BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/BM/UR/2021-22/15032]

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

Karuna Retails Pvt. Ltd.

(PAN: AADCK3025D)

In the matter of Trading in Illiquid Stock Options on BSE

BACKGROUND OF THE CASE

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

2. Pursuant to investigation, it was observed that total of 2,91,744 trades comprising 81.40% of all the trades executed in stock options segment of BSE during the IP were non genuine trades. The aforesaid non-genuine trades resulted into creation of artificial volume in stock options segment of BSE during the IP. It was observed that Karuna Retails Pvt. Ltd. (PAN-AADCK3025D) (hereinafter referred to as the "**Noticee**") was one of the

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

APPOINTMENT OF ADJUDICATING OFFICER

3. The undersigned was appointed as Adjudicating Officer in the matter, conveyed vide communique dated September 27, 2021, under Section 19 read with Section 15-I(1) of the SEBI Act, 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 as deemed fit in terms of Rule 5 of Adjudication Rules and Section 15HA of SEBI Act, 1992.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. A Show Cause Notice dated October 21, 2021 (hereinafter referred to as "**SCN**") was issued to the Noticee under Rule 4(1) of the Adjudication Rules to show-cause as to why an inquiry should not be initiated against him and why penalty should not be imposed under section 15HA of the SEBI Act, 1992 for the violations alleged to have been committed by the Noticee.

5. It was *inter alia* alleged in the SCN that the Noticee had executed 2 non-genuine trades in 1 Stock Options contract which resulted in artificial

volume of total 152,000 units. Summary of dealings of the Noticee in the said Options contracts, in which the Noticee allegedly executed non-genuine trades during the I.P, is as follows:

S. No.	Contract Name	Avg. Buy Rate (Rs)	Total Buy Volume (No. of units)	Avg. Sell Rate (Rs)	Total Sell Volume (No. of units)	% of Non Genuine trades of Noticee in the contract to Noticee's Total trades in the Contract	% of Non Genuine trades of Noticee in the contract to Total trades in the Contract	% of Artificial Volume generated by Noticee in the contract to Noticee's Total Volume in the Contract	% of Artificial Volume generated by Noticee in the contract to Total Volume in the Contract
1	ALBK15MAR105.00PEW3	0.05	76000	4	76000	100	5	100	9.84

6. From the above table, following was noted as regard to dealings of the Noticee:
   (a) The Noticee had allegedly executed non genuine trades in 1 contract, wherein all the trades of Noticee in the said contract were non-genuine trades.
   (b) No. of alleged non-genuine trades of the Noticee had significantly contributed to total no. of trades from the market in the above contract, as 5% of the trades that happened in the said contract were due to alleged non-genuine trades executed by the Noticee.
   (c) 100% of volume generated by Noticee in the above contract was alleged to be artificial volume, and further, the percentage of alleged artificial volume generated by the Noticee in the above contract to the total volume from the market in said contract was 9.84%. Therefore,

it is alleged that the Noticee generated artificial volume in the above contract.

7. The SCN with reference no. EAD-3/BM/UR/ISO-II/29392/2021 was served on the Noticee via Speed Post Acknowledgement Due (SPAD) dated October 21, 2021 and via email dated October 22, 2021. The proof of service is on record. Noticee vide letter dated November 12, 2021 requested for extension of 7 days to file its reply which was acceded to. Thereafter vide letter dated November 18, 2021, the Noticee submitted its preliminary reply, in which it denied all allegations levelled against it and sought additional details like action taken by SEBI against BSE for such large scale reversal trading in Illiquid Stocks, copies of all materials on record in connection with aforesaid proceedings etc. and disputed the transaction.

8. Noticee was conveyed vide email dated December 15, 2021 that *"all the details relied upon by the SCN have already been shared with you vide annexures to the said SCN, also mentioned below:*

   a. Integrated trade log of all reversal trades of Noticee in the stock options segment of BSE during the period April 1, 2014 to September 30, 2015.

   b. Summary of all reversal trades."

In this regard, reference may be made to the Hon'ble SAT Order in the matter of **Mayrose Capfin Privatte Limited Vs. SEBI** (decided on 30.03.2012) held that :

> *" … the principles of natural justice require that the inquiry officer should make available such document and material to the delinquent on which reliance is being placed in the inquiry. It is not*

necessary for the inquiry officer to make available all the material that might have been collected during the course of investigation but has not been relied upon for proving charge against the delinquent. No prejudice can, therefore be said, to have been caused to the appellant on this count …."

