BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/RK/DS/2021-22/15003]

UNDER SECTION 15-I (2) OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 AND RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995.

In respect of –

1. **Seema Agarwal** (PAN: AFIPA7860H) having address at – FD 356 Salt Lake City Sector III Kolkata West Bengal -700091

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

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") observed large scale reversal of trades in the Stock Options segment of the Bombay Stock Exchange (hereinafter referred to as "**BSE**") leading to the alleged creation of artificial volume in the stock options segment. In this regard, SEBI conducted an investigation into the trading activity in the illiquid Stock Options segment at the BSE for the period April 01, 2014 to September 30, 2015 (hereinafter referred to as "**Investigation Period**").

2. It was observed during the course of investigation that a total of 2,91,643 trades comprising 81.38% of all the trades executed in the Stock Options Segment at the BSE during the investigation period were trades which involved reversal of buy and sell positions by the clients and counterparties in a contract on the same day. It was observed that **Seema Agarwal** (hereinafter referred to as "**Noticee**") was one such client whose reversal trades involved squaring off open positions with a significant difference without any basis for such change in the contract price. The aforesaid reversal trades allegedly resulted into generation of artificial volumes, leading to allegations

that the Noticee had violated the provisions of regulations 3(a),(b),(c),(d) and regulations 4(1),4(2)(a) of the SEBI (Prohibition of Fraudulent and Unfair Trading Practices related to Securities Markets) Regulations, 2003 (hereinafter referred to as “**PFUTP Regulations, 2003**”).

APPOINTMENT OF ADJUDICATING OFFICER

3. SEBI initiated adjudication proceedings and 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**”) read with rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as “**Adjudication Rules**”) vide order dated July 02, 2021 to inquire into and adjudge under section 15HA of the SEBI Act against the Noticee for the alleged violation of the aforesaid provisions of PFUTP Regulations, 2003.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. Show Cause Notice No. SEBI/ERO/RK/DPS/OW/2021/22961/1 dated September 03, 2021 (hereinafter referred to as “**SCN**”), was issued to the Noticee in terms of Rule 4(1) of the Adjudication Rules, to show cause as to why an inquiry should not be held and penalty not be imposed against the Noticee in terms of section 15HA of the SEBI Act, for alleged violation of regulation 3(a),(b),(c),(d) and regulations 4(1), 4(2)(a) of the PFUTP Regulations, 2003.

5. The allegations levelled against the Noticee in the SCN are summarized as below:

    a) The Noticee was one of the entities which indulged in reversal trades which allegedly created false and misleading appearance of trading, generating artificial volumes in the Stock Options Segment of BSE during the Investigation Period.

b) The Noticee is alleged to have engaged in 1 such reversal trades in 1 unique contract, which led to generation of alleged artificial volume of 32000 units.

c) These trades of the Noticee were reversed on the same day with same counterparty at a substantial price difference without any basis for significant change in the contract price which indicates that these trades are artificial and are non-genuine in nature.

d) A summary of dealings of Noticee in 1 Stock Options contracts in which the said Noticee allegedly executed non genuine reversal trades during the Investigation Period, provided in the SCN is reproduced below-

S. No.	Contract Name	Avg. Buy Rate (Rs.)	Total Buy Volume (no. of units)	Avg. Sell Rate (Rs.)	Total Sell Volume (no. of units)	% of Artificial Volume generated by Noticee in the contract to Noticee's Total Volume in the Contract	% of Artificial Volume generated by Noticee in the contract to Total Volume in the Contract
1	SYND15APR130.00PEW3	17.90	16000	30.40	16000	100	18.18

Date	Buyer	Seller	Buy Order Time	Sell Order Time	Trade Time	Trade Rate (Rs.)	Trade Quantity
30/03/2015	Noticee	Rajeev Singh Dugal	13:27:46.560207	13:29:07.193008	13:29:07.193008	17.90	16000
30/03/2015	Rajeev Singh Dugal	Noticee	13:31:32.214474	13:31:32.318048	13:31:32.318048	30.40	16000

6. By indulging in execution of aforesaid non-genuine reversal trades, the Noticee was alleged to have violated regulations 3(a),(b),(c),(d) and regulations 4(1), 4(2)(a) of the PFUTP Regulations, 2003, text of which has been reproduced below:-

"*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"

7. The aforesaid SCN was issued through Speed Post Acknowledgement Due (SPAD) to the Noticee. Noticee vide letter dated September 21, 2021, submitted its reply.

