BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/BM/UR/2021-22/14818]

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

Kashni Gupta

(PAN: AIEPG8815D)

In the matter of Trading in Illiquid Stock Options on BSE

BACKGROUND OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") observed large scale reversal of trades in stock options segment of Bombay Stock Exchange (hereinafter referred to as "**BSE**"). SEBI observed that such large scale reversal of trades in stock options lead to creation of artificial volume at BSE. In view of the same, SEBI conducted an investigation into the trading activities of certain entities in illiquid stock options at BSE for the period April 1, 2014 to September 30, 2015 (hereinafter referred to as "**IP**").

2. Pursuant to investigation, it was observed that total of 2,91,744 trades comprising 81.40% of all the trades executed in stock options segment of BSE during the IP were non genuine trades. The aforesaid non-genuine trades resulted into creation of artificial volume in stock options segment of BSE during the IP. It was observed that Kashni Gupta (PAN-AIEPG8815D) (hereinafter referred to as the "**Noticee**") was one of the

various entities who indulged in execution of reversal trades in stock options segment of BSE during the IP. Such trades were observed to be non-genuine in nature and created false or misleading appearance of trading in terms of artificial volumes in stock options and therefore were alleged to be manipulative, deceptive in nature. In view of the same, SEBI initiated adjudication proceedings against the Noticee for violation of the provisions of Regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003 (hereinafter referred to as "**PFUTP Regulations, 2003**").

APPOINTMENT OF ADJUDICATING OFFICER

3. The undersigned was appointed as Adjudicating Officer in the matter, conveyed vide communique dated September 27, 2021, under Section 19 read with Section 15-I(1) of the SEBI Act, 1992 (hereinafter referred to as "SEBI Act, 1992") and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as "**Adjudication Rules**") to conduct adjudication proceedings in the manner specified under Rule 4 of Adjudication Rules read with Section 15-I(1) and (2) of SEBI Act, 1992, and if satisfied that penalty is liable, impose such penalty deemed fit in terms of Rule 5 of Adjudication Rules and Section 15HA of SEBI Act, 1992.

SHOW CAUSE NOTICE, REPLY AND HEARING

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

5. It was *inter alia* alleged in the SCN that the Noticee had executed 2 non-genuine trades in 1 Stock Options contract which resulted in artificial volume of total 35,000 units. Summary of dealings of the Noticee in the said Options contracts, in which the Noticee allegedly executed non genuine trades during the I.P, is as follows:

S. No.	Contract Name	Avg. Buy Rate (Rs)	Total Buy Volume (No. of units)	Avg. Sell Rate (Rs)	Total Sell Volume (No. of units)	% of Non Genuine trades of Noticee in the contract to Noticee's Total trades in the Contract	% of Non Genuine trades of Noticee in the contract to Total trades in the Contract	% of Artificial Volume generated by Noticee in the contract to Noticee's Total Volume in the Contract	% of Artificial Volume generated by Noticee in the contract to Total Volume in the Contract
1	RLNF15MAR480.00PEW3	4	17500	9.75	17500	100	11.11	100	6.33

6. From the above table, following was noted as regard to dealings of the Noticee:
   (a) The Noticee had executed non genuine trades in 1 contract, wherein all the trades of Noticee in the said contract were non-genuine trades.
   (b) No. of non-genuine trades of the Noticee had significantly contributed to total no. of trades from the market in the above contract, as 11.11% of the trades that happened in the said contract were due to non-genuine trades executed by the Noticee.

(c) 100% of volume generated by Noticee in the above contract was artificial volume, and further, the percentage of artificial volume generated by the Noticee in the above contract to the total volume from the market in said contract was 6.33%. Therefore, it is alleged that the Noticee generated artificial volume in the above contract.