Further, Hon'ble SAT, in its order dated February 12, 2020, in the matter of **Shruti Vora vs. SEBI** had held that :

"Reliance was also made a decision of the Supreme Court in Union of India and Others vs E.Bashyan (1988) 2 SCC 196 which has no bearing to the controversy involved in the present context, in as much as, the said decision relates to a disciplinary proceedings wherein the Supreme Court in Union of India and Others vs E.Basyan (1988) 2 SCC 196 which has no bearing to the controversy involved in the present context, in as much as, the said decision relates to a disciplinary proceedings wherein the Supreme Court observed that the inquiry report was required to be made available to the delinquent. An inquiry report is totally distinct and different from an investigation report. The inquiry report considers all the materials in the inquiry proceedings which form the basis of the final order and therefore the said report is required to be made available to the delinquent. In the instant case, the show cause notice relies upon certain documents which have been made available. Thus the investigation report is not required to be supplied. The Learned Counsel has also placed reliance upon a minority view of this tribunal in Price Waterhouse vs Securities and Exchange Board of India decided by this Tribunal in Appeal No.8 of 2011 on June 1, 2011 wherein it was observed that fairness demands that the entire material collected during the course of

investigation should be made available for inspection to the person whose conduct was in question and that said material should also be supplied. In our opinion, the said minority view is directly against the decision of the Supreme Court in Natwar Singh case (supra). A bare reading of the provision of the Act and the Rules as referred to above do not provide supply of documents upon which no reliance has been placed by the AO, nor even the principles of natural justice require supply of such documents which has not been relied upon by the AO. We are of the opinion that we cannot compel the AO to deviate from the prescribed procedure and supply of such documents which is not warranted in law. In our view, on a reading of the Act and the Rules we find that there is no duty cast upon the AO to disclose or provide all the documents in his possession especially when such documents are not being relied upon."

9. Vide Hearing Notice dated November 30, 2021, the Noticee was advised to appear for hearing on December 14, 2021. The personal hearing was conducted on scheduled date and time, through video conferencing on the Webex platform. During the course of hearing, Authorized Representative of the Noticee requested for time till December 17, 2021 to submit additional submissions pursuant to hearing, which was granted by the undersigned. The personal hearing in the matter was completed and hearing minutes are on record.

10. Vide letter dated November 12, 2021 and December 17, 2021, the Noticee submitted its reply to the SCN, in which it denied all the allegations and observations made against it in the SCN. Contentions made by it have been summarized below:
    - It denied committing any breach of PFUTP regulations, 2003.

- Noticee contended that it had traded only in 2 reversal trades. Further in contended that there was a time gap of 5 hours and 27 minutes which shows it had not executed any trade with any prior intentions. The said trades were conducted just 13 minutes before closure of the exchange.
- Noticee contended the underlying scrips were highly liquid in nature i.e derivatives contracts of ALBK and these scrips is regularly traded in Cash & Derivatives segment of NSE & BSE.
- The option series in which it had traded met the eligibility criteria of SEBI and was permitted for trading by the exchanges and thus alleging it had traded deliberately in this options which was illiquid in nature is unfair.
- Noticee submitted, all orders were placed by the broker and it did not give any specific instruction regarding any stock options, time quantity or rate to the broker and the broker decided on the same itselves. Since these trades were not carried out as per its instruction, it cannot be held liable and present proceedings should be vitiated.
- Noticee contented, to allege the creation of artificial volume in the market it is imperative to show the connection between the parties and there was meeting of minds between them. Noticee submitted that it was completely unaware of the identity of the counterparty, and there cannot be question of meeting of minds. In this regard, it relied upon the orders in the cases of "M/s. Jagruti Securities Ltd Vs. SEBI and Vintel Securities Pvt. Ltd V/s. SEBI, Saroj & Co. proprietor Sanjay Agarwal v. Securities and Exchange Board of India and Kaushik Rajnikant Mehta v SEBI".
- Noticee submitted that it was not connected with counterparties so it should not be punished until proven guilty. It contended that rule of preponderance of probability cannot be exercised in absence of

connection with counterparty. It drew references to the order in the case of "M/s. Nishith M shah v SEBI".

