BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/PB/AS/2021-22/13471]

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

Nikunj Poddar

(PAN: AWIPP5073G)

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 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 Nikunj Poddar (PAN-AWIPP5073G) (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. Shri K Saravanan was appointed as Adjudicating Officer in the matter, conveyed vide communique dated April 26, 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. Pursuant to transfer of Shri K Saravanan, the undersigned was appointed as Adjudicating Officer in the matter, conveyed vide communique dated July 14, 2021.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. A Show Cause Notice dated July 27, 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 her and why penalty should not be imposed under section 15HA of the SEBI Act, 1992 for the violations alleged to have been committed by Noticee.

5. It was *inter alia* alleged in the SCN that the Noticee had executed 5 non genuine trades in 2 Stock Options contracts which resulted in artificial volume of total 3,86,000 units. Summary of dealings of the Noticee in 2 Stock 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	JPPW15JUN12.00PE	4.6	165000	7.5	165000	100	11.11	100	8.59
2	NTPC15APR125.00CEW2	11.6	28000	21.65	28000	100	16.67	100	14.66

6. From the above table, following was noted as regard to dealings of the Noticee:

(a) The Noticee had executed non genuine trades in 2 contracts, wherein all trades of Noticee in the said 2 contracts were non genuine trades.

(b) No. of non-genuine trades of the Noticee had significantly contributed to total no. of trades from the market in the above contracts, as 11.11% to 16.67% of the trades that happened in the two contracts were due to non-genuine trades executed by the Noticee.

(c) The entire 100% of volume generated by Noticee in all of the above contracts was artificial volume, and further, the percentage of artificial volume generated by the Noticee in the above contracts to the total volume from the market in said contracts was in the range of 8.59% to 14.66%. Therefore, substantial volume generated by the Noticee in each of the above contracts were artificial volume.

(d) Non genuine trades executed by the Noticee in above contracts had significant difference in buy rates and sell rates considering that the trades were reversed on same day.

7. The SCN ref no SEBI/HO/A&E/EAD/PB/AS/16570/2021 was served on the Noticee via Speed Post Acknowledgement Due (SPAD) and via email dated July 28, 2021. The proof of service is on record. Thereafter, Noticee, vide email dated August 11, 2021 requested for additional time for submitting reply to the SCN. Vide email dated August 12, 2021, acceding to Noticee’s request, time till September 01, 2021 was granted to submit

reply to the SCN and opportunity of personal hearing was granted on September 02, 2021. Vide email dated September 01, 2021, Authorized Representative (AR) of the Noticee, Ms Anjali Agrawal (Advocate) requested for additional time for submitting reply to the SCN and for adjournment of personal hearing dated September 02, 2021 in the matter. Vide email dated September 01, 2021, acceding to AR's request, time till September 07, 2021 was granted to submit reply to the SCN and also, final opportunity of personal hearing was granted on September 07, 2021. Vide email dated September 04, 2021, AR submitted reply to the SCN. The main contentions made in the aforesaid reply are summarized below:

- The trades executed were subject to regulatory supervision of BSE and SEBI, and were cleared by the clearing corporation of BSE, which was empowered not to clear any trades which were not genuine and illegal. The impugned trades were cleared as these were genuine. Noticee denies execution of non-genuine reversal trades and having created false or misleading appearance of trading in terms of creation of artificial volumes.
- The trades in the two impugned contracts viz. 'NTPC125CE Expiry 9 April 2015' and 'JPPW12PE Expiry 25 June 2015' were explained and it was contended that:
    - the buy orders placed at lesser prices were matched with corresponding sell orders by accident, as such bids at higher and lower levels are always placed by traders which are sometimes matched resulting in trades.

- The trades made trading sense and were executed at market related prices.
- Price of a derivative contract is dependent upon the underlying cash market scrip, and the squaring off of reversal trades was done with reference to prevailing cash market price only.

- There is no bar on squaring off a trade on the same day and a trade does not become non-genuine because it is reversed on the same day. AR cited judgement of the Hon'ble SAT in the matter of Ketan Parekh vs SEBI (Appeal 2 of 2004 dated 17 July 2006) in this regard.
- The counterparties to the buy and sell trades were common by coincidence and accidental matching.
- Both the impugned derivative contracts were liquid on the date of trades. This is substantiated from the following data as regards volume generate by Noticee in the impugned contracts:

