BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

(ADJUDICATION ORDER NO: Order/RG/NM/2021-22/14952/5)

UNDER SECTION 15-I OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995.

In respect of

Shri Ankit Kumar Bihani

PAN: AIHPB2959G

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

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as **SEBI**) conducted investigation into the trading activity in illiquid stock options on BSE Limited (hereinafter referred to as **BSE**) for the period April 01, 2014 to September 30, 2015 (hereinafter referred to as **Investigation Period/IP**) after observing large scale reversal of trades in the Stock Options segment of the BSE.

2. Pursuant to investigation, it was observed that during the Investigation period total of 2,91,744 trades comprising substantial 81.41% of all the trades executed in stock options segment of BSE 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 Shri Ankit Kumar Bihani (hereinafter referred to as **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 and misleading appearance of trading in terms of artificial volumes in stock options segment 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 relating to Securities Markets) Regulations, 2003 (hereinafter referred to as **PFUTP Regulations, 2003**).

APPOINTMENT OF ADJUDICATING OFFICER

3. SEBI appointed the undersigned as Adjudicating Officer under Section 15-I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **SEBI Act, 1992**) read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as **Adjudication Rules, 1995**) *vide* order dated July 02, 2021 to inquire into and adjudge under Section 15HA of the SEBI Act, 1992 against the Noticee for the alleged violation of aforesaid provisions of PFUTP Regulations, 2003. The appointment of the AO was communicated *vide* communique dated July 06, 2021.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. A Show Cause Notice dated August 13, 2021 having reference no. AO/RG/NKM/OW/P/19325/1/2021 (hereinafter referred to as **SCN**) was served upon the Noticee under rule 4(1) of the Adjudication Rules, 1995 to show cause as to why an inquiry should not be held and penalty be not imposed against the Noticee under Section 15HA of the SEBI Act, 1992 for the alleged violation of the provisions of Regulation 3(a),(b),(c),(d) and 4(1), 4(2)(a) of the PFUTP Regulations, 2003.

5. It was *inter alia* alleged in the SCN that the Noticee was one of the various entities which indulged in reversal trades which allegedly created false and misleading appearance of trading, generating artificial volumes in Stock Options segment of the BSE during the Investigation Period. Out of the total 24 trades for 16,56,000 units executed in the contract *viz.* IBRL15AUG75.00CEW1, the Noticee had executed 3 non genuine trades i.e. 1 buy trades and 2 sell trade in the aforesaid contract on August 06, 2015 with

same counterparty *viz.* Saffire Exports & Agency Pvt. Ltd. on the same day and with significant price differential in buy and sell rate, which resulted in artificial volume of 72,000 units. Summary of dealings of the Noticee in the Stock Option contract, in which the Noticee allegedly executed non genuine trades during the IP are 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	IBRL15AUG75.00CEW1	0.05	36,000	2.77	36,000	100%	12.50%	100%	4.35%

6. From the above table, following is noted as regards to dealings of Noticee in the contract "IBRL15AUG75.00CEW1":
   a) Noticee had executed alleged non-genuine trades in the above contract, wherein 100% trades were non-genuine trades.
   b) No. of non-genuine trades of Noticee significantly contributed to the total no. of trades from the market in the above contract, as a substantial 12.50% of the trades happened in aforementioned contract were due to alleged non-genuine trades executed by the Noticee.
   c) A substantial 4.35% of volume generated by the Noticee in the above contract was artificial volume.
   d) Alleged non-genuine trades executed by Noticee in above contracts had significant differential in buy rates and sell rates considering that the trades were reversed on same day.

7. By indulging in execution of aforesaid non-genuine reversal trades, the Noticee was alleged to have violated the provisions of Regulation 3(a), (b), (c), (d) and 4(1), 4(2)(a) of the PFUTP Regulations, 2003.