- Trades carried out are legal and not fraudulent, were carried out in the normal course of business.
- Noticee contented the words artificial and non-genuine were not defined in PFUTP regulation or any of the Acts / Regulations of SEBI.
- It submitted no penalty should be imposed and further submitted that findings do not lead to the conclusion viz, that there had been disproportionate gain or unfair advantage. Further, it contented in absence of any investor complaints, the allegation of causing loss to other investor is baseless.
- Notice contended that the said SCN does not sent out exact penalty that is proposed to be imposed of the alleged violations mentioned therein. In this regard, it drew attention towards the judgment of supreme court in the case of "Gorkha Security Services vs. Government (NCT OF Delhi) and others [2014 (9) SSC 105]" wherein the court set out two requirements of principle of natural justice viz-
    a) The material / grounds to be stated according to the department necessitates an action.
    b) Particular penalty / action which is proposed to be taken."
- Noticee contended that proceeding should be quashed on the ground of inordinate delay of 6 years. It drew reference towards the orders in the cases of "Mr Rakesh Kathotia & Ors v. SEBI and Government of India vs. Citedal Fine Pharmceuticals, Madras and Others"
- Noticee contended that synchronization is not ipso facto illegal under SEBI Act and SEBI Regulations. It further relied upon the order in the cases of "S.P.J. Stock Brokers Pvt Ltd Vs. Securities and Exchange board of India"

CONSIDERATION OF ISSUES AND FINDINGS

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

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

    PFUTP Regulations, 2003

    3. Prohibition of certain dealings in securities

    No person shall directly or indirectly—

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

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

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

    (d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.

4. Prohibition of manipulative, fraudulent and unfair trade practices

(1) Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.

(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:—

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

Issue No 1 : Whether the Noticee has violated provisions of Regulations 3(a), (b), (c), (d) and Regulation 4(1) & 4(2)(a) of PFUTP Regulations, 2003?

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

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

15. It has been alleged that the Noticee traded in one contract in the stock options segment of BSE during the IP. It executed 2 non-genuine trades in

1 contract and such trades of the Noticee resulted in the creation of artificial volume of 152000 units in the said contract. Summary of the alleged non-genuine trades of the Noticee is as follows:

S. No.	Contract Name	Avg. Buy Rate (Rs)	Total Buy Volume (No. of units)	Avg. Sell Rate (Rs)	Total Sell Volume (No. of units)	% of Non Genuine trades of Noticee in the contract to Noticee's Total trades in the Contract	% of Non Genuine trades of Noticee in the contract to Total trades in the Contract	% of Artificial Volume generated by Noticee in the contract to Noticee's Total Volume in the Contract	% of Artificial Volume generated by Noticee in the contract to Total Volume in the Contract
1	ALBK15MAR10500PEW3	0.05	76000	4	76000	100	5	100	9.84

Note: "Unit" refers to lot size in contract multiplied by number of contracts traded

16. I note from the trade & order log that the Noticee had executed trades in said contract, wherein the percentage of the trades of the Noticee in stock options contract to total trades in the contract was 5% in the aforesaid contract. Further, the volume generated by Noticee in the contract amounted to 100% of total volume generated by it in the contract. It is also noted that the volume generated by the Noticee contributed 9.84% of the total volume from the market in the said contract.

17. The details of squaring up done by the Noticee in the contract 'ALBK15MAR10500PEW3' are as given below :

Trade Date	Client Name	CP Client Name	Trade Time	Trade Rate (Rs.)	Traded Quantity	Buy/Sell by the Noticee
19/03/2015	KARUNA RETAILS PVT LTD	JRK VINIMAY PVT LTD	09:41:30	4	76000	Sell
19/03/2015	JRK VINIMAY PVT LTD	KARUNA RETAILS PVT LTD	15:17:58	0.05	76000	Buy

18. I note from the trade log details which are given above, that the trades executed by the Noticee in a contract were squared up with its counter-party. As can be seen from the table, the Noticee on March 19, 2015 at 09:41:30 hrs (Order time of Noticee 09:41:30 and Counterparty Order time : 09:41:25) entered into 1 sell trade with counterparty viz: Jrk Vinimay Pvt Ltd for 76000 units at the rate of Rs.4 per unit in the contract 'ALBK15MAR10500PEW3'. Thereafter, on the same day, Noticee at 15:17:58 hrs (Order time of Noticee : 14:17:56 and Counterparty Order time : 15:17:58) entered into 1 buy trade with same counterparty for 76000 units at the rate of Rs.0.05 per unit in the same contract. It is noted that while dealing in the said contract during the I.P., the Noticee executed reversal trades with same counterparty viz. Jrk Vinimay Pvt Ltd on the same day, with significant price difference. Thus, the Noticee, through its dealing in the contract during the I.P., executed non genuine trades which was 5% of the total trades from the market in the said contract during the I.P., and thereby, Noticee generated artificial volume of 152000 units which was 9.84% of the volume traded in the said contract from the market during the I.P.

