BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO.: Order/SU/VA/2021-22/15789]

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:

Priti Jain

(PAN: ACJPJ9000C)

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 Ms. Priti Jain (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. SEBI/HO/CFID/CFID_2/VA/P/OW/2021/18864/1 dated August 11, 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. Corrigendum to the said Show cause Notice was also issued on March 07, 2022 and March 24, 2022.
5. The SCN issued to the Noticee, *inter alia*, mentioned / alleged the following:

"…. 5. The Noticee was one of the entities, who 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 EP.

6 (f) A summary of dealings of the noticee in 1 Stock Options contracts, in which the said noticee allegedly executed reversal trades, during the EP, 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 Entity 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	*NTPC15APR170.00PEW4*	*9.5*	*28,000*	*17.09*	*28,000*	*100%*	*100%*	*100%*	*100%*

6. Following are the observation from the trades executed by the Noticee in the contract of NTPC15APR170.00PEW4, during the EP, as mentioned at para 3 above:

(a) The Noticee has executed 3 trades, on 21/04/2015, for 28,000 units with the same counterparty i.e. Agro Commodity Pvt Ltd.

(b) It is observed that the Noticee placed a limit order of Rs.9.5 per unit to buy 28,000 units at 14.02.26 hrs, a second before limit order entered by Agro Commodity Pvt Ltd to sell the same number of units, at exactly the same price.

(c) While reversing the trades on the same day, the noticee placed two limit orders of Rs 12.4 per unit to sell 2,000 units at 14:02:33 hrs and Rs. 17.45 to sell

26,000 units at 14:02:46 hrs at the same time as the limit order entered by Agro Commodity Pvt Ltd.

(d) It is observed that both the trades were executed on the same day which led to generation of alleged artificial volume of 56,000 units which made up 100% of total market volume in the said contract, during this period. The trades entered by the noticee were reversed on the same day with same counter-parties at a substantial price difference without any basis for significant change in the contract price thereby accumulating a profit of Rs 2,12,500.

8. In view of the foregoing, it is alleged that the noticee, indulged in execution of reversal of trades in Stock Options segment of BSE with same counterparties 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 the stock options segment and therefore alleged to be manipulative and deceptive in nature. Thus, Noticee, has allegedly violated the provisions of Regulation 3 (a), (b), (c), (d), and 4(1), 4(2) (a) of the PFUTP Regulations, 2003.

SUBMISSION BY THE NOTICEE

6. The SCN was served on the Noticee via Registered Post Acknowledgement Due ("**RPAD**"). Thereafter, the Noticee, vide letter dated September 03, 2021, acknowledged the receipt of the SCN and submitted the following:

   1. *The Noticee denied having violated the PFUTP Regulations as alleged or otherwise. The Noticee is a law abiding citizen and has always complied with all the applicable laws in letter and spirit.*
   2. *The Noticee had traded in the stock options segment of the BSE Ltd. only once and because of these trades executed, the captioned SCN has been issued to the Noticee.*
   3. *The trades executed by the Noticee in the stock options segment of the BSE Ltd. are genuine and were executed on the platform provided by the stock exchange. The Noticee was also subjected to various charges and taxes on the transactions inter alia including Exchange Turnover Charges, Service Tax, STT, SEBI Turnover Fee, Stamp Duty etc.*

4. *All these transactions have been perfectly recorded in the regular books of accounts, records and Income Tax Returns.*
5. *It is untenable to suddenly label these transactions as artificial and non-genuine after a period of 6 to 7 years from the date of the transactions on completely untenable grounds and unjustified reasons. Therefore the SCN is liable to be set aside on this reason alone, leave apart other valid reasons and explanation herein below.*
6. *The Noticee understood that BSE has launched Weekly Expiry Options Contracts which are short term contracts and one can invest and get good returns. So to try and see how it operates, the Noticee for the first time bought 28000 units of NTPC 15-APR 170.00 PE W4 at 14:02:25 at Rs. 9.50.*
7. *Since this was the first time, the Noticee wanted to test if it could square off the position and therefore placed an order to sell 2000 units at Rs. 12.40. The said order traded immediately and therefore the Noticee thought that it can make bigger profits and placed an order to sell 26000 units at Rs. 17.45 which also got traded. It is imperative to note that the Noticee has placed 1 buy trade and 2 sell trades as it first tested water by selling a small quantity. However it is only 1 single instance of trade reversal, which happened merely out of co-incidence.*
8. *The Noticee was surprised at the speed with which this profit happened in* options in a very short time. Though the Noticee was pleasantly surprised with *sudden profit, it also indicated that such sudden losses can also take place. As a result the Noticee decided to never transact again.*
9. *It is only from SEBI that the Noticee has understood that the trades matched with the same counter party, which the Noticee was oblivious at the relevant time of trade.*
10. *It can be treated as a one off case of sheer luck and co-incidence and was no way manipulative.*
11. *One possible reason of the trade matching with the same counter party could be the lack of liquidity and the same has been appreciated by SEBI through issuance of its Risk Disclosure Document.*
12. *Upon understanding the counter party details from SEBI, the Noticee checked the details of the counter party and understands that both buy and sell trades happened with one M/s. Agro Commodity Private Limited.*
13. *The Noticee humbly submits that it neither knows the counterparty nor had any relationship, financial or otherwise, with the said counter party.*

