BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
ADJUDICATION ORDER NO.: Order/RM/RV/2021-22/14939

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

In respect of:

Manoj Agarwal
PAN: ACRPA2347K
CJ 113, Sector 2
Saltlake City, Bidhannagar
Kolkata, West Bengal -700091

In the matter of
Dealings in Illiquid Stock Options at BSE

BACKGROUND

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

2. It was observed during the course of investigation that a total of 2,91,643 trades comprising 81.38% of all the trades executed in the Stock Options Segment at the BSE during the investigation period were trades which involved reversal of buy

and sell positions by the clients and counterparties in a contract on the same day. It was observed that Mr. Manoj Agarwal (hereinafter referred to as "Noticee") was one such client whose reversal trades involved squaring off open positions with a significant difference without any basis for such change in the contract price. The aforesaid reversal trades allegedly resulted into generation of artificial volumes, leading to allegations that the Noticee had violated the provisions of regulations 3(a),(b),(c),(d) and regulations 4(1),4(2)(a) of the SEBI (Prohibition of Fraudulent and Unfair Trading Practices related to Securities Markets) Regulations, 2003 (hereinafter referred to as "**PFUTP Regulations, 2003**").

APPOINTMENT OF ADJUDICATING OFFICER

3. SEBI initiated adjudication proceedings and appointed the undersigned as Adjudicating Officer under section 15-I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act**") read with rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as "**Adjudication Rules**") vide order dated April 30, 2021 to inquire into and adjudge under section 15HA of the SEBI Act against the Noticee for the alleged violation of the aforesaid provisions of PFUTP Regulations, 2003.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. A Show Cause Notice bearing reference no. PTA/RRM/RV/OW/2021/0000017051/1 dated July 30, 2021 (hereinafter referred to as "**SCN**") was issued to the Noticee under Rule 4(1) of the Adjudication Rules to show cause as to why an inquiry should not be initiated against the Noticee and why penalty should not be imposed on the Noticee under Section 15HA of the SEBI Act for the violations alleged to have been committed by the Noticee.

5. The SCN issued to the Noticee, *inter alia*, mentioned / alleged the following:

"….

5. The Noticee was one of the entities which indulged in reversal trades which allegedly created false and misleading appearance of trading, generating artificial volumes in the Stock Options Segment of BSE during the investigation period. The Noticee is alleged to have engaged in reversal trades through 2 trades in 1 unique contract, which led to generation of alleged artificial volume of 80000 units. These trades of the Noticee involved reversal with the same counterparty on the same day, but at different prices.

… ."

7. *"*A summary of dealings of Noticee in 'PNBK15JUN145.00CEW1' Stock Options contracts in which the said Noticee allegedly executed reversal trades during the investigation period, is as follows:-

Summary of dealings in contracts wherein the Noticee executed reversal trades

S. No.	Contract Name	Avg. Buy Rate (Rs.)	Total Buy Volume (no. of units)	Avg. Sell Rate (Rs.)	Total Sell Volume (no. of units)	% of Artificial Volume generated by Noticee in the contract to Noticee's Total Volume in the Contract	% of Artificial Volume generated by Noticee in the contract to Total Volume in the Contract
1	PNBK15JUN145.00CEW1	5.2	40000	9.0	40000	100%	100%

The abovementioned reversal trades and volumes are illustrated through the dealings of Noticee in one contract viz, “PNBK15JUN145.00CEW1” during the investigation period, as follows:-

(a) During the investigation it was found that Noticee executed 1 trade reversal through 2 non-genuine transactions on 01/06/2015 and with same counter party i.e. BANSHIDHAR VYAPAAR PVT. LTD.

(b) While dealing in the said contract on 01/06/2015, at 13:38:16 hrs the Noticee entered into a buy trade with counterparty BANSHIDHAR VYAPAAR PVT. LTD for 40000 units at Rs. 5.2 per unit. At 13:39:16 hrs the Noticee entered into a sell trade with the same counterparty, for 40000 units at Rs 9.00.

(c) It was also found that during investigation period, Noticee had only traded in one contract i.e., PNBK15JUN145.00CEW1 therefore 100% of trade of the Noticee was in the contract of PNBK15JUN145.00CEW1 itself.