8. The submissions made by the Noticee are reproduced below:-

   (a) It has inter alia been alleged that I, Seema Agarwal entered into execution of non-genuine reversal of trades in Stock Options with same entities on the same day, generated artificial volume in a leading to false and misleading appearance of trading in stock options. It has further been alleged that I have violated Regulation 3(a) to (d), Regulation 4(1); 4(2) (a) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to

as PFUTP Regulations'). I have further been called upon to show cause as to why an inquiry should not be held under Rule 4 of SEBI (Procedure for holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as 'Rules') and penalty be not imposed against noticee under Section 15HA of SEBI Act. It has been stated that SEBI conducted investigation for the period April 01, 2014 to September 30, 2015 (hereinafter referred to as 'investigation period')

(b) The transaction which the noticee had entered into, which is forming subject matter of SCN was entered on the advice of the stockbroker and I was in compliance of all applicable rules and regulations in this regard as an Investor is required to abide by.

(c) Before giving reply to the charges in the Notice, I would also like to state that:

i. I had entered into the said transaction with the BSE Registered stockbroker BEST BULL STOCK TRADING PVT LTD and I as a small time Investor having no means and access to the counter party with whom the Transaction was being entered into, was under a bonafide and honest belief that the said broker operating under applicable regulations of the relevant stock exchanges had been following due process of law including all the rules and regulations as determined and made applicable by SEBI.

ii. The said broker had initiated the said transaction himself without any iota of hint or communication to me that the said transaction was being done in disregard of the SEBI Regulations if any. I had been all along under an honest and bonafide belief that the transaction that I had undertaken was in accordance with the applicable rules and regulations.

iii. I submit that I have not created any false market, indulged in any act detrimental to the investor's interest or which leads to interference with the fair and smooth functioning of the market. Further, I was never involved in excessive speculative business in the market beyond reasonable levels.

iv. My track record in terms of regulatory compliances has been excellent. No action has been taken against me in the past by SEBI, or any other regulatory authority with respect to my dealing in securities market.

(d) Notwithstanding, after having received the SCN, and upon communication in this regard with the experts in the field, I have been told that the pricing of an option depends on various factors which are taken into consideration by the option writer- such as price of underlying scrip, movement of market, number of trades in other options, volatility index prevailing etc., and as an ordinary investor, it is beyond my

capacity and rather impossible for me to explain why I had dealt in a particular options at a particular price at a particular time which was entirely done by my stock broker, though with my approval as an investor in an electronic interface where I had no access to what is being done by the broker.

(e) At the outset and without prejudice to anything stated hereinafter, I contradict all the allegations and findings made against me in the said notice. Nothing contained in the said notice may be deemed to be admitted by me by reason of non-traverse or otherwise, save and except what is expressly admitted herein. I refute all the statements, submissions, contentions, allegations and averments contained in the said notice that are contrary to and/or inconsistent with what is stated herein below. Further, it is categorically denied that I have violated the provision of Regulations 3(a), (b), (c), (d), 4(1), 4(2) (a) PFUTP Regulations as alleged.

(f) With reference to the above Regulation, I would like to bring to your attention that,

i. The mere occurrence of 1 or 2 trades instances (isolated cases) with no malafide intention on my part cannot be considered per se illegal.

ii. I carry out trading only in the scrip which are reasonably liquid and have got a reasonable volume to enable the constituent to square off the position by end of the day and all this was done with bona fide intention.

iii. The scrips in which trading was done were at no time banned and hence there was no bar on trading in the said scrips. Further, in absence of any warning the Noticee cannot get awareness that the shares were illiquid.

iv. It is claimed in the said SCN that the trading was done with the same counterparty, in this regards I shall like to state that the trading was done on BSE's anonymous platform and the Noticee is not aware of the identity of the counterparties. Further, there was no prior meeting of minds with the counterparties.

(g) I would like to draw your kind attention to the series of decision on an identical issue to support my case:

(h) In the Supreme Court Of India Civil Appellate Jurisdiction Civil Appeal No. 2595 of 2013 Securities And Exchange Board Of India Versus Shri Kanaiyalal Baldevbhai Patel
"It has even been expressly stated in the judgment that mens rea is not an indispensable requirement to attract the rigour of regulations 3 and 4, and the correct test is one of preponderance of probabilities."