7. The SCN with reference no. EAD-3/BM/UR/ISO-II/29970/2021 was served on the Noticee via Speed Post Acknowledgement Due (SPAD) and via email dated October 26, 2021. The proof of service is on record. Vide email dated November 13, 2021, the Noticee submitted reply to the SCN and vide email dated December 14, 2021 Noticee submitted additional submissions pursuant to conclusion of hearing. The main contentions made in the aforesaid reply are summarized below:

- *Considerable delay of six years in issuance of notice and date of alleged transaction. She further placed reliance on the orders in the cases “Ashok shivlal Rupani Vs. SEBI” and “Mr. Rakesh Kathotia & Ors. Vs. SEBI”.*
- *Broker might have committed an error for which noticee cannot be blamed.*
- *Noticee does not know either the counterparty or the management of company in question. She has never entered into any collusive or manipulative transaction in the stock market. She further contended that no proof of connection has been established by the authorities between noticee and counterparty. Judgement in the cases of “Labhu Gohil vs. Securities and Exchange Board of India”, “Nishith M. Shah HUF vs. SEBI [Appeal No. 97, of 2019 dated 16-1-2020]”,” Jagruti Securities Ltd. Vs. Securities and Exchange Board of India” and “Vikas Ganeshmal Bengani vs. Whole Time Member” were relied upon by the Noticee.*

- *In the absence of multiple/voluminous transactions, inference of fraud/ undue trade practices cannot be drawn. In this regard Noticee relied upon "Ramod Kumar Agrawal (HUF) vs. Adjudicating Officer", "Subhkam Securities Private Limited vs. Securities and Exchange Board Of India", "Dhvani Darshan Kothari & Anr. Vs. Securities and Exchange Board of India", "Global Earth Properties and Developers Pvt. Ltd. Vs. SEBI", "Ketan Parekh vs. SEBI", Sebi vs. Kishore R. Ajmera and "SEBI vs Rakhi Trading Ltd."*
- *Noticee has always done transaction in stock market in a genuine manner and in good faith and therefore not violated PFUTP regulations. She also submitted that none of the factors provided in Rule 5 (2) of SEBI (Procedure for holding enquiry and imposing penalties) Rules, 1995 are present in the Noticee's case and further relied upon order in the case of "Usha Kothari & Others".*
- *She contended that burden to prove the facts alleged against the noticee is unequivocally cast upon the Adjudicating Officer and claimed that general rules of evidence are applicable in the present case.*
- *Noticee argued that there was no adverse impact caused to the third party by such alleged transactions and no data has been provided in the Show Cause Notice to show the price behavioural pattern of the scrip in question.*
- *She pointed out that as per Risk Disclosure Document issued by SEBI, the possibility of a wide spread price difference in Illiquid Stock Contract prevails. Further she contended that SEBI or stock exchange platform have not put in place any price band mechanism in options segment concluding that the prices at which the alleged transactions took place were genuine.*
- *The data relied upon in the Show Cause Notice is not sufficient benchmark to prove the allegation made against the noticee.*

8. Hearing Notice dated November 30, 2021 was issued to the Noticee, advising her to appear for the hearing on December 14, 2021. The personal hearing was conducted on scheduled date and time through video conferencing. The Noticee was represented by her Authorized Representative. During the course of hearing, the authorized representative reiterated submissions made by her vide letter dated November 13, 2021. The authorized representative also confirmed that he would be submitting additional submissions which were submitted by him vide email dated December 14, 2021. The personal hearing in the matter was completed and hearing minutes are on record.

CONSIDERATION OF ISSUES AND FINDINGS

9. I have carefully perused the charges levelled against the Noticee, his reply and the documents / material available on record. The issues that arise for consideration in the present case are:
    (a) Whether the Noticee has violated provisions of Regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of PFUTP Regulations, 2003?
    (b) Does the violation, if any, attract monetary penalty under section 15HA of the SEBI Act, 1992?
    (c) If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in section 15J of the SEBI Act, 1992?

