BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

ADJUDICATION ORDER NO. Order/RJ/PG/2021-22/14535

UNDER SECTION15-I OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995

In respect of:
SURENDRA KUMAR GUPTA HUF
[PAN: AAMHS0277D]
1286 Y BLOCK KIDWAI NAGAR
KANPUR, UTTAR PRADESH
PIN; 208 011

In the matter of Illiquid Stock Options at BSE Limited

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') observed large scale reversal of trades in Stock Options segment of BSE Limited (hereinafter referred to as '**BSE**') leading to creation of artificial volume. Accordingly, SEBI conducted an investigation into the trading activities of certain entities in Illiquid Stock Options at BSE for the period April 1, 2014 to September 30, 2015 (hereinafter referred to as "**Investigation Period**").

2. It was observed that during the Investigation Period, total 2,91,643 trades comprising substantial 81.38% of all the trades executed in Stock Options Segment of BSE were found to be non-genuine trades. The aforesaid non-genuine trades resulted into creation of artificial volume to the tune of 826.21 crore units or 54.68% of the total market volume in Stock Options segment of BSE during the investigation period.

3. It was observed that the said non- genuine trades were not restricted to any specific contract or between any specific set of entities. Surendra Kumar Gupta HUF (hereinafter referred to as '**Noticee'**) was one of the various entities who were

indulged in execution of non-genuine trades in Stock Options Segment of BSE during the investigation period. The following points narrate the dealings of the Noticee during the investigation period and the allegations against the Noticee for execution of non-genuine trades.

4. As regards the dealings of the Noticee in the Stock Options segment of BSE during the Investigation Period, it was observed that the Noticee had traded in 1 unique contract, in which Noticee has allegedly executed total of 2 non-genuine trades, which resulted in artificial volume of total 30,000 units.

5. Summary of dealings of the Noticee in the Stock Options contract in which the Noticee allegedly executed non genuine trades on July 13, 2015 during the Investigation Period is as follows:

S. No	Contract Name	Avg. Buy Rate (₹)	Total Buy Volume (no. of units)	Avg. Sell Rate (₹)	Total Sell Volume (no. of units)	Number of non genuine trades executed by Entity in the Contract	Total number of trades executed by the Entity in the Contract	Total number of trades executed 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	UBRL15AUG1060.00CE	12.25	15000	39	15000	2	2	2	100%	100%

6. From the above table, the following is observed as regards the dealings of the Noticee:

a) During the Investigation Period, 2 trades for 30,000 units were executed by the Noticee in the said contract on July 13, 2015.

b) That while dealing in the said contract during the Investigation Period, Noticee executed total 2 reversal trades (1 buy trade + 1 sell trade) with same counterparty viz XION GEMS & JEWELLERS PVT. LTD on the same day.

c) Thus, Noticee, through its dealing in the contract viz, "UBRL15AUG1060.00CE" during the Investigation Period, executed 2 non genuine trades and thereby allegedly generated artificial volume of 30,000 units which is 100% of the total volume traded in the said contract in the market during the Investigation Period.

7. In view of the foregoing, it was alleged that the Noticee, indulged in execution of reversal of trades in Stock Options with same entity on the same day. Such trades are non-genuine in nature and have created false and misleading appearance of trading in terms of artificial volumes in stock options and therefore alleged to be manipulative and deceptive in nature. Thus, it was alleged that the Noticee had violated the provisions of Regulation 3(a), 3(b), 3(c), 3(d), 4(1) and 4(2) (a) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as "**PFUTP Regulations, 2003**").

APPOINTMENT OF ADJUDICATING OFFICER

8. Pursuant to investigation, SEBI, after being satisfied that there are sufficient grounds to inquire into the affairs and adjudicate upon the alleged violations as mentioned above, *inter-alia*, in respect of the Noticee, had appointed the undersigned as the Adjudicating Officer vide Order dated July 02, 2021, under Section 19 read with Section 15I(1) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act, 1992**") and Rule 3 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as "**Adjudication Rules, 1995**") to conduct adjudication proceedings in the manner specified under Rule 4 of the Adjudication Rules, 1995 read with Section 15I (1) and (2) of the SEBI Act,1992, and if satisfied that penalty is liable, impose such penalty as deemed fit in terms of Rule 5 of the Adjudication Rules,1995 and Section 15HA of the SEBI Act,1992.