8. The SCN was served to the Noticee *via* Speed Post Acknowledgement Due (SPAD) on August 17, 2021 and *via* email dated August 13, 2021. *Vide* letter dated August 27, 2021, Noticee submitted his reply to the SCN. *Vide* hearing notice dated September 22, 2021, an opportunity of hearing was granted to the Noticee on October 07, 2021 through video conferencing due to Covid-19 pandemic. Noticee *vide* email dated October 05, 2021 sought adjournment of hearing till November 10, 2021. Acceding to the request of the Noticee, another opportunity of personal hearing was granted to the Noticee on November 10, 2021.

9. On the scheduled date of hearing i.e. November 10, 2021, the Authorized Representative (AR) on behalf of the Noticee attended the hearing and reiterated the submissions made earlier by the Noticee *vide* its letter dated August 27, 2021 and requested for additional time of 10 days to make additional submissions which was acceded to. The personal hearing in the matter was completed and hearing minutes are on record. Noticee *vide* its email dated November 22, 2021 submitted his reply. Replies dated August 27, 2021 and November 22, 2021 of the Noticee is as follows:

Reply dated August 27, 2021

I deny each and every allegation made against me in the show cause Notice and state that I will provide the necessary explanations to SEBI to demonstrate our bona fides and absence of any wrongdoing in the matter during the course of the present proceedings.

Upon perusal of show cause Notice) it appears that there is certain data, documents and information available with the securities and Exchange board of India (SEBI) in connection with the matter, but which has not been provided with the show cause Notice. Only certain selective information and data appears to have been provided with the said Notice.

Further noted that, it is incorrect to allege that there have been any dealings in Illiquid Stock Options at BSE ("Exchange").

a) Any securities listed for free trading in the floor of the Exchange should not be classified as Illiquid Stock. Till such time, these securities are permitted to be listed and traded in the floor of the Exchange, the Exchange cannot *complain of any manipulation till such time specific instances are highlighted that would substantiate fraud, price rigging or veiled trading in securities.*

b) *No complaint has been made nor does the Exchange allege that I have acted against the interest or to the prejudice of any Party or have synchronized a Trade to defraud or cause breach of any contract, be it with the Exchange or any other third party.*
c) *The Exchange has not alleged that the Trades are illegal, as it could not, thus no breach of any substantive law prohibiting such Trades has been triggered.*

And Also, I denied that there has been any violation of the provisions of Sections 3(a), 3(b), 3(c), 3(d), 4(1) and 4(2)(a) of SEBI (Prohibition of fraudulent and Unfair Trade Practices related to Securities Markets) Regulations,2003 ("Regulations") at all.

a) *There has been no indirect buy or sell of securities.*
b) *No substance has been provided to substantiate that the Trades are fraudulent or contravenes provisions of Securities and Exchange Board of India Act, 1992 ("Act").*
c) *The Trades were conducted through a legalized mechanism or device and not through any improvised or artificial means or devices.*
d) *No third party prejudice was caused and consequentially there could not be any deception, fraud or deceit perpetuated upon any person in contravention of the provisions of the Act.*
e) *The Trades do not constitute "fraud" as envisaged under Section 2(1)(c) of the Regulations. There has been no concealment, omission, misrepresentation of truth, concealment of a material fact, suggestion to a fact which is not true, any promise made without intending to perform such promise, ay representation made in reckless and careless manner, deprivation of any right of other person) false statement) etc.*

With reference to Paragraphs no. 7,8 & 9 of your purported notice) I deny and disputes the generated artificial Volumes and non-genuine transaction in the said notice, (in the contract viz,IBRL15AUG75.00CEW1). While dealings on this trade totally misunderstood the fact that these all trade fully controlled by the Surveillance system of Exchange or In charge of BSE. They keep their eyes always on market trade.

That I am in no way related to the counterparty M/ s. SAFFIRE EXPORTS & AGENCY PVT. LTD. Neither I am in relation (personally/Professionally).