10. Before proceeding further, I would like to refer to the relevant provisions of the PFUTP Regulations, 2003 as below:

    PFUTP Regulations, 2003

    3. Prohibition of certain dealings in securities

    No person shall directly or indirectly—

    (a) buy, sell or otherwise deal in securities in a fraudulent manner;

(b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;
(c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;
(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.

4. Prohibition of manipulative, fraudulent and unfair trade practices
(1) Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.
(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:—
(a) indulging in an act which creates false or misleading appearance of trading in the securities market;

Issue no. 1: Whether the Noticee has violated provisions of Regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of PFUTP Regulations, 2003?

11. I note that allegation against the Noticee is that, while dealing in the stock option contracts at BSE during the IP, she had executed reversal trades which were allegedly non-genuine and the same had resulted in generation of artificial volume in stock option contracts at BSE. Reversal trades are considered to be those trades in which an entity reverses its buy or sell positions in a contract with subsequent sell or buy positions with the same counterparty during the same day. The said reversal trades

are alleged to be non-genuine trades as they are not executed in the normal course of trading, lack basic trading rationale, lead to false or misleading appearance of trading in terms of generation of artificial volumes and hence are deceptive and manipulative.

12. I shall now proceed to deal with the transactions executed by the Noticee in the alleged non-genuine trades.

13. The Noticee stated that she has not violated the PFUTP Regulations, 2003. I note from the trade log of the Noticee that she had traded in one contract in the stock options segment of BSE during the IP. It is observed that the Noticee had executed 2 non-genuine trades in 1 contract. I further note that the above mentioned trades of the Noticee had resulted in the creation of artificial volume of 35000 units in the said contract. Summary of non- genuine trades of the Noticee is as follows:

S. No.	Contract Name	Avg. Buy Rate (Rs)	Total Buy Volume (No. of units)	Avg. Sell Rate (Rs)	Total Sell Volume (No. of units)	% of Non Genuine trades of Noticee in the contract to Noticee's Total trades in the Contract	% of Non Genuine trades of Noticee in the contract to Total trades in the Contract	% of Artificial Volume generated by Noticee in the contract to Noticee's Total Volume in the Contract	% of Artificial Volume generated by Noticee in the contract to Total Volume in the Contract
1	RLNF15MAR480.00PEW3	4	17500	9.75	17500	100	11.11	100	6.33

14. It is noted that the Noticee had executed non-genuine trades in said contract, wherein the percentage of alleged non-genuine trades of the Noticee in stock options contract to total trades in the contract was 11.11% in the aforesaid contract. Further, artificial volume generated by Noticee in the contract amounted to 100% of total volume generated by her in the contract. It is also noted that artificial volume generated by the Noticee contributed 6.33% of the total volume from the market in the said contract.

15. The details of squaring up done by the Noticee in the contract 'RLNF15MAR480.00PEW3' are as given below :

Trade Date	Client Name	CP Client Name	Trade Time	Trade Rate (Rs.)	Traded Quantity	Buy/Sell by the Noticee
03/03/2015	Kashni Gupta	Dinesh Kumar Somani	15:06:12	4	17500	Buy
03/03/2015	Dinesh Kumar Somani	Kashni Gupta	15:06:17	9.75	17500	Sell

16. I note from the trade log details which are given above, that the trades executed by the Noticee in a contract were squared up within 05 seconds, which is a short span of time, with her counter- party. As can be seen from the table, the Noticee on March 03, 2015 at 15:06:12 hrs (Order time of Noticee: 15:06:12 and Counterparty Order time: 15:06:12) entered into 1 buy trade with counterparty viz. Dinesh Kumar Somani for 17500 units at the rate of Rs. 4 per unit in the contract 'RLNF15MAR480.00PEW3'. Thereafter, on the same day, Noticee at 15:06:17 hrs (Order time of Noticee: 15:06:17 and Counterparty Order time: 15:06:17) entered into 1 sell trade with same counterparty for 17500 units at the rate of Rs. 9.75 per unit in the same contract. It is noted that while dealing in the said contract during the I.P., the Noticee executed reversal trades with same