(d) The Noticee’s trades while dealing in the above said contract during the investigation period allegedly generated artificial volume of 80000 units, which made up 100 % of total market volume in the said contract during this period.

9. *In view of the foregoing, it is alleged that Noticee, by indulging in execution of non-genuine reversal of trades in Stock Options with same entities on the same day, created false and misleading appearance of trading in stock options and therefore allegedly violated Regulation 3(a),(b),(c),(d), 4(1), 4(2)(a) of PFUTP Regulations, 2003.*

…”

6. The SCN was sent to the Noticee via Speed Post Acknowledgement Due ("**SPAD**") and was delivered on August 9, 2021. Copy of the said SCN was also served through email on August 13, 2021.

7. The Noticee, vide reply email dated August 18, 2021, in pretext of ill health, sought three months' time to reply to the SCN. A letter, dated August 13, 2021, also, to this effect, was sent by the Noticee, which was received in SEBI on August 20, 2021. The request of the Noticee was not acceded to and an email, on this account, was issued on August 20, 2021. Vide letter dated August 21, 2021 (received in SEBI on August 25, 2021) Noticee stated to have done all the transactions through M/s Odyssey Securities Pvt. Ltd., SEBI Regn.No.BFO INZ010013332; BFX: INZ010013332 and the profit/loss incurred have been accounted in the financial year and taxes paid accordingly. He further stated that the Contract Notes, bills etc. were provided by the broker and hence SEBI should make enquiry in respect of his above transaction with the said broker.

8. In the interest of natural justice and in terms of the Adjudication Rules, the Noticee was provided with an opportunity of personal hearing in the matter on September 24, 2021 at 3 PM through the online Webex platform. The Notice of Hearing was sent through Speed Post AD as well as email on September 14, 2021. Noticee, vide reply email dated September 14, 2021, submitted his reply to the SCN and through another email of the same day shared the details of the Authorised Representative ("**AR**") who would be appearing in the personal hearing on behalf of the Noticee. The hard copy of the reply to SCN was received on September 18, 2021. Noticee, vide aforesaid reply submitted the following:

   I) **Preliminary Objection:** He reiterated that he dealt through the stock broker Odyssey securities Pvt Ltd. having Sebi regn.no.INZ010013332. He submitted that SEBI has not provided any evidence or proof to show that his trades were fraudulent. He further, submitted that none of the ingredients of the said PFTUP

Regulations are attracted in the present case essentially because:

a. The SCN fails to appreciate that when SEBI itself has not discharged its obligations of quick investigation, seeking explanation of the parties at that time, declaring trades in stock options as illegal at the relevant time, subjecting him to adjudication proceeding at such a belated stage of approx. 6 years is unfair and unreasonable.

   Even though limitation act does not specify time limit in such case, still as per judicial pronouncements by the SAT and SC, a reasonable period has to be complied with.

b. The trades were executed on the online trading platform of the exchange with due compliance with all the rules and regulations of the exchange;

c. At no point of time was there any warning or any observation about the scrips in stock Options which were executed by the Noticee;

d. The observations regarding the stock options being illiquid is incorrect;

e. Even assuming by any stretch of imagination the stock options were illiquid, then any small quantity or volumes would look significant as there are no active traders in the said stock option.

f. For the transaction to be termed fraudulent, as per the definition of "fraud", there has to be an "inducement" and SEBI has not even alleged inducement;

g. There is no nexus, directly or indirectly with the alleged counter party /parties in his case and SEBI has not even alleged this. He requested for cross examination of the alleged counterparties and strict proof as to any exchange of cash for alleged non genuine trades;

h. His trading in option segment was low percentage of overall volume in market. The total number of alleged non-genuine trades were only 2 which is a meagre part of overall 2,91,744 trades in market (constituting a miniscule

0.000685% of market volume of alleged non-genuine trades). Thus, it is erroneous to allege that his trades created artificial volume on BSE.

i. The trades in question were in the normal course of investment activity and there is nothing amiss in the trades executed by him. All the receipts and payments for the trades were made through SEBI registered stock broker and banking channels with appropriate audit trails;

j. None of the trades are deceptive in nature or have any impact on the investors or their investment decisions which is a sine qua non of "fraud";

