BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
ADJUDICATION ORDER NO. Order/AK/AJ/2023-24/29381

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:

PRAGMA SUPPLIERS PRIVATE LIMITED
PAN: AADCP9346P

in the matter of dealings in Illiquid Stock Options at BSE

A. 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 "**Investigation Period**").

2. Pursuant to a preliminary examination conducted in the Illiquid Stock Options matter, an Interim order was passed by SEBI on August 20, 2015 against 59 entities, which were confirmed, vide Orders dated July 30, 2016 and August 22, 2016. Meanwhile, SEBI initiated a detailed investigation relating to trading in stock options segment of BSE, which was completed in the year 2018. The investigation findings revealed that of all trades executed in the stock options segment of BSE during the Investigation Period, 81.38% of the trades, that is 2,91,643 trades, were trades which involved a reversal of buy and sell positions by the clients and counterparties in a contract. The investigation revealed that 14,720 entities were involved in executing non-genuine trades in BSE's stock options segment during the investigation period. The proceedings initiated

against the first set of 59 entities, vide the aforementioned Interim Order were disposed of vide final Order dated April 05, 2018, without any further directions, observing that the Adjudicating Officer shall continue the proceedings in accordance with the SEBI Act, 1992 (hereinafter referred to as the "**SEBI Act**") and SEBI (Procedure for Holding and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the "**Adjudication Rules**") and pass appropriate order on merits. It was also recorded therein that SEBI has decided to take appropriate action against all 14,720 entities in phases.

3. In the meantime, the Hon'ble Securities Appellate Tribunal (SAT), vide its Order dated October 14, 2019, in the case of *R. S. Ispat Ltd Vs SEBI*, *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"*.

4. Accordingly, a Settlement Scheme was framed under the SEBI (Settlement Proceedings) Regulations, 2018, which provided a 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. Finally, adjudication proceedings were initiated against those entities who did not avail the opportunity of settlement. It was observed that **Pragma Suppliers Pvt. Ltd.** (hereinafter referred to as the "**Noticee**") was one of the various entities which indulged in execution of reversal trades in stock options segment of BSE during the Investigation Period. 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 Market) Regulations, 2003 (hereinafter referred to as "**PFUTP Regulations**").

5. It was observed that 13,186 entities did not avail the opportunity of settlement and therefore Adjudication proceedings were initiated against the entities in a phased manner. In order, to duly expedite the Adjudication proceedings against the entities, SEBI had appointed additional Adjudicating officers to adjudicate against the said entities. However, owing to the huge number of alleged entities, the adjudication proceedings were being conducted in a phased manner that

required adequate time to complete the proceedings against all entities. The Adjudicating officers had passed Orders with respect to certain Noticees in a phased manner.

6. It was observed, that some of the entities against whom Orders were passed in the adjudication proceedings appealed before the Hon'ble SAT. During the course of the hearing in a group of appeals, the Hon'ble SAT, vide its Order dated May 13, 2022, inter alia held that "*SEBI should reconsider and seriously give a thought in coming out with a fresh Scheme under Clause 26 of the Settlement Regulations, 2018. Such scheme can be a onetime scheme for this class of person. The terms of settlement should be attractive so that it could attract the noticees/entities to come forward and settle the matter which will ameliorate the harassment of penalty proceedings to the noticees and at the same time would help to clear the backlog of these pending matters before various AOs*".

7. Accordingly, SEBI introduced a Settlement Scheme i.e. SEBI Settlement Scheme, 2022 (hereinafter referred to as "**Scheme 2022**") in terms of Regulation 26 of the SEBI (Settlement Proceedings) Regulations, 2018 (hereinafter referred to as "Settlement Regulations"). The Scheme provided a onetime opportunity to the entities against whom proceedings had been initiated and appeals against the said proceedings are pending before any forum or authority.