14. *Upon receiving the SCN the Noticee has checked the details of the counter party on ROC website and found that the said counter party is based out of H - 6 Ratlam Kothi Indore and is managed by some Mr. Sunik Kumar Saboo, Mr. Vijay Garg and Mr. Vimal Saboo.*
15. *The Noticee submits that it does not know nor has any relationship with Mr. Sunik Kumar Saboo, Mr. Vijay Garg or Mr. Vimal Saboo as well.*
16. *Further the settlement of the transaction has taken place through the Exchange approved by SEBI and there is absolutely no reason why M/s Agro Commodity Private Limited will allow unknown Noticee to make profits at its cost and consequences.*
17. *Therefore, it is most humbly submitted that the transaction is merely a co-incidence and was not intentional, non-genuine or manipulative as alleged in the SCN.*
18. *The SCN alleges that the Noticee has generated artificial volume by executing non-genuine trades and creating false and misleading appearance of trading, which was manipulative and deceptive. It is submitted that the alleged trades are wrongly categorised as non-genuine, for the reasons recorded hereunder:*

    a. *The word "non-genuine" is not defined in PFUTP Regulations or any of the Acts /Regulations of SEBI. This leaves us to rely on dictionary meaning of the word to test whether the alleged trades fall under the categories of artificial volume through non-genuine trades.*

    b. *The term "non-genuine" is opposite of "genuine" which is defined as "really coming from its reputed source etc; not sham; properly so called; pure bred."*

    c. *The alleged trades have all traits of being genuine and therefore cannot be categorised as non-genuine. These trades were executed on the anonymous platform of the Exchange, without any knowledge of counter party, at price ranges that were permitted by the Exchange and SEBI and the obligations arising out of it have been settled through the clearing mechanism of the Exchange.*

    d. *Since the trades do not fall under the definition of non-genuine transactions, they cannot be categorised to be creating artificial volume and effectively cannot be said to be creating false and misleading appearance of trading or cannot be categorised as manipulative or deceptive trades.*

e. If the intention was to carry out artificial volume and create a false and misleading appearance of trading or execute manipulative and deceptive trades, the frequency of such trades would have been much higher. No one can achieve the alleged manipulative goals with such infrequent non-genuine trades, which is a one off case of 1 buy order and 2 sell orders.

f. The Noticee understood that it's a very risky segment and therefore has not traded ever again on BSE Stock Options Segment. Further as aforesaid the Noticee is no way related or connected to the counter party and therefore can have never executed non-genuine transitions that have financial impact with such an unknown party.

19. The SCN fails to highlight any possible reason for executing the alleged non-genuine trades and what has been achieved by executing such trades. Without even having indicated any purpose for carrying out non-genuine trades, there is no reason to categorise them as non-genuine, artificial, or creating false and misleading appearance of trading as wrongly alleged in the SCN.

20. The SCN completely ignores several critical facts and has wrongly categorise the trades as artificial and non-genuine.

21. The SCN is issued based on imaginary and presumptive grounds. It categorises trades of the Noticee as non-genuine in spite of the fact that these transactions were carried out on the platform provided by the BSE Ltd. and have been settled through the clearing corporation by way of movement of funds. If at all there was a fault in the platform provided by the stock exchange, SEBI should have taken action against the Stock Exchange and as SEBI has not taken any action against stock exchange till date, it is clear that trades executed on the stock exchanged should also not be termed as non-genuine. Surely there can be no fault in the trading of such huge number of market participants, which comprised of 81.38% of all trades on Exchange and if it is so, then SEBI cannot take action on the investors without taking any action on the Exchange, which allowed such huge number of non-genuine transactions.

22. The SCN ignores the fact that options are derivative contracts based on certain underlying and the total trades in the underlying and all its derivative contracts is to be compared to identify the % volume. It is submitted that the volume in *stock options was extremely negligible when compared with the total volume of the underlying and all the derivatives contract in the underlying and such small quantity of trading is completely incapacitated to create any kind of artificial volume.*

23. *For manipulating any security, the entire series of its derivatives contracts has to be manipulated, but that it not the case in the current SCN. It is an admitted position that the Noticee did not carry out any manipulative transactions in the underlying securities and merely carrying out few trades in options contracts cannot create any false and misleading appearance of trading or result in a manipulative or deceptive device as falsely alleged.*

24. *The SCN fails to take into consideration that the anonymous systems of the Stock Exchange does not allow a transacting party to know the details of the counter party and therefore the allegation of executing reversal trades cannot hold good. It is humble submitted that the transactions were in the nature of reversal trades was not known to the Noticee before being informed by SEBI.*

25. *Though the SCN claims that the trades were reversed at significant price difference, it has only compared the value of premium of the contracts. However in case of options contract the notional value i.e. the value of Strike Price plus the premium is to be considered. The noticee submits that when the price difference of options should be based on notional value and similar changes are observed in multiple contracts on the Exchanges including the ones having higher volumes than the alleged contracts of the Noticee. Therefore the Noticee submits that the allegation that there was a significant price difference is incorrect and untenable.*

26. *Further SEBI has issued Risk Disclosure Document that records risks of trading on the stock options segment of the Exchange. Clauses 1.2 and 1.3 deal with Risk of low liquidity and Risk of wider spreads, which quote as under:*