(i) The judgment of the Hon'ble Supreme Court of India in SEBI Vs 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 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; and such other relevant factors. The illustrations are not exhaustive…"

(j) Allahabad High Court, Rishi Kesh Singh And Ors. Vs The State on 18 October, 1968, AIR 1970 All 51, 1970 CriLJ 132 in Para 61, The phrase "preponderance of probability" appears to have been taken from Charles R. Cooper v. F.W. Slade, (1857-59) 6 HLC 746. The observations made therein made it clear that what "preponderance of probability" means is "more probable and rational view of the case", not necessarily as certain as the pleading should be.

(k) In the case of 1995 AIR 2109, 1995 SCC Supl. (2) 453, Sumati Dayal v CIT, the apex court had applied the principle of Human Probabilities and took note of the scheme of converting black money into white money through the route of lottery winnings and held as follows: "As laid down by this Court, apparent must be considered real until it is shown that there are reasons to believe that the apparent is not the real and that the taxing authorities are entitled to look into the surrounding circumstances to find out the reality and the matter has to be considered by applying the test of human probabilities."

(l) With reference to above case laws as discussed, I would like to bring to your notice that for charging any penalty, preponderance of probabilities should be considered. I am a very small investor and it has been alleged that I generated artificial volume of 32,000 units, which made up 18.18% of total market volume in the said contract during the period, which in itself seems far-fetched. This point should be taken into consideration before imposing any penalties against me.

(m) The trades cannot be classified as non-genuine. A charge of fraud and manipulation cannot be levelled, merely on the basis of possibility of reversal. Some collusion/connection/relation/ has to be shown to substantiate the charge. However, there is nothing on record that the noticee was aware of anything about the voluminous trades being entered into disregarding the due process of law. There is no meeting of minds for undue advantage. Transactions are not manipulative/deceptive device to create a desired loss and/or profit. No

loss has been caused to investors and no wrongful gain has been made by this trading.

(n) *The transaction cannot be termed as "fictitious", "fraudulent", "unfair trade practices", with a view to "generate artificial volumes" as such trades were done bona fide and I have also made payment of income tax on profit earned on the same during the financial year.*

(o) *In view of the same, the allegation of fraudulent and unfair trade practices etc. defies logic, and on this observation only the SCN should be withdrawn and an order may be passed accordingly. I reiterate and deny that I have violated any provision of SEBI Act and/ or regulations framed there under. Alternatively, without prejudice, I say that the penalty imposed is exorbitant, unreasonable, excessive and wholly unjustified.*

(p) *It is submitted that on a careful perusal of the Regulation 3 and 4 it is clear that element of deceit is an underlying factor in the transactions. A genuine transaction by itself cannot attract the regulation though such a transaction had resulted in creation of volume. It is submitted that in Regulation 4, the intention of the party is relevant. If one is to be charged for the fraudulent and unfair trade practices stated in Regulation 4, it is absolutely necessary to prove that the person had acted intentionally. It is submitted that charge of fraudulent and unfair trade practices under Regulation 3 and 4 is a serious charge. In the instant case, as demonstrated herein before there is no evidence at all that my trading was with a view to carry out fraudulent and unfair trade practices.*

(q) *I submit and say that I have always followed all the procedures, as stipulated by any regulatory authority, followed all rules/ regulations/ instructions etc. issued by any government agency, and my intention has always been to comply with rules/ regulations/ filings etc. and not to conceal any information. I further submit that I have got clean track record till date. I further undertake that in future also that I shall comply with all Acts, rules, regulations etc., in letter and in spirit, and would not violate any of the provision of any Act, rules and regulations etc. of any regulatory authority.*

(r) *I did not have any connection with either promoter and/ or directors, no unfair gain or advantage has occurred to me and also no harm or loss has been caused to retail investors, your honor is kindly requested to take a lenient view in the matter the SCN should be withdrawn and an order may be passed accordingly.*

(s) *It is further requested that the present proceedings under Show Cause Notice dated September 3, 2021 may be dropped and I may be discharged from the same and an order may be passed accordingly.*

(t) *I crave leave to add or modify my submissions and to refer to and rely upon case law as and when required. I request you to providing me all documents as sought for hereinabove and thereafter an opportunity may also be granted to appear before your good self through an authorized representative after this covid pandemic situation in under control and make submissions, before any adverse order is passed in the matter.*

9. An opportunity of personal hearing was provided to the Noticee on September 28, 2021. Hearing on September 28, 2021 was attended by the Authorised Representative of the Noticee (AR) – Mr. Santosh Mohta and Mrs. Juhi Goyal. AR of the Noticee reiterated the submissions made in its reply dated September 21, 2021 and submitted that it will be providing additional submissions within two weeks from the date of this hearing. Noticee vide email dated November 20, 2021 submitted its additional submissions.