1. *Finally, the Trades were conducted openly and transparently and did not conceal any material fact.*

    a) *The Trades were conducted on arm)s length basis.*
    b) *The Exchange was provided each material fact constituting a particular Trade.*
    c) *No one including investors was misled.*

d) The Exchange has not alleged price rigging at the behest of an interested consortium.
e) The Trades were conducted through a legalized mechanism.
f) The trades constitute personal judgments and perceptions and did not cause loss, prejudice or windfall to any other person other than the Parties involved in each particular Trade.
g) The Exchange or its mechanism was not used to perpetuate fraud.
h) No Public Policy has been breached or contravened.
i) There is no allegation of cartelization and consequentially indulgence in an Unfair Trade Practice affecting the rights and interest of others.
j) There has been no creation of false or misleading information with intention to unjustly enrich ourselves or cause prejudice to other.

That, the trades were conducted openly, transparently and without concealing any material fact constituting the particular trade.

2. In view of the above, I submit that there has been no violation or default and consequentially I am not liable to be prosecuted under the provisions of Section 15HA of the Act as our Trades are neither fraudulent or constitute an Unfair Trade Practice.

Reply dated November 22, 2021

1. At the outset, my Client denies all allegations made in above SCN and states that he is not liable to be prosecuted under the provision of section 15HA of the Act as the trades are neither fraudulent nor constitute Unfair Trade Practice within the framework of SEBI PFUTP Regulations.

2.** That, the alleged trades were conducted of the year 2015; for which I got a notice in the year 2021. Such proceedings are ex-facie vitiated in law, and is a complete abuse of process. Such a long delay in initiation of the proceedings by itself poses grave difficulties and extreme hardship for my client to defend, highly prejudiced by such inordinate delay on the part of SEBI such a prime institution of our country and may not be in a position to locate or lay hands on relevant material information**. I further informed you that as the transition was more than six year old so I did not recall anything at present and whatever data you have given in your SCN is known by you and your good office according to your calculations or presumptions.

3. Without prejudice to the aforesaid, however, strongly relying thereupon, My client further proceed to deal with the allegations made in the said purported notice, which further renders its operation as bad in law….

… With reference para 8 of SCN and the alleged non genuine trades given "Annexure B and C", My client state that the SCRIPT NAME, SCRIPT CODE AND STRIKE PRICE (Please note that 15TH August is national holiday) as WRONGLY mentioned in SCN .

4. *All the relevant documents in connection with the matter were not provided to my client so that enable effectively deal with the allegations in the SCN, which is an essential part of the due legal process necessary to discharge the requirements of natural justice and fair play. My client also reserve his rights to cross examine persons whose statements have been recorded in the matter.*

   On that note, my client places reliance on the decision of Hon'ble Supreme Court in the case of Price Waterhouse Coopers vs. SEBI (Civil Appeal No. 6003-6004 of 2012) wherein it was held that "all statements recorded during the course of investigation shall be provided to the respondents and further directed, that all documents collected during investigation shall be permitted to be inspected by the respondents. The authors of such statements (recorded during investigation), which are to be relied upon ***(against*** *the respondents), shall be offered for cross-examination to the respondents. Only thereupon, it will be permissible to rely upon the same."*

In para 7(b) it is mentioned in SCN….

*……..****Whatever data you have given in your SCN is known by you and your good office, the purported allegations in the SCN are clearly out of surmises, conjectures and hearsay and are totally misplaced and contrary to factual position on record. As per "Annexure B" described the trade details where the counterparty M/s. SAFFIRE EXPORTS & AGENCY PVT. LTD*** *(My client not related or connected in any manner whatsoever with the counterparties to that trades and do not have any link / nexus/ relationship/ connection/ dealing/ collusion/ arrangement or agreement with the counterparties)* ***place an order in second instance at 10:27:54.662200 hrs having the higher quantity of 2,28,000 units at higher price whereas my client earlier place order (10:24:00 & 10:24:15) having a quantity of 4000 units and 32000 units respectively . In view of that M/s. SAFFIRE EXPORTS & AGENCY PVT. LTD trade volume is higher than my client volume that details not provided/ escaped in SCN.***

Based on the facts, it cannot be alleged that such Trades are synchronized, fraudulent or manipulative or violative of PFUTP Regulations. Thus, levelling allegation in the SCN based on such narrow premises is bound to lead to erroneous results.