2) He further submitted that, upon reading of the Show Cause Notice, it appears that there are various documents and data that are referred to and relied upon by SEBI in the Captioned proceedings to arrive at an allegation of non-genuine/artificial trades,

II) Submissions on dealing in "illiquid" option segment of BSE

a. With respect to observation that I have dealt in stock options contracts which are /were illiquid in nature, I submit that if we observe the underlying scrips in which I traded, it can be established that these scrips are highly liquid in nature i.e. frequently traded in market. I traded in contracts of underlying scrips such as PNB. In fact, I submit with humility that underlying stock of aforesaid contracts consists of companies which are part of the BSE -200/ 500/ indices of the Bombay Stock Exchange. Thus, to allege that I deliberately traded in only those options which were illiquid in nature is unfair.

b. Apparently, SEBI has held that he transacted in 'illiquid options' on the basis that his trades were squared up at substantial price difference without any basis for significant change in the contract price. However, in that case, it may also be concluded that said trades could have had no effect on other investors or market at large and that such illiquidity would be reason for volatility and alleged 'reversal' transactions since variations in option price would be dramatic if the chosen strike price is thinly traded.

c. He submitted that BSE and SEBI have themselves allowed and permitted trading in options for 'far months' with a strike price which are at large variance to current market price. The fact that such parameters are laid down is clearly indicative that options will always be 'in the money' and 'out of money' and since regulators have themselves permitted trading in same, no adverse inference be drawn against him in this regard.

d. He further submitted that stock exchanges regularly come out with list of illiquid scrips in cash segment. However, no such list is issued by exchanges or regulator for dealing in stock options contracts. Thus, to fasten the responsibility or allege a single entity (him) that it traded in illiquid option is unwarranted and unfair.

e. He further submitted that derivative market is 'zerosum game' and thus in each and every case one party will inevitably make profit and counterparty will make loss. In capital market neither BSE nor SEBI can guarantee profit or loss to any individual/ entity. In derivative trading, traders often make profit or loss over a period of time since the market does not always behave as per their prediction/ expectation. Thus, profit and loss is concomitant to trading in derivative segment. The mere fact that he traded in option segment cannot be a ground to rope him into present proceedings.

III) Trades did not influence the price / volume of underlying shares in cash segment:

a. He submitted that he trades & invest in the stock market in ordinary course which includes his bona fide trading in option segment. Thus, it is erroneous to allege that his trades created artificial volume on BSE. Going by the logic of SEBI if these were illiquid stock options, then any trade and transaction would look significant. In fact, the impugned trades constituted a miniscule percentage of overall trades.

b. He submitted that there was no major movement in price of underlying scrips which itself proves that his trades had no impact on market. Thus, his transactions neither distorted the equilibrium in market nor caused any loss or prejudice to investors at large.

c. He submitted that any kind of alleged fictitious/ manipulative trade in cash segment may create distorted impression in minds of investors that price of scrip is rising/falling who may invest/ divest from said scrip. However, in case of option segment there is no such effect since each contract expires at end of contract period and for every party who makes profit there is counterparty who makes a loss. There is no question of transfer of beneficial ownership in option segment since at end of settlement cycle only net loss/profit is adjusted. Therefore, allegation of creation of 'artificial' or 'reversal' trade is of no consequence in option segment of exchange.

IV) No relationship with counterparty/parties:-

a. Noticee submitted that he did not act in concert or in collusion with anyone and nor was he part of any group or connected with anyone for the purpose of influencing price or for any manipulative activity as alleged or otherwise. It is an admitted position that there is no connection whatsoever between him and the counter parties mentioned in SCN to the impugned trades.

b. Noticee stated that he has no 'connection' or 'relation' with any of counterparties to his trade as mentioned in SCN. His trading in stock option segment was independent of any other entities dealing in the same and based on his limited understanding of capital market.

c. Noticee stated that all his transactions have been carried out on the online trading platform of stock exchange. Undisputedly, in case of screen-based trading, the automated system itself matches orders on a price-time priority basis and hence it is not possible for anybody to have access over identity of counter party. Since counter party identity is not displayed; one can never have any choice with whom it wants to deal or not to deal.

