BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/SM/S./2023-24/28380]

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

In respect of –

SUNSTAR SECURITIES

[PAN: ABOFS9148Q]

In the matter of Illiquid Stock Options at BSE.

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as, "**SEBI**") had examined trading in illiquid stock options at BSE for possible violation of the provisions of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as, "**SEBI Act**") and various Rules and Regulation made thereunder.

2. An Interim Order No. WTM/RKA/ISD/106/2015 dated August 20, 2015 ('**Interim Order'**) was passed by SEBI in the matter of Illiquid Stock Options restraining 59 persons/entities from buying, selling or dealing in the securities market, either directly or indirectly, in any manner, till further directions. Confirmatory Orders dated July 30, 2016, August 22, 2016 and August 24, 2016 (collectively "**Confirmatory Orders**" in short) in this regard were passed by SEBI confirming the directions issued vide the Interim Order against all 59 persons/entities.

3. The modus operandi that was identified in the Interim order and Confirmatory Orders was that certain entities (clients) had continuously made profits and certain entities (clients) had continuously made losses by reversing their trades or executing reversal

trades in various individual Stock Options contracts on BSE's Stock Options segment. In the Interim order, these reversal trades were also referred to as "non-genuine trades". Reversal trades executed by clients through brokers had been classified as those trades in which an entity (client) reverses its buy or sell positions in a contract with subsequent sell or buy positions with the same counterparty during the same day.

4. Subsequent to passing of aforementioned Interim Order against 59 persons /entities, SEBI passed an Interim Order dated February 17, 2016 against 22 Trading Members ("**Brokers**") in the same matter of Illiquid Stock Options. However, the said order was set aside by Hon'ble Securities Appellate Tribunal ("**SAT**") vide its orders dated February 25, 2016, March 04, 2016, March 09, 2016, March 14, 2016, March 15, 2016, March 18, 2016 and April 05, 2016. Pursuant to appeal filed by SEBI against the aforesaid orders of Hon'ble SAT, the Hon'ble Supreme Court, vide its order dated July 1, 2016, *inter-alia* directed as under:

"*Looking at the facts of the case, we are of the view that the respondents should give reply to the show cause notice, which had been issued to them by the SEBI by virtue of order dated 17th February, 2016, within two weeks from today. Upon getting the reply, within four weeks thereafter the SEBI shall decide the matter finally after giving a hearing to the parties, to whom the show cause notice had been given by the SEBI In view of the above order, we dispose of these appeals. It is clarified that the SEBI shall pass an order after hearing the concerned parties and without being influenced by any observation made by the SAT. Looking at the facts of the case, the order passed by the SAT shall operate till the SEBI decides the case pending before it.*"

5. Subsequently, SEBI passed order no. WTM/RKA/ISD/94/2016 dated August 12, 2016 in the matter, *inter alia,* stating that a final view for appropriate action be taken after completion of ongoing investigation in the matter.

6. Pursuant to investigation for the period April 01, 2014 – September 30, 2015 (hereinafter referred to as "**IP/ Investigation Period**"), it was observed that during the investigation period, a total of 2,91,744 trades comprising 81.40% of all the

trades executed in BSE Stock Options Segment were trades which involved reversal of buy and sell positions by the clients and counterparties in contracts through 192 Brokers. The reversal trades involved squaring off transactions, but with significant difference in the sell value and buy value of the transactions. The aforesaid reversal trades allegedly led to generation of artificial volumes. It was observed that brokers including Sunstar Securities (hereinafter referred to as "**Noticee**") had failed to identify and generate alerts regarding the said reversal trades and thereby it was alleged that the said brokers including the Noticee had contravened Clauses A (1), (2), (3) and (4) of the Code of Conduct for Stock Brokers under Schedule II read with Regulation 9 (f) of the SEBI (Stock Brokers) Regulations, 1992 (hereinafter referred to as "**Broker Regulations**").

7. Subsequently, SEBI initiated adjudication proceedings against Noticee under Section 15HB of SEBI Act, for allegedly not exercising due skill, care and diligence in the conduct of its business while dealing with its clients/ dealing in their proprietary accounts which was in violation of Clauses A (1), (2), (3) and (4) of the Code of Conduct for Stock Brokers under Schedule II read with Regulation 9 (f) of the Broker Regulations.

APPOINTMENT OF ADJUDICATING OFFICER

8. Vide order dated August 13, 2021, SEBI appointed the undersigned as Adjudicating Officer (**AO**) under Section 15-I read with Section 19 of SEBI Act and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as '**Adjudication Rules**') to inquire into and adjudge under Section 15HB of the SEBI Act, the aforesaid alleged violations by Noticee.

SHOW CAUSE NOTICE, REPLY AND HEARING

9. A show-cause notice dated July 14, 2022 (hereinafter referred to as '**SCN**') was issued to Noticee under Rule 4(1) of the Adjudication Rules to show-cause as to why an inquiry should not be initiated against Noticee and penalty, if any, should not

be imposed upon it under the provision of Section 15HB of SEBI Act for the aforesaid violation alleged to have been committed by it.

10. The allegations levelled against Noticee in the SCN are briefly stated as under:

"BSE had issued notice to all the Trading Members (brokers) casting an obligation on the broker to, inter alia, monitor and report reversal of trades in derivatives segment. BSE notice no 20130307-21 (addressed to all the trading members) dated March 07, 2013 pertaining to "e-Boss", inter alia, indicated the list of alerts that will be generated by BSE which includes reversal of trades in derivatives segment. Further, in terms of the aforesaid notice every broker was necessarily required to frame a surveillance policy, inter alia, covering suspicious/manipulative activity identification and reporting process.