19. Noticee contended that it had traded only in 2 reversal trades. Further, it contended that there was a time gap of 5 hours and 27 minutes which shows it had not executed any trade with any prior intentions. Further, it submitted, the said trades were conducted just 13 minutes before closure of the exchange. I note that the impugned stock option contract was illiquid, as

stated in the SCN, and also that Noticee's trades in said contract reversed with the same counterparty also contributed 9.84% artificial volume to the total market volume generated during the IP. This points to the contribution of Noticee, irrespective of quantum of reversal trades or volume generated, in the creation of misleading appearance of trading through his impugned trades.

Therefore, Noticee's trades were manipulative and intended to create misleading appearance of trading, so the contentions of Noticee in this regard are liable to be rejected.

Further, I note, the Show Cause Notice alleged that Noticee had engaged in non-genuine reversal of trades which generated artificial volume of 152000. As explained in paras above, reversal trades are considered to be those trades in which an entity reverses its buy or sell positions in a contract with subsequent sell or buy positions with the same counterparty during the same day. The said reversal trades are alleged to be non-genuine trades as they are not executed in the normal course of trading, lack basic trading rationale, lead to false or misleading appearance of trading in terms of generation of artificial volumes and hence are deceptive and manipulative. Thus since Noticee engaged in reversal trades, and since such trades includes reversing buy/sell position within the same day, with same counterparty the contention of Noticee in regards is not tenable.

20. Noticee contended the underlying scrips were highly liquid in nature i.e. derviatives contracts of ALBK and these scrips is regularly traded in Cash and Derivatives Segment of NSE & BSE. I note that the allegation against the Noticee is that it had traded in illiquid stock options segment of BSE, 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. There was no significant change in the price of the underlying

scrip to justify the wide variation in prices of the said contracts. The wide variation in prices of the said contracts, within such a short span of time, is a clear indication that there was pre-determination in the prices by the counterparties while executing the trades. Thus it is observed that Noticee had indulged in reversal trades with the counterparties in the stock options segment of BSE and the same were non-genuine trades.

21. Noticee contended the option series in which they had traded met the eligibility criteria of SEBI and were permitted for trading by the exchanges. I note, stock exchanges merely provide a platform for carrying out the trades and the clearing corporation affiliated with exchange handle the confirmation, settlement and delivery of transactions, however, the obligation to ensure genuineness of trades as regards instant considerations lies squarely on the Noticee. I note that instant adjudication proceedings levy the impugned allegations against Noticee, and that permitting of trading by stock exchanges cannot be a ground to absolve Noticee from its obligation to ensure genuineness of trades executed on exchange platform. Thus, the contention of the Noticee in this regards is not tenable.

22. Noticee submitted, all orders were placed on by the broker and it did not give any specific instruction regarding any stock options, time quantity or rate to the broker and broker decided on the same themselves. Since these trades were not carried out as per its instructions, it cannot be held liable and the present proceedings should be vitiated. I note that Noticee was owner of the trading account(s) through which impugned trades were carried out. Therefore, the obligation to ensure genuineness of impugned trades lay with the Noticee. Further the Noticee in its reply has stated that it had traded only in 2 reversal trades which points out to its involvement in the said trades, so the aforesaid contentions of Noticee are without merits.

23. Noticee contended, to allege the creation of artificial volume in the market it is imperative to show the connection between the parties and there was meeting of minds between them. Noticee submitted that it was completely unaware of the identity of the counterparty, and there cannot be a question of meeting of minds. I note that considering the precision at which the reversal transactions have taken place i.e. synchronisation of the quantity, order price and order time and sale with price variations as observed in the instant matter, the same couldn't have been possible without prior meeting of mind. In this regard, I find it relevant to refer to the decision of 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, 2018 wherein it has been held as under:

> *"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"*

The Hon'ble Supreme Court has also held in the aforesaid Judgment 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, 2003.