Contracts	Date of Trade	Total volume on date of trade	Noticee's volume on date of trade	Noticee's %	Noticee's reversal volume on date of trade	Noticee's %	Total market volume in contract	Noticee's total volume in contract	%	Noticee's reversal volume in contract	%
NTPC 125 CE Expiry 9 April 2015	27.3.15	374000	56000	14.97	28000	7.48	382000	56000	14.6	28000	7.32
JPPW 12 PE Expiry 25 June 2015	22.6.15	1380000	330000	23.91	165000	11.95	3840000	330000	8.59	165000	4.29

- As the derivative contracts were liquid, matching with same counterparties was possible. Also, if the trades are matched at market price, then whether the counterparty is same or different is immaterial and genuineness of trades is not affected. The reversal trades were market rate driven and genuine, so that there was no creation of misleading appearance of trading, deceptive and manipulative practices etc. In this regard, AR cited AO order in the matter of Leaps and Bounds Pvt ltd (ref No MC/HP/2021-22/12846 dated 30 July, 2021).
- The allegation that artificial volume was generated is not correct from judicial point of view. AR cited judgement of the Hon'ble SAT in the matter of Ketan Parekh vs SEBI in this regard, and contended that the total trade percentages and reversal trade percentages of Noticee were much lesser than the volume referred to in the said judgement viz. 25%.
- The profit or loss arising from the impugned trades was settled by the parties to the trade to their respective brokers, who collected the same through the clearing corporation of BSE, and the same was collected/ paid to respective clients by BSE through respective brokers. BSE had collected transaction charges on these transactions, stamp duty was collected by state government through BSE, SEBI collected turnover fees and the broker collected its brokerage. Thus, the trading was genuine as the trades were acted upon by all the entities involved including the regulatory bodies.

- There was no effect on prices of the derivative contract or the underlying scrips in the cash market because of the Noticee's trades. The market wise price and volume data of the Exchange does not reveal any such manipulative and deceptive effect.
- The percentages of volume generated by reversal trades to the total contract volume was insignificant, and not capable of many manipulative and deceptive trade. AR cited AO order in the matter of Govind Ji Gupta and others (ref no Order/MC/DS/2019-20/6209-6214) in this regard.
- AR cited judgement of the Hon'ble SC in the matter of SEBI vs Kishore R Ajmera (2016 6 SCC 368) and contended that proximity of time in matching of a trade *per se* is not conclusive of violation of PFUTP Regulations unless it is accompanied by several other factors such as huge volume of trade, persistent trading by trader etc. AR contended that in the present matter:
    - no huge volume of trades was executed by Noticee.
    - no persistent trades were done by him.
    - the decision of investors was not affected because of reversal trades executed by Noticee.
    - Noticee was not connected or related to counterparties to the trades or to their brokers.
    - There was neither any mechanism to deter nor a note of caution by BSE about matching trades with same counterparty on the same day. BSE established a mechanism to prevent a reversal

trade only in March, 2016, which implies that such trades were permissible till then.

- Noticee has not been subjected to any other regulatory action by SEBI or BSE.

- It has not been specified in the instant SCN that under which specific clauses of PFUTP Regulations, 2003 the allegations have been levied. The clauses of regulations 3 of the PFUTP Regulations, 2003 deal with (a) fraudulent manner, (b) manipulative or deceptive device (c) scheme or artifice to defraud and (d) fraud or deceit whereas the allegation in the notice is about non genuine trades leading to false and misleading appearance of trading which is manipulative and deceptive.

- The essential requirement to constitute fraud is to induce another person or his agent to deal in securities, which has not been brought out in the instant SCN or in the inferential circumstances.

- The allegations made in the SCN are general, and no specific point in regulation 4 of the PFUTP Regulations, 2003 has been alleged.

- Unfair trade practice as judicially interpreted by the Hon'ble SC in the matter of SEBI vs Kanaiyalal Baldevbhai Patel & Ors (2017 15 SCC 1) implies that there has to be violation of ethical standards or absence of good faith between the parties. Both these ingredients are absent in the instant matter.

- Section 15 HA of the SEBI Act, 1992 applies only if a person indulges both in fraudulent and unfair trade practices relating to securities, which have not been committed in the instant matter.

- Based on the test of proportionality, adjudication proceedings which are punitive in nature must not be pursued, and the purpose will be served by other means like warning or resort to section 15HB of the SEBI Act, 1992 or suspension from trading for a few days etc. Therefore, a penalty of Rs 5 Lakhs will be highly excessive.

- Instant SCN has been issued after 6 years of the impugned trades, causing serious prejudice to the Noticee. The order of the Whole Time Member of SEBI dated August 20, 2015 records that SEBI had knowledge of the illiquid options trading, so that delay of 6 years is solely on account of laxity of SEBI. Though the SEBI Act, 1992 does not prescribe any limitation period for initiating action, it has been held in numerous judgements that relevant law must be exercised within a reasonable time.