- *In Jagruti Securities vs SEBI. (2008 SCC On Line SAT 184: 2008 SAT 184), the Hon'ble SAT has gone ahead to record in para 4 "….we are all the view that in an artificial trade there has to be collusion between the buyer and the seller and in the absence of any collusion, the trade cannot be termed as 'artificial'."*

- *P.J. Stock Brokers Pvt. Ltd. vs Securities and Exchange Board of India [2013 SCC On Line SAT 67: [2013] SAT 17]"13. Unless some connection between appellant and counter parties with whom appellant traded is established, it is difficult to hold that trades in question were carried out with a view to manipulate market by creating false volumes resulting in upsetting market equilibrium."*

5. *Finally, it is incorrect to allege that there have been any dealings in Illiquid Stock Options at BSE ("Exchange"). Any securities listed for free trading in the floor of the Exchange ought not to be classified as Illiquid Stock. Till such time, these securities are permitted to be listed and traded in the floor of the Exchange, there cannot be a complain of any manipulation till such time specific instances are highlighted that would substantiate fraud, price rigging or veiled trading in securities.*

   As per Master Circular CIR/MRD/DRMNP/11/2013 on April, 2013 provided that eligibility criteria 3.1.2 is as follows which supersedes previous Master Circular DNPD/1/2012 on January 2, 2012: ……

6. *Since alleged impugned transaction in option segment were cash settled and these is no question of delivery of shares, there will be no 'downstream effect' or 'domino effect' of such annulment. There is no question of transfer of beneficial ownership in option segment since at end of settlement cycle only net loss/profit is adjusted. Therefore, allegation of creation of 'artificial' or 'reversal' trade is of no consequence in option segment of exchange*

CONSIDERATION OF ISSUES AND FINDINGS:

10. I have taken into consideration the facts and circumstances of the case, replies of the Noticee and the material available on record. The issues that arise for consideration in the present case are:

    Issue (a): Whether the reversal trades in illiquid Stock Options carried out by the Noticee during the Investigation Period were in violation of Provisions of Regulation 3(a), (b), (c), (d) and 4(1) & 4(2)(a) of the PFUTP Regulations, 2003?

    Issue (b): If yes, whether the violation, on the part of the Noticee would attract monetary penalty under Section 15HA of the SEBI Act, 1992?

Issue (c): If yes, what would be the quantum of monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act, 1992, read with rule 5(2) of the Adjudication Rules, 1995?

11. 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 thereunder;

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

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

12. Before advancing into the merits of the case, I would like to deal with the contention of the Noticee pertaining to the delay in initiation of proceedings and of non-furnishing of documents sought by the Noticee.

13. With regard to the delay in initiation of adjudication proceedings, it is noted 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.

14. 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”.*

15. 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.

16. As can be seen from the narration of facts in the foregoing paragraphs, pursuant to appointment of AO on July 06, 2021, SCN was issued on August 13, 2021. In compliance with principles of natural justice, after receipt of reply, an opportunity of personal hearing was scheduled on October 07, 2021 and November 10, 2021. Upon conclusion of hearing, additional written submissions were received from the Noticee *vide* email dated November 22, 2021.

17. Further, I note that there is no provision under SEBI Act, 1992, which prescribes a time limit for taking cognizance of a breach of the provision of the SEBI Act, 1992 and Rules and Regulations made thereunder. Further, as per Section 11C of SEBI Act, 1992, SEBI can initiate investigation at any point of time, for any period of alleged violation or any period of alleged transactions. I also note that the investigations relating to the PFUTP Regulations, 2003 are complex (considering the volume of transactions, connections and examination of trading of shares, etc.) and time consuming. 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*." Further, I note that the Hon'ble SAT in the matter of Pooja Vinay Jain vs SEBI (Appeal No. 152 of 2019, Date of Decision – 17.03.2020) 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*".