The Hon'ble 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) also 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."

The Hon'ble SAT reaffirmed its stand taken in Global Earth Properties and Developers Pvt Ltd Vs SEBI (Appeal No. 212 of 2020), in its judgment dated November 24, 2021 in the matter of **Radha Malani vs. SEBI** (appeal no. 698 of 2021), has held the following:

> "Having heard the learned counsel for the appellant, in our view the controversy involved in the present appeal is squarely covered by a decision of this Tribunal in Global Earth Properties and Developers Pvt. Ltd. vs. SEBI (Appeal No. 212 of 2020 decided on September 14, 2020). In view of the aforesaid, the appeal is dismissed with no order as to costs."

Therefore, applying the ratio of the above judgments, I am convinced that the execution of trades by the Noticee in the illiquid options segment with such precision in terms of order placement, time, price, quantity etc. and also the fact that the transactions were reversed with the same counterparty clearly indicates a prior meeting of minds with a view to execute the reversal trades at a pre-determined price. The only reason for the wide variation in prices of the same contract, withn a day was a clear indication that there was pre-determination in the prices by both the counterparty when executing the trades. Thus, the nature of trading, as brought out above, clearly indicates an element of prior meeting of minds and therefore, a collusion of the Noticee with its counterparty to carry out the trades at pre-determined prices

24. Noticee submitted that it not connected with counterparties so it should not be punished until proven guilty. It contended that rule of preponderance of probability cannot be exercised in absence of connection with counterparty. I note in matters dealing with violation of PFUTP Regulations, 2003, the reason as regards execution of non-genuine trades might not be immediately forthcoming. However, the correct test instead, is one of preponderance of probabilities. Here I would like to rely on the judgment of Hon'ble Supreme Court in **SEBI v Kishore R Ajmera** (AIR 2016 SC 1079) decided on February 23, 2016, wherein it was held that –

> *"...According to us, knowledge of who the 2nd party / client or the broker is, is not relevant at all. While the screen based trading system keeps the identity of the parties anonymous it will be too naïve to rest the final conclusions on the said basis which overlooks a meeting of minds elsewhere. Direct proof of such meeting of minds elsewhere would rarely be forthcoming...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..."

The Hon'ble Supreme Court further held in the same matter that –

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

In **SEBI and Ors. vs. Pursarth Trading Company Private Ltd**. (26.04.2007 - SEBI / SAT) : MANU/SB/0084/2007, it was held:

> *……Further, I observe that the standard of proof required in a proceeding of this nature is at variance with the standard of proof required in criminal cases. It is sufficient if the preponderance of probabilities suggests towards the indulgence of the delinquent in the misconduct. The strict rules of Evidence Act and proof beyond reasonable doubt are not applicable to a proceeding of this nature. The Supreme Court's decision in Gulabchand vs Kudilal MANU/SC/0064/1966 and the decision of the Special Court for trial of offences relating to transactions in securities in the matter of National Housing Bank v. ANZ Grindlays Bank, 1998 (2) LJ 153 is relied upon in this regard.*

The observations made in the aforesaid judgments of Hon'ble Supreme Court apply with full force to the facts and circumstances of the present case and the contention of Noticee in this regards is not tenable.

25. Noticee contended, the words "artificial" and "non-genuine" were not defined in PFUTP regulation or any of the Acts / Regulations of SEBI. Reversal trades were considered those trades in which an entity reverse its buy or sell positions in a contract with subsequent sell or buy positions with the same counterparty during the same day. It has been alleged that the said reversal trades were non genuine trades as they were not executed in normal course of trading, lack basic trading rationale, and allegedly lead to false or misleading appearance of trading in terms of generation of artificial volume. 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 was not reversed. It has been noted that there was no change in beneficial ownership of the volume reversed in non genuine trades of Noticee as positions of both the parties in these trades were squared off

among themselves only, and no open positions were carried forward. Hence, the volume generated in 2 non genuine reversal trades of Noticee was artificial volume which created misleading appearance of trading. It is pertinent to note that Regulation 4(2)(a) of PFUTP Regulations states that dealing in securities will be deemed to be a fraudulent and unfair trade practice if it involves "indulging in an act which creates false or misleading appearance of trading in the securities market". It is also pertinent to note that artificial volume generated from the said trades shows non-genuine appearance of trading in aforesaid contract to the unsuspecting investors. These non genuine and deceptive trades are covered under the definition of 'fraud' and dealing of Noticee noted hereinabove were 'fraudulent' as defined under regulation 2(1)(c) of SEBI PFUTP Regulations, 2003.