…

However, as informed by BSE vide email dated November 06, 2020, no broker had reported any suspicious transactions to exchange being executed on Stock Options segment of BSE during I.P. None of the brokers generated any alerts or reported any reversal of trades executed by their respective clients.

…

Analysis of Source Data

On analysing the source data, the data was segregated based on scenarios so as to identify scenario-wise violations by a Broker. Scenarios in which the source data was segregated is as given below:

Table 2: Summary of scenarios

Scenario	***Particulars***	***Count of Brokers***	***Total number of non-genuine trades (both client and counterparty client)***	***Cumulative non-genuine trades through Brokers after removing duplicates (same broker for both clients)***	***As a % of total transactions***
1	*Same Broker for both clients on both legs of trade reversal*	*19*	*8,528*	*4,264*	*0.74*

Scenario	*Particulars*	*Count of Brokers*	*Total number of non-genuine trades (both client and counterparty client)*	*Cumulative non-genuine trades through Brokers after removing duplicates (same broker for both clients)*	*As a % of total transactions*
2	*Different Broker for both clients on both legs of trade reversal*	*189*	*5,74,900*	*5,74,900*	*99.25*
3	*Trade reversals involving three Brokers*	*8*	*60*	*59*	*0.01*
	Total	***192****	***5,83,488***	***5,79,223***	***100***

**Note – There are 3 unique brokers appearing in Scenario 1 and the remaining 16 brokers of Scenario 1 are overlapping with 189 unique brokers appearing in Scenario 2. Accordingly, total Brokers through whom 2,91,744 non-genuine trades have been executed is 3+189 = 192 brokers. Names of 8 brokers appearing in scenario 3 are overlapping with names appearing in either Scenario 1 or Scenario 2.*

In the instant proceedings, based on the analysis Scenario 2 is applicable, which is detailed below through illustrations:

<u>Scenario 2: Different Broker for both clients on both legs of trade reversal</u>

As an illustration, in the instant scenario, two clients execute reversal trade through two different Brokers. For the sake of clarity, a contract is shortlisted (i.e. "JPPW15JAN10.00CEW1") and trades that were executed in this contract on January 01, 2015 is shown below:

Table 3

SL. NO.	CLIENT PAN	CLIENT NAME	CP PAN	CP CLIENT NAME	ORDER TIME	CP ORDER TIME	TRADE TIME	TRADE RATE	TRADED QTY	MEMBER NAME	CP MEMBER NAME
1	AAGFC5601H	Chanakya Broking Company	BSUPS7339K	Vitrag R Sheth	11:40:42	11:40:42	11:40:42	1.2	90000	Skung Tradelink Ltd	Prudent Broking Services Pvt.Ltd.
2	BSUPS7339K	Vitrag R Sheth	AAGFC5601H	Chanakya Broking Company	11:41:03	11:41:03	11:41:03	2.8	90000	Prudent Broking Services Pvt.Ltd.	Skung Tradelink Ltd
3	AAGFC5601H	Chanakya Broking Company	BSUPS7339K	Vitrag R Sheth	11:42:48	11:42:48	11:42:48	1.3	90000	Skung Tradelink Ltd	Prudent Broking Services Pvt.Ltd.
4	BSUPS7339K	Vitrag R Sheth	AAGFC5601H	Chanakya Broking Company	11:43:15	11:43:14	11:43:15	2.8	90000	Prudent Broking Services Pvt.Ltd.	Skung Tradelink Ltd

SL. NO.	CLIENT PAN	CLIENT NAME	CP PAN	CP CLIENT NAME	ORDER TIME	CP ORDER TIME	TRADE TIME	TRADE RATE	TRADED QTY	MEMBER NAME	CP MEMBER NAME
5	AAGFC5601H	Chanakya Broking Company	BSUPS7339K	Vitrag R Sheth	11:43:54	11:43:54	11:43:54	1.3	15000	Skung Tradelink Ltd	Prudent Broking Services Pvt.Ltd.
6	BSUPS7339K	Vitrag R Sheth	AAGFC5601H	Chanakya a Broking Company	11:44:17	11:44:17	11:44:17	2.8	15000	Prudent Broking Services Pvt.Ltd.	Skung Tradelink Ltd

It is observed from the above table that:

a. *In total 6 trades were executed in the contract "JPPW15JAN10.00CEW1" on January 01, 2015. Trade reversals are executed between clients Chanakya Broking Company and Vitrag R Sheth through Brokers Skung Tradelink Ltd and Prudent Broking Services Pvt. Ltd. respectively.*
b. *Total number of non-genuine trades that were executed in the contract "JPPW15JAN10.00CEW1" were 6 (trades shown at S. No. 1 to 6 at Table above) and total artificial volume generated through such non genuine trades was 3,90,000 units.*
c. *The Broker-wise contribution to number of non-genuine trades and artificial volume in the above contract is as shown below*:

Table 4

S. No.	Entity Name	Artificial volume through non genuine trades	Number of Non genuine trades
1	Skung Tradelink Ltd	3,90,000	6
2	Prudent Broking Services Pvt. Ltd.	3,90,000	6
Total		**7,80,000**	**12**

In the above illustration, trade reversals were executed by Chanakya Broking Company through Broker Skung Tradelink Ltd through same modus operandi on 3 instances on a same day. In a similar manner, Trade reversals were executed by Vitrag R Sheth through Broker Prudent Broking Services Pvt. Ltd. on 3 instances on a same day. Despite the repeated reversals of identical quantity and with more than 100% difference in price in less than a minute, the brokers through whom such transactions went through failed to notice them immediately or even much after the said transactions as they did not have any system in place to identify trade *reversals. Though the broker may not know the counterparty client or counterparty broker in a transaction, however, the fact that certain quantity transacted by his client is getting reversed within the same day in a repeated manner should have alerted the brokers concerned.*

…

It was observed that since Skung Tradelink Ltd and Prudent Broking Services Pvt. Ltd. did not take necessary steps to generate alerts by putting a system in place to detect and curb reversal of trades, both Skung Tradelink Ltd and Prudent Broking Services Pvt. Ltd. failed to exercise care and diligence in the conduct of business while dealing with its respective clients.