18. I also note that the Hon'ble SAT in the matter of Bipin R Vora vs SEBI 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". In view of the aforesaid and considering the facts of the aforesaid matter, I do not find any merit in the contentions of the Noticee.

19. Further, Noticee has contended that it has not been provided with certain data, documents and information available with SEBI and only certain selective information and data has been provided with the SCN and also to cross examine the persons whose statements have been recorded in the matter. In this regard, I note that all the relied upon records/documents based on which the charges/allegations were levelled against the Noticee in the SCN were already furnished to the Noticee along with the SCN. In this regard, reference is drawn to the Hon'ble Supreme Court in the matter of Kanwar Natwar Singh v. Directorate of Enforcement [(2010) 2 SCC 497], has *inter alia* held that: *"…Even the principles of natural justice do not require supply of documents upon which no reliance has been placed by the Authority to set the law into motion. Supply of relied on documents based on which the law has been set into motion would meet the requirements of principles of natural justice…".* Further, in the matter of Chandrama Tewari v. Union of India, Through General Manger, Eastern Railways, (1988) 1 SCR 1102, the Hon'ble Supreme Court has held that it is not necessary that each and every document must be supplied to the Noticee facing charges. Only material and relevant documents are necessary to be supplied to him/ her. Further, the Hon'ble Securities Appellate Tribunal in the matter of Manoj Gaur vs. SEBI (Appeal No 64 of 2012, decided on October 03, 2012) has *inter alia* held that "….*Since the adjudicating officer has complied with the statutory requirements, there is no legal obligation on the Board to furnish the entire investigation report to the appellants….".*

20. Further, the Hon’ble SAT, in its order dated February 12, 2020, in the matter of Shruti Vora vs. SEBI held that:*“……….A bare reading of the provisions 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.”* Further, the Hon’ble SAT in the matter of Anant R Sathe vs SEBI (Appeal No. 150 of 2020) *vide* Order dated July 17, 2020 has reaffirmed the principle elucidated in the judgment of Shruti Vora’s case, which was reproduced herein above and ruled that: *“the Authority is required to supply the documents that they rely upon while serving the show cause notice which in the instant case has been done and which is sufficient for the purpose of filing an efficacious reply in his defence”.* Further, with regard to cross examination of the entities, it is noted that no statements/ opinions provided by any person/ witness have been relied upon in the SCN. Therefore, in view of the above, the contention of the Noticee that it was not provided with the relevant records/documents pertaining to the matter is baseless and without any merit.

21. Now I deal with the issues on merit in the instant matter. 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 trade which were allegedly non-genuine trades and the same had resulted in generation of artificial volume in stock option contracts at BSE. With regard to the contact *viz*, IBRL15AUG75.00CEW1, Noticee contended that the scrip name, scrip code and strike price is wrong as 15th August is a national holiday. In this regard, it is noted that on August 06, 2015, on BSE option segment Noticee first sold

36,000 units of call option of the contact IBRL15AUG75.00CEW1 (i.e a call option on the scrip of Indiabulls Real Estate Ltd. with a strike price of ₹ 75.00 in August 2015) and then bought 36,000 units in the same contract on the same day. Hence, 15AUG in the contract name reflects August 2015 and not 15th August as presumed by the Noticee. Therefore, the contention of the Noticee is baseless.

22. The Noticee contended that the counterparty place an order in second instance at 10:27:54.662200 hrs having the higher quantity of 2,28,000 units at higher price whereas my client earlier place order (10:24:00 & 10:24:15) having a quantity of 4000 units and 32000 units respectively and hence counterparty trade volume is higher than Noticee's volume and the details are not provided/ escaped in SCN. In this regard, it is noted that the allegation against the Noticee is that, he had executed reversal trade which were allegedly non-genuine trades and the same had resulted in generation of artificial volume. 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. Artificial volume is considered to be the volume (no. of units) reversed in both legs of said reversal trades while keeping out the volume, if any, which is not reversed. Therefore, the contentions of the Noticee are devoid of any merit.