d. Noticee stated that he had no prior meeting of minds with broking entities as well as their clients as mentioned in SCN, nor any contemporaneous knowledge about any alleged wrongdoing. He was not guilty of conduct which is contumacious or dishonest or acted in conscious disregard of law.

e. Noticee drew attention to SAT Orders in the matter of **Jagruti Securities (2008 SCC online SAT 184) and S.P.J Stockbroker Pvt Ltd (2013 SCC Online SAT 67)** and **Order dated 18.05.2012 in the matter of Sanjay Agrawal vs. SEBI** and submitted non-existence of any connection with the counterparty as established in Show Cause Notice.

g. He further submitted that all his trades in option segment were within prudential norms of exchange and as per procedures and guidelines as prescribed by regulators ie. SEBI & BSE. At the relevant time, none of his trades were questioned by the brokers who are SEBI registered intermediaries and frontline gate-keepers of stock exchange. Had he been alerted by the broker or stock exchange he would have taken prompt and immediate corrective measures, if any, at that point of time itself.

h. Further, no cautionary warning, advisory, communication or alarm was raised by BSE at any point of time. There was nothing in the public domain that there is anything amiss in the matter. In fact, with a fool proof and state of the art surveillance system BSE could have annulled the trades at that point of time itself in case it considered that the trades were fraudulent. However, this was not the case, which means that the trades executed by him were genuine and fair.

i. Noticee submitted that it is only recently that BSE, vide Notice No.20160308-33 dated 08.03.2016, announced that it has introduced measure for prevention of reversal trades in Equity Derivative Segment w.e.f from 14.03.2016. Thus, in case of potential reversal trade, second leg (latest leg) of a reversal trade shall automatically be cancelled by exchange in an on-line real time basis on trading system. He submitted that merely because on-line preventive measure and check & balance did not exist at relevant point of time to avoid inadvertent reversal trades no adverse inference be drawn against him in this regard.

V) <u>No role attributed to me in Show Cause Notice</u>

Noticee submitted that there is no reason for any allegation that he has violated the provisions of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Markets) Regulations, 2003 or the SEBI Act. He submitted that besides recording common/generic allegations against him, not a single instance or observation on his specific role in alleged reversal trade is delineated in the Show Cause Notice. Such an approach is bad in law.

VI) Noticee further requested reliance on judgement of the Hon'ble Supreme Court in the matter of Commissioner of Central Excise, Bangalore vs M/s Brindavan Beverages (P) Ltd. and Ors [Civil Appeal 3417 of 2002] decided on 15.06.2007 in this regard.

VII) SUMMARY

In summary, with regard to his dealings in stock options on BSE, Noticee liked to clarify as under:

A. He acted as bona fide trader / investor and have transacted in stock option segment in normal course of my investment/trading activity and his trading in the same was very much within his own financial and risk bearing capacity.

B. He submitted that in any business activity in stock market, one can either make profit or loss. He submitted that at the relevant time he had no idea of any profit or loss in said transactions and he traded in option segment taking into account my 'risk and reward' parameters.

C. He is not connected to counterparties of his transactions in option segment and neither does he have any relation with promoters/directors/ key management person of underlying scrips in cash segment.

D. Noticee submitted that there has been no grievance/complaint by any investor, broker, stock exchange or any other agency concerned with respect to his dealing in the option segment of BSE .

E. SEBI has discontinued proceedings against the brokers and intermediaries against whom similar allegations of dealing in illiquid stock options while executing trades on behalf of clients have been levelled. He submitted that the same recourse ought to be adopted on an entity like him.

F. Speaking for himself, Noticee stated that he had followed and complied with all the procedures and requirements of capital market while dealing through SEBI registered intermediary. All the pre-trade, trade and post-trade activities were carried out on the trading, clearing and settlement system of stock exchange which itself has sophisticated on-line surveillance software and systems in place.

VIII) **PRAYER**

Based on the submissions, Noticee requested that the Show Cause Notice dated 30.07.2021 be dropped without imposing any monetary penalty on him. He stated that all allegations are based on conjectures and surmises without any proof of exchange of cash, hence he should be given benefit of doubt as contemplated by '**Principles of Natural Justice'**. He prayed for grant of opportunity of personal hearing in order to add/adduce/cite other points and/or case laws and judgements of SAT/ High Courts/ Supreme Court.