> *"1.2 Risk of Lower Liquidity:*
>
> *Liquidity refers to the ability of market participants to buy and/or sell securities / derivatives contracts expeditiously at a competitive price and with minimal price difference. Generally, it is assumed that more the*

numbers of orders available in a market, greater is the liquidity. Liquidity is important because with greater liquidity, it is easier for investors to buy and/or sell securities /derivatives contracts swiftly and with minimal price difference, and as a result, investors are more likely to pay or receive a competitive price for securities / derivatives contracts purchased or sold. ***There may be a risk of lower liquidity in some securities / derivatives contracts as compared to active securities / derivatives contracts. As a result, your order may only be partially executed, or may be executed with relatively greater price difference or may not be executed at all.***

1.2.1 ***Buying or selling securities / derivatives contracts as part of a day trading strategy may also result into losses, because in such a situation, securities / derivatives contracts may have to be sold / purchased at low / high prices, compared to the expected price levels, so as not to have any open position or obligation to deliver or receive a security / derivatives contract.***

1.3 Risk of Wider Spreads:

Spread refers to the difference in best buy price and best sell price. It represents the differential between the price of buying a security / derivatives contract and immediately selling it or vice versa. ***Lower liquidity and higher volatility may result in wider than normal spreads for less liquid or illiquid securities / derivatives contracts. This in turn will hamper better price formation.***

From the above clauses recorded in the RDD issued by SEBI it can be construed that SEBI was aware of the possible (significant as per SCN but not actually significant) price difference and losses / profits due to lower liquidity and wider spreads. The SCN itself records that the contracts in which the Noticee dealt were illiquid and therefore the spreads were bound to be wide resulting in so called significant price difference in view of SEBI, which is also appreciated by the RDD issued by SEBI. However this knowledge has been ignored while issuing the SCN and the SCN wrongly goes on to allege that these trades are non-genuine. Such a conclusion is absolutely untenable in light of the fact that SEBI itself recognises that significant price difference may occur in contracts with lower liquidity and wider spreads.

27. *The SCN fails to appreciate that though SEBI and Exchanges had put in place a mechanism of price band in Capital Market Segment to control extreme volatility, which may result in trades taking place at unrealistic prices. No such price band mechanism was in place for options segment. This in itself means that all prices at which our trades were executed were genuine.*

28. *The SCN fails to appreciate that pricing of options is a complex arithmetical calculation based on several variables most of which are subjective and presumptive thus making a huge range of price to be completely valid and genuine. The price of an option is derived based on complex formulas dealing with price of the strike price, underlying, time to expiry, expected volatility, rate of interest etc., all of which are dynamic thus resulting in exponential increase in the lower and upper valid prices of options as a result of which SEBI and Exchanges in their wisdom did not stipulate any price band for options. After having failed to put in place such a mechanism due to complexity of such a product in spite of having infinite wherewithal with SEBI and Exchanges, it cannot be expected of common investors and traders to know the correct range of option prices.*

29. *The SCN does not provide an iota of evidence as to how the Noticee was related or connected to the counter party. Therefore it is submitted that without the theory of collusion or meeting of minds between the two parties being established, the allegations in the SCN do not hold good. Further there is no reason for unknown people to deliberately allow profits or losses to one another without being related and the SCN failed to highlight any relationship between buyers and sellers.*

30. *It is also not a case in the SCN that other investors have got carried away or have been misled due to the trades carried out by the Noticee. Further it is not even alleged that third parties suffered any loss due to the transactions carried out by the Noticee. So no other party has been affected by these trades as it got reversed with same party (which the Noticee understand only through SEBI) and no impact what so ever has been caused to anyone because of these trades.*
31. *Above all there is no charge of price manipulation in the SCN and without manipulating price of a security or contract no person can gain anything from artificial trades.*

32. *Reliance is placed on various decisions of the Hon'ble Securities Appellate Tribunal:*

a) *In Jagruti Securities vs SEBI. [2008 SCC Online SAT 184 : 2008 SAT 184], it was inter held as under:*

> *"….**we are of the view that in an artificial trade there has to be collusion between the buyer and the seller and in the absence of any collusion, the trade cannot be termed as 'artificial'."***

b) *In S.P.J. Stock Brokers Pvt. Ltd. vs Securities and Exchange Board of India [2013 SCC Online SAT 67: [2013] SAT 17] it was inter alia held as under:*

> *"13. **Unless some connection between appellant and counterparties with whom appellant traded is established, it is difficult to hold that trades in question were carried out with a view to manipulate market by creating false volumes resulting in upsetting market equilibrium."***

c) *In HB Stockholdings Limited vs SEBI [2013 SCC OnLine SAT 56 : [2013] SAT 44] it was inter alia held as under:*

> *"17. ... **It may be noted that synchronization of trades is not per se illegal. It is actionable only if it is illegitimate and is the outcome of a mischievous meeting of minds among certain parties.** For this purpose, the counter party, namely, Gloria Investment Limited has already been exonerated by the Respondent. Moreover, **no cogent and convincing reasons are forthcoming from a reading of the SCN or the impugned order to sustain such a charge of synchronization or creation of artificial volumes against the Appellants.** In this connection, we may also pertinently note that the mere factum of one or two Appellants sharing common address or one of the Appellants being the promoter of the other group at some point in time are not in themselves sufficient to bring home the residual charge against the Appellants. There has to be sufficient evidence on record to clearly prove connivance on the part of the Appellants with a counter party to prove the charge in question against the Appellants. In the absence of any such evidence and unambiguous findings by the learned WTM to this effect, we have no option but to quash the impugned order in question"*

d) *In the matter of **R.K. Global vs. SEBI** (Appeal No. 158 of 2008, Date of decision 16th September, 2010) it was inter alia held that:*