Upon analysing all the 5,74,900 non-genuine trades in Scenario 2, it was observed that there were 189 unique brokers through whom clients had executed trade reversals. On further analysis, it was observed that there were 14,333 clients who had executed trade reversals in various combinations among each other.

While repeated transactions of at least 4 (2 cycles of reversal), it was observed that there are 5,316 unique set of PAN numbers who have executed repeated reversals with at least 4 transactions or more through 125 different Brokers. The Noticee was one of the 125 brokers.

S. No.	Name of Broker	S. No.	Name of Broker
115	….	116	SUMPOORNA PORTFOLIO LTD
117	…	118	**SUNSTAR SECURITIES (Noticee)**
119	…	120	SUNSTAR SECURITIES

*Hence, … **it is alleged that the** Noticee, being one of the aforementioned 125 brokers **failed to exercise care and diligence in the conduct of business while dealing with its clients and therefore not in compliance with Schedule II A (2) of the Code of Conduct for Stock Brokers r/w regulation 9 (f) of the SEBI (Stock Brokers) Regulations, 1992**."*

Trades executed by Brokers through Proprietary accounts

While analzing the non-genuine trades it was observed that 74 Brokers had executed trade reversals through their proprietary accounts. The proprietary trades of the brokers, thus, created misleading appearance of trading and resulting artificial volume in illiquid stock option on BSE. It further shows that these brokers had failed to exercise due skill, care and diligence and did not maintain high standards of integrity, promptitude and fairness in conduct of business as a stock broker.

By not taking necessary steps to generate alerts by putting a system in place to detect and curb reversal of their proprietary trades, said 74 Brokers failed to exercise care and diligence in the conduct of business while dealing with their proprietary accounts. Since it is clear that the brokers were aware of the modus operandi of trade reversals and yet continued to exploit the said route and also facilitated their clients to do so, the Noticee being one of the aforementioned 74 Brokers is alleged to be in non-compliance with Schedule II A (1), (2), (3) and (4) of Code of Conduct for Stock Brokers r/w Regulation 9 (f) of the SEBI (Stock Brokers) Regulations, 1992.

11. The SCN with reference no. SEBI/HO/EAD10/SM/S./28883/1/2022 dated July 14, 2022 was served on the Noticee via SPAD and digitally signed email dated July 18, 2022. The proof of service is on record.

12. Thereafter, vide Supplementary SCN ("**SSCN**") dated November 28, 2022, Noticee was informed regarding SEBI's Settlement Scheme for Stock Brokers, 2022 (hereinafter referred to as "**SEBI Settlement Scheme**") in the matter of Illiquid Stock Options. The intimation regarding settlement scheme given to the Noticee SCN is reproduced herein below:

"*SEBI has framed the SEBI Settlement Scheme for Stock Brokers, 2022 in terms of Regulation 26 of the Securities and Exchange Board of India (Settlement Proceedings) Regulations, 2018 whereby SEBI has introduced a onetime opportunity of settlement to all the Stock Brokers through whom trade reversals were executed by various clients/proprietary trades executed by the Stock*

Brokers in the Illiquid Stock Options segment of BSE during the period of April 1, 2014 to September 30, 2015 and against whom enforcement proceedings have been approved or initiated and are pending. The said scheme proposes payment of Settlement Amount as per the details given below:

i. *Settlement amount with respect to Stock Brokers through whom repeated reversals were executed by clients and the Stock Broker did not have a system in place to identify such repeated reversals resulting in violation of Code of Conduct for Stock Brokers of SEBI (Stock Brokers) Regulations, 1992:*

Sl No	***Sum of all the repeated trade reversal transactions executed by clients***	***Settlement Amount (Rs.)***
1	*Upto 1000*	*1,00,000*
2	*1001-10000*	*2,00,000*
3	*10001 and above*	*5,00,000*

ii. *Settlement amount with respect to Stock Brokers who did not have a system in place to identify trade reversals executed through their proprietary accounts resulting in violation of Code of Conduct for Stock Brokers of SEBI (Stock Brokers) Regulations, 1992:*

Sl No	**Settlement Amount (Rs.)**
1	1,00,000

iii. *Additional Settlement amount with respect to Stock Brokers who failed to take any remedial measure despite having received alerts from BSE resulting in violation of SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003*:

Sl No	**Settlement Amount (Rs.)**
1	5,00,000

The Settlement amount applicable to you under the Settlement Scheme for Stock Brokers, 2022 is as under:

Name	PAN number	Director 1	PAN number	Director 2	PAN Number	Alerts generated by BSE (A)	Trades executed through proprietary accounts (B)	Sum of all repeated trade reversal transactions executed by clients through the broker	Execution of repeated reversals by clients (C)	Settlement amount for A	Settlement Amount for B or C or (B and C) (in Rs.)	Total Settlement Amount (in Rs.)
RELYBULLS STOCK BROKING PVT. LTD.	AAPCS3322M					No	No	29	Yes	-	1,00,000	1,00,000

*The period of the Settlement Scheme for Stock Brokers, 2022 will commence on **December 19, 2022** and will close on **January 19, 2023**, so as to provide an opportunity for settlement to the eligible stock brokers. In case you wish to avail the benefit of the said Scheme, you may access the details of the said Scheme, which would be available on the website of SEBI i.e. www.sebi.gov.in, during the said period.*

Necessary application for settlement may be filed within the validity period of the scheme and payment of the settlement amount shall be made online. Additionally, for any clarification in regard to settlement scheme, you may refer to the FAQs at SEBI website or send email to SS2022@sebi.gov.in.