SHOW CAUSE NOTICE, REPLY AND HEARING

9. A Show Cause Notice (hereinafter referred to as '**SCN'**) bearing ref. no. SEBI/HO/EFD2/PROS/P/OW/2021/22619/1 dated September 06, 2021 was served upon the Noticee under Rule 4 of the Adjudication Rules, 1995 to show cause as to why an inquiry be not held against Noticee in terms of Rule 4 of the Adjudication Rules, 1995 and penalty be not imposed under Section 15HA of the SEBI Act, 1992 for the violations alleged to have been committed by it. The SCN was sent to the Noticee vide Speed Post AD and was duly served on the Noticee as per the Tracking details obtained from the India Post website.

10. Vide email dated September 21, 2021, Noticee requested for additional 15 days' time to file its reply. In the interest of natural justice, vide notice dated October 04, 2021, Noticee was granted additional time to file its reply by November 14, 2021 and also, in terms of Rule 4 (3) of the Adjudication Rules, 1995, Noticee was given an opportunity of personal hearing on November 17, 2021.

11. In reply to the SCN, Noticee vide email dated November 15, 2021 submitted the copy of letter dated November 14, 2021. Vide the said letter, the Noticee, *inter alia,* submitted as under:

"……………

It is in reference to the Show Cause Notice and later on your letter dated 4th oct.

2021 My HUF is alleged with carrying out non-genuine trade on illiquid stock option at BSE, thereby allegedly violating regulation 3(a) ,(b), (c) and 4(1),4(2) a. In this respect we would like to submit humbly that.

(1) We are very very small rather micro- level investor.

(2) As time to time directed by SEBI and other govt. agencies we did the trade through the broker who is registered with BSE and trading on BSE plate form.

(3) We trusted all the trade done on BSE, as it is a pioneer stock exchange equipped with a strong security system to track and filter all malicious/ illiquid trades. Till date we did not receive any notice or communication from BSE regarding this trade.

(4) Sir, we being very small people we are not aware of the rule and regulation of SEBI, which we understand is a organization to protect the interest of the investor.

(5) With the above facts we do not think that our HUF is responsible for any violation of regulations.

(6) Your honour we are not directly responsible, this is due to fault in the system which is regulated by SEBI.

(7) Your honor I Surendra Kumar Gupta Karta of this HUF at this age of 80 yrs. Can simply plead for fair justice with sympathetic/merciful attitude.

(8) This is the case of year 2014-15 already more than 6 years have passed ,If any time limitation is applicable kindly give us the advantage of that.

(9) Your honor I am at this age of 80 yrs. not interested in any litigation nor we can afford it.

PRAYER:-

Your Honor it is our humble request that we should not be penalized for any fault which is not directly committed by us and was not in our control as only a registered broker can trade on BSE.

Your kind honor is requested to drop the proceedings against us .

…………."

12. Further, the opportunity of hearing was availed by the Noticee on November 17, 2021. The hearing was conducted through video conference mode using Webex platform. The Karta of the Noticee, Shri Surendra Kumar Gupta (hereinafter referred to as "**AR**") appeared on behalf of the Noticee. During the hearing, the contents of the SCN and the allegations levelled against the Noticee were explained to the AR. AR reiterated the submissions made vide the reply dated November 14, 2021 and submitted that they have no further submission to make and the hearing was concluded thereby.

13. In view of the above, noting that sufficient opportunity for submission of reply and personal hearing has been granted to the Noticee, I now proceed further for consideration of Issues.

CONSIDERATION OF ISSUES AND FINDINGS

14. After perusal of the material available on record, I have the following issues for consideration viz.,

    I. Whether the Noticee has violated the provisions of Regulations 3 (a), 3(b), 3(c), 3 (d), 4 (1) and 4 (2) (a) of the PFUTP Regulations,2003?

    II. If yes, whether the Noticee is liable for monetary penalty under Section 15HA of the SEBI Act, 1992?

    III. If so, what quantum of monetary penalty should be imposed on the Noticee?

FINDINGS

15. On perusal of the material available on record and giving regard to the facts and circumstances of the case and submissions of the Noticee, I record my findings hereunder. Before advancing into the merits of the case, I would like to deal with the issue pertaining to the delay, as contended by the Noticee.

16. I note that there is no provision under the SEBI Act, 1992 which prescribes a time limit for taking cognizance of a breach of the provision of the SEBI Act, 1992 and Rules and Regulations made thereunder. Further, as per Section 11C of the SEBI Act, 1992, SEBI can initiate investigation at any point of time, for any period of alleged violation or any period of alleged transactions. I also note that the investigations relating to the PFUTP Regulations, 2003 are complex (considering the volume of transactions, connections and examination of trading of shares, etc.) and time consuming. In this regard, it is pertinent to note that, in the matter

of **SEBI Vs Bhavesh Pabari** (2019) SCC Online SC 294, the Hon'ble Supreme Court has, *inter alia*, held as follows:

"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."