9. The hearing was attended by Sh.Vinod Kumar Goyal, the Authorized Representative of the Noticee, on September 24, 2021 at 3pm. The AR reiterated the contents of the reply to the SCN and submitted that no monetary penalty be imposed. He further submitted that Noticee is ready to bear a ban from securities market for one or two months. During the hearing, following further information was submitted by the AR, as an addendum to the reply submitted earlier:

   a. Latest verdict of SAT setting aside penalty proceeding for inordinate delay in initiation of the same:

   In support of the submission reliance was placed upon the very recent decision of Securities Appellate Tribunal (SAT) in Ashok Shivlal Rupani vs SEBI and other companion appeals in Appeal No. 417 of 2018 decided on August 22, 2019 wherein the order of penalty was set aside on account of an inordinate delay in the initiation of the proceedings.

   b. Execution of one trade held not to be treated as synchronized/circular or reversal:

   Reliance was placed on the Honble SAT verdict on 21.01.2021 in appeal no.198 of 2020 and appeal no.199 of 2020 in the case of ALMONDZ ENTERTAINMENT PVT LTD AND OTHER APPELLANTS which is reproduced here:

“18. In this regard, we find that the appellant Dhvani and Darshan executed one trade and since it was sold to the same counter party, the AO held that it was fraudulent. There is no finding as to how the trades executed by these appellants were synchronized or circular or reversal. There is no consideration or reasoning given as to how the execution of one trade could make it synchronized, circular or reversal and how they are treated at par with the other entities. We find that the AO has not considered the directions given by this Tribunal in its earlier order. We are further of the opinion that this set of appellants is also entitled for the same relief as other appellants on the basis of contradictory findings.

19. For the reasons stated aforesaid, the impugned order passed by the AO cannot be sustained in so far as the appellants are concerned and is quashed. The appeals are allowed with no order as to costs.”

c. Breaking down of the one contract into two trades by you is factually and practically wrong in the context in which the SCN has been issued.

The plea given in said SCN is that the Noticee has done reversal trade with the same counter party on the same day. For the sake of argument if it is assumed that there is reversal of earlier trade then for holding a trade to be reversal, there has to be an original trade either buy or sell which has been reversed by contra trade i.e sell or buy. Hence the reversal is the only 2nd trade (last leg). Thus in one contract reversal trade is one only and not two as alleged. Once this plea is upheld the observation and verdict of hon’ble SAT cited above in para 2 holds good for our case too and cannot be termed reversal at all.

d. Since SEBI has not provided the proof of exchange of cash or call records/cross examination facility with alleged counter party, the allegations of non -genuine trades are treated to be not cogent and only based upon pure conjectures and surmises and hence cannot sustain.

e. Reliance is place on the under noted S.C. verdict in the context of "evidence"

“Digambar Vaishnav V/S State of Chhattisgarh

2019CriLJ 1901 : 2019 AIR (SC) 1367:2019 (4) SCC 522 2019 (107) ACrC 619: 2019(2) CCSC 1048 Evidence — Last seen together — Cannot by itself from the basis of holding accused guilty of offence — To constitute last seen together, factor as an incriminating circumstance, there must be close proximity between time of seeing and recovery of dead body.

Evidence — Burden of proof —Squarely rests on prosecution and that general burden never shifts. (Para 15)

Criminal trial — No conviction on basis of surmises and conjectures or suspicion however grave it may be — Strong suspicion, strong coincidences and grave doubt cannot take place of Legal proof. (Para 15)"

CONSIDERATION OF ISSUES AND FINDINGS

1. I have taken into consideration the facts and circumstances of the case, the material/documents made available on record and the submissions of the Noticee. The issues that arise for consideration in the instant case are :
   (a) Whether the Noticee has violated the 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?
   (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?

2. Before advancing into the merits of the case, I would like to deal with the issue pertaining to the delay, as alleged by the Noticee, in point 6 (a) in reply to SCN.

   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. 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, SCN was issued on July 30, 2021. In compliance with principles of natural justice, after receipt of reply, an opportunity of personal hearing was scheduled on September 24, 2021 and upon conclusion of hearing, additional written submissions *(if any)* which were given during the hearing were reiterated by Noticee/ AR through email on December 2, 2021.