- The instant SCN is invalid on following grounds:

  (a) The SCN does not specify charges specifically and is vague. It only makes a general reference to section 15HA of the SEBI Act, 1992. In this regard, AR cited judgement of the Karnataka High Court in CIT vs Manjunatha Cotton and Ginning Factory and that of the Hon’ble SC in the matter of Commissioner of Central Excise vs M/s Brindavan Beverages (P) Ltd and Ors.

(b) Instant Notice is vitiated by bias, discrimination, prejudice and judicial discipline. AR cited order of the Whole Time Member of SEBI dated August 12, 2016 and contended that vide aforesaid order, WTM had directed investigation to be conducted against all parties including the trading members. However, no such enquiry or action has been initiated against the brokers by SEBI or BSE.

(c) The instant SCN is discriminatory, being in favor of BSE. As per SEBI Master Circular no CIR/MRD/DRMNP/11/2013 dated April 01, 2013 on matter related to Exchange traded derivatives, BSE was *interalia* required to ensure market integrity, smooth and orderly trading, monitor trades in contracts, ensure that indications of material aberrations from normal activity are automatically generated etc.. The issuance of SCN by SEBI to traders without any aberrations being thrown up by BSE systems suggests that either such systems were not put in place or that BSE had abdicated its regulatory role, and no action has been initiated against BSE for failure of its system to throw alerts or for failure to install such safeguards.

8. Vide email dated September 06, 2021, AR requested for weblink for the personal hearing scheduled on September 07, 2021. The aforesaid link was provided to the Noticee vide email dated September 06, 2021. The personal hearing was conducted on scheduled date and time. During the course of hearing, AR reiterated submissions made by her vide email dated September 04, 2021. AR was also given time till September 08, 2021 to

make post hearing submissions, if any, in the matter. Further, the compilation of judgements relied upon by AR during the course of hearing, as submitted by her vide email dated September 07, 2021 was also taken on record. The personal hearing in the matter was completed and hearing minutes are on record.

CONSIDERATION OF ISSUES AND FINDINGS

9. I have carefully perused the charges levelled against the Noticee, his 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?

10. 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;

11. I note that allegation against the Noticee is that, while dealing in the stock option contracts at BSE during the IP, he 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 & manipulative.

12. Noticee has *interalia* contended that the instant SCN has been issued after 6 years of the execution of impugned trades, causing serious prejudice to the Noticee, and that even though the SEBI Act, 1992 does not prescribe any limitation period for initiating action, the powers under relevant law must be exercised within a reasonable time. I note that the investigation as regards violation of PFUTP Regulations, 2003 is an exhaustive, time consuming process, which may require detailed analysis of the case facts. In this regard, 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 he has also not specified what prejudice has been caused to him, so that the contentions of Noticee in this regard are without merits.

13. Noticee has further contended that the specific clauses of the PFUTP Regulations, 2003 alleged to have been violated have not been specified in the instant SCN, and that the allegations made are general and vague. I note that Noticee has been alleged to have executed non-genuine reversal trades, leading to creation of false or misleading appearance of trading in terms of artificial volume in the stock options and resulting in violation of regulations 3(a),(b),(c),(d) and 4(1),(2)(a) of the PFUTP Regulations, 2003. I note that the aforesaid charges against the Noticee and the provisions of PFUTP Regulations, 2003 alleged to be violated as stated above have been cogently spelt out in the SCN dated July 27, 2021 served on the Noticee. Therefore, I note that the contentions of Noticee in this regard are liable to be rejected, so that I now proceed to consider the matter on merits.

14. I note from the trade log of the Noticee that he had traded in 2 unique contracts in the stock options segment of BSE during the IP. It is observed that the Noticee had executed 5 non-genuine trades in 2 contracts. I further note that the above mentioned trades of the Noticee had resulted in the creation of artificial volume of 3,86,000 units in the said 2 contracts. Summary of 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	JPPW15JUN12.00PE	4.6	165000	7.5	165000	100	11.11	100	8.59
2	NTPC15APR125.00CEW2	11.6	28000	21.65	28000	100	16.67	100	14.66

15. It is noted that the Noticee had executed non-genuine trades in 2 contracts, wherein the percentage of non-genuine trades of the Noticee in stock options contracts to total trades in the contracts was in the range of 11.11% to 16.67% in the aforesaid contracts. Further, artificial volume generated by Noticee in the contracts amounted to the entire 100% of total volume generated by him in both the contracts. It is also noted that artificial volume generated by the Noticee contributed significantly viz. 8.59% to 14.66% of the total volume from the market in the said contracts. Non-genuine trades executed by the Noticee in the above contracts had significant difference in buy rates and sell rates considering that the trades were reversed on the same day.