counterparty viz. Dinesh Kumar Somani on the same day, with significant price difference. Thus, the Noticee, through her dealing in the contract viz. 'RLNF15MAR480.00PEW3' during the I.P., executed non genuine trades which was 9.75% of the total trades from the market in the said contract during the I.P., and thereby, Noticee generated artificial volume of 35000 units which was 6.33% of the volume traded in the said contract from the market during the I.P. I note that the abovementioned trades of the Noticee had resulted in the creation of artificial volume of a total of 35,000 units in the given contract making a profit of Rs. 100,625/- .

17. Noticee has *interalia* contended that the instant SCN has been issued after 6 years of the execution of impugned trades, causing prejudice to the noticee. I note that pursuant to a preliminary examination conducted in the Illiquid Stock Options matter, Interim order was passed by SEBI on August 20, 2015 which was confirmed vide Orders dated July 30, 2016 and August 22, 2016. Meanwhile, SEBI initiated a detailed investigation relating to stock options segment of BSE which was completed in the year 2018. The investigation revealed that 14,720 entities were involved in executing non-genuine trades in BSE's stock option segment during the investigation period. The proceedings initiated vide the aforementioned Interim Order were disposed of vide Final Order dated April 05, 2018 also considering that appropriate action was initiated against the said 14, 720 entities in a phased manner.

During the course of hearing in the case of ***R. S. Ispat Ltd Vs SEBI*,** the Hon'ble Securities Appellate Tribunal (SAT), vide its Order dated October 14, 2019, *inter alia* observed that:

"SEBI may consider holding a Lok Adalat or adopting any other alternative dispute resolution process with regard to the Illiquid Stock Options".

A Settlement Scheme was framed under the SEBI (Settlement Proceedings) Regulations, 2018, which provided one-time opportunity for settlement of proceedings in the Illiquid Stock Options matter. The said scheme was kept open from August 01, 2020 till December 31, 2020. Subsequently adjudication proceedings were initiated against those entities who had not availed of the opportunity of settlement.

As can be seen from the narration of facts in the foregoing paragraphs, pursuant to appointment of AO on September 23, 2021, SCN was issued on October 25, 2021. In compliance with principles of natural justice, after receipt of reply, an opportunity of personal hearing was scheduled on December 14, 2021 and upon conclusion of hearing, additional written submissions were received from the noticee on December 14, 2021. In this regard, I feel it is pertinent to note that, in the matter of **SEBI Vs Bhavesh Pabari** (2019) SCC Online SC 294, the Hon'ble Supreme Court of India has, inter alia, held that:

"There are judgments which hold that when the period of limitation is not prescribed, such power must be exercised within a reasonable time. What would be reasonable time, would depend upon the facts and circumstances of the case, nature of the default/statute, prejudice caused, whether the third-party rights had been created etc."

I note that the Hon'ble SAT in the matter of **Pooja Vinay Jain vs SEBI** (Appeal No. 152 of 2019 decided on March 17, 2020) held that:

> *"The record would show that all the documents concerning the defense of the appellant were filed by her before the AO. Therefore, for want of any prejudice the proceedings cannot be quashed simply on the ground of delay in launching the same"*

I also note that the Hon'ble SAT in the matter of **Bipin R Vora vs SEBI** (decided on March 22, 2006) held that:

> "*As regards the plea of delay and latches and submission that the show cause notice is barred by limitation, I do not find any merit in these contentions as the time and efforts involved in an investigation though may vary from case to case, generally investigations per-se is a time consuming process which invariably involve collection, scrutiny and careful examination of voluminous records/ order-trade details of all the concerned including the exchanges/recording of statements etc. and therefore no time limit can be fixed in this regard to enable a regulator to take appropriate disciplinary action for the safeguard and improvement of the system/market* ".