Thus, the terms "artificial" and "non-genuine" have no strict definition. The definition of the said terms has to be construed, understood and interpreted in reference to the context in which it is used. Therefore, the contentions of Noticee in this regards is without merits.

26. Noticee contended in absence of any investor complaints, the allegation of causing loss to other investors is baseless. I note that the SCN issued to the Noticee did not allege that on account of the trading of the Noticee in the options, there was adverse impact caused to the third party. Instead the SCN alleged the execution of non genuine/ reversal trades in the illiquid stock options at BSE, which has been detailed above. Therefore, I do not find any merit in the contentions of the Noticee in this regard. I note that the impugned reversal trades, which were carried out with prior meeting of minds as inferred from the case facts, affected the price discovery and execution of trades as per market mechanism on the stock options segment of BSE. In this regard, I further note the following from the judgment of the Hon'ble SC in the matter of **SEBI vs Rakhi Trading Pvt Ltd** (supra):

> "……….According to SAT, only if there is market impact on account of sham transactions, could there be violation of the PFUTP Regulations. We find it extremely difficult to agree with the proposition. As already noted above, SAT has missed the crucial factors affecting the market integrity, which may be direct or indirect. The stock market is not a platform for any fraudulent or unfair trade practice. The field is open to all the investors. By synchronization and rapid reverse trade, as has been carried out by the traders in the instant case, the price discovery system itself is affected. Except the parties who have pre-fixed the price nobody is in the position to participate in the trade. It also has an adverse impact on the fairness, integrity and transparency of the stock market."

Thus, the Noticee's contentions do not establish any denial of the charges made in the SCN.

27. Noticee contended that the said SCN does not set out exact penalty that is proposed to be imposed fo the alleged violations mentioned therein. I note that, the SCN alleged violations of regulation 3(a), (b), (c), (d), 4(1), 4(2) of the PFUTP Regulations, 2003 by the Noticee. The aforesaid alleged violations, if established, make the Noticee liable for monetary penalty under section 15HA of the SEBI Act, 1992. The provision of Section 15HA is reproduced hereunder:

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.

As can be seen from the above, penaty against the said violations by the Noticee has been clearly spelt out, therefore the contentions of Noticee in this regard are without any merits.

28. Noticee contended that proceeding should be quashed on the ground of inordinate delay of 6 years. I note that pursuant to a preliminary examination conducted in the Illiquid Stock Options matter, Interim order was passed by SEBI on August 20, 2015 which was confirmed vide Orders dated July 30, 2016 and August 22, 2016. Meanwhile, SEBI initiated a detailed investigation relating to stock options segment of BSE which was completed in the year 2018. The investigation revealed that 14,720 entities were involved in executing non-genuine trades in BSE's stock option segment during the investigation period. The proceedings initiated vide the aforementioned Interim Order were disposed of vide Final Order dated April 05, 2018 also considering that appropriate action was initiated against the said 14, 720 entities in a phased manner.

During the course of hearing in the case of ***R. S. Ispat Ltd Vs SEBI*****,** the Hon'ble Securities Appellate Tribunal (SAT), vide its Order dated October 14, 2019, *inter alia* observed that:

> *"SEBI may consider holding a Lok Adalat or adopting any other alternative dispute resolution process with regard to the Illiquid Stock Options".*

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

As can be seen from the narration of facts in the foregoing paragraphs, pursuant to appointment of AO on September 23, 2021, SCN was issued on October 25, 2021. In compliance with principles of natural justice, after receipt of reply, an opportunity of personal hearing was scheduled on December 14, 2021 and upon conclusion of hearing, additional written submissions were received from the noticees on December 14, 2021. In this regard, I feel it is pertinent to note that, in the matter of **SEBI Vs Bhavesh Pabari** (2019) SCC Online SC 294, the Hon'ble Supreme Court of India has, inter alia, held that:

> *"There are judgments which hold that when the period of limitation is not prescribed, such power must be exercised within a reasonable time. What would be reasonable time, would depend upon the facts and circumstances of the case, nature of the default/statute, prejudice caused, whether the third-party rights had been created etc."*

I note that the Hon'ble SAT in the matter **of Pooja Vinay Jain vs SEBI** (Appeal No. 152 of 2019 decided on March 17, 2020) held that:

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

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

> “*As regards the plea of delay and latches and submission that the show cause notice is barred by limitation, I do not find any merit in these contentions as the time and efforts involved in an investigation though may vary from case to case, generally investigations per-se is a time consuming process which invariably involve collection, scrutiny and careful examination of voluminous records/ order-trade details of all the concerned including the exchanges/recording of statements etc. and therefore no time limit can be fixed in this regard to enable a regulator to take appropriate disciplinary action for the safeguard and improvement of the system/market* ”.