I further note that there is no provision under SEBI Act which prescribes a time limit for taking cognizance of a breach of the provision of SEBI Act and Rules and Regulations made thereunder. Further, as per Section 11C of SEBI Act, 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. 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 IP. 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.

3. Further, 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*, observed 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*."

4. With respect to the alleged violations in the instant matter, I note that it is pertinent to refer to the relevant provisions of the PFUTP Regulations, 2003, which are reproduced as follows:

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 6[manipulative] 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;

5. I note that the allegation against the Noticee is that, while dealing in the stock option contracts at BSE during the Investigation Period, the Noticee had executed reversal trades which were allegedly non-genuine trades and the same had resulted in generation of artificial volume in stock options contracts at BSE. Reversal trades are 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 alleged to be non-genuine 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.

6. I note from the trade log of the Noticee that the Noticee had traded in 1 unique contract in stock options segment of BSE during the Investigation Period. 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 a total of 80000 units in the said 1 contract. The summary of the non-genuine trades of the Noticee are as follows:

Contract Name	**Avg Buy Rate (in ₹)**	**Buy Qty (No. of units)**	**Avg Sell Rate (in ₹)**	**Sell Qty (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**
PNBK15JUN145.00 CEW1	5.2	40000	9.00	40000	100%	50%	100%	100%

7. It is noted that the Noticee had executed non-genuine trades in 1 contract, wherein the percentage of non-genuine trades of the Noticee to the total trades in the contract

was 50%. Further, the artificial volume generated by the Noticee in the contract amounted to a substantial 100% of total volume generated by him in the contract. It is also noted that artificial volume generated by the Noticee contributed 100% to the total volume from the market in the said contract. The non-genuine trades executed by the Noticee in the above contract had significant difference between buy and sell rates considering that the trades were reversed on the same day.

Upon perusing the trade log, I note that the trades executed by the Noticee in the contract were squared up within a short span of time with the same counterparty. To illustrate, on June 1, 2015, at 13:38:16:760, the Noticee placed a buy limit order for 40000 units at a price of ₹ 5.2 per unit and the said order was matched with the sell limit order (which was also for 40000 units at a price of ₹5.2 per unit) of counterparty client BANSHIDHAR VYAPAAR PVT.LTD. I note that the said sell limit order was placed at 13:38:17:495, i.e. after the entry of the buy limit order by the Noticee. I also note that there was no modification of either price or quantity by either the Noticee or the counterparty and the buy limit order of the Noticee got executed into trade immediately upon the entry of the sell limit order by the counterparty. Subsequently, at 13:39:16:073, the Noticee placed a sell limit order for 40000 units at a price of ₹9 per unit and the said order was matched with the same counterparty (i.e. BANSHIDHAR VYAPAAR PVT.LTD), who placed a buy limit order for the same quantity (i.e. 40000) and price (i.e. ₹9). I note that the said buy limit order was placed by the counterparty at 13:39:16:292, i.e. after the entry of the sell order by the Noticee. I also note that there was no modification of either price or quantity by either the Noticee or the counterparty and the sell limit order of the Noticee got executed into trade immediately upon the entry of the buy limit order by the counterparty.

8. 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. 1 minute), the Noticee reversed the position with the same counterparty client with a significant price difference. Such a short span of time taken for reversing

the trades in an illiquid stock option contract suggests the non-genuineness of these trades executed by the Noticee. The fact that the orders of the Noticee and her counterparty matched with such precision (considering that there was a perfect match of price and quantity as well as a short time difference between placing of the orders by the Noticee and counterparty) indicates a prior meeting of minds with a view to execute the reversal trades at a predetermined price. Since these trades were done in illiquid option contracts, there was very little trading in the said contract and hence, there was no price discovery in the strictest terms. The wide variation in prices of the said contracts, within a short span of time, is a clear indication that there was pre determination in the prices by the counterparties while executing the trades. Therefore, it is observed that the Noticee had indulged in reversal trades with his counterparty in the stock options segment of BSE and the same were non-genuine trades.