"…Let us not forget that the Appellant has been charged for executing fraudulent trades which is, indeed, a serious charge and cannot be established on mere suspicion and should have firmer ground to stand upon. A higher degree of probability must exist before such a charge could be found to have been established…"

33. *Above all there have been several judgements of SEBI and SAT wherein it has given benefit of doubt to Noticees and such a one off instance of trade matching with same counter party surely deserves benefit of doubt in light of other facts like no relationship with counter party, its directors, promoters etc.*

34. *The SCN does not allege that the Noticee colluded with the counter party and in absence of any such allegation or material, the allegation of carrying out artificial trades does not hold good. At best it surely deserves benefit of doubt in favour of the Noticee.*

35. *The SCN alleges that by executing the trades mentioned in the SCN, the Noticee has violated Regulation 3(a), (b), (c), (d), 4(1), 4(2)(a) of PFUTP Regulations, the same is denied for the reasons stated hereinunder:*

Regulation 2(1)(c) quotes as under:

"fraud" includes any act, expression, omission or concealment committed whether in a deceitful manner or not by a person or by any other person with his connivance or by his agent while dealing in securities in order to induce another person or his agent to deal in securities, whether or not there is any wrongful gain or avoidance of any loss, and shall also include –

(1) a knowing misrepresentation of the truth or concealment of material fact in order that another person may act to his detriment;
(2) a suggestion as to a fact which is not true by one who does not believe it to be true;
(3) an active concealment of a fact by a person having knowledge or belief of the fact;
(4) a promise made without any intention of performing it;

(5) a representation made in a reckless and careless manner whether it be true or false
(6) any such act or omission as any other law specifically declares to be fraudulent,
(7) deceptive behaviour by a person depriving another of informed consent or full participation,
(8) a false statement made without reasonable ground for believing it to be true.
(9) the act of an issuer of securities giving out misinformation that affects the market price of the security, resulting in investors being effectively misled even though they did not rely on the statement itself or anything derived from it other than the market price.

There is nothing on record to substantiate that the Noticee knowingly misrepresented the truth or concealed material fact, suggested a fact that the Noticee believed is untrue, concealed any fact required to be disclosed. Further the Noticee never made any promise or representation, and has not omitted any obligation under other law. Even further the Noticee's behaviour was no way deceptive, nor has the Noticee made any false statement. Lastly the Noticee has not issued any securities and the question of giving misinformation in relation thereto does not arise.

As none of the Noticee's acts fall under the definition of 'fraud' as provided under Regulation 2(1)(c), the Noticee cannot be charged of having violated PFUTP Regulations.

Analysis of the applicability of the PFUTP Regulations in the SCN:

Sr. No.	***Reg. / Sec. No.***	***Regulation***	***Explanation***
1.	*3*	*No person shall directly or indirectly-*	
2.	*3(a)*	*buy, sell or otherwise deal in securities in a fraudulent manner;*	*None of the Noticee's acts can be categorized as fraud under Reg. 2(1)(c)* *The Noticee transacted on the anonymous trading system of the Exchange without the knowledge of who the counter party was.* *The trades are validly settled on the Exchange Platform.*

Sr. No.	Reg. / Sec. No.	Regulation	Explanation
			The trades were within the price range permitted by the Exchange. *There is no charge of meeting of mind or collusion with the counter party.*
3.	*Reg. 3(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;*	*None of the Noticee's acts can be said to have been in the form of a manipulative or deceptive device or in contravention to the provisions of the Act, rules or regulations of SEBI.* *The trades were validly executed on the platform of the Exchange and fully settled.* *No one has been alleged to have been affected by the trades which are allegedly manipulative.* *The alleged trades have taken place only once during the IP of 1.5 years and with such infrequent trades, it is impossible to form a manipulative or deceptive device or contrivance in contravention to the provisions of Act and Rules of SEBI.*
4.	*Reg. 3(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;*	*The SCN fails to establish that The Noticee employed any device, scheme or artifice to defraud anyone.* *Further when the allegation pertains to carrying out a fraud, there has to be a defrauded party or someone has to be induced to trade. No person has claimed to be defrauded or have been induced to trade because of the Noticee's trades.*

Sr. No.	Reg. / Sec. No.	Regulation	Explanation
5.	*Reg. 3(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.* ***Already responded in explanations above.***	
6.	*4(1)*	*Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.*	***Already responded in explanations above.***
7.	*4(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:—*	
8.	*4(2)(a)*	*indulging in an act which creates false or misleading appearance of trading in the securities market;*	*The trades were in normal course and the settlement has been made by the Exchange and the transactions have been correctly reflected in the books of accounts and therefore the trades are perfectly genuine. No false or misleading appearance of trading has been created by alleged trades.*

36. Now dealing with the Judgment passed by the Hon'ble Securities Appellate Tribunal in the matter of Global Earth Properties Ltd. vs. SEBI (Appeal No. 212 of 2020, Date of decision 14th September, 2020), wherein it was inter alia held as under:

"20. From the aforesaid cumulative analysis of the reversed transactions with the counter party, quantity, time and significant variation of the price clearly indicates that the trades were non-genuine and had only misleading appearance of trading in the securities market without intending to transfer the beneficial ownership. One finds it to be naive to presume that the perception of the two counter parties to a trade changed within few seconds/minutes and positions were interchanged and the contracts were changed where one party made profit and the other party ended up making losses every time without prior meeting of mind. 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."