8. I note that SEBI framed the Scheme in accordance with the provisions of the Settlement Regulations and issued a Public Notice dated August 19, 2022 about the Scheme and the modalities for availing the benefit of the Scheme. The Notice was also made available on the website of the BSE. The Scheme was initially kept open for a period of three months commencing from August 22, 2022 to November 21, 2022 (both days inclusive). Considering the interest of a large number of entities to avail the Scheme, SEBI extended the period of the Scheme till January 21, 2023 vide public notice dated November 22, 2022.8. A total of 10,980 Noticees availed the benefit of the Scheme and remitted the specified settlement amount respectively. Accordingly, a settlement order was passed on March 08, 2023, settling the matter with respect to 10,980 Noticees.

9. I note that Noticee did not avail settlement under the Settlement Scheme in 2020 or 2022 and therefore Adjudication proceedings have been revived against the Noticee.

B. APPOINTMENT OF ADJUDICATING OFFICER

10. SEBI initiated adjudication proceedings and appointed Mr. Nirdosh Rajan Minz as the Adjudicating Officer (AO) under section 15-I of the SEBI Act read with Rule 3 of the Adjudication Rules. Subsequently, the undersigned was been appointed as the Adjudicating Officer under section 15I read with 15HA of the SEBI Act, 1992 (hereinafter referred to as "**SEBI Act**") and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as "**Adjudication Rules**"), vide communication dated March 17, 2023, to conduct adjudication proceedings in the manner specified under Rule 4 of Adjudication Rules read with section 15I of SEBI Act, and if satisfied that penalty is liable, impose such penalty as deemed fit in terms of Rule 5 of Adjudication Rules and Section 15HA of SEBI Act.

C. SHOW CAUSE NOTICE, REPLY AND HEARING

11. Show Cause Notice dated October 25, 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 the Noticee and why penalty should not be imposed upon the Noticee as per Section 15HA of the SEBI Act for the violations alleged to have been committed by the Noticee. The same returned undelivered.

12. Subsequently, letter dated August 17, 2022 enclosing SCN dated October 25, 2021, was sent to the Noticee. The same returned undelivered.

13. Vide letter dated September 22, 2022, SEBI, Lucknow Local Office (LLO) was requested to serve the said SCN to the Noticee by way of affixture/hand delivery as required under rule 7 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudication Officer) Rules, 1995. SEBI-LLO forwarded the same

to SEBI, Northern Regional Office (NRO) to serve the said notice to the Noticee. Vide email dated January 02, 2023, SEBI-NRO intimated that the affixture was not done due to incomplete address.

14. Subsequently, vide hearing notice (HN) dated April 12, 2023, the Noticee was granted an opportunity of personal hearing on May 09, 2023. The digitally signed hearing notice was sent by email to the Noticee, which constitutes valid service under the Rule 7 of the Adjudication Rules. The Hearing Notice was delivered to the email id of the Noticee, as per the proof available on record.

15. Vide email dated May 03, 2023, SCN dated October 25, 2021 was forwarded to the Noticee. Further, contact number for communication regarding Settlement Scheme which could come in the future, in the matter was sought from the Noticee.

16. Pursuant to the request of the Noticee for another opportunity of personal hearing, the same was granted on June 08, 2023 vide email dated June 01, 2023.

17. Noticee submitted email dated June 08, 2023 attaching letter dated May 09, 2023, in reply to the SCN. The submissions are summarized as under:

    a) Noticee raised preliminary objections to the proceedings citing delay in initiating proceedings and stated that:

    i. *In this regard, attention of the Hon'ble Whole Time Member is drawn to the fact that the requirement to preserve documents under various legislations is not more than Five years for Brokers. Hence, after February 2020 no broker is obliged to give any documents to SEBI or investor.*

    ii. *SEBI has issued SCN in the present case without any direct evidence against the Noticee without allowing the cross-examination of trading members and without having any complaints of fraud in 2014 and 2015.*

iii. SEBI's actions beg the question as to how SEBI can issue SCN to investors after 7 years where as brokers are not required to maintain the records after 5 years and the same is grossly unjustified.

