units,

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

29. The Noticee has submitted that few trades by her out of 2.92 Lakhs trades are few drops of ocean and in the absence of multiple transactions and/or voluminous transactions, inference of fraud or undue trade practices cannot be drawn.

I am of the view that number of trades entered into by the Noticee is not of much relevance, as long as the trades result into violation of the PFUTP Regulations. At this juncture, I would like to refer to the decision of the Hon'ble Supreme Court in the matter of **SEBI Vs. Rakhi Trading (supra)** wherein the Hon'ble Supreme Court, inter alia, held that:

"37. ....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."

30. I would also like to refer to the decision of the Hon'ble Securities Appellate Tribunal in the matter of **Shivam Investments Vs. SEBI** wherein the Hon'ble Tribunal, inter alia, held that:

"We are of the view that in the facts and circumstances of this case, the volume of trades, as contended by the appellant, is not relevant since the wrong doing stands established."

In view of the above judgments, it is amply clear that the Noticee merely executing two trades is not of much relevance as long as the factum of violation of PFUTP Regulations stands established. Thus, the plea of the Noticee that the penalty may not be imposed upon the Noticee as only two trades were executed by the Noticee is not sustainable.

ISSUE 2: If yes, whether the Noticee is liable for monetary penalty under section 15HA of the SEBI Act, 1992?

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.

32. 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…".*

33. 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 reads as under:

***Penalty for fraudulent and unfair trade practices**.*
***15HA**. If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher.*

ISSUE 3: If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in section 15J of the SEBI Act, 1992 read with Rule 5(2) of the Adjudication Rules?

34. 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:

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.

35. I note that the documents available on record does not quantify any disproportionate gains or unfair advantage, if any, made by the Noticee and the losses, if any, suffered by the investors due to such violations on part of the said Noticee. However, the act of Noticee in executing the aforesaid two non-genuine trades is in violation of the provisions of regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of the PFUTP Regulations which has been established in the aforesaid paragraphs. Once the factum of violation of legal provisions is established, an appropriate penalty must follow.

36. After considering the facts of the matter as discussed above, I am of the view that imposition of minimum penalty as provided under Section 15 HA of the SEBI Act, 1992 would commensurate with the violations committed by the Noticee.

ORDER

37. 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 power 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 ₹5,00,000/- (Rupees Five Lakhs Only) on the Noticee i.e. Dazy Jain under section 15HA of the SEBI Act, 1992 for violation of the provisions of Regulations 3(a), (b), (c),(d), 4(1) and 4(2)(a) of Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003. I am of the view that the said penalty shall commensurate with the violation committed by the Noticee.

38. The Noticee shall remit/pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft (DD) 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. https://www.sebi.gov.in/ on the following path, by clicking on the payment link:

    ENFORCEMENT ⟹ Orders ⟹ Orders of AO ⟹ PAY NOW

    In case of any difficulties in payment of penalties, the Noticee may contact for the support at portalhelp@sebi.gov.in

39. In case of DD, the Noticee shall send the said DD alongwith a covering letter mentioning the details of the order to *"The Division Chief, EFD-DRA-I, Securities and Exchange Board of India, SEBI Bhavan 2, Plot No. C- 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051.”*

40. The Noticee shall, after making online payment of penalty, provide the following details to SEBI by an email addressed to :- tad@sebi.gov.in

S.No.	Particulars	Description
1	Case Name	
2	Name of the ‘Payer/Noticee’ and PAN	
3	Date of Payment	
4	Amount Paid	
5	Transaction Number	
6	Bank Name and Account number used for payment of penalty	
7	Purpose of payment	Payment of penalty under adjudication proceedings

41. In the event of failure to pay the said amount of penalty within 45 days of the

receipt of this Order, recovery proceedings may be initiated under section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, *inter alia,* by attachment and sale of movable and immovable properties.

42. In terms of the provisions of Rule 6 of the Adjudication Rules, copy of this order is sent to the Noticee viz. Dazy Jain and also to Securities and Exchange Board of India.

Date: April 8, 2022
Place: Mumbai

Naveen Sharma
Adjudicating Officer