9. I note that it is not a mere coincidence that Noticee could match his trades (with the corresponding price and quantity entered by both the Noticee and counterparty being equal) with the same counterparty with whom he 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...*"

10. The Hon'ble Supreme Court of India further held in the same matter that "*…It is a fundamental principle of law that proof of an allegation levelled against a person may*

be in the form of direct substantive evidence or, as in many cases, such proof may have to be inferred by a logical process of reasoning from the totality of the attending facts and circumstances surrounding the allegations/charges made and levelled. While direct evidence is a more certain basis to come to a conclusion, yet, in the absence thereof the Courts cannot be helpless. It is the judicial duty to take note of the immediate and proximate facts and circumstances surrounding the events on which the charges/allegations are founded and to reach what would appear to the Court to be a reasonable conclusion therefrom. The test would always be that what inferential process that a reasonable/prudent man would adopt to arrive at a conclusion."

11. In the instant matter, I note that though direct evidence regarding meeting of minds or collusion of the Noticee with the counterparty is not forthcoming, the trading behavior of the Noticee makes it clear that the aforesaid non-genuine trades could not have been possible without meeting of minds at some level. In this context, I find it pertinent to refer to the Hon'ble SAT Order dated July 14, 2006 in the matter of Ketan Parekh Vs SEBI (Appeal No. 2 of 2004), wherein the Hon'ble SAT has held that *"…The nature of transactions executed, the frequency with which such transactions are undertaken, the value of the transactions, the conditions then prevailing in the market are some of the factors which go to show the intention of the parties. This list of factors, in the very nature of things, cannot be exhaustive. Any one factor may or may not be decisive and it is from the cumulative effect of these that an inference will have to be drawn."*

12. In the matter of SEBI Vs Rakhi Trading Pvt Ltd (Civil Appeal no, 1969 of 2011, 3174-3177 of 2011 and 3180 of 2011, decided on February 08, 2018), the Hon'ble Supreme Court of India held that *"…Considering the reversal transactions, quantity, price and time and sale, parties being persistent in number of such trade transactions with huge price variations, it will be too naive to hold that the transactions are through screen-based trading and hence anonymous. Such conclusion would be over-looking the prior meeting of minds involving synchronization of buy and sell order and not*

negotiated deals as per the board's circular. The impugned transactions are manipulative/deceptive device to create a desired loss and/or profit. Such synchronized trading is violative of transparent norms of trading in securities...."

13. Additionally, the Hon'ble SAT in its judgment dated November 24, 2021 in the matter of Radha Malani Vs.SEBI (Appeal NO.698/2021) adjudged the case based its judgment in the matter of Global Earth Properties and Developers Pvt Ltd Vs SEBI (Appeal No. 212 of 2020) which 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."*

14. The trading behavior of the Noticee which confirms that the trades executed by the Noticee were not normal, the wide variation in prices of the trades in the same contract in a short time without any basis for such wide variation, all indicate that the trades executed by the Noticee were not genuine trades and being non-genuine, created an appearance of artificial trading volumes in respective contracts. In view of the aforesaid, I find that the allegation of violation of regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of PFUTP Regulations, 2003 by the Noticee stands established. The Hon'ble Supreme Court of India in the matter of SEBI Vs Shri Ram Mutual Fund [2006] 68 SCL 216(SC) held that *"…In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant.."*

15. Noticee has contended none of the trades are deceptive in nature or have any impact on the investors or their investment decisions which is a sine qua non of "fraud"; Also that, The trades were executed on the online trading platform of the

exchange with due compliance with all the rules and regulations of the exchange. Noticee also contended that his trading in option segment was low percentage of overall volume in market. The total number of alleged non-genuine trades were only 2 which is a meagre part of overall 2,91,744 trades in market (constituting a miniscule 0.000685% of market volume of alleged non-genuine trades). Thus, it is erroneous to allege that his trades created artificial volume on BSE.. Noticee has also contended that stock exchanges regularly come out with list of illiquid scrips in cash segment. However, no such list is issued by exchanges or regulator for dealing in stock options contracts, Noticee has also contended that the trades in question were in the normal course of investment activity and there is nothing amiss in the trades executed by him. All the receipts and payments for the trades were made through SEBI registered stock broker and banking channels with appropriate audit trails. I note that Noticee was obligated to ensure genuineness of the trades executed by him on the exchange platform. The aforesaid obligation was mandatory not withstanding distortion of the equilibrium in market, loss or prejudice to investors at large, any grievance submitted by any investor, low percentage trading or any preventive measures installed by SEBI in this regard.