In case you do not wish to avail of the facility under the SEBI Settlement Scheme for Stock Brokers, 2022, the adjudication proceedings initiated vide SCN shall stand automatically revived and the proceedings shall continue, from the stage at which the said proceedings were kept pending. In such case, you are advised to file your reply within 14 days of receipt of this Intimation, if not filed earlier."

13. The aforesaid SSCN dated November 28, 2022 was duly served on the Noticee through SPAD and email dated November 30, 2022. The aforesaid settlement scheme had commenced on December 19, 2022 and ended on January 19, 2023.

However, it is noted that Noticee did not avail the SEBI Settlement Scheme provided by SEBI to stock brokers.

14. Vide email dated August 29, 2022, Noticee requested for additional documents in the matter, like copy of complete investigation report, complete trade log, order log of all trades of Noticee in all scrips/options, copies of file notings etc. Vide email dated April 21, 2023, Noticee was informed that all the relevant and relied upon documents in support of the charge framed against Noticee in the SCN had been provided to the Noticee as Annexures to SCN, in accordance with the ratio laid down in the judgement of Hon'ble Supreme Court in *T. Takano vs SEBI* (Decided on February 18, 2022). It was also communicated to Noticee that certain information like redacted portion of third party information in the investigation report, copies of file notings etc which were sensitive information, were not being provided.

15. Since Noticee had not availed the SEBI Settlement Scheme, in the interest of natural justice, vide email dated May 11, 2023, Noticee was granted an opportunity of personal hearing on May 17, 2023. Vide email dated May 16, 2023, Noticee requested for an adjournment of hearing citing unavailability of their counsel on the date of hearing. Considering Noticee's request, vide hearing notice dated July 06, 2023, a final opportunity of hearing was granted to the Noticee on July 18, 2023. The Authorised Representative of Noticee, Mindspright Legal (AR), appeared for the hearing and reiterated their earlier submissions. I note that vide email dated June 03, 2023, Noticee filed its detailed reply to the SCN and also reiterated their request for additional documents made earlier. However, , the AR of Noticee did not pursue their request for additional documents during the course of personal hearing and therefore, the reply provided to Noticee vide email dated April 21, 2023 in this regard is considered final.

16. I reproduce hereunder the relevant extracts of the reply filed by Noticee:

   1. The *present SCN has been issued after the lapse of more than 6 years after the withdrawing the ex-parte proceedings against the Noticee for the same cause of* *action. An important facet of principles of natural justice is that the action must be commenced within a reasonable period of time and inordinate delay of many years in initiation of proceedings is a violation of principles of natural justice as it leads to difficulties for the alleged delinquent in properly defending the case.*

2. *The Noticee would like to draw your attention to the Order of the Hon'ble Securities Appellate Tribunal in the matter of* ***Libord Finance Ltd. v. SEBI, 2008 86 SCL 72 SAT****, in this regard. The Noticee would also like to draw your attention to the Order of the Hon'ble securities Appellate Tribunal in the matter of* ***HB Stockholdings Limited v. Securities and Exchange Board of India, Appeal No. 114 of 2012*** *and* ***Ashlesh Gunvantbhai Shah v. SEBI, Appeal no. 169 of 2019*** *on January 31, 2020.*
3. *Similar view was taken by this Tribunal in* ***Mr. Rakesh Kathotia & Ors. v. SEBI, Appeal No. 7 of 2016*** *decided by this Tribunal on May 27, 2019.*
4. *The inordinate delay in the present proceedings is causing serious prejudice to the Noticee. Hence, the present proceeding cannot sustain and is liable to be quashed.*
5. *Without prejudice to the foregoing argument, it is submitted that there is nothing in e SCN to indicate that the Noticee had failed to report any suspicious transaction during the Investigation Period.*
6. *The Noticee further submits that it is not in a position to verify the total trades that were carried out during the Investigation Period. The Noticee submits that no material whatsoever has been supplied substantiating the claim.*
7. *It is submitted that in order to allege the reversal of trades in the market, it is imperative to show that parties carrying out the trades were connected to each other or at least shared a common objective of reversal of their trades. With this common objective they carried out trades which were not genuine or which did not intend real trading.*
8. *It is submitted that the apart from the relationship between the Noticee and its clients the Noticee was completely unaware of the identity of the actual counter party trader and broker. It is further submitted that the clients of the Noticee did not have any connection with the counter party or broker and the same has also been acknowledged by your goodself in the Notice. Thus, there cannot be any question of meeting of minds. The trades were executed by the Noticee in normal course*

devoid of any malafide intentions and knowledge of any alleged scheme as carved out in the Notice.