23. The Noticee stated that he has not violated the PFUTP Regulations as alleged in SCN and that the trades do not constitute fraud. I note from the trade log that the Noticee had traded in one contract in the stock options segment of BSE during the investigation period namely IBRL15AUG75.00CEW1. It is observed that the Noticee had executed 3 non genuine trades in the aforesaid contract i.e. 1 buy trades and 2 sell trade. I further note that the above mentioned trades of the Noticee had resulted in the creation of alleged

artificial volume of 72,000 units in the aforesaid contract. The summary of the non-genuine trades of the Noticee are 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	IBRL15AUG75.00CEW1	0.05	36,000	2.77	36,000	100%	12.50%	100%	4.35%

24. It is noted that the Noticee had executed non-genuine trades in the aforesaid contract, wherein the percentage of non-genuine trades of the Noticee in stock option contract to total trades in the said contract was 12.50%. Further, artificial volume generated by the Noticee in the said contract to Noticee's total volume amounted to the entire 100% of total volume generated in the contracts. It is also noted that artificial volume generated by the Noticee contributed 4.35% of the total volume from the market in the said contract. Non-genuine trades executed by the Noticee in the aforesaid contract had significant difference in buy rate and sell rate considering that the trades were reversed on the same day i.e. August 06, 2015 within a short span of time.

25. The Noticee contended that he does not have any link/ nexus/ relationship/ connection / dealing / collusion/ arrangement or agreement with the counter party. In this regard, I note from the trade log that the trades executed by the Noticee in the aforesaid contract were squared up within a short span of time with the same counterparty. To illustrate, the Noticee on August 06, 2015 at 10:27:54 hrs (Order time of the Noticee for the two sell trades: 10:24:00 hrs and 10:24:15 and Counterparty order time: 10:27:54 hrs) had entered into two sell trades with the counterparty *viz*. Saffire Exports & Agency Pvt. Ltd. for 4,000 and 32,000 units at the rate of Rs. 0.90/- and Rs. 3/- respectively per unit in the aforesaid contract. Thereafter, immediately, on the same day within a gap of few hours, the Noticee at 11:41:38 hrs (Order time of the Noticee: 11:41:38 hrs and Counterparty order time: 11:41:26 hrs) entered into one buy

trade with same counterparty for 36,000 units at the rate of ₹ 0.05/- per unit in the same contract. It is noted that while dealing in the said contract during the investigation period, the Noticee executed reversal trades with same counterparty i.e. Saffire Exports & Agency Pvt. Ltd. on the same day within a gap of few hours and with a significant price difference in buy and sell rates. Thus, the Noticee, through his dealing in the contract *viz.* "IBRL15AUG75.00CEW1", executed non genuine trades which was 12.5% of the total trades on the market in the said contract and thereby, generated artificial volume of 72,000 units which was 4.35% of the volume traded in the said contract during the investigation period. I note that the charges against the Noticee for the aforesaid trades and the provisions of PFUTP Regulations, 2003 alleged to have been violated as stated above have been cogently spelt out in the SCN dated August 13, 2021 which has been served on the Noticee. Therefore, the contentions of the Noticee are devoid of any merit.