10. The additional submissions made by the Noticee are reproduced below:-

(a) *We would like to draw your kind attention to few of under mentioned judgements:-*

(b) *In Madras Stock Exchange Ltd. V S. R. Rajkumar, the Madras High Court observed that the profession of stock broking is regulated through the agency of the Stock Exchange. Through after the enactment of the SEBI Act, 1992 and the framing of the SEBI Rules, 1992, every stock broker must be registered with the SEBI and should in addition be a member of a registered stock exchange. The Exchange is to regulate the functioning of member stock brokers and ensures that they possess all the qualifications prescribed and that the conduct of their business does not at any time fall short of the high standards expected, as it is only the maintenance of such standards, that will ensure the retention of the confidence of the public in the activities of the exchange.*

(c) *In ChanderKanta V Rajinder Singh Anand, the Supreme Court observed that the 'due diligence' means reasonable diligence; it means such diligence as a prudent man would exercise in the conduct of his own affairs. The Supreme Court stated:*

(d) *"Therefore, the stock broker's responsibility of due diligence is such that any other reasonable person would apply in his/her own affairs. It is the duty of the stock broker under the Broker's Regulations to constantly monitor the trades executed by the client through internet based trading platforms so as to ensure that the trades are executed in accordance* *with law and do not disturb the market equilibrium".So referring to the above case laws, your honor, I would like to bring to your observation that the Stock Brokers are the highly regulated members of the SEBI and while providing services to their clients they have the responsibility to follow due diligence while serving their duties. But in our case the same is not followed by our broker Best Bull Stock Trading Pvt. Ltd.which should be considered before delivering any adverse view against us.*

(e) *Further to this kindly note that:*

i) There is no allegation that the noticee was involved in any manner with the connivance of the counter party and/or broker to violate the regulations

ii) There is no consistent profit or loss by the noticee and it is an isolated transaction.

iii) The Courts in various judgements itself held that the allegation of unfair trade practice cannot be generalised and has to be decided on case to case basis. The noticee's case cannot be seen in the light of 2,91,744 trades which have been undertaken by various clients, brokers and sub-brokers etc. which have got no relation whatsoever with the noticee and the preponderance of probability cannot be taken against the noticee based on the said number of trades.

iv) *We crave leave to add or modify our submission and to refer to and rely upon case laws as and when required.*

CONSIDERATION OF ISSUES AND FINDINGS

11. I have taken into consideration the facts and circumstances of the case, the material/documents made available on record and the submissions of the Noticee. The issues that arise for consideration in the instant matter are:

Issue No. I Whether reversal trades in illiquid Stock options carried out by the Noticee during the Investigation Period were in violation of regulations 3(a),(b),(c),(d) and regulations 4(1), 4(2)(a) of the PFUTP Regulations, 2003?

Issue No. II If yes, whether Noticee is liable for imposition of monetary penalty under Section 15HA of SEBI Act?

Issue No. III If yes, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5(2) of the Adjudication Rules?

Issue No. I **Whether reversal trades in illiquid Stock options carried out by the Noticee during the Investigation Period were in violation of regulations 3(a),(b),(c),(d), 4(1), 4(2)(a) of the PFUTP Regulations, 2003?**

12. It has been alleged in the SCN that the Noticee had indulged in execution of reversal of trades in Stock Options with same entity on the same day. Such trades are nongenuine in nature and have created false or misleading appearance of trading in terms of artificial volume in stock options and therefore alleged to be manipulative, deceptive in nature.

13. I note that reversal trades have been considered as 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 non-genuine trades as they are not executed in normal course of trading, lacks basic trading rationale, and lead to false or misleading appearance of trading in terms of generation of artificial volume, 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.