16. I note from the trade log that the trades executed by the Noticee in a contract were squared up within a short span of time with his counterparties. To illustrate, the Noticee on June 22, 2015 at 14:32:14.82 hrs entered into 1 sell trade with counterparty viz. J B Overseas for 1,65,000 units at the rate of Rs 7.5 per unit in the contract JPPW15JUN12.00PE. Thereafter, on the same day, Noticee at 14:32:20.03 hrs entered into 1 buy trade with same counterparty for 1,65,000 units at the rate of Rs. 4.6 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. J B Overseas on the same day and with significant price difference in buy and sell rate. Thus, the Noticee, through his dealing in the contract viz. "JPPW15JUN12.00PE" during the I.P., executed non genuine trades which was 11.11% of the total trades from the market in the said contract during the I.P., and thereby, Noticee generated artificial volume of 3,30,000 units which was 8.59% of the volume traded in the said contract from the market during the I.P.

17. The non-genuineness of these transactions executed by the Noticee is evident from the fact that there was no commercial basis as to why, within a short span of time, the Noticee reversed the position with his counterparties with significant price difference. I note from the trade log of the Noticee that the time taken by the Noticee for reversing the non-genuine trades ranged from 05 seconds to 01 hour, 17 minutes and 05 seconds, on the same day. Such a short span of time taken for reversing the trades in an illiquid stock option contract suggests the non-genuineness of these

trades executed by the Noticee. 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 had indulged in reversal trades with his counterparties in the stock options segment of BSE and the same were non-genuine trades.

18. Noticee has further contended that the counterparties to both buy and sell trades were common by coincidence. I note that it is not mere coincidence that Noticee could match his trades with the same counterparties with whom he had undertaken 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 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..."

19. 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."*

20. Noticee has *interalia* contended that he was not related to counterparties to the trades or to their brokers. 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 Noticee with other entities. However, I note that 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. 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.".* Further, Noticee has also contended that the essential requirement to constitute fraud is to induce another person or his/her agent to deal in securities, which has not been brought out in the instant SCN. In this regard, I note the following from the judgement of the Hon'ble SAT in the matter of Ketan Parekh vs SEBI (supra):

In other words, if the factum of manipulation is established it will necessarily follow that the investors in the market had been induced to buy or sell and that no further proof in this regard is required. The market, as already observed, is so wide spread that it may not be humanly possible for the Board to track the persons who were actually induced to buy or sell securities as a result of manipulation and law can never impose on the Board a burden which is impossible to be discharged. This, in our view, clearly flows from the plain language of Regulation 4 (a) of the Regulations. Therefore, I reject the contentions of Noticee in this regard.

21. I place my reliance on the judgment of Hon'ble Supreme Court in the matter 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 SC 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…..”

22. Noticee has contended that the decision of investors was not affected because of reversal trades executed by him. Also that, there was no effect on prices of the derivative contracts or the underlying scrips in the cash market because of Noticee’s trades, and that market wise price and volume data of the Exchange does not reveal any such manipulative and deceptive effect. 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 judgement 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 bedirect 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."

Therefore, I note that contentions of Noticee in this regard are liable to be rejected.

23. 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 judgement of Hon'ble SC 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.*"

24. Noticee has *interalia* contended that the buy orders placed by him at lower prices in both the contracts matched by accident, and that the trades made trading sense as they were executed at market related prices. Noticee has also contended that price of a derivative contract is dependent upon

underlying cash market scrip, and that in instant matter, squaring off of reversal trades was done with reference to prevailing cash market price. I note that the buy orders placed by Noticee in both the impugned contracts were at a very low price, and were matched in very short time by sell order placed by counterparty. Further, the same counterparties, on the same day, placed a sell order at a higher price without any market logic or substantial change in price of underlying scrip, which were again matched by buy orders placed by Noticee. I note basis such trading pattern, that the trades were undertaken defying market logic and intended to create misleading appearance of trading. Therefore, I reject the contentions of Noticee in this regard.

25. Noticee has contended that both the derivative contracts were liquid on the date of trades i.e. on March 27, 2015 and June 22, 2015, so that as the contracts were liquid, matching with same counterparties in buy and sell trades was possible. I note that the market volume only in the impugned contracts is relevant as regards instant considerations, so that the artificial volume generated by Noticee as a proportion of total market volume in the two contracts was 8.59% in the contract JPPW15JUN12.00PE and 14.66% in the contract NTPC15APR125.00CEW2. I note that Noticee’s trades, although few in number, contributed substantially to total market volume in such contracts indicating that the stock options segment of BSE was illiquid as regards the aforesaid contracts. Further that, the matching of trades among the same counterparties, along with attending circumstances i.e. existence of wide difference in buy and sell rates which was devoid of any

reason points to manipulative intent behind execution of the impugned reversal trades.