iv. The Noticee submits that as per section 11(1) of the SEBI Act, 1992 which lays down the Powers of the Board, it is submitted that the present SCN violates the abovementioned provision of law as the Board has failed to protect the interest of the investors and has not charged the Broker nor the Stock Exchange for their alleged dealings in securities.

v. It was BSE who introduced option trading with a 5-day settlement period for the first time.

vi. BSE had invited the trading members to engage their clients to trade for the 5 days settlement, option contract. Moreover, BSE was providing the trading members with incentives for marketing and engaging its clients for trading in the new F&O product that had a settlement period of 5 days. These incentives were revised w.e.f. October 2015.

vii. These promotions were within the public domain and no objection was taken by SEBI or even BSE.

viii. The constituents were lured to invest in the scheme through SEBI and BSE registered intermediaries who at the relevant time convinced the clients to participate in such transactions and executed trades in the name and code of the constituents, like the Noticee.

ix. The Noticee acted in good faith based on the representations of the broker. Pertinently, no objection till date has been taken by BSE for such trades.

x. The same model/practice was followed by all the trading members at the relevant time and the Noticee was one of such constituents for whom the trading member executed such transactions.

xi. The alleged violation are not an instance, but a market vide phenomenon. However, BSE and the trading members have not been called upon to show cause qua their involvement in the episode.

xii. The trading member did not collect any margin from the Noticee, and no order placement proof of any nature has been referred to and relied upon by SEBI in the SCN while alleging the charges against the Noticee.

xiii. The profile of the Noticee has not been taken into consideration. The Noticee does not understand the nitty gritties of the stock market let alone the intricacies involved in F&O trading.

xiv. BSE and the trading members who executed such transactions in the account of their clients have not been made a party to the transactions.

xv. BSE is the first level regulator and obligations of the transactions having been fulfilled at the relevant time it is not proper to question the validity of the transactions after a period of 6 years.

xvi. Further, the trading member is necessary party to the proceedings as the Noticee was registered as a constituent with [Best Bull Trading Pvt. Ltd. Client Code [KO1059] and its orders were executed by them from their terminals. The Noticee was not aware about operating features of trading or prevailing liquidity in stock options or spread between buying selling rates or volume. The trading member informed the Noticee that the orders would be executed within circuit filters limits then imposed by BSE. Hence, the Noticee was under bonafide belief that the trading member would not execute order beyond the confines of trite law.

xvii. Moreover, BSE was providing the trading members with incentives for marketing and engaging its clients for trading in the new F&O product that had a settlement period of 5 days. These incentives were revised w.e.f. September 2015. Also margin for such trade was never collected.

xviii. Creation of 'artificial' or 'reversal' trade is of no consequence in option segment of exchange.

xix. Noticee demands cross examination with Broker, BSE, Counter Party Broker, Counter Party i.e. Broker, Counter Party Broker and Counter Parties viz. Best Bull Stock Trading Pvt.. Ltd. Destiny Securities Ltd. & Rahul Jhajharia. No adverse inference could be taken against the Noticee on the basis of untested statement without allowing opportunity of cross-examination.

xx. Price manipulation is not a charge in the SCN.

xxi. Element of fraud missing.

xxii. Trades are genuine and have been bought and sold in the normal course of trading since the counterparty is not related to in any manner whatsoever.

xxiii. No evidentiary basis for alleging fraud.

xxiv. The present show cause notice is violative of Article 20(1) of the Constitution of India as the present show cause notice is trying to penalize the Noticcee for violation of a law which was not in force at the time of alleged transaction.

xxv. Submits that it did not act in concert or in collusion with anyone and nor were part of any group or connected with anyone for the purpose of influencing price or for any manipulative activity as alleged or otherwise. It is an admitted position that there is no connection whatsoever between it and counter parties to the impugned trades. The details of counterparties to trades provided by the Noticee and it is asserted that is no 'connection' or relation' with any of counterparties to the trades. Trading in stock option segment was independent of any other entities dealing in the same and based on limited understanding of capital market.