14. The allegation that the Noticee carried out reversal trades is directly supported by evidence from the trade log records in Annexures B and C of the SCN. I note that the Noticee had executed 2 non-genuine trades in 1 contract on March 30, 2015. The details of non-genuine trades executed by the Noticee are given below:

S. No.	Contract Name	Avg. Buy Rate (Rs.)	Total Buy Volume (no. of units)	Avg. Sell Rate (Rs.)	Total Sell Volume (no. of units)	% of Artificial Volume generated by Noticee in the contract to Noticee's Total Volume in the Contract	% of Artificial Volume generated by Noticee in the contract to Total Volume in the Contract
1	SYND15APR130.00PEW3	17.90	16000	30.40	16000	100	18.18

15. The transactions executed by Noticee in the alleged non-genuine trades of the contract named "SYND15APR130.00PEW3" are given below:-

Date	Buyer	Seller	Buy Order Time	Sell Order Time	Trade Time	Trade Rate (Rs.)	Trade Quantity
30/03/2015	Noticee	Rajeev Singh Dugal	13:27:46.560207	13:29:07.193008	13:29:07.193008	17.90	16000
30/03/2015	Rajeev Singh Dugal	Noticee	13:31:32.214474	13:31:32.318048	13:31:32.318048	30.40	16000

16. Upon perusing the trade log, I note that the trades executed by the Noticee in the contract were squared up within a short span of time with the same counterparty. To illustrate, on March 30, 2015, at 13:27:46.560207, the Noticee placed a buy limit order for 16000 units at a price of ₹17.90 per unit and the said order was matched with the sell limit order (which was also for 16000 units at a price of ₹17.90 per unit) of counterparty client Rajeev Singh Dugal. I note that the said sell limit order was placed at 13:29:07.193008, i.e. after the entry of the buy limit order by the Noticee. I also note that there was no modification of either price or quantity by either the Noticee or the counterparty and the buy limit order of the Noticee got executed into trade immediately upon the entry of the sell limit order by the counterparty. Subsequently, at 13:31:32.318048 i.e. after 2 minutes of the above trade, the Noticee placed a sell limit order for 16000 units at a price of ₹30.40 per unit and the said order was matched with the same counterparty (i.e. Rajeev Singh Dugal), who placed a buy limit order for the same quantity (i.e. 16000) and price (i.e. ₹30.40). I note that the said buy limit order was placed by the counterparty at 13:31:32.214474, i.e. before the entry of the sell order by the Noticee. I also note that there was no modification of either price or quantity by either the Noticee or the counterparty and the sell limit order of the Noticee got executed into trade immediately upon the entry of the buy limit order by the counterparty.

17. Noticee in its reply submitted that the impugned trades were executed through a registered stock broker. The said transaction was done by the broker without informing her. Noicee stated that mere occurrence of 1 or 2 trades with no

malafide intention cannot be considered as illegal. Noticee further submitted that he did not know who was the counterparty to the trades and that SCN has failed to establish any connection with the counterparties, that there was no meeting of minds and no alert or warning from the broker or the Exchange was received which would prompt him to take any caution or create an alarm to stop trading.Therefore the charge of execution of non-genuine trades cannot be levelled.

18. In this context, I note that 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 (viz. approx. 2 minutes), the Noticee reversed the position with the same counterparty client with a significant price difference. Such a short span of time taken for reversing the trades in an illiquid stock option contract suggests the nongenuineness of these trades executed by the Noticee. The fact that the orders of the Noticee and her counterparty matched with such precision (considering that there was a perfect match of price and quantity as well as a short time difference between placing of the orders by the Noticee and counterparty) 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 very little 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. Therefore, it is observed that the Noticee had indulged in reversal trades with her counterparty in the stock options segment of BSE and the same were non-genuine trades. Hence, the aforesaid contentions of the Noticee are unacceptable.

19. In view of the facts relating to the impugned trades, and reversal with same counterparties as brought out above, the reliance by the Noticee on judgements of *Allahabad High Court, Rishi Kesh Singh And Ors. Vs The State on 18 October, 1968, AIR 1970 All 51, 1970 CriLJ 132; in the case of 1995 AIR 2109, 1995 SCC Supl. (2) 453, Sumati Dayal v CIT; Madras Stock Exchange*

Ltd. V S. R. Rajkumar, the Madras High Court and ChanderKanta V Rajinder Singh Anand, the Supreme Court is not helpful to the Noticee.

