BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/AS/VC/2024-25/31306]

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

In respect of:
Pankaj Kumar Agarwal
(PAN No.- AGKPA4563A)

In the matter of dealing in Illiquid Stocks Options at BSE

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**"), observed large scale reversal of trades in the Illiquid Stock Options (hereinafter referred to as "**ISO**") segment of Bombay Stock Exchange (hereinafter referred to as "**BSE**") leading to creation of artificial volume. Reversal trades are the trades in which an entity reverses its buy or sell positions in a contract with subsequent sell or buy position with the same counter party. The said reversal trades are alleged to be non-genuine trades as they lack basic trading rationale and allegedly lead to false or misleading appearance of trading leading to generation of artificial volume. In view of the same, such reversal trades are alleged to be deceptive and manipulative in nature. On account of the same, SEBI conducted an investigation into the trading activities of certain entities in Illiquid Stock Options at BSE for the period April 1, 2014 to September 30, 2015 (hereinafter referred to as "**Investigation Period/IP**").

2. Pursuant to investigation by SEBI, it was observed that during IP, a total of 2,91,744 trades comprising substantial 81.41% of all the trades executed in Stock Options of BSE were trades which involved reversal of buy and sell positions by the clients and counterparties in a contract. The investigation revealed that 14,720 entities were involved in executing non-genuine trades in BSE's Stock Options segment during the investigation period. It was observed that Pankaj Kumar Agarwal (PAN No.- AGKPA4563A) (hereinafter referred to as the **"Noticee"**) was one of the various entities who indulged in execution of reversal trades in stock options segment of BSE during the IP. Such trades were alleged to be non-genuine in nature and created false or misleading appearance of trading in terms of artificial volumes in stock options and therefore were alleged to be manipulative and deceptive in nature. In view of the same, SEBI initiated adjudication proceedings against the Noticee for alleged violation of the provisions of Regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003 (hereinafter referred to as "**PFUTP Regulations**").

APPOINTMENT OF ADJUDICATING OFFICER

3. SEBI appointed Ms. S. Gomathi as Adjudicating Officer (AO) in the matter, vide communique dated September 27, 2021, under Section 19 read with Section 15-I of SEBI Act read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as "**SEBI Adjudication Rules**"), to inquire and adjudge under section 15HA of SEBI Act. Subsequently, pursuant to transfer of erstwhile AO, undersigned has been appointed as AO in the matter vide communique dated September 06, 2024.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. Based on the findings by SEBI, Show Cause Notice dated January 06, 2022 (hereinafter referred to as "**SCN**") was issued to the Noticee under Rule 4(1) of Adjudication Rules to show cause as to why an inquiry should not be held and

penalty should not be imposed on it for the alleged violations of the provisions of Regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of the PFUTP Regulations.

5. It was alleged in the SCN that the Noticee was engaged in two (2) reversal trades in one (1) unique contract (TGBL15MAR140.00CE), which led to generation of alleged artificial volume of 68,000 units. These trades of the Noticee involved reversal with the same counterparty on the same day, but at different prices.

6. SCN further alleged that the trade entered by the Noticee in contract TGBL15MAR140.00CE on March 18, 2015 were reversed on the same day with same counterparty at a substantial price difference without any basis for significant change in the contract price which indicates that these trades were artificial and were non-genuine in nature.

7. A summary of aforementioned trade and reversal trade of Noticee in the contracts TGBL15MAR140.00CE during the investigation period, is as follows:

Contract name	**Avg. buy rate (₹)**	**Total buy volume (no. of units)**	**Avg. sell rate (₹)**	**Total sell volume (no. of units)**	**% of Artificial volume generated by the Noticee in the contract to Noticee's Total volume in the contract**	**% of Artificial volume generated by the Noticee in the contract to Total volume in the contract**
A	**B**	**C**	**D**	**E**	**G**	**H**
TGBL15MAR140.00CE	23.45	34,000	16.85	34,000	100.00	14.05

8. From the trades executed by the Noticee in the contract of TGBL15MAR140.00CE, it was observed that:

   a) During the investigation period, 2 trades for 34,000 units each were executed by the Noticee in the TGBL15MAR140.00CE contract on March 18, 2015.

   b) While dealing in the said contract on March 18, 2015, at 13:21:44.58 hrs the Noticee entered into a buy trade with counterparty Priti Damani for 34,000 units

at Rs.23.45 per unit. At 14:22:00.95 hrs the Noticee entered into a sell trade with the same counterparty, for 34,000 units at Rs.16.85.

c) The Noticee's two trades while dealing in the TGBL15MAR140.00CE contract during the investigation period allegedly generated artificial volume of 68,000 units, which made up 14.05% of total market volume in the said contract during this period.

9. The aforesaid SCN was served upon the Noticee through Speed Post Acknowledgement Due and receipt of the SCN was acknowledged by the Noticee. Noticee filed his reply to the SCN vide letter / e-mail dated January 27, 2022.

10. Noticee's reply to the SCN submitted letter / e-mail dated January 27, 2022 is summarised as under:

(a) Noticee denied that he has violated any provisions of Regulation 3(a), (b), (c), (d), and 4(1), 4(2) (a) of the PFUTP Regulations or any other law as alleged in the SCN.

(b) Noticee invests in various financial instruments for the purpose of making some gain. He opened his trading account with a SEBI registered broker, M/S MKB Securities Pvt. Ltd. and complied with all formalities for the same.

(c) Noticee stated that the trades executed by him were genuine, due to the reasons as submitted below.