37. *In the cases disposed off by SAT as aforesaid or any other case, the Noticees had carried out multiple reversal trades. In the present case it is to be noted that only 1 buy order and 2 sell order was placed and therefore it is only on instance of reversal. This is a case of sheer luck and co-incidence and cannot be said to be manipulative. Taking into account preponderance of probability also, it cannot be alleged that a one of case was intentional and non-genuine.*

38. *In the appeal of Dhvani Darshan Kothari & Anr. vs Securities and Exchange Board of India (Appeal No. 276 of 2020 decided on January 21, 2021) the Hon'ble SAT held that purchasing off market and selling online to the same counter party may raise a strong suspicion that the transfer may not be genuine, but further held that reasons have to be recorded to show as to how the trades were manipulative or fraudulent and that one transfer cannot make it circular / reversal or synchronized nor execution of one trade would be treated at par with the trades executed by other entities which was large in number. The said finding of this Tribunal is squarely applicable in the instant case.*

39. *So in the current case even if SEBI has a suspicion that the Noticee's trades were allegedly non-genuine the fact that it is only 1 instance of reversal and the SAT has decided the matter in favour of the Appellant, the same principle should*

be accepted by SEBI and the SCN against the Noticee may be dropped without any adverse inference.

40. *Such one instance of reversal cannot be alleged to be creating artificial volume of trading in the market as compared to the overall trading in the stock options segment. As per the SCN more than 1500 Crores units were traded in the stock options segment of BSE Ltd.*

41. *Without prejudice to the aforesaid, if at all it is held that the Noticee violated the aforesaid PFUTP Regulations, then in that case it is submitted that no penalty should be imposed on the Noticee taking into consideration the mitigating circumstances and factors under Section 15 J of the SEBI Act.*
    - *i. The Noticee was under the belief that since the transactions executed were under the stock exchange mechanism and were therefore genuine;*
    - *ii. No illegal gain has been made by the Noticee while trading in the stock options segment;*
    - *iii. No loss has been caused to any investor or group of investor as a result of the Noticee's trading nor the same has been alleged against the Noticee in the SCN;*
    - *iv. This is the first time, SEBI has taken any kind of action against the Noticee.*

42. *Reliance is also placed on the following judgments:*

a. The Hon'ble Bombay High Court in the matter of Securities & Exchange Board of India v. Cabot International Capital Corporation, 2004 SCC Online Bom 180:

38. *Thus, the following extracted principles are summarised.*

…

(G) Though looking to the provisions of the statute, the delinquency of the defaulter may itself expose him to the penalty provision yet despite, that in the statute minimum penalty is prescribed, the authority may refuse to impose penalty for justifiable reasons like the default occurred due to bona fide belief that he was not liable to act in the manner prescribed by the statute or there was too technical or venial breach etc.

…

__44.__ Now, the question, of the penalty by the Adjudicating Authority, in the facts and circumstances of the case, was warranted or not. We find that the allotment in question was undoubtedly, covered under the exemption provided in Regulation 3(1). There could not have been insistence by the appellants SEBI to comply with the requirements of Regulation 3(4). It is also clear that when an acquisition is covered under Regulation 3, the acquirer is required to report to the Board under the sub-Regulation 3(4) within the specified time, as referred above. In view of this undisputed position, merely because there was no report filed, that itself cannot be read as serious defect or non-compliances of the said provisions. The Appellate Authority, after considering the material' on record, including the events, referred in the pleadings, found that the respondents company had no intention to suppress any material information from the appellants or the shareholders.

b. *In the matter of Yogi Sungwon (India) Ltd. v/s SEBI - Appeal No. 36 of 2000, Order dated May 04, 2001, wherein Hon'ble Securities Appellate Tribunal had inter alia observed that:*

"……On perusal of section 15I it could be seen that imposition of penalty is linked to the subjective satisfaction of the Adjudicating Officer. The words in the section that 'he may impose such penalty' is of considerable significance, especially in view of the guidelines provided by the legislature in section 15J. 'The Adjudicating Officer shall have due regard to the factors' stated in the section is a direction and not an option. It is not incumbent on the part of the Adjudicating Officer, even it is established that the person has failed to comply with the provisions of any of the sections specified in the sub-section (1) of section 15-I, to impose penalty. It is left to the discretion of the Adjudicating Officer, depending on the facts and circumstances of each case….."

c. *In the matter of National Highway Authority of India v/s SEBI - Appeal No. 232 of 2020, Order dated August 27, 2020, wherein it was inter alia observed that:*

"23. In the light of the aforesaid, there is no doubt that if the Regulations require a particular act to be done in a particular manner and within the stipulated period then noncompliance of the said provisions would invite imposition of penalty but the law also provides and gives power to the respondent to relax the strict enforcement of the Regulations. We are of the opinion that the Adjudicating Officer

failed to take into consideration the mitigating circumstances as a factor under Sec. 15-J while considering the imposition of penalty.

24. Consequently, for the reasons stated aforesaid, we are of the view that even though there has been a violation of Regulation 52 of the LODR Regulations but in the peculiar facts and circumstances of the present case which should not be treated as a precedent for other matters, we are of the opinion that the imposition of penalty of Rs.7 Lakhs in the given circumstances was harsh and excessive."