9. *It is submitted that the trades in question were executed by the Noticee on the instructions of its clients devoid of any connection with the respective counter parties. It is submitted that it is the duty of the Noticee to adhere with the Instructions given by its clients and if the Noticee fails to obey the instructions, the same is said to have violated the Code of Conduct. Therefore, the Noticee has followed the instructions of its clients without any knowledge of the counter party broker or the counterparty client.*
10. *The Notice has failed to appreciate that the anonymous systems of the Exchange do not allow a transacting party to know the details of the counter party and therefore the allegation of executing reverse cannot hold good. It is submitted that the Noticee never knew that the trades are allegedly in the nature of reverse trades before receiving the Notice and scrutinising the Annexures thereto.*
11. *The said trades were executed on screen based system where it is not possible for transacting party to know the details of the counter party. The Notice has failed to provide any connection or connivance with the counter party nor provided any evidence, document, record on the same.*
12. *Noticee submits that a bare perusal of the SEBI Act indicates that it is not mandatory for the Adjudicating Officer to impose a penalty every time he come to conclusion that any person /entity has failed to comply with the specified requirement under the Act and/or the Regulations. Even though Section 15HB of the SEBI Act contains the words "shall be liable to a penalty" there is no strict or mandatory obligation on the part of the defaulter to suffer such penalty.*
13. *In this regard, Noticee would like to draw your good self's attention on the Judgement passed by the Hon'ble Supreme Court of India in the matter* ***Superintended and Remembrancer Legal Affairs to Government of West Bengal vs, Abani Maity (1979) 4 SCC 85*** *held that:*
14. *The Notice has also opted for settlement under the Settlement Scheme 2.0 for its proprietary trades.*

15. Before proceeding to decide the case on merits, I first deal with the preliminary objection raised by Noticee. The Noticee has contended that there is an inordinate delay in the instant proceedings and that SCN has been issued after a lapse of

more than 6 years. In support of its contention, Noticee has drawn attention to the orders of Hon'ble SAT in *Libord Finance Ltd. v. SEBI, 2008 86 SCL 72 SAT,* in the matter of *HB Stockholdings Limited v. Securities and Exchange Board of India, Appeal No. 114 of 2012 ,Ashlesh Gunvantbhai Shah v. SEBI, Appeal no. 169 of 2019 etc.* In this regard, I note that pursuant to initial examination, an Interim Order dated August 20, 2015 was passed by SEBI in the matter of Illiquid Stock Options restraining 59 persons/entities from buying, selling or dealing in the securities market, either directly or indirectly, in any manner, till further directions. The directions issued vide the aforementioned Interim order were confirmed vide confirmatory orders dated July 30, 2016, August 22, 2016 and August 24, 2016.

16. Subsequent to passing of aforementioned Interim order against 59 persons/entities, SEBI passed an Interim order dated February 17, 2016 against 22 Trading Members ("Brokers") in the same matter of Illiquid Stock Options. However, the said order was set aside by Hon'ble SAT vide its orders dated February 25, 2016, March 04, 2016, March 09, 2016, March 14, 2016, March 15, 2016, March 18, 2016 and April 05, 2016. Pursuant to appeal, in terms of order of the Hon'ble Supreme Court dated July 01, 2016, SEBI passed order no. WTM/RKA/ISD/94/2016 dated August 12, 2016 in the matter stating, inter alia, that a final view for appropriate action be taken after completion of ongoing investigation in the matter. Thereafter, Investigation was carried out in the instant matter for the period, April 01, 2014 – September 30, 2015, which is same as the examination period referred in the Interim Order dated February 17, 2016 in respect of Brokers in the matter of Illiquid Stock Options. During the course of investigation, trade data of BSE's Stock Options segment during the I.P. for the Illiquid Stock Options was analyzed to identify reversal trades. Pursuant to analysis, it was observed that a total of 2,91,744 non-genuine trades were executed by 14,720 entities through 192 Brokers that resulted in reversal trades during the I.P. Trade data pertaining to these 2,91,744 non-genuine trades formed the source data for the case against brokers. Owing to the humungous number of entities involved and sheer scale of logistics in the adjudication process in the matter, SEBI initiated adjudication proceedings in the matter in phased manner. Further, records show that the onset of the Covid pandemic during 2020-21 also

placed constraints in the resources being allocated in this regard. I note that adjudication proceedings in the instant case was initiated through appointment of AO vide SEBI's order dated August 13, 2021. Thereafter, a show cause notice was issued to Noticee on July 14, 2022 and the Noticee submitted its replies on August 29, 2022 and June 03, 2023.

17. In this regard, it is pertinent to note that, in the matter of SEBI vs. Bhavesh Pabari (decided on February 28, 2019), the Hon'ble Supreme Court of India has, *inter alia*, has 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."*

18. Therefore, considering the facts and circumstances in totality, I find that the instant adjudication proceedings were initiated within a reasonable time and no prejudice has been caused to the Noticee.

19. Having dealt with the preliminary objection of Noticee, I now proceed to deal with the case on merits.

CONSIDERATION OF ISSUES AND FINDINGS

20. The issues that arise for consideration in the present case are:

Issue No I: Whether Noticee has violated Clauses A (1), (2), (3) and (4) of the Code of Conduct for Stock Brokers under Schedule II read with Regulation 9(f) of the Broker Regulations?

Issue No II: Does the violation, if any, attract monetary penalty under Section 15HB of SEBI Act?

Issue No III: If the answer to issue no. 2 is in affirmative, then what should be the quantum of monetary penalty?

17. Before proceeding, it is pertinent to refer to the relevant provisions of the Broker Regulations, in force at the time of impugned transactions, which are reproduced as under.