16. The Noticee has contended that he has dealt and traded in contracts of underlying scrips such as PNB, and the underlying stock of his aforesaid contract consists of companies which are highly liquid and are part of the BSE -200/ 500/ indices of the Bombay Stock Exchange. He has further contended that BSE and SEBI have themselves allowed and permitted trading in options for 'far months' with a strike price which are at large variance to current market price. The fact that such parameters are laid down is clearly indicative that options will always be 'in the money' and 'out of money' and since regulators have themselves permitted trading in same, no adverse inference be drawn against him in this regard. In this respect I would like to state that in the instant matter, the mentioned Noticee has done transaction in Option contract of PNB and the same were carried out in the F&O Segment of BSE. The said contract, as has been referred to in earlier paras, there were few transactions that have

happened during the period of investigation, hence these options were illiquid. I note that Noticee executed 1 contract having two transactions which comprised of reversal trades in which buy and sell rates had substantial difference in them without any difference in the underlying scrip price or any trading strategy to justify the same. I note that the aforesaid facts point to non-genuineness of such trades on the days they were executed on the stock options segment, which prevented efficient price discovery and resulted in generation of artificial volume. Hence, the averments made by the Noticee are not tenable.

17. In view of the aforesaid, I am convinced that, in the instant matter, the Noticee is liable for monetary penalty under the provisions of section 15HA of the SEBI Act, which reads as follows:

Penalty for fraudulent and unfair trade practices

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

18. While determining the quantum of penalty under section 15 HA of the SEBI Act, it is pertinent to consider the relevant factors stipulated in section 15J of the SEBI Act, which reads as under :

Factors to be taken into account while adjudging quantum of penalty

15J. *While adjudging quantum of penalty under 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.

19. 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 2 non-genuine trades in 1 stock option contract during the investigation period.

20. Therefore, I note that the Noticee indulged in execution of reversal trades in stock options on BSE in the Investigation Period which were non-genuine and created false and misleading appearance of trading in terms of artificial volumes in stock options, leading to violation of regulation 3(a), (b), (c), (d), 4(1) and 4(2)(a) of PFTUP Regulations, 2003.

ORDER

21. After taking into consideration all the facts and circumstances of the case, the material / documents made available on record including the submissions of the Noticee, the factors mentioned in section 15J of the SEBI Act and in exercise of the power conferred upon me under section 15-I of the SEBI Act read with rule 5 of the Adjudication Rules, I hereby impose a penalty of ₹5,00,000/- (Rupees Five Lakh only) on the Noticee, viz. Mr. Manoj Agarwal, under section 15HA of the SEBI Act for the violation of regulation 3(a), (b), (c), (d), 4(1) and 4(2)(a) of PFTUP Regulations, 2003. I am of the view that the said penalty is commensurate with the lapse / omission committed by the Noticee.

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

ENFORCEMENT → Orders → Orders of AO → PAY NOW.

23. The Noticee shall forward the aforesaid DD / payment confirmation details to the Division Chief, Enforcement Department -I (EFD1), FDM2 Division [EFD1-FDM2] SEBI Bhavan, Plot No.C-7,' G' Block, Bandra Kurla Complex (BKC), Bandra (East), Mumbai –400 051 and also send an email to tad@sebi.gov.in with the following detail:

1.	Case Name	
2.	Name of the 'Payer / Noticee' along with PAN of Noticee	
3.	Date of Payment	
4.	Amount Paid	
5.	Transaction No.	
6.	Bank Name and Account No.	
7.	Purpose of payment	

24. In the event of failure to pay the aforesaid amount of penalty within 45 days of receipt of this Order, recovery proceedings may be initiated under section 28A of the SEBI Act for realization of the said penalty amount along with interest thereon, *inter alia,* by attachment and sale of movable and immovable properties.

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

DATE: February 10, 2022	**RAM RUDRA MURARI**
PLACE: MUMBAI	**ADJUDICATING OFFICER**