In view of the above, and considering the facts and circumstances, I note that there was no delay in the issuance of SCN in the matter as argued by the Noticee, so the contentions of the Noticee in this regard are without merits.

18. Noticee contended that broker might have committed an error or entered into the alleged transactions with an ulterior motive. I note that Noticee was owner of the trading account(s) through which impugned trades were carried out. Therefore, the obligation to ensure genuineness of impugned

trades lay with the Noticee, so the aforesaid contentions of Noticee are without merits.

19. Noticee has also contended that the few trades out of 2.92 lakh trades are few drops in the ocean and in the absence of multiple and voluminous transactions, inference of fraud and undue trade practices cannot be drawn. I note that the impugned stock option contract was illiquid, as stated in the SCN, and also that Noticee's trades in said contract contributed 6.33% artificial volume to the total market volume generated during the IP. This points to the contribution of Noticee, irrespective of quantum of reversal trades or volume generated, in the creation of misleading appearance of trading through his impugned trades. Therefore, Noticee's trades were manipulative and intended to create misleading appearance of trading, so the contentions of Noticee in this regard are are not tenable.

20. Noticee contended that she does not know either the counterparty or the management of company in question. She has never entered into any collusive or manipulative transaction in the stock market. I note that considering the precision at which the reversal transactions have taken place i.e. reversal of the quantity, order price and order time and sale with price variations as observed in the instant matter, the same couldn't have been possible without prior meeting of mind. In this regard, I find it relevant to refer to the decision of Hon'ble Supreme Court in the matter of **SEBI vs. Rakhi Trading Private Ltd**., in Civil appeals no., 1969 of 2011 decided on February 8, 2018 wherein it has been held as under:

> *"considering the reversal transactions, quantity, price and time and sale, parties being persistent in the number of such trade transactions with huge price variations, it will be too naïve to hold that the transactions are through screen-based trading*

and hence anonymous. Such conclusion would be over-looking the prior meeting of minds involving synchronization of buy and sell order and not negotiated deals as per the Board's circular. The impugned transactions are manipulative/deceptive device to create a desired loss and/or profit. Such synchronized trading is violative of transparent norms of trading in securities"

The Hon'ble Supreme Court has also held in the aforesaid judgment 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 liable to be proceeded against for violation of Regulations 3(a), 4(1) and 4(2)(a) of the PFUTP Regulations, 2003.

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) also 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 trades with the counter party with whom he had undertaken the first leg of respective trade. In our opinion, the trades were non-genuine trades and even though direct evidence is not available in the instant case but in the peculiar facts and circumstances of the present case there is an irresistible inference that can be drawn that there was meeting of minds between the Appellants and the counter parties, and collusion with a view to trade at a predetermined price."

The Hon’ble SAT reaffirmed its stand taken in Global Earth Properties and Developers Pvt Ltd Vs SEBI (Appeal No. 212 of 2020), in its judgment dated November 24, 2021 in the matter of **Radha Malani vs. SEBI** (appeal no. 698 of 2021), has held the following:

> *“Having heard the learned counsel for the appellant, in our view the controversy involved in the present appeal is squarely covered by a decision of this Tribunal in Global Earth Properties and Developers Pvt. Ltd. vs. SEBI (Appeal No. 212 of 2020 decided on September 14, 2020). In view of the aforesaid, the appeal is dismissed with no order as to costs.”*

Keeping in mind the dicta of the Hon’ble Supreme Court as reproduced above, I see no reason to take a different view in the present case. In view of the foregoing, I hold that the Noticee had indulged in execution of reversal trades in Stock Options with same entitiy on the same day, which are non-genuine in nature and have created false and misleading appearance of trading in terms of artificial volumes.

Further, 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 Noticee 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..."

The Hon'ble Supreme Court further held in the said case 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."