<u>Broker Regulations:</u>

Conditions of registration

9. Any registration granted by the Board under regulation 6 shall be subject to the following conditions, namely,-
(a)……
(b)……
……….
(f) he shall at all times abide by the Code of Conduct as specified in Schedule II;

<u>SCHEDULE II</u>

Securities and Exchange Board of India (Stock Brokers and Sub-brokers) Regulations, 1992

<u>CODE OF CONDUCT FOR STOCK BROKERS</u>

[Regulation 9]

A. General.

(1) *Integrity: A stock-broker, shall maintain high standards of integrity, promptitude and fairness in the conduct of all his business.*

(2) *Exercise of due skill and care: A stock-broker shall act with due skill, care and diligence in the conduct of all his business.*

(3) *Manipulation: A stock-broker shall not indulge in manipulative, fraudulent or deceptive transactions or schemes or spread rumours with a view to distorting market equilibrium or making personal gains.*

(4) *Malpractices: A stock-broker shall not create false market either singly or in concert with others or indulge in any act detrimental to the investors' interest or which leads to interference with the fair and smooth functioning of the market. A stockbroker shall not involve himself in excessive speculative business in the market beyond reasonable levels not commensurate with his financial soundness.*

Issue No 20(I) - Whether Noticee has violated Clause A (1), (2), (3) and (4) of the Code of Conduct for Stock Brokers under Schedule II read with Regulation 9(f) of the Broker Regulations?

18. It has been alleged in the SCN that Noticee had failed to exercise due skill, care and diligence in the conduct of its business in relation to reversal trades in the illiquid stock options executed by its clients and thereby allegedly violated the provisions of Clause A (2) of the Code of Conduct for Stock Brokers under Schedule II read with Regulation 9(f) of the Broker Regulations.

19. I note that BSE had issued a circular vide notice no. 20130307-21 dated March 07, 2013, addressed to and circulated to all the Trading Members (**Brokers**) pertaining casting upon them an obligation to, *inter alia*, monitor and report reversal of trades in derivatives segment. The notice pertaining to “e-Boss”, *inter alia*, indicated the list of alerts that will be generated by BSE which includes reversal of trades in derivatives segment. Further, in terms of the aforesaid notice every broker was necessarily required to frame a surveillance policy, *inter alia*, covering suspicious/manipulative activity identification and reporting process.

20. From a perusal of the BSE trade log, I find that Noticee acted as broker for 60 clients in 947 reversal trades for 1,23,13,000 units in 169 illiquid stock options contracts during the IP, wherein Noticee’s clients executed buy and sell trades in which they reversed their positions with the same counterparties within a short period of time and there was significant variation in the buy and sell price of the aforesaid trades.

21. The trades executed by the Noticee’s clients is illustrated through the dealings of the Noticee for one of the clients in the contract viz, “ASPL15JUL700.00PEW1” executed on June 05, 2015, during the Investigation Period which is stated as under:

Sr No	*Client Pan*	*Client Name*	*CP Pan*	*CP Name*	*Trade Time*	*Order Time*	*CP Order Time*	*Trade Rate (In Rs.)*	*Traded Qty*	*Member Name*	*CP Member Name*

1	AAFCA5667D	XION GEMS & JEWELLERS PVT. LTD	AABHR3924D	RAKESH KUMAR GARG HUF	13:21:35.157009	13:21:35.157009	13:21:34.453875	6.75	20000	SUNSTAR SECURITIES	MULTIGAIN SECURITIES SERVICES PRIVATE LIMITED
2	AABHR3924D	RAKESH KUMAR GARG HUF	AAFCA5667D	XION GEMS & JEWELLERS PVT. LTD	13:21:39.266632	13:21:39.157112	13:21:39.266632	4	20000	MULTIGAIN SECURITIES SERVICES PRIVATE LIMITED	SUNSTAR SECURITIES
3	AABHR3924D	RAKESH KUMAR GARG HUF	AAFCA5667D	XION GEMS & JEWELLERS PVT. LTD	13:21:14.953808	13:21:14.859727	13:21:14.953808	7	20000	MULTIGAIN SECURITIES SERVICES PRIVATE LIMITED	SUNSTAR SECURITIES
4	AAFCA5667D	XION GEMS & JEWELLERS PVT. LTD	AABHR3924D	RAKESH KUMAR GARG HUF	13:21:11.453736	13:21:11.453736	13:21:10.656674	9	20000	SUNSTAR SECURITIES	MULTIGAIN SECURITIES SERVICES PRIVATE LIMITED

22. It is seen from the above table that in the Stock option contract "ASPL15JUL700.00PEW1" on June 05, 2015, at 13:21:11.45 hrs and 13:21:35.15 hrs Noticee's client, Xion Gems & Jewellers Pvt. Ltd. executed 2 buy trades for 40,000 units at the average buy rate of Rs 7.88 /- per unit with counterparty viz. Rakesh Kumar Garg HUF. Thereafter, at 13:21:14.95 hrs and 13:21:39.26 hrs i.e., within 3 to 4 seconds from the aforementioned buy trades, the Noticee's client executed 2 sell trades for 40,000 units at the average sell rate of Rs. 5.5/- per unit, in the said contract with the same counterparty. The aforesaid reversal trades were executed within 3 to 4 seconds of each other, thus generating volume to the extent of 80,000 units in the said contract which was 100% of the total market volume in the said contract during the IP. to be Such 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 are considered to be reversal trades.