xxvi. The Noticee states that they have no knowledge about the nuances involved in F&O trading. The trades in the Noticee's account originated from that of the trading member. The Noticee had faith in his trading member who was marketing product approved by BSE (a recognized stock exchange). There was no reason why the Noticee would smell a fraud.

xxvii. Vague Show Cause Notice

xxviii. BSE as first level regulator responsible for fraud in illiquid stock options.

xxix. Intermediaries responsible for Fraud of Illiquid Stock Options on BSE.

xxx. Noticee cannot be penalized for the fraud of illiquid stock options on BSE.

xxxi. The buy rate and sell rate of the Noticee were within permissible price range.

xxxii. Intra-day trading is permissible. Not objection or query about our trading or for anything was received at the relevant time. It was then weekly settlement. I met our settlement obligations.

xxxiii. Matching of orders was the function of trading system installed by the Exchange and was having supervision of surveillance department of the Exchange. Had there been any wrongdoing or foul play or any unusual feature our trading, BSE would be alerted us at that time only. BSE has not sent any query about our trading till date – even after several orders of SEBI.

xxxiv. The Noticee denies that our trades generated artificial volume or that they were non-genuine. BSE had accepted the trades, settled them in terms of money, did not consider them non-genuien and di not annual them (even after SEBI's orders) BSE will not allow non-genuine trades to *remain on its books as official records. Hence they were accepted, settled and obligations discharged.*

xxxv. While on the subject, out of 18 months investigation period, our few trades of only 2 day have been found objectionable. Had there been any intention to create artificial volume, out objectionable trading would have taken place on many days, substantial, uninterrupted, running and throughout and in several different options.

xxxvi. Broker of Noticee traded in Stock Options on anonymous electronic trading platform of stock exchange, which is approved by SEBI. Therefore, the allegation that trades matched with same entity by design is illogical, arbitrary and goes against the principles on which electronic trading was started.

xxxvii. Unlike the cash segment, there is no physical delivery of shares in futures & options segment. Therefore, the impunged trades cannot be alleged to have created misleading appearance of trading in stock options.

xxxviii. The trades have all trails of being genuine, viz. they were executed on anonymous platform, without knowledge of counterparty, at price ranges permitted by the exchange and SEBI and also, the obligations arising out of it were settled through clearing mechanism of the exchange.

xxxix. No alert / warning etc. was issued by BSE / SEBI as regards impugned trades.

xl. There is no evidence to allege that there was market manipulation.

xli. The alleged violations have not caused any loss to any investor, and have not affected the investors or securities market in any manner.

xlii. There have been no investor complaints as regards the matter. Further, due to the alleged violations, Noitcee has not made any unfair gain.

xliii. The allegations made in the SCN are bald and devoid of any material details as Noticee has not been provided with vital documents inter alia including copy of investigation report, date on which findings of investigation were put up for knowledge of the Whole Time member (WTM), copy of material placed before WTM to decide that there were sufficient grounds to enquire into the alleged violations etc.

xliv. There is no material on record to uphold the definition of artificial.

xlv. The SCN alleges that the trades with counterparty, which were reversal trades, essentially involve synchronizaiton of trades. Synchronization is not illegal ipso facto under SEBI Act and SEBI Regulations.

xlvi. Broker of Noticee had traded in the option contract of a well known company, so that there was no reason to doubt credibility of the platform provided by Exchange.

xlvii. Trades of broker of Noticee constituted around 0.001% of the total alleged artificial trades during the IP, which could not create misleading appearance or distort impression in minds of investors.

18. The authorized representative of the Noticee appeared before me on the scheduled date and time through WebEx online conference and made submissions relying upon the responses sent vide email dated June 08, 2023.

19. Delay in proceedings, as contended by Noticee has squarely been addressed in paragraph nos. 2 to 8 above.

<u>D.</u> CONSIDERATION OF ISSUES

20. I have taken into consideration the facts of the case, replies of the Noticee and the material on record and I now proceed to consider the issues that arise in this case.