20. Noticee also contended that there has been no warning/ advisory communication were raised by any regulatory authority at any time, does not absolve the Noticee from responsibility for carrying out reversal trades which generated artificial volume without change of beneficial ownership.The trading volumes generated by the aforesaid trades of the Noticee were non-genuine and artificial. I note that the law in this regard is well-settled through the decision of the Hon'ble Supreme Court in *Securities and Exchange Board of India v. Rakhi Trading Private Limited*. The Supreme Court observed - "*The non-genuineness of these transactions is evident from the fact that there was no commercial basis to suddenly, within a matter of minutes, reverse a transaction when the value of the underlying had not undergone any significant change*."

21. I note that it is not a mere coincidence that Noticee could match her trades (with the corresponding price and quantity entered by both the Noticee and counterparty being equal) with the same counterparty with whom she had undertaken first leg of the respective trades. It indicates meeting of minds. In this context, I would like to rely on the judgment of the Hon'ble Supreme Court of India in SEBI Vs 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 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..."*

22. The Hon'ble Supreme Court of India 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."*

23. In the instant matter, I note that though direct evidence regarding meeting of minds or collusion of the Noticee with the counterparty is not forthcoming, the trading behavior of the Noticee makes it clear that the aforesaid non-genuine trades could not have been possible without meeting of minds at some level. In this context, I find it pertinent to refer to the Hon'ble SAT Order dated July 14, 2006 in the matter of Ketan Parekh Vs SEBI (Appeal No. 2 of 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."*

24. In the matter of SEBI Vs Rakhi Trading Pvt Ltd (Civil Appeal no, 1969 of 2011, 3174-3177 of 2011 and 3180 of 2011, decided on February 08, 2018), the Hon'ble Supreme Court of India 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....”

25. Additionally, the Hon’ble SAT in its judgment dated September 14, 2020 in the matter of Global Earth Properties and Developers Pvt Ltd Vs SEBI (Appeal No. 212 of 2020) relied upon the aforesaid judgment of the Hon’ble Supreme Court and held that *“…It is not a mere coincidence that the Appellants could match the tradeswith 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.”*

26. The trading behavior of the Noticee which confirms that the trades executed by the Noticee were not normal, the 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 nongenuine, created an appearance of artificial trading volumes in respective contracts. In view of the aforesaid, I find that the allegation of violation of regulations 3(a), 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..”*

Issue No. II **If yes, whether Noticee is liable for imposition of monetary penalty under Section 15HA of SEBI Act?**

&

Issue No. III **If yes, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5(2) of the Adjudication Rules?**

27. As it has been established that the Noticee violated provisions of Regulations 3(a), 4(1) and 4(2) (a) of the PFUTP Regulations, 2003, hence the Noticee is liable for imposition of monetary penalty under Section 15 HA of the SEBI Act.

28. While determining the quantum of penalty under Section 15HA of the SEBI Act, the following factors stipulated in Section 15J of the SEBI Act, 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.

29. As established above, the trades by the Noticee were non genuine in nature and created a misleading appearance of trading. I note that the trading was in illiquid stock option contracts where there was negligible participation by the public. Further, from 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 2 non-genuine trades in 1 stock option contract during the investigation period.

30. Therefore, I note that the Noticee indulged in execution of reversal trades in stock options on BSE in 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 regulation 3(a), 4(1) and 4(2)(a) of PFTUP Regulations, 2003.

ORDER

31. After taking into consideration all the facts and circumstances of the case, in exercise of powers conferred upon me under Section 15I (2) of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose a penalty of ₹5,00,000/- (Rupees Five Lakh only) upon the Noticee, i.e. Seema Agarwal (PAN: AFIPA7860H), under Section 15HA of the SEBI Act, for violation of regulations 3(a), 4(1), 4(2)(a) of the PFUTP Regulations, 2003.

32. The Noticee shall remit / pay the said amount of penalty within 45 (forty five) days of the receipt of this order either by way of Demand Draft ("DD") in favour of "SEBI -Penalties Remittable to Government of India", payable at Mumbai or through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in, i.e.

    ENFORCEMENT → Orders → Orders of AO → PAY NOW

33. The Noticee shall forward the aforesaid DD / 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 detail:

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	

34. 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 for realization of the said penalty amount along with interest thereon, *inter alia,* by attachment and sale of movable and immovable properties.

35. In terms of Rule 6 of the Adjudication Rules, a copy of this order is sent to the Noticee and SEBI.

DATE: FEBRUARY 17, 2022	**RAJKUMAR KALURI**
PLACE: MUMBAI	**ADJUDICATING OFFICER**