43. *Further, SEBI had initially passed an interim order dated 20th August, 2015 in the matter of stock options segment of BSE Ltd. and restrained 59 persons/entities from buying, selling, or dealing in the securities market till further directions. After concluding the investigation in the matter SEBI found that 14,720 entities were involved in executing non-genuine reversal trades on the stock options segment and passed the Order dated 05th April, 2018 inter alia recording thus:*

" 14. In summary,

a) As per the investigation report, 14,720 entities have been found to have executed non-genuine trades.

b) The Hon'ble Supreme Court in the case of Rakhi Trading Pvt. Ltd. has upheld that similar trades are in violation of SEBI (PFUTP) Regulations, 2003.

c) SEBI has decided to take appropriate action against all 14,720 entities in phases.

d) In the 1st Phase, Adjudication Proceedings have been initiated against 567 entities including 56 of the 59 entities (against whom directions were issued vide Interim Order and Confirmatory Order). One entity (out of the 59 entities) would fall in a subsequent phase of action. Two entities (out of the 59 entities) do not meet the criteria as detailed in paragraph 4 of this order.

e) Any person found to be in violation of SEBI (PFUTP) Regulations, 2003, is 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.

f) BSE has taken steps to prevent / significantly reduce the possibility of misuse of the exchange platform in such a manner.

g) There is a need for some similarity of approach in taking action against the various entities even though the difference in amount of profit made / loss incurred through the non-genuine trades varies and can be the basis of some differences.

44. It is to be noted that the Noticee was not part of the 59 entities against whom the Interim Order was passed and neither part of the first 567 entities against whom the Adjudication Proceedings were initiated. SEBI itself considered the Noticee's trades to be so minuscule, that it initiated Adjudication Proceedings against the Noticee in the last stage and therefore it is prayed that a lenient view be taken in the present matter.

45. In the present matter, it has been alleged that Noticee executed only one reversal transaction comprising of one buy and two sell orders in 1 unique contract which created an artificial volume of 28,000 units. Comparing the same with the other orders of Illiquid Options passed by SEBI and various orders cited above, it is submitted that a lesser penalty like warning etc. may at most be imposed taking into consideration the mitigating factors and circumstances as mentioned above.

46. Thus in view of the facts stated, arguments advanced and authorities cited, it is humbly prayed that the present proceedings be quashed since no primary violation of any PFUTP Regulations is made out against the Noticee and the genuineness of the trades has also been explained hereinabove. Therefore the question of holding an inquiry against the Noticee in terms of Rule 4 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 and imposing penalty for the alleged violation does not arise.

HEARING

7. 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 January 05, 2022, through the online Webex platform. Mr. Ravi Ramaiya, Chartered Accountant, appeared as the Authorised Representative ("**AR**") on behalf of the Noticee on the stipulated date of hearing. During the course of the hearing, the AR reiterated the submissions made by the Noticee in her reply dated September 03, 2021.

8. Thus, submissions made by the Noticee in her reply to the SCN and during the course of the hearing have been taken on record. Therefore, sufficient opportunity was provided to the Noticee to defend her case effectively and requirements of principles of natural justice have been fulfilled in the instant proceeding. In view of the same it is fit and proper to proceed with the consideration of issues and findings involved in the instant Adjudication proceeding.

CONSIDERATION OF ISSUES AND FINDINGS

9. I have carefully perused the charges levelled against the Noticee, her reply and the documents/material available on record. The issues that arise for consideration in the present case are:

    a) Issue No.I: 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) Issue No. II: If yes, whether the violation, on the part of the Noticee would attract monetary penalty under section 15HA of the SEBI Act?
    AND

    c) Issue No. III: If the answer to Issue No. II is in affirmative, what would be the monetary penalty that can be imposed upon the Noticee?

10. 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 the issuance of the SCN.

11. I 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. 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, 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."

12. I note that in the instant matter, SEBI has investigated large scale reversal of trades in stock options which were entered into by large number of entities. As far as Noticee's transactions are concerned, the SCN provides adequate details of her trades. Further, I note that the Hon'ble SAT in the matter of *Pooja Vinay Jain vs SEBI (Appeal No. 152 of 2019, Date of Decision – 17.03.2020)* held the following:

    "12. The decision would show that the power to initiate the proceedings must be exercised by the authorities within a reasonable time. This would depend upon the facts and circumstances of the case, nature of the default / statute and prejudice caused to the noticee.

    13. In the present case, the appellant neither put a plea of prejudice before the AO nor before us. It was simply stated that since the proceedings were launched by respondent SEBI after a period seven years, the same should be quashed on the ground of delay. 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. Further, as explained by the learned counsel for the respondent as recorded in paragraph No. 6.4 above, large numbers of entities and transactions were analyzed by SEBI which took some time. In the result, the following order:-

    ORDER

    14. The appeal is hereby dismissed without any order as to costs."

    I find that the aforementioned decision of the Hon'ble Tribunal is squarely applicable to the instant case. Accordingly, I don't find any merit in the plea of the Noticee that it is untenable to suddenly label these transactions as artificial and non-genuine after a period of 6-7 years from the date of the transaction on completely untenable grounds and unjustified reasons.

13. I also note that the Hon'ble SAT in the matter of Bipin R Vora vs SEBI 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".*

14. In view of the aforesaid and considering the facts of the aforesaid matter, I do not find any merit in the contentions of the Noticee.