26. Further Noticee contended that the trades were executed on the floor of the stock exchange and hence not illiquid. Also, the Noticee contended that while dealings on this trade totally misunderstood the fact that these all trade fully controlled by the surveillance system of exchange or in charge of BSE. Till such time, these securities are permitted to be listed and traded in the floor of the Exchange, there cannot be a complain of any manipulation till such time specific instances are highlighted that would substantiate fraud, price rigging or veiled trading in securities. Noticee also denied any connection or relation with the counterparty. In this regard, I note that in the screen based trading, which is virtually anonymous, it may not be ordinarily possible for anyone to enter into such reversal trades. However, 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 significant price variations as observed in the instant matter, the same couldn't have been possible without prior meeting of minds. In this regard, I find it relevant to refer to the decision of the Hon'ble Supreme Court in the matter of SEBI vs. Rakhi Trading Private Ltd., in Civil appeals no., 1969 of 2011 decided on February 8, 2018 wherein

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

27. 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 of few hours, the Noticee reversed the position with the same counterparty with a significant price difference. I note from the trade log of the Noticee that the Noticee reversed the non-genuine trades within few hours. 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 counterparty within a few hours indicates a prior meeting of minds with a view to execute the reversal trades at a predetermined price. Since these trades were done in illiquid option contracts, there was 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 counterparty in the stock options segment of BSE and the same were non-genuine trades.

28. It is very pertinent to state that the said trades were matched with one entity only. I note that it is not mere coincidence that Noticee could match his trades with the same counterparty with whom he had undertaken first leg of the

respective trade. 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..."*

29. 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."*

30. I note that though direct evidence is not forthcoming in the present matter regarding meeting of minds or collusion of the Noticee with other entities, 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 Hon'ble SAT order dated

July 14, 2006, in the case of Ketan Parekh vs. SEBI (Appeal no. 2/2004), wherein the Hon'ble SAT has held that - *"The nature of transactions executed, the frequency with which such transactions are undertaken, the value of the transactions, the conditions then prevailing in the market are some of the factors which go to show the intention of the parties. This list of factors, in the very nature of things, cannot be exhaustive. Any one factor may or may not be decisive and it is from the cumulative effect of these that an inference will have to be drawn."*

31. I place my reliance on the judgment of the Hon'ble Supreme Court in the matter of SEBI vs Rakhi Trading Private Limited (Civil Appeal Nos. 1969, 3174-3177 and 3180 of 2011 decided on February 8, 2018), in which the Hon'ble Supreme Court held that - *"Considering the reversal transactions, quantity, price and time and sale, parties being persistent in number of such trade transactions with huge price variations, it will be too naive to hold that the transactions are through screen-based trading and hence anonymous. Such conclusion would be over-looking the prior meeting of minds involving synchronization of buy and sell order and not negotiated deals as per the board's circular. The impugned transactions are manipulative/deceptive device to create a desired loss and/or profit. Such synchronized trading is violative of transparent norms of trading in securities….."*

32. 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 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 that *"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."* Thus, the submission of the Noticee cannot be accepted.

33. Further, I would like to rely on the judgement of Hon'ble Supreme Court passed in the case of SEBI vs. Rakhi Trading Private Ltd. (supra), wherein the Apex Court held that "*the entities were engaged in a fraudulent and unfair trade practice while dealing in Options and hence were liable for violation of SEBI (PFUTP) Regulations".* The Hon'ble Apex Court has also held that in the absence of direct proof of meeting of minds, the test should be one of preponderance of probability and also stated that the conclusion has to be gathered from various circumstances like volume of trade, period of persistence of trading, particulars of buy and sell orders, proximity of time between the two and such other relevant factors.

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

35. In this regard, I would like to rely on the judgement of Hon'ble Supreme Court in the matter of SEBI vs. Rakhi Trading Private Ltd.(supra) decided on February 8, 2018, where Apex Court held that, *"The stock market is not a platform for any fraudulent or unfair trade practice. The field is open to all the investors. By synchronization and rapid reverse trade, as has been carried out by the traders in the instant case, the price discovery system itself is affected. Except the parties who have pre-fixed the price nobody is in the position to participate in the trade. It also has an adverse impact on the fairness, integrity and transparency of the stock market."*