21. The core issue that arises for consideration in the instant matter is whether the trading in illiquid stock options done by the Noticee during the Investigation Period was in violation of Regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of the PFUTP Regulations? If yes, whether the Noticee is liable for a levy of monetary penalty under Section 15HA of the SEBI Act and if yes, how much should be the penalty?

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

PFUTP Regulations

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; ………

SEBI Act

"Penalty for fraudulent and unfair trade practices.

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

23. I note that the Noticee is alleged to have entered into 2 non-genuine trades, on 1 day through 1 contract with 1 counterparties, as given in the table below.

Table No.1 – Details of the Non-genuine trades executed by the Noticee

TRADE_DATE	Client Name	Counterparty Client Name	TRADE_TIME	ORDER_LMTIME	CP_ORDER_LMTIME	TRADE_RATE	TRADED_QTY	Contract
24/03/2015	RAHUL JHAJHARIA	PRAGMA SUPPLIERS PRIVATE LIMITED	13:36:45.002187	13:36:36.114863	13:36:45.002187	13.6	136000	ALLD15MAR46.00CE
24/03/2015	PRAGMA SUPPLIERS PRIVATE LIMITED	RAHUL JHAJHARIA	13:44:28.780375	13:44:28.780375	13:44:27.997075	20.95	136000	ALLD15MAR46.00CE

24. I note from the table above, that the Noticee while trading in the contract of ALLD15MAR46.00CE on March 24, 2015, executed one sell trade of 136000 units at the rate of INR 13.6 per unit at 13:36:45.002187 hrs to the counterparty, viz. RAHUL JHAJHARIA. Thereafter, at 13:44:28.780375 hrs. the Noticee bought 136000 units at the rate of INR 20.95 per unit from the same counterparty. The Noticee sold the units at a lower value and bought the units for a higher value, reversing the trades within a time difference of 7 minutes and 43 seconds. I note that the Noticee's transactions i.e.one sell trades and one buy trade took place on the same day and the order time for the trades were placed by the Noticee and the counterparty in a difference of split seconds.

25. I see that, the exactness of the quantity that got reversed between the counterparty on a single day, the proximity in the time of the reversal of trades and above all the absence of rationale to justify the variation in the sell and buy price, certainly shows that these are non- genuine trades.

26. I note that the quantity of the units bought and sold, with the same counterparty, are the same and there is hardly any difference in the time of placement of order for the reversal trade, which clearly shows that the Noticee did not intend to transfer beneficial ownership of units in the contract and the trade was non-genuine, which created artificial volume in the said contract.

27. I note that in the said contract, the Noticee along with the counterparty contributed to the market volume of the day as given below:

Contract	**%age of volume generated by the Noticee in the contract vs total volume of the Noticee**	**%age of artificial volume generated vs total volume in the contract**
ALLD15MAR46.00CE	100	100

28. In the aforesaid contracts, the Noticee had contributed to the artificial volume of 100% vs total market volume in the said contracts. Thus, I find that the Noticee by executing non-genuine trades, had contributed to the creation of artificial volumes in the said contracts.

29. From the facts brought out in the matter, I am convinced that the trades between the Noticee and the counterparty were a consequence of pre-meditated decision of both the parties and hence are unfair trades as per PFUTP Regulations. It cannot be a matter of coincidence or lack of awareness, or without knowledge of the counterparty. Hence, the trades placed on the stock exchange platform by mutual understanding are non-genuine trades, which are prohibited under PFUTP Regulations.

30. In this context, it is relavant to quote the judgment of the Hon'ble Supreme Court in the matter of **Rakhi Trading (SEBI Vs. Rakhi Trading- CANo.1969/2011, Order dated February 8, 2018)**

"Fairness, integrity and transparency are the hallmarks of the stock market in India". (**Paragraph No. 1** of the part of the judgement authored by His Lordship Mr. Justice Kurian Joseph).

"… *Nobody intentionally trades for loss. An intentional trading for loss per se, is not a genuine dealing in securities. The platform of the stock exchange has been used for a non-genuine trade. Trading is always with the aim to make profits. But if one party consistently make loss and that too in pre-planned and rapid reverse trades, it is not genuine; it is an unfair trade practice."* (**Paragraph No. 35** of the part of the judgement authored by His Lordship Mr. Justice Kurian Joseph).