17. Further, I note that the Hon'ble Securities Appellate Tribunal (hereinafter referred to as **"SAT"**) in the matter of **Pooja Vinay Jain vs. SEBI** (Appeal No. 152 of 2019, Date of Decision – 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*"

18. In view of the aforesaid and considering the facts of the present matter, I do not find any merit in the submission of the Noticee that there has been any delay in the matter and advantage of it may be given to the Noticee.

ISSUE I: Whether the Noticee has violated the provisions of Regulations 3 (a), 3(b), 3(c), 3 (d), 4 (1) and 4 (2) (a) of PFUTP Regulations, 2003 ?

19. Before moving forward, it is pertinent to refer to the relevant provisions of the PFUTP Regulations, 2003 which reads as under:

Regulation 3: - Prohibition of certain dealings in securities

3. No person shall directly or indirectly—

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

(b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made thereunder;

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

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

Regulation 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;

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

21. 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.

22. I note that the Noticee had executed 2 non-genuine trades in 1 contract on July 13, 2015. The details of non-genuine trades executed by the Noticee are furnished hereunder:

S.No	Contract Name	Avg. Buy Rate (₹)	Total Buy Volume (no. of units)	Avg. Sell Rate (₹)	Total Sell Volume (no. of units)	Number of non genuine trades executed by Entity in the Contract	Total number of trades executed by the Entity in the Contract	Total number of trades executed 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	UBRL15AUG1060.00CE	12.25	15,000	39	15000	2	2	2	100%	100%

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

I. Scrip Name: UBRL15AUG1060.00CE, Trade Date: 13/07/2015

CLIENTNAME	CP_CLIENTNAME	TRADE_TIME	TRADE_RATE	TRADED_QTY
SURENDRA KUMAR GUPTA HUF	XION GEMS & JEWELLERS PVT. LTD	14:44:52.885523	12.25	15,000
XION GEMS & JEWELLERS PVT. LTD	SURENDRA KUMAR GUPTA HUF	14:44:58.588834	39	15,000

(a) I note from the above table that during the investigation period, total 2 trades for 30,000 units were executed in the "UBRL15AUG1060.00CE" contract on July 13, 2015 wherein the Noticee was party to both the said trades.

(b) The Noticee placed a buy limit order for 15,000 units at a price of ₹ 12.25 per unit and the said order was matched with the sell limit order (which was also for 15,000 units at a price of ₹ 12.25 per unit) of counterparty client XION GEMS & JEWELLERS PVT. LTD. I note that the said buy limit order by the Noticee was placed at 14:44:52.166987 almost at the same time as that of the entry of the sell limit order by the Counterparty i.e. at 14:44:52.885523. 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 at 14:44:52.885523 with the counterparty. Subsequently within 6 seconds from the above trade, at 14:44:58.464188, the Noticee placed a sell limit order for 15,000 units at a price of ₹ 39 per unit and the said order was matched at 14:44:58.588834 with the same counterparty (i.e. XION GEMS & JEWELLERS PVT. LTD), who placed a buy limit order for the same quantity (i.e. 15,000) and price (i.e. ₹ 39). I note that the said buy limit order was placed by the counterparty at 14:44:58.588834 almost at the same time as that of the sell limit order placed by the Noticee i.e. at 14:44:58.464188. 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 with the buy limit order by the Counterparty.

(c) Therefore, it is noted that while dealing in the said contract on July 13, 2015, the Noticee at 14:44:52.89 hrs entered into 1 buy trade with counter party viz, . XION GEMS & JEWELLERS PVT. LTD for 15,000 units at a rate of ₹ 12.25 per unit. Thereafter, on the same day, within 6 seconds from the above trade, Noticee, at 14:44:58.59 hrs entered into 1 sell trade with the same counterparty for 15,000 units at a rate of ₹ 39 per unit.

(d) From the above, it is noted that while dealing in the said contract during the investigation period, the Noticee executed reversal trades through 1 buy trade and 1 sell trade with the same counterparty viz XION GEMS & JEWELLERS PVT. LTD, on the same day for the same quantity.