36. I note that dealing in Illiquid stock options not only displays an unreal picture of market activity to other investors but also defeats the basic premise of screen based electronic trading system and price discovery mechanism by execution of pre-decided reversal trades at irrational / arbitrary prices. Such activity deliberately or otherwise damages market integrity apart from presenting wrong picture of liquidity to gullible investors which could affect their trading / investment decisions. Options as financial instruments, ordinarily, provide hedging avenues to investors. The trading of the Noticee in the instant matter was abnormal and was clearly designed to create artificial volumes in the illiquid stock option contracts, fail to justify any of the normal strategies of hedging/ arbitrage. In my view, the abuse of such financial instruments, which are made available to the investors for the purpose of protection of their investment portfolios from the risks of adverse price movement, needs to be dealt with strictly. I also note that while the stock exchange provides a platform for carrying out the trades, the obligation to ensure genuineness of the trades executed on the exchange platform primarily lies on the Noticee.

37. In view of the above, 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 the

contract i.e. IBRL15AUG75.00CEW1. In view of the above, I find that the allegation of violation of provisions of Regulation 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) 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.."*

38. In view of the aforesaid judgment of the Hon'ble Supreme Court, I am convinced that, in the instant matter, the Noticee is liable for monetary penalty under the provisions of Section 15HA of the SEBI Act, 1992 which reads as follows:

    15HA. Penalty for fraudulent and unfair trade practices.

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

39. While determining the quantum of penalty under Section 15HA of the SEBI Act, 1992, the following factors stipulated in Section 15J of the SEBI Act, 1992, have to be given due regard:

    (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.

40. I observe that the material / documents made available on record does not quantify any disproportionate gains or unfair advantage, if any, made by the Noticee and the losses, if any, suffered by the investors due to such violations on part of the said Noticee. However, Noticee has entered into three non-genuine trades in one stock option contract during the investigation period. Therefore, I note that the Noticee indulged in execution of reversal trades in stock options on BSE during the Investigation Period which were non-genuine and created false and misleading appearance of trading in terms of artificial volumes in stock options, leading to violation of provisions of Regulation 3(a), (b), (c), (d), 4(1) and 4(2)(a) of PFTUP Regulations, 2003.

ORDER

41. After taking into consideration 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 powers conferred upon me under Section 15-I(2) of the SEBI Act, 1992 read with Rule 5 of the Adjudication Rules, 1995, I hereby impose a penalty of ₹5,00,000/- (Rupees Five Lakh only) upon the Noticee i.e. Shri Ankit Kumar Bihani (PAN: AIHPB2959G), under Section 15HA of the SEBI Act, 1992 for violation of provisions of Regulation 3(a), (b), (c), (d), 4(1) and 4(2)(a) of the PFUTP Regulations, 2003.

42. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order through Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, or the 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. In case of any difficulties in payment of penalties, the Noticee may contact the support at portalhelp@sebi.gov.in.

43. The Noticee shall forward the aforesaid Demand Draft / payment confirmation details to the Division Chief, Enforcement Department-I (EFD), Division of Regulatory Action -I [EFD1-DRA-1] SEBI Bhavan, Plot No.C4-A,' G' Block,

Bandra Kurla Complex (BKC), Bandra (East), Mumbai –400 051 and also send an email to tad@sebi.gov.in with the following details:

1	Case Name	
2	Name of the 'Payer / Noticee' along with PAN of Noticee	
3	Date of Payment	
4	Amount Paid	
5	Transaction No.	
6	Bank Name and Account No.	
7	Purpose of payment	

44. In the event of failure to pay the aforesaid amount of penalty within 45 days of receipt of this Order, recovery proceedings may be initiated under Section 28A of the SEBI Act, 1992 for realization of the said penalty amount along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties.

45. In terms of the provision of Rule 6 of the Adjudication Rules, 1995, a copy of this order is being sent to the Noticee and also to the Securities and Exchange Board of India.

Place: Mumbai **RAJESH GUJJAR**

Date: February 11, 2022 **ADJUDICATING OFFICER**