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 behaviour 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 deem it appropriate to refer to the order dated July 14, 2006 passed by Hon'ble SAT, in the case of **Ketan Parekh vs. SEBI** (Appeal no. 2/2004), wherein, Hon’ble SAT has held that:

> *"The nature of transactions executed, the frequency with which such transactions are undertaken, the value of the transactions, the conditions then prevailing in the market are some of the factors which go to show the intention of the parties. This list of factors, in the very nature of things, cannot be exhaustive. Any one factor may or may not be decisive and it is from the cumulative effect of these that an inference will have to be drawn."*

Further, I would like to rely on the judgement of Hon’ble Supreme Court passed in the case of **SEBI vs. Rakhi Trading Private Ltd**. (supra), wherein the Apex Court held that :

> *“the entities were engaged in a fraudulent and unfair trade practice while dealing in Options and hence were liable for violation of SEBI (PFUTP) Regulations”*.

The Hon’ble Apex Court has also held that in the absence of direct proof of meeting of minds, the test should be one of preponderance of probability and also stated that the conclusion has to be gathered from various circumstances like volume of trade, period of persistence of trading, particulars of buy and sell orders, proximity of time between the two and such other relevant factors. Thus, the nature of trading, as brought out above, clearly indicates an element of prior meeting of minds and therefore, a collusion of the Noticee with her counterparty to carry out the trades at pre-determined prices.

21. Noticee claimed that general rules of evidence are applicable in the present case. In the instant proceeding in view of sub-rule (5) of Rule 4 of the Adjudication Rules, 1995, which states that the Adjudication proceeding is not bound by the provisions of Indian Evidence Act, 1872 the contentions of Noticee are not tenable.

22. Noticee contended that there was no adverse impact caused to the third party by such alleged transactions and no data has been provided in the Show Cause Notice to show the price behavioural pattern of the scrip in question. I note that the SCN issued to the Noticee did not allege that on account of the trading of the Noticee in the options, there was adverse impact caused to the third party. Instead the SCN alleged the execution of non genuine/ reversal trades in the illiquid stock options at BSE, which has been detailed above. Further the relevant data which was relied upon to allege the Noticee's involvement in such non genuine transactions was provided along with the Show Cause Notice. Therefore, I do not find any merit in the contentions of the Noticee in this regard. I note that the impugned reversal trades, which were carried out with prior meeting of minds as inferred from the case facts, affected the price discovery and execution of trades as per market mechanism on the stock options segment of BSE. In this regard, I further note the following from the judgment of the Hon'ble SC in the matter of **SEBI vs Rakhi Trading Pvt Ltd** (supra):

> "……….*According to SAT, only if there is market impact on account of sham transactions, could there be violation of the PFUTP Regulations. We find it extremely difficult to agree with the proposition. As already noted above, SAT has missed the crucial factors affecting the market integrity, which may be direct or indirect. The stock market is not a platform for any fraudulent or unfair trade practice. The field is open to all the investors. By*

synchronization and rapid reverse trade, as has been carried out by the traders in the instant case, the price discovery system itself is affected. Except the parties who have pre-fixed the price nobody is in the position to participate in the trade. It also has an adverse impact on the fairness, integrity and transparency of the stock market."

Further Hon'ble SAT in the matter of Ketan Parekh vs. SEBI held:

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

Considering the abovementioned judgements and the fact that the Noticee has executed 2 non genuine transactions in the matter, I note that the contentions of Noticee in this regard, are not tenable.

23. Noticee contended that the data relied upon in the Show Cause Notice is not sufficient benchmark to prove the allegation made against the noticee. I note that the only documents, the relevant trade logs, relied upon in the matter were duly provided to the Noticee along with SCN dated October 25, 2021, and the same are as follows:

    A. Integrated trade log of all reversal trades of Noticee in the stock options segment of BSE during the period April 01, 2014 to September 30, 2015.