23. I note that the buy order and sell order for 80,000 units in the ASPL15JUL700.00PEW1 contract were placed within a miniscule time gap of within 1 second of each other. I also note that there was wide variation in the buy and sell prices of the reversal trades i.e. 40,000 units were bought at an average buy rate of Rs 7.88/- per unit at 13:21:11.45 hrs and 13:21:35.15 hrs; and then

40,000 units were sold at an average sell rate of Rs. 5.5/- per unit 13:21:14.95 hrs and 13:21:39.26 within 3 to 4 seconds from the said respective buy trades, without there being any significant movement in the price of the underlying scrip in the cash segment.

24. Thus, I note from the above table that trade reversals were executed between Noticee's client, Xion Gems & Jewellers Pvt. Ltd. and its counterparty, named Rakesh Kumar Garg HUF through the Noticee, Sunstar Securities and counterparty broker, Multigain Securities Services Pvt. Ltd., respectively (indicating 4 trades that were executed in the aforesaid contract on the same day).

25. I note from the trade log and order log that there were only 4 trades executed in the ASPL15JUL700.00PEW1 for a total trading volume of 40,000 units on one day during the IP. I also find that in the aforesaid contracts only trades executed in the market during the IP were by the Noticee and its counterparties i.e. the entire trades in these contracts were executed in the market during the IP was between Noticee and its counterparties. Thus, I note that there was minimal trading activity in the aforesaid stock options contracts traded by the Noticee's clients. Therefore, I note from the number of trades and trading volume in the stock option contracts traded by Noticee's clients that these contracts were illiquid in nature.

26. The non-genuineness of these transactions executed by the Noticee on behalf of its clients is evident from the fact that there was no commercial basis as to why, within such a short span of time, the Noticee reversed the position of its clients with its counterparties with a significant price difference.

27. A perusal of the BSE trade log shows the contribution of Noticee's clients to the number of reversal trades during the IP, as shown below:

S.No.	Trading Member Name	Total traded quantity/ Total volume generated in reversal trades through the Trading Member	Number of clients	Number of Contracts	Number of reversal trades (buy trades + sell trades)
1.	SUNSTAR SECURITIES	1,23,13,000	60	169	947

28. In view of the aforesaid, I note that Noticee acted as a broker for 60 clients in 947 reversal trades for 1,23,13,000 units in 169 illiquid stock options contracts, wherein Noticee’s clients reversed their positions with the same counterparties within a short period of time with a significant variation in their buy and sell price for the aforesaid trades in the said illiquid stock options contracts.

29. I note that in terms of the BSE circular vide notice no. 20130307-21 dated March 07, 2013 mentioned in the preceding paragraph, all the Brokers are required to frame a surveillance policy and implement a system to identify and report reversal trades as well as suspicious trades to BSE. However, as informed by BSE to SEBI, vide email dated November 06, 2020, no broker, including the Noticee, had reported to BSE any reversal or suspicious trades being executed on Stock Options segment of BSE during the IP.

30. I further note that 947 non-genuine reversal trades in 169 different contracts were executed through the Noticee, wherein the positions taken were reversed with the same counterparty on the same day, at a significant price difference. Therefore, I note that though there were huge number of instances of such reversal trades on the same day in the illiquid stock options contracts traded by its clients, the Noticee failed to generate any alerts regarding them and failed to report them to BSE as the Noticee lacked a system in place to spot trade reversals. It is clear that Noticee did not implement a system to identify and generate alerts in response to trade reversals by its clients.

31. In terms of Regulation 9(f) of Broker Regulations read with Code of Conduct as specified in Schedule II, a stock broker is obligated to act with due skill, care and diligence and abide by various provisions of the SEBI Act and rules and regulations framed by SEBI and the stock exchange from time to time. Thus, Noticee was

under an obligation to abide by the BSE circular vide notice no. 20130307-21 dated March 07, 2013 as part of diligent conduct of its business by implementing a system for identification and generation of alerts regarding reversal trades and suspicious trades executed by its clients and reporting the said trades to BSE. However, I find that by failing to identify and generate alerts in respect of reversal of trades by its clients and by failing to frame a surveillance mechanism to identify and generate alerts of suspicious activity by its clients and reporting such trades to BSE, the Noticee had failed to abide by the aforesaid BSE circular and thereby, failed to exercise due skill, care and diligence in the conduct of its business in relation to the trades executed by its clients in illiquid stock options on the BSE platform.

32. In its reply, Noticee has submitted that in order to allege reversal of trades in the market, it is imperative that the parties carrying out the trades were connected to each other and that there was a meeting of minds between them, which the SCN has failed to show. Noticee has further stated that it was not in a position to know the counterparty to the trades executed on behalf of its clients and had no nexus/ connection with them. In support of its contention, Noticee has placed reliance on the judgment of Hon'ble SAT in the matter of *M/s Jagruti Securities Ltd vs. SEBI*., *Vintel Securities Pvt Ltd vs. SEBI (Appeal no 219/2009).* I note that it is not SEBI's case that there was a collusion between the entities entering into such reversal trades. I also note that even though the Noticee may not be aware of the counterparty client or counterparty broker in a transaction, the fact that such significantly large quantity of shares transacted by its clients for a certain price were being reversed repeatedly within the same day should have alerted the Noticee and it was obligated to report such reversal trades to BSE which it had failed to do. Therefore, I do not find merit in this contention of Noticee.