(e) Thus, the Noticee, through its dealing in the contract viz, "UBRL15AUG1060.00CE" during the investigation period, executed 2 non genuine trades and thereby, the Noticee generated artificial volume of 30,000 units which is 100% of the volume traded in the said contract in the the market during the Investigation Period.

24. From the above pattern of trades, I note that the Noticee had bought and sold option contract with the same counter party and also reversed its trade in 6 seconds from its earlier buy trade, at substantial price difference. Such pattern of dealings suggests beyond doubt that they were not driven by market factors. The buying of illiquid stock options by the Noticee and subsequent reversal trade

with the same counterparty for the same quantity, within a short span of time, with a significant difference in buy and sell value of stock options, where order time, order price and order quantity were matched by both the parties for both legs of the reversal trade, in itself, exhibits abnormal market behaviour and defies economic rationality. Therefore, I am inclined to note that the aforesaid trades of Noticee were non genuine and have created false and misleading appearance of trading in terms of artificial volume in stock options and therefore the same are manipulative and deceptive in nature.

25. As noted above, Noticee had executed non- genuine trades in 1 contract viz., UBRL15AUG1060.00CE, where all the trades were non genuine trades and the Noticee contributed to 100% artificial volumes. Non genuine trades executed by the Noticee in above contracts had significant differential in buy rates and sell rates considering that the trades were reversed immediately on the same day.

26. I note from the above trading pattern of trades that Noticee has deliberately made misuse of the trading platform for creating artificial volume in the illiquid stock options. I note that no justifiable rationale has been given for entering into such transactions by the Noticee as the behaviour exhibited by the Noticee defies the logic and basic economic sense. The fact that the counterparties are same corroborates that the trades were not genuine and executed for manipulative purpose.

27. The non-genuineness of these transactions executed by the Noticee is evident from the fact that there was no commercial basis as to why, within a short span of time (viz. approx. 6 seconds), the Noticee reversed the position with the same counterparty client with a significant price difference. Such short span of time in reversing the trades in the contract suggests the non-genuineness of these trades executed by the Noticee. The fact that the orders of the Noticee and its 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 its counterparty in the stock options segment of BSE and the same were non-genuine trades. Therefore, the submission of the Noticee that he was a small investor and not responsible for the trade is not tenable.

28. The non-genuine and deceptive transactions of these entities are covered under the definition of 'fraud' and the dealings of the Noticee as discussed herein above were "fraudulent", as defined under regulation 2(1)(c) of the PFUTP Regulations and prohibited under the provisions of Regulations 3(a), 3(b), 3(c) and 3(d) and 4(1) and 4(2)(a) of the PFUTP Regulations, 2003.

29. The Noticee has contended that all its trades were executed through a stock broker registered with the BSE and had been executed on BSE Platform. In this regard, I note that in the screen based trading, which is virtually anonymous, it may not be ordinarily possible for anyone to enter into such reversal trades. However, considering the precision at which the reversal transactions have taken place i.e. synchronisation of the quantity, order price and order time and sale with 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*"

30. 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 hence liable to be proceeded against for violation of Regulations 3(a), 4(1) and 4(2)(a) of the PFUTP Regulations, 2003.

31. 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*."

32. 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."

33. 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.

34. Further, I note that it is not a mere coincidence that Noticee could match its 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..."*

35. 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."

36. 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 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."

37. 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.

38. In line with the aforesaid judgements of Hon'ble SAT and Hon'ble Supreme Court, I note from the foregoing findings that the trading pattern of the Noticee in terms

of volume of reversal trades, proximity of buy/sell and subsequent reversal evidences the indulgence of the Noticee beyond a reasonable doubt of the manipulative intent in creation of artificial volume. Further, the dealings by Noticee only in such options contracts which was illiquid clearly demonstrates the manipulative intent to use stock exchange platform to carry out non-genuine trades with the aim to execute such trades for manipulative purposes.

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

40. Vide its reply, the Noticee has submitted that it was not aware of rules and regulations of share market and did the trades through the broker registered with BSE and executed on exchange platform. It is cardinal rule of law that ignorance of law cannot be an excuse for the violation of any statutory provision and therefore I am not inclined to give any consideration to the said submissions of the Noticee in its favour.

41. Further, it is established that the Noticee by indulging in reversal trades which are manipulative, unfair, fraudulent and non-genuine, in nature, had created artificial volumes in the contracts and therefore, misused the exchange trade platform. In view of above, I conclude that the Noticee had violated the provisions of Regulations 3 (a), 3(b), 3(c), 3 (d), 4 (1) and 4 (2) (a) of the PFUTP Regulations, 2003.