B. Summary of all reversal trades.

24. The Noticee submitted that as per Risk Disclosure Document issued by SEBI, the possibility of a wide spread price difference in Illiquid Stock Contract prevails. Further she contended that SEBI or stock exchange platform have not put in place any price band mechanism in options segment concluding that the prices at which the alleged transactions took place were genuine. I note that SEBI being the regulator, regulates the Indian capital market. Stock exchanges merely provide a platform for carrying out the trades and the clearing corporation affiliated with exchange handles the confirmation, settlement and delivery of transactions, however, the obligation to ensure genuineness of trades as regards instant considerations lies squarely on the Noticee. Firstly, I note that instant adjudication proceedings levy the impugned allegations against Noticee, and that absence of any preventive mechanism cannot be a ground to absolve Noticee from her obligation to ensure genuineness of trades executed on exchange platform. Secondly, since these trades were done in illiquid option contracts, there was no trading in the said contract and hence, there was no price discovery in the strictest terms. The wide variation in prices of the said contracts, within such a short span of time, is a clear indication that there was pre- determination in the prices by the counterparties while executing the trades. Thus, it is observed that Noticee had indulged in reversal trades with her counterparties in the stock options segment of BSE and the same were non-genuine trades.

25. Therefore, the trading behaviour of the Noticee confirms that such trades were not normal indicating that the trades executed by the Noticee were not genuine trades and being non-genuine, created an appearance of artificial trading volumes in respective contracts. In view of the above, I

find that the allegation of violation of regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of PFUTP Regulations, 2003 by the Noticee stands established.

Issue No 2: Does the violation, if any, attract monetary penalty under Section 15HA of the SEBI Act, 1992?

26. Considering the findings that the Noticee, as mentioned above, has executed non-genuine trades resulting in the creation of artificial volume, thereby violating the provisions of Regulation 3(a), (b), (c) & (d) & Regulation 4(1) and 4(2)(a) of the PFUTP Regulations, 2003 and in terms od the judgement of the Hon'ble Supreme Court of India in the matter of SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC) decided on May 23, 2006 held that:

> *"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant…".*

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

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 [1][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].

Issue 3: If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in Section 15J of the SEBI Act, 1992?

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

Factors to be taken into account by the adjudicating officer.

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

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

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

(c) the repetitive nature of the default.

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

29. I observe, that the material available on record does not quantify any disproportionate gains or unfair advantage, if any, made by the Noticee and the losses, if any, suffered by the investors due to such violations on part of the said Noticee. However, the Noticee has entered into two non-genuine trades which demonstrates the violation of PFUTP Regulations, 2003.

30. Therefore, I note that Noticee indulged in execution of reversal trades in stock options contracts in the IP which were non-genuine and created

false and misleading appearance of trading in terms of artificial volumes in stock options, leading to violation of Regulation 3(a),(b),(c),(d) and 4(1),(2)(a) of the PFUTP Regulations, 2003.

ORDER

31. Having considered all the facts and circumstances of the case, the material available on record, the factors mentioned in section 15J of the SEBI Act, 1992 and in exercise of power conferred upon me under section 15-I of the SEBI Act, 1992 read with rule 5 of the Adjudication Rules, 1995, I hereby impose following penalty under section 15HA of the SEBI Act, 1992 on the Noticee:

Name of the Noticee	**Violation provisions**	**Penalty**
Kashni Gupta PAN: AIEPG8815D	Regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of PFUTP Regulations, 2003	Rs 5,00,000/- (Rupees Five Lakh only)

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

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

ENFORCEMENT → Orders → Orders of AO → PAY NOW

33. The aforesaid Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to "The Division Chief (Enforcement Department 1 DRA-2), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C – 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.". The Noticee shall also provide the following details while forwarding DD / payment information:

- Name and PAN of the Noticee
- Name of the case / matter
- Purpose of Payment – Payment of penalty under AO proceedings
- Bank Name and Account Number
- Transaction Number

34. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, SEBI may initiate consequential actions including but not limited to recovery proceedings under section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties.

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

Date: January 28, 2022 **BARNALI MUKHERJEE**

Place: Mumbai **ADJUDICATING OFFICER**