Their Lordships have considered similar transactions in the same segment, *"The repeated reversals and predetermined arrangement to book profits and losses respectively, made it clear that the parties were not trading in the normal sense and ordinary course. Resultantly, there has clearly been a restriction on the free and fair operation of market forces in the instant case."* (**Paragraph No. 38** authored by His Lordship Mr. Justice Kurian Joseph)

*" ….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." (***Paragraph No. 41** of the part of the judgement authored by His Lordship Mr. Justice Kurian Joseph*).*

"The smooth operation of the securities market and its healthy growth and development depends upon large extent on the quality and integrity of the market. Unfair trade practices affect the integrity and efficiency of the securities market and the confidence of the investors. Prevention of market abuse and preservation of market integrity are the hallmark of securities law ..." (Paragraph **No.38** of the part of the judgment

authored by Her Ladyship Ms. Justice R. Bhanumathi). For this, the Hon'ble Judge also relied on the apex court observations in N. Narayanan Vs. Adjudicating Officer, Securities and Exchange Board of India(2013) 12 SCC 152 wherein it was inter alia observed: "Market abuse" impairs economic growth and erodes investor's confidence.

"Where certain unscrupulous elements are trying to manipulate the market to serve their own interest, it becomes imperative on the part of SEBI to intervene and to curb further mischief and to take necessary action to maintain public confidence in the integrity of the securities market…" (Paragraph **No.42** of the part of the judgment authored by Her Ladyship Ms. Justice R. Bhanumathi).

31. With regard to contention of Noticee that, BSE should have been impleaded as it was instrumental in introducing and incentivizing the five days' stock option product and the constituents were lured to invest in the scheme through SEBI and BSE registered intermediaries who at the relevant time convinced the clients to participate in such transactions and executed trades in the name and code of the constituents, like the noticee, I note that mere introduction of a product, in the nature of liquidity enhancement, to be traded by market participants may not necessarily be an illegal act unless evidence proves it otherwise. In the instant matter of illiquid stock option matter, there have been genuine trades also, albeit a much lower percentage of the whole trade. The Noticee is playing the card of a gullible investor, however, no evidence to support his arguments has been produced before me. For example, the Noticee has not stated nor has proved that this was the first time he was trading derivatives and that too at the insinuation of his trading member. In the absence of evidence to the contrary, I am not inclined to accept his arguments.

32. The Noticee has pleaded that the number of trades in the alleged transactions are only 2 and that too were executed by the broker without the consent of the Noticee. I note that transactions in derivatives are not supposed to be entered into by unsophisticated investors and for this reason only the minimum lot in derivatives, which is substantially higher than the amount required to enter into cash market trading, is available for trade. The higher notional value of the contract, and consequently, the higher margin is there to discourage a small investor to enter

into derivatives contract. The Noticee has neither claimed nor produced any records to indicate that the impugned trades were unauthorized trades and that the Noticee has filed any complaint of unauthorized trading against the stock broker. Hence, the submissions of the Noticee are not tenable as even single trade can be fraudulent/ unfair if the circumstances around it indicate the preponderance of such probabilities.

33. The Noticee has further made its contention that BSE had provided the trading members with incentives for marketing and engaging its clients for trading in new F&O product. Further, this product was approved by SEBI and had no margin obligations as per the Noticee. This contention of the Noticee, however, is not acceptable as liquidity enhancements in stocks, derivatives, etc. is a common phenomenon in market and are sometimes required to create awareness of products. However, this does not give the Noticee a right to indulge in manipulative practices as alleged in the SCN. Collection of margin in the market is for the purpose of risk management and ensuring market integrity, however, non-collection of the same by a trading member does not make a particular trade void. Hence, I don't find merit in the arguments of the Noticee that it was okay to trade in the manner in which it did.