ISSUE - II: If yes, whether the Noticee is liable for monetary penalty under Section 15HA of the SEBI Act, 1992?

42. From the detailed analysis as brought out above, it is established that reversal trades are not normal transactions and it clearly demonstrates beyond reasonable doubt that the Noticee had intentionally executed these trades and manipulated the volume by artificial trading pattern in the contract UBRL15AUG1060.00CE, where the total of 2 trades executed during the Investigation Period in the said contract were non genuine trades and the Noticee was part of all the trades.

43. I am of the view that the misuse of stock options as shown above not only displays an unreal picture of market activity to other investors but also defeats the basic premise of screen based electronic trading system and price discovery mechanism by repeated execution of pre decided reversal trades at irrational / arbitrary prices. Such activity deliberately or otherwise damages market integrity apart from presenting wrong picture of liquidity to gullible investors which could affect their trading/investment decisions. Options as financial instruments, ordinarily, provide hedging avenues to investors. The trading of the Noticee in the instant matter was abnormal and was clearly designed to create artificial volumes in the illiquid stock options. In my view, the abuse of such financial instruments, which are made available to the investors for the purpose of protection of their investment portfolios from the risks of adverse price movement, cannot be tolerated.

44. I find that the Noticee by indulging in execution of reversal trades in Stock Options with same entity on the same day, had created artificial volume, leading to false and misleading appearance of trading in the illiquid stock options at BSE and therefore violated the provisions of Regulations 3 (a), 3(b), 3(c), 3 (d), 4 (1), and 4 (2) (a) of the PFUTP Regulations, 2003. Accordingly, the Noticee is liable for monetary penalty under Section 15HA of the SEBI Act, 1992, the provisions of which are furnished hereunder.

Section 15HA of SEBI Act, 1992 - Penalty for fraudulent and unfair trade practices

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

ISSUE – III: If so, what quantum of monetary penalty should be imposed on the Noticee?

45. While determining the quantum of monetary penalty under Section 15HA of the SEBI Act, 1992. I have considered the factors stipulated in Section 15-J of the SEBI Act,1992, which reads as under:

    Section 15J - Factors to be taken into account by the Adjudicating Officer

    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.

46. I observe that the material / documents made available on record does not quantify any disproportionate gains or unfair advantage, if any, made by the Noticee and the losses, if any, suffered by the investors due to such violations on part of the said Noticee. However, Noticee has entered into non-genuine trades in stock option contract during the Investigation Period.

47. Considering, the facts of the matter as discussed above, I am of the view that imposition of minimum penalty as provided under Section 15 HA of the SEBI Act, 1992 would be commensurate with the violations committed by the Noticee.

ORDER

48. After taking into consideration the nature and gravity of the violations established in the preceding paragraphs and in exercise of the powers conferred upon me under Section 15-I of the Securities and Exchange Board of India Act, 1992 read with Rule 5 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995, I hereby impose a penalty of ₹ 5,00,000 (Rupees Five Lakhs Only) on the Noticee i.e. Surendra Kumar Gupta HUF, under Section 15HA of the Securities and Exchange Board of India Act, 1992, for the violation of the provisions of Regulations 3(a), 3(b), 3(c), 3(d), 4(1) and 4 (2)(a) of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003.

49. The said penalty imposed on the Surendra Kumar Gupta HUF, as mentioned above, shall commensurate with the violation committed by it i.e. Surendra Kumar Gupta HUF.

50. Surendra Kumar Gupta HUF 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 SEBI website www.sebi.gov.in on the following path, by clicking on the payment link:

ENFORCEMENT → Orders → Orders of AO →PAY NOW

51. Surendra Kumar Gupta HUF shall forward said Demand Draft or the details / confirmation of penalty so paid to the "The Division Chief, Division of Regulatory Action-3, Enforcement Department (EFD1 – DRA III), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C –4 A, "G" Block, Bandra Kurla Complex,

Bandra (E), Mumbai –400 051”. Surendra Kumar Gupta HUF shall provide the following details while forwarding DD/ payment information:

a) Name and PAN of the entity

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

52. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under Section 28A of the Securities and Exchange Board of India 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.

53. In terms of the provisions of Rule 6 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995, a copy of this order is being sent to Surendra Kumar Gupta HUF and also to the Securities and Exchange Board of India, Mumbai.

December 22, 2021
Mumbai

Ratan Lal Jat
Adjudicating Officer