33. Noticee has also contended that the impugned trades were executed in the normal course of business devoid of any fraudulent intentions. Noticee has further stated that before receipt of SCN, it did not know that the impugned trades were in the nature of reversal trades. I am unable to accept this argument of Noticee, since as a member of BSE, Noticee ought to have known about the compliances expected

of it, based on the nature of transactions being carried out by it on behalf of its clients. Noticee has, in its reply, also questioned the lack of evidence in the SCN to allege that Noticee had failed to report any suspicious transaction to BSE during the IP. I find that Noticee has not furnished any proof to the effect that it had reported the reversal trades of its clients to the BSE during the IP. The evidence in respect of the alleged violation has been clearly provided along with the SCN i.e. a copy of the BSE's email of November 06, 2020, and the BSE trade log showing that Noticee's clients executed 947 reversal trades in 169 illiquid stock options contracts during the IP but these were never reported to the BSE. Thus, I find this argument to be baseless.

34. I further note that an Adjudication Order (Adjudication Order No. Order/VV/NK/2021-22/11627) dated April 30, 2021 was passed against the Noticee's client, Xion Gems & Jewellers Pvt. Ltd. (AAFCA5667D) imposing a penalty of Rs. 1,05,80,000/- on it under Section 15HA of SEBI Act for violation of Regulation 3(a), (b), (c), (d), 4(1) and 4(2)(a) of PFUTP Regulations in respect of 1,646 reversal trades executed by the said client through the Noticee and other brokers in illiquid stock options at BSE.

35. In view of the foregoing, I conclude that the charge that Noticee has failed to exercise care and diligence in the conduct of business while dealing with its clients and thereby, has violated the provisions of Clause A (2) of the Code of Conduct for Stock Brokers under Schedule II read with Regulation 9 (f) of the Brokers Regulations, stands established.

PART B

36. As regards the allegation that Noticee had executed reversal trades in illiquid stock options contracts by way of its proprietary trades, I note that Noticee had filed an application under Settlement Scheme introduced by SEBI with respect to the proprietary trades executed by it and paid a settlement amount of Rs. 2,00,000/- and a Settlement Order dated March 08, 2023 was passed by SEBI in respect of the aforesaid proprietary trades of Noticee. Therefore, based on the foregoing

observation, I do not find merit in proceeding with adjudication on the same set of proprietary trades in illiquid stock options contracts which have been already settled vide the aforesaid Settlement Order.

Issue no 20(II) If yes, whether the failure, on the part of the Noticee would attract monetary penalty under Section 15HB of the SEBI Act?

&

Issue no 20(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?

37. It has been established in the foregoing paragraphs that the Noticee has violated Clause A (2) of the Code of Conduct for Stock Brokers under Schedule II read with Regulation 9 (f) of the Brokers Regulations. In the context of the above, I refer to the observations of Hon'ble Supreme Court in the matter of Chairman, SEBI vs. Shriram Mutual Fund [2006] 5 SCC 361} wherein the Hon'ble Court had 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......*"

38. Therefore, in view of the foregoing findings and placing reliance on the above judgment of Hon'ble Supreme Court, I find that the Noticee is liable for monetary penalty under Section 15HB of SEBI Act, which is reproduced as follows:

Penalty for contravention where no separate penalty has been provided

***15HB**. Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.*

39. While determining the quantum of penalty under Section 15HB of 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.

40. As established above, the material available on record shows that the Noticee has failed to exercise due skill, care and diligence in the conduct of its business. I observe that the material available on record does not quantify any disproportionate gains or unfair advantage, if any, made by the Noticee and the losses, if any, suffered by the investors due to such violations on the part of the Noticee. As regards the repetitive nature of the default, I do not find from material available on record any regulatory action taken by SEBI in past against the Noticee for similar violations. However, it is pertinent to note that the broker is the first point of contact for the majority of investors. In this regard, the role of a Broker is crucial as a facilitator of investors into the securities market. So, it is of utmost importance that every Broker abides by the relevant regulations, provisions of SEBI/Stock Exchange circulars and various guidelines issued by SEBI/Stock Exchanges. I cannot ignore the fact that being a SEBI registered intermediary, the Noticee was under a statutory obligation to abide by the provisions of the SEBI Act, rules and regulations and circulars / directions issued thereunder, which it failed to do during the investigation period. The violations on the part of the Noticee as brought out in the preceding paragraphs clearly show that it has failed to exercise due care and diligence in the conduct of its business while dealing with the clients.

ORDER

41. Having considered all the facts and circumstances of the case, the material available on record, the factors mentioned in section 15J of the SEBI Act and in exercise of power conferred upon me under section 15-I of the SEBI Act read with rule 5 of the Adjudication Rules, 1995, I hereby impose a penalty of Rs. 1,00,000/- (Rupees One Lakh only) on Noticee i.e. Sunstar Securities under Section 15HB of the SEBI Act.

42. 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 SEBI website www.sebi.gov.in on the following path, by clicking on the payment link-

ENFORCEMENT → Orders → Orders of AO → PAY NOW

43. The Noticee shall forward the confirmation of penalty so paid to the Enforcement Department –Division of Regulatory Action –I of SEBI and also to e-mail id:- tad@sebi.gov.in.

44. The Noticee shall provide the following details while forwarding confirmation of e-payment in the following format:

a) Name and PAN of the entity (Noticee)
b) Name of the case / matter
c) Purpose of Payment –Payment of penalty under AO proceedings
d) Bank Name and Account Number
e) Transaction Number

45. In case of any difficulties in payment of penalties, Noticee may contact the support at portalhelp@sebi.gov.in.

46. 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 of Noticee.

47. Copy of this Adjudication Order is being sent to the Noticee and also to SEBI in terms of Rule 6 of the Adjudication Rules.

DATE: July 31, 2023 **SOMA MAJUMDER**
PLACE: MUMBAI **ADJUDICATING OFFICER**