34. I note that all the documents which have been relied upon in the SCN were provided to the Noticee along with the SCN, the rest of the documents mentioned by the Noticee, for example voice records, etc. were not relevant for the purpose of SCN as no reliance was placed on documents other than those mentioned in the SCN. The evidence collected and relevant for the purpose of this matter is the trading pattern of the Noticee and not the information contained in the KYC. Relevant extract of the Trade log of has been provided to the Noticee by way of Annexure 'B'.

35. The Noticee further contends that no action has been taken against BSE and the trading members involved in the manipulations/fraud of illiquid stock option contract is also not correct. This is in the nature of grievance/suggestions and the Noticee may take this up with SEBI. The instant proceeding is with respect to the alleged violations by the Noticee.

36. The Noticee's request for cross examination of Broker, counter-party broker, etc. is uncalled for as there is no reliance placed on such documents as is evident in the Show cause notice issued to the Noticee.

37. The Noticee has mentioned that the requirement of preserving documents under various legislations is not more than five years for broker, hence, he is not obliged to give any documents to SEBI after September 2020. In this regard, the legal provisions with regard to the preservation of documents as mentioned in Section 6(2) of the Securities Contracts(Regulation) Act, 1956 is for five years, however, records in this regard have already been collected before the expiry of the five-year period as mentioned in the SCN and copy of the relevant record has already been provided to the Noticee. There is no new record being sought from the Noticee.

38. The Noticee has also represented that Section 11(2) (4A) which provides the Board with the power to levy penalty was introduced in the SEBI Act, 1992 by way of the 2019 amendment hence, the SCN is bad in law if penalties are levied on the basis of the same. In this regard, it is clarified that this is an adjudication proceeding u/s 15 of SEBI Act against the Noticee and the provisions for the same has been in existence long before the act of commission of the Noticee. This fact has also been brought out in the SCN issued to the Noticee.

39. I note that it is not mere coincidence that Noticee could match his trades with the same counterparty with whom it 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), 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 of the 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..."

40. The Hon'ble Supreme Court further observed 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."*

41. I note that direct evidence is not forthcoming in the present matter as regards to meeting of minds or collusion of the Noticee with his counterparty. 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. It is noted that in the screen based trading, the manipulative or fraudulent intent can be inferred from various factors such as conduct of the party, pattern of transactions, etc. Further, in the absence of direct proof of meeting of minds, the conclusion can be derived from various circumstances like volume of trade, period of persistence of trading, particulars of buy and sell orders, proximity of time and such other relevant factors. In this context, I deem it appropriate to refer to the Hon'ble SAT order dated July 14, 2006, in the case of Ketan Parekh vs. SEBI (Appeal no. 2/2004), wherein the Hon'ble SAT has observed 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."*

42. Further, I place my reliance on the judgment of Hon’ble Supreme Court in the matter in respect of SEBI v Rakhi Trading Private Limited (Civil Appeal Nos. 1969, 3174-3177 and 3180 of 2011 decided on February 8, 2018), in which the Hon’ble Supreme Court observed that - *“the price discovery system itself was affected by synchronization and rapid reverse trade, which also had the impact of excluding other investors from participating in the market. The Supreme Court, therefore found that the traders having engaged in a fraudulent and unfair trade practice while dealing in securities, are hence liable to be proceeded against for violation of Regulations 3(a), 4(1) and 4(2)(a) of PFUTP Regulations”. The Apex Court also observed 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….”*

43. Reliance is also placed upon the observations of Hon’ble Supreme Court in the matter of SEBI vs. Rakhi Trading Private Ltd. (supra) where the Hon’ble Apex Court stated at Para 35 and Para 41 of that said Order that - *“The platform of the stock exchange has been used for a non-genuine trade. Trading is always with the aim to make profits. But if one party consistently makes loss and that too in pre-planned and rapid reverse trades, it is not genuine; it is an unfair trade practice” … “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.”*

44. Finally, to answer the question as to whether these trades fall within the ambit of Regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of the PFUTP Regulations, I would like to rely on the following extract of the judgment of the Hon'ble Supreme Court in the matter of **Rakhi Trading:**