26. Noticee has *interalia* contended that profit or loss arising from the impugned trades was settled by the parties to the trade to their respective brokers, who collected the same through the clearing corporation of BSE, and same was collected/ paid to respective clients by BSE through respective brokers, and that BSE had collected transaction charges on these transactions, stamp duty was collected by state government through BSE, SEBI collected turnover fees and the broker collected its brokerage. I note that instant allegations pertain to the trading pattern exhibited by Noticee while executing reversal trades, which indicated manipulative intent, and that the aforesaid facts submitted by Noticee have not been disputed and are not relevant as regards instant considerations. Therefore, I note that contentions of Noticee in this regard are without merits.

27. Noticee has contended that the allegation that artificial volume is being generated is not correct from judicial point of view, and cited judgement of the Hon'ble SAT in the matter of Ketan Parekh vs SEBI (supra) in this regard. I note that the allegation of creation of artificial volume is made depending on case facts pertaining to each matter. There may not be a threshold as regards allegations of artificial volume applicable universally, so that in the instant matter, artificial volume has been alleged to be generated through reversal trades carried out by Noticee based on consideration of attending circumstances *in toto*. Noticee has also contended that there is no bar on squaring off a trade on the same day and

a trade does not become non-genuine because it is reversed on the same day. Noticee also contended that proximity of time in matching trades must be accompanies by other factors interalia including generation of huge volume, execution of trades persistently etc, which were not present in Noticee's trading pattern. I note that Noticee executed reversal trades, which defy market rationality when looked along with attending circumstances. Therefore, Noticee's trades were manipulative and intended to create misleading appearance of trading, so that contentions of Noticee in this regard are liable to be rejected.

28. Noticee has also contended that volume contributed by reversal trades to the total contract volume was insignificant, and could not be termed manipulative and deceptive. I note that the impugned stock option contracts were illiquid, as stated in the SCN, and also that Noticee's trades in such contracts viz. JPPW15JUN12.00PE and NTPC15APR125.00CEW2 contributed substantially i.e. 8.59% and 14.66% respectively 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.

29. Noticee has further contended that the trades executed were subject to regulatory supervision of BSE and SEBI, and were cleared by the clearing corporation of BSE, which was empowered not to clear any trades which were not genuine and illegal, so that the impugned trades which were cleared were genuine. I note that stock exchanges merely provide a

platform for carrying out the trades and the clearing corporation affiliated with exchange handles the confirmation, settlement and delivery of transactions, however, the obligation to ensure genuineness of trades as regards instant considerations lies squarely on the Noticee.

30. Noticee has also contended that there was neither any mechanism to deter nor a note of caution by BSE about matching trades with same counterparty on the same day during the IP. Further that, the instant SCN is discriminatory and vitiated by bias, discrimination, prejudice and judicial discipline as it neither charges the trading members who were part of such reversal trades nor charges the BSE. I note that instant adjudication proceedings levy the impugned allegations against Noticee, and that absence of any preventive mechanism cannot be a ground to absolve Noticee from his obligation to ensure genuineness of trades executed on exchange platform. Further that, the considerations in the present matter are limited to allegations levied only against the Noticee. Therefore, I reject the contentions of Noticee in this regard.

31. Therefore, the trading behaviour 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 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. The 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…".*

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

    [1][***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 [2][which shall not be less than five lakh rupees but which may extend to twenty - five crore rupees or three times the amount of profits made out of such practices, whichever is higher].

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

    Factors to be taken into account by the adjudicating officer.

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

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[1] Inserted by the SEBI (Amendment) Act, 2002, w.e.f.29-10-2002.

[2] Substituted for the words ―twenty-five crore rupees or three times the amount of profits made out of such failure, whichever is higher‖ by the Securities Laws (Amendment) Act, 2014, w.e.f. 08-09-2014

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

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

(c) the repetitive nature of the default.

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

34. 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, Noticee has entered into 5 non-genuine trades in 2 stock option contracts which demonstrates the repetitive nature of default on his part.

35. 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.

<u>ORDER</u>

36. 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**
Nikunj Poddar PAN:AWIPP5073G	regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of PFUTP Regulations, 2003	Rs 5,00,000/- (Rupees Five Lakh only)

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

37. 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

38. 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

39. 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.

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

Date: September 22, 2021 **PARAG BASU**

Place: Mumbai **ADJUDICATING OFFICER**