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

29. Noticee contended that synchronization is not ipso facto illegal under SEBI Act and SEBI Regulations. I also note that the Hon’ble Supreme Court in the matter of **Securities and Exchange Board of India vs. Rakhi Trading Private Ltd.** (supra) held that:

> *…….In Ketan Parekh v. SEBI MANU/SB/0229/2006, the Securities Appellate Tribunal (SAT) has considered the circumstances under which "Synchronized trade" will be legal and held as under:*
>
> *………A synchronized transaction will become illegal or violative of the Regulations if it is executed with a view to manipulate the market or if it results in circular trading or is dubious in nature and with a view to manipulate the price or volume of the scrip or with*

some ulterior purpose. In Ketan Parekh case, SAT held as under:..... A synchronized transaction will, however, be illegal or violative of the Regulations if it is executed with a view to manipulate the market or if it results in circular trading or is dubious in nature and is executed with a view to avoid regulatory detection or does not involve change of beneficial ownership or is executed to create false volumes resulting in upsetting the market equilibrium. Any transaction executed with the intention to defeat the market mechanism whether negotiated or not would be illegal. Whether a transaction has been executed with the intention to manipulate the market or defeat its mechanism will depend upon the intention of the parties which could be inferred from the attending circumstances because direct evidence in such cases may not be available. The nature of the transaction executed, the frequency with which such transactions are undertaken, the value of the transactions, whether they involve circular trading and whether there is real change of beneficial ownership, 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.

The Hon’ble Supreme Court further 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. If the findings of SAT are to be sustained, it would have serious repercussions undermining the integrity of the market and the impugned order of SAT is liable to be set aside. On the above additional reasonings also, I agree with the conclusion allowing the appeal preferred by SEBI against the traders. I also agree with the conclusion dismissing the appeal preferred by the SEBI against the brokers.

Thus, considering the reversal transactions, quantity and time and sale, the contention of Noticee in this regards is not tenable.

30. Therefore, the trading behaviour of the Noticee confirms that such trades were not normal indicating that the trades executed by the Noticee were not genuine trades and being non-genuine, created an appearance of artificial trading volumes in respective contracts. In view of the above, I find that the allegation of violation of regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of PFUTP Regulations, 2003 by the Noticee stands established.

Issue No 2: Does the violation, if any, attract monetary penalty under Section 15HA of the SEBI Act, 1992?

31. Considering the findings that the Noticee, as mentioned above, has executed non-genuine trades resulting in the creation of artificial volume, thereby violating the provisions of Regulation 3(a), (b), (c) & (d) & Regulation 4(1) and 4(2)(a) of the PFUTP Regulations, 2003 and in terms of the judgement of Hon’ble Supreme Court of India in the matter of **SEBI**

Vs. Shri RAM Mutual Fund[2006] 68 SCL 216(SC) decided on May 23, 2006 held that ‘’

> “*In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant...”* I am convinced that it is a fit case for imposition of monetary penalty under the provisions of Section 15 HA of SEBI Act which reads as under:

Penalty for fraudulent and unfair trade practices.

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

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

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

15J. *While adjudging quantum of penalty under [15-I or section 11 or section 11B, the Board or the adjudicating officer] shall have due regard to the following factors, namely:—*

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to an investor or group of investors as a result of the default;

(c) the repetitive nature of the default.

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

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

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

ORDER

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

Name of the Noticee	Violation provisions	Penalty
Karuna Retails Pvt. Ltd. PAN: AADCK3025D	Regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of PFUTP Regulations, 2003	₹ 5,00,000/- (Rupees Five Lakhs only)

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

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

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

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

but not limited to recovery proceedings under section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties.

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

Date: February 18, 2022

Place: Mumbai

BARNALI MUKHERJEE

ADJUDICATING OFFICER