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

40. *Regulation 3(a)expressly prohibits buying, selling or otherwise dealing in securities in a fraudulent manner. Under Regulation 4(2) dealing in securities shall be deemed to be fraudulent if the trader indulges in an act which creates a false or misleading appearance of trading in the securities market. It is a deeming provision. Such trading also involves an act amounting to manipulation of the price of the security in the sense that the price has been artificially and apparently prefixed. The price does not at all reflect the value of the underlying asset. It is also a transaction in securities entered into without any intention of performing it and without any intention of effecting a change of ownership of such securities, ownership being understood in the limited sense of the rights of the contract." (per His Lordship Mr.Justice Kurian Joseph's findings in paragraph Nos. 39&40).*

45. The Hon'ble Appellate Tribunal has summarized the circumstances identified by the Apex court in **Rakhi Trading Judgment** in the case of **Global Earth Properties and Developers Pvt. Ltd. Vs Securities and Exchange Board of India (Appeal No.212 of 2020 decided on September 14, 2020).** In para 14 of the said order, the Hon'ble SAT enlisted the following circumstances:

*"**14 d.** An intentional trading for loss per se, is not a genuine dealing in securities. Trading is always with the aim to make profits. But if one party consistently makes loss and that too in preplanned and rapid reverse trades, it is not genuine and the same is an unfair trade practice.*

***e.** In synchronised and reverse trades, there is no genuine change of rights in the contract."*

46. Further in paragraph No. 20 of the said order in **Global Earth (supra),** the Hon'ble Tribunal held as below:

    *"**20.** From the aforesaid cumulative analysis of the reversed transactions with the counter party, quantity, time and significant variation of the price clearly indicates that the trades were non-genuine and had only misleading appearance of trading in the securities market without intending to transfer the beneficial ownership. One finds it to be naïve to presume that the perception of the two counter parties to a trade changed within few seconds/minutes and positions were interchanged and the contracts were changed where one party made profit and the other party ended up making losses every time without prior meeting of mind. 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."*

47. From the above position in law and facts, it is clear that the Noticee's transactions, as mentioned above, were fraudulent/ manipulative, as contemplated in the PFUTP Regulations. Hence, I am inclined to impose monetary penalty on the Noticee.

48. As regards the quantum of penalty to be levied, I take into regard the manipulative nature of the trades placed by the Noticee that has led to creation of artificial volume in the contract.

49. I now proceed to determine the quantum of penalty to be imposed, bearing in mind the parameters laid down in Section 15J of the SEBI Act. I observe that in this matter, the amount of disproportionate gain or unfair advantage is not quantifiable. Therefore, considering all the facts and circumstances in this matter, I am inclined to impose a minimum penalty against the Noticee, as provided under Section 15HA of the SEBI Act.

50. I note that, as per the provisions of the Amendment of Section 15HA vide the Securities Laws (Amendment) Act, 2014, that came into force on September 08, 2014, the penalty shall not be less than five lakh rupees. In the instant case, it is observed that the violation of the PFUTP Regulations, took place after the aforesaid date, therefore, the penalty shall not be less than five lakh rupees.

E. ORDER

51. Therefore, in exercise of powers conferred upon me under Section 15-I(2) of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose a penalty of Rs 5,00,000/- (Rupees Five Lakhs only) upon the Noticee *i.e.,* Pragma Suppliers Private Limited (PAN No:AADCP9346P) under Section 15HA of the SEBI Act for violation of Regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of the PFUTP Regulations.

52. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link:

ENFORCEMENT → ORDERS → ORDERS OF AO → PAY NOW

53. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, SEBI may initiate consequential actions including but not limited to recovery proceedings under Section 28A of the SEBI Act for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

54. In terms of Rule 6 of the Adjudication Rules, copies of this order are sent to the Noticee and also to SEBI.

Date: September 21, 2023 **AMIT KAPOOR**

Place: Mumbai **ADJUDICATING OFFICER**