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

15. Before moving forward, it is pertinent to refer to the relevant provision of the PFUTP Regulations which are alleged to have been violated. The said provisions are reproduced hereunder:

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;

16. 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.

17. 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.

18. The Noticee has denied all allegations made in the SCN. The Noticee states that she has not violated the PFUTP Regulations. In this regard, 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 3 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 56,000 units in the said 1 contract. The summary of the non-genuine trades of the Noticee are as follows:

Details	**Original Trade**	**Reversal Trade 1**	**Reversal Trade 2**
Scrip Name	NTPC15APR170.00PEW4	NTPC15APR170.00PEW4	NTPC15APR170.00PEW4
QTY	28,000	2,000	26,000
Pan No	ACJPJ9000C	AAECA8900E	AAECA8900E
Client Name	Priti Jain	Agro Commodity Pvt Ltd	Agro Commodity Pvt Ltd
Counter party Pan No	AAECA8900E	ACJPJ9000C	ACJPJ9000C
Counter party client name	Agro Commodity Pvt Ltd	Priti Jain	Priti Jain
Order last modified rate	9.5	12.4	17.45
Counter party order last modified rate	9.5	12.4	17.45
Last modified order time	14:02:26	14:02:33	14:02:46
Counter party last modified order time	14:02:27	14:02:33	14:02:46
Trade Time	14:02:27	14:02:33	14:02:46
Trade Rate	9.5	12.4	17.45
Trade Value	50,26,000	3,64,800	48,73,700

19. 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 100%. Further, the artificial volume generated by the Noticee in the contract amounted to a substantial 100% of total volume generated by her 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.

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

    i. I note from the table at para 18 above that while dealing in the contract of NTPC15APR170.00PEW4 on April 21, 2015, the noticee engaged in reversal trade (altogether 3 trades, 1 on buy side and 2 on sell side), which led to generation of alleged artificial volume of 56,000 units (buy side + sell side). These trades of the Noticee involved reversal with the same counterparty within a short time-span.

    ii. Noticee placed a limit order of Rs.9.5 per unit to buy 28,000 units at 14.02.26 hrs, a second before limit order entered by Agro Commodity Pvt Ltd, to sell the same number of units, at exactly the same price.

    iii. While reversing the trades on the same day, the noticee placed two limit orders of Rs 12.4 and Rs.17.45 per unit to sell 2,000 and 26,000 units at 14:02:33 hrs and 14:02:46 hrs respectively, at the same time as the limit order entered by Agro Commodity Pvt Ltd.

    iv. I note that all the three trades were executed on the same day which led to generation of alleged artificial volume of 56,000 units which made up 100% of total market volume in the said contract, during this period. The trades entered by the noticee were reversed on the same day with same counter-parties at a substantial price difference without any basis for significant change in the contract price thereby accumulating a profit of Rs 2,12,500.

21. 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. 19 seconds), 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 her counterparty in the stock options segment of BSE and the same were non-genuine trades.

22. 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. I note from the above trading pattern of the Noticee that she has deliberately made blatant misuse of trading platform for creating artificial volume in the illiquid stock options.

23. The Noticee has also submitted that its trades are genuine as the Risk Disclosure Document (RDD) issued by SEBI also envisages the possibility of significant price difference and losses / profits due to lower liquidity and wider spreads. In this context, I note that RDD is a document in the nature of general advisory to investors dealing in derivatives markets considering that derivatives products are complex, risky and high leverage products. Such a document in any case does not either implicitly or explicitly permit deliberate structuring of manipulative trades which lack economic rationale and run contrary to the dynamics of price discovery

in option trading. Therefore, the said contention of the Noticee is devoid of any merit.

24. The Noticee has also contended that all transactions have been carried out on the platform provided by BSE and have been settled through the clearing corporation by way of movement of funds. The Noticee was also subjected to various charges and taxes on the transactions inter alia including Exchange Turnover Charges, Service Tax, STT, SEBI Turnover Fee, Stamp Duty etc. All these transactions have been perfectly recorded in the regular books of accounts, records and Income Tax Returns.

    In this regard I note that while the trading happened through the trading platform of BSE, however, considering the precision at which the reversal transactions had taken place within short time-span, the matching of price (with significant variation), time and quantity, I am of the view that it will be too naïve to hold that just because these transactions were executed through exchange trading platform, such trades were genuine. Such conclusion would be over-looking the prior meeting of minds involving synchronization of buy and sell order w.r.t. the transactions entered into by the Noticee with its counterparty and such reversal trading is clearly violative of the transparent norms of trading in the securities market. In view of the above observations, I hold that the said transactions executed by the Noticee in the said Stock Option contract were non-genuine trades, in which positions were reversed within short span of time with prior meeting of mind between the parties to the trade

25. Noticee has contended that she neither knows the counterparty nor had any relationship, financial or otherwise, with the said counter party. Further, Noticee also argued that she had no meeting of mind or collusion with the other party. In this regard, I note that as far as the allegation against the Noticee is concerned, it's her reversal trade with specific counterparty which have been found to be non-genuine based on the precision at which the such reversal transactions had taken place, the huge price differential at which the orders were placed by both the parties to the trade, I note that it is not a mere coincidence that Noticee could match her trades (with the corresponding price and quantity entered by both the Noticee and counterparty being equal) with the same counterparty with whom she had undertaken first legs 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 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."*

26. 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, as detailed earlier, 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."*

27. 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...."*

28. In line with the above 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 reversal of 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 through non-genuine trades.

29. In this regard, I would also like to rely on the judgement of Hon'ble Supreme Court in the matter of ***SEBI vs Rakhi Trading Private Ltd.*** (*supra)*, wherein the 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.

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

31. The observations made in the aforesaid judgments apply to the facts and circumstances of the present case. Therefore, applying the ratio of the above judgments, I am convinced that the execution of trades by the Noticee in the illiquid options segment with such precision in terms of order placement time, quantity and price and also the fact that the transactions were reversed within few seconds clearly indicates a prior meeting of mind with a view to execute the reversal trade at a pre-determined price. Such trading also involves an act amounting to manipulation of the price of the security in the sense that the price has been artificially and apparently prefixed. It is also a transaction without any intention of performing it and without any intention of effecting a change of ownership of such securities, ownership being understood in the limited sense of the rights in the contract. By synchronization and reversal trades, as has been carried out by the Noticee in the instant case, the price discovery system has been affected. Except the parties who have pre-fixed the price, nobody is in the position to participate in the trade. Therefore, it has an adverse impact on the fairness, integrity and transparency of the stock market.

32. The noticee has also contended that as none of the Noticee's acts fall under the definition of 'fraud' as provided under Regulation 2(1)(c), the Noticee cannot be charged of having violated PFUTP Regulations. In this regard, I note that, in totality of the circumstances, as observed above, it is not acceptable that the Noticee has not employed any manipulative and deceptive device in contravention of the SEBI Act or the rules and the regulations made there under. Further, the non-genuine and deceptive trades as found in this case are covered under the definition of 'fraud' and dealing of Noticee were 'fraudulent' as defined under Regulation 2(1)(c) of the PFUTP Regulations. The investigation has shown amount of profit / loss of the counterparties to the trades as a result of such non-genuine trades. The violation by the Noticee is creation of artificial trading volumes by trading between two counterparties and wider market is not involved in the trades, the trades are such that one of the counterparty books a profit while the other counterparty books a loss. Hence, it would be appropriate to consider the impact of these transactions between the counterparties in totality. When the impact of artificial volumes created by the two counterparties is seen as a whole, the making of loss or profit or causing investor grievance etc., is immaterial as the charge in this case is of creating false

or misleading appearance of trading in the aforementioned contract. In view of the same, I find no merit in such contentions of the Noticee.

33. Noticee has contended that in regard to the price of trades executed by the Noticee, the value of strike price along with the premium value of the contract i.e. notional value should be considered for these contracts. This argument is erroneous because the price of a particular option contract is the premium price, and for a given strike price, the premium cannot vary widely within less than half an hour without significant movement in the underlying price or in other factors which determine option price. There was no such justification given for the price variation in the option price.

34. 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.

Issue No. II: If yes, whether the violation, on the part of the Noticee would attract monetary penalty under section 15HA of the SEBI Act?

AND

Issue No. III: If the answer to Issue No. II is in affirmative, what would be the monetary penalty that can be imposed upon the Noticee?

35. I find it appropriate to deal with Issue No. II and III together in the following paragraphs. Since violation of regulations 3(a), (b), (c), (d), 4(1) and 4(2) (a) of the PFUTP Regulations by the Noticee is established, I am of the view that the same warrants imposition of monetary penalty upon the Noticee under Section 15HA of the SEBI Act, text of which is produced 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 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.*

36. Further, 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.

37. Though the records available before me does mention about amount of gain/loss of the entities involved in the non-genuine trades including the Noticee. However, it is worth considering that entities involved in these non-genuine trades have either booked gains or loss and the gains or loss appears to be of notional in nature. Generally, there is nil or negligible participation of the public in the trading in illiquid stock option contracts. Hence, the impact of these non-genuine trade has been considered. When the impact of artificial volume created by the two counterparties is seen as a whole, it is not possible from the material on record to quantify the amount of disproportionate gain or unfair advantage resulting from the artificial

trades between the counter parties or the consequent loss caused to investors as a result of the default. The Noticee has entered into 3 non-genuine transactions in 1 stock option contracts which demonstrates the nature of the default on its part. In this regard, it is pertinent to refer to the decision of the Apex Court in the matter of ***SEBI vs Shri Ram Mutual Fund (Appeal Civil 9523-9524 of 2003) dated May 23, 2006***, wherein it held that *"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established*

38. In the view of the above, I note that, in the present matter, the facts of the case clearly establish the violation committed by the Noticee and I consider it necessary to impose monetary penalty which would act as deterrent to the Noticee in future.

ORDER

39. 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. Ms. Priti Jain, 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.

40. 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.

41. The Noticee shall forward the aforesaid DD / payment confirmation details to the Division Chief, Enforcement Department -I (EFD), Division of Regulatory Action -I [EFD1-DRA-1] SEBI Bhavan, Plot No.C4-A,' G' Block, Bandra Kurla Complex

(BKC), Bandra (East), Mumbai–400 051 and also send an email to tad@sebi.gov.in with the following detail:

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

42. 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.

43. In terms of Rule 6 of the Adjudication Rules, a copy of this order is sent to the Noticee and also to the Securities and Exchange Board of India, Mumbai.

DATE: MARCH 31, 2022 **SAREENA P U**

PLACE: MUMBAI **ADJUDICATING OFFICER**