(d) There are no connections whatsoever between the Noticee and the said counter parties. The SCN also fails to point out or establish any relation between the Noticee and the counter party (Priti Damani). Due to the anonymous trading system, it is not possible for anybody to have access over identity of the counter parties to the best of my knowledge. No complaints were received against these trades by the Counter Party. Therefore, it is a matter of absolute coincidence that the trades were matched with the said Counter Party. Accordingly, the trades cannot be identified as reversal trades.

(e) According to the SCN the alleged trades were in 'illiquid' stock options in BSE Ltd. However, the said scripts were, at no time banned from trading and hence trading

was allowed in those scripts. Further there were no alerts or warnings by the exchange indicating otherwise. Even after the first trade, Noticee did not receive any alert or warning regarding violation of any regulations from the exchange or any regulatory authority. Accordingly, a bona-fide investor cannot be expected to assume that the stock was illiquid and the trades were non-genuine. On March 18, 2015, as per BSE data total trades done on that day was of valued Rs. 582.97 Lacs in said contract. On that day, alone in future & option segment TGBL was traded for Rs. 1106.48 Lacs excluding that Rs.582.97 lacs, it means the said contract should not be treated as illiquid contract. Further out of this total volume his share of volume was almost negligible.

(f) *There were only 2 trades of Noticee which is less than 0.000001%. So his contribution in artificial trade volume should be treated as non-considerable. Further all required pay in and pay outs were lawfully settled on the exchange platform. The SCN also fails to indicate about any investor complaint on account of such trades. Accordingly, such trades cannot be considered as a creator of artificial volume.*

(g) *Another allegation by the SCN was that the trades were executed at a high price difference in a short span of time. The price fluctuations in the stock exchange are a result of changes in demand and supply. This order of "TGBL15MAR140.00CE" was placed by the broker to create some Teji (Buy) position at the price of underlying in anticipation that price will increase and profit will be booked by selling at higher price. After some time, the price as reported by the broker was fallen, so to protect the further loss the trade was squared off and hence a loss of Rs. 225191.34 was booked. Further, as the options segment remain highly volatile in terms of percentage, it has a price band to protect in case of unusual movement, and the said sale or buy trades didn't violate the price band set by BSE. The intention of the Noticee here was to book the profit only, but when instead of profit when loss started, it was squared off to protect further loss. Loss booking cannot be a part of the allegation. None of the trades are deceptive in nature or have any impact on the investors or their investment decision which is an essential part of "fraud". Therefore, the above allegations against the Noticee turn out to be unjustified.*

(h) *According to the SCN the alleged trades were non-genuine. All trades were carried out on the platform provided by BSE Ltd. The trades were executed on the floor of the*

exchange with due compliance with all the rules and regulations of the exchange. The trades were also executed in the normal course of business. If the trades were non genuine, then settlement of funds should have been kept on hold by the exchange, but the exchange didn't find any non-genuine aspects in the trade, hence the trade's pay ins were settled by the exchange. If there was a fault in the platform of the stock exchange, SEBI should have taken action against the stock exchange and stock broker. However, as SEBI didn't take any action against the stock exchange or the stock broker, it makes it evident that trades executed on the stock exchange are genuine. SEBI should have taken action against the exchange and the broker which allowed such number of non-genuine transactions. Further, the said trades have all the characteristics of being genuine. Therefore, they cannot be categorised as non-genuine.

(i) *Even if there is any sort of suspicious transaction as alleged in SCN by SEBI, the responsible person should be any of the intermediaries such as BSE Ltd. and Brokers, and not the Noticee. Hence, it seems that the SCN has been issued on presumptive and imaginary grounds to Noticee.*

(j) *Noticee denied the charges as no fraud was committed by him. The trades executed by him were within the stipulated price band and due to the anonymous structure of the Exchange, he could not be expected to have the knowledge of the counter parties. Further all the trades were lawfully settled on the exchange platform.*

(k) *As per Regulation 2(c) as interpreted by the Supreme Court in SEBI v. Shri Kanaiyalal Patel, requires an element of "inducement" to be proved before holding that a person is guilty of fraud. The Securities Appellate Tribunal in S. Gopalakrishnan v. SEBI has held that "it must be proved by cogent evidence that the appellants are guilty of "inducement". In the absence, of any evidence, the charge of fraud is not proved, nor the provisions of Regulation 3 and 4 of PFUTP Regulations applicable". In the present case, there is no indication by the SCN of any inducement by Noticee to any other person to deal in fraudulent securities. Hence, the Noticee is not liable for proceedings under Regulation 3(a).*

(l) *None of the Noticee's acts indicate any employment of any type of manipulative/deceptive device. The alleged trades took place only on a single day.*

Hence it is impossible to create or use a manipulative or deceptive device. Hence, the Noticee is not liable for proceedings under Regulation 3(b).

(m) *The SCN fails to prove the use of any device, scheme to defraud by the Noticee. The said allegation pertains to fraud, however, there is no identification of any defrauded party for a fraud to exist. Hence, the Noticee is not liable for proceedings under Regulation 3(c).*

(n) *Regulation 3(d) prohibits any act, practice, course of business which operates as fraud or deceit. The Noticee, denied the charges in this regulation due to the reasons explained above. Hence, the Noticee is not liable for proceedings under Regulation 3(d).*

(o) *There is no manipulative intent which can be manifested in the pattern of trades undertaken by the Noticee either directly or by inferring from circumstantial evidence. The trades were in the normal course of business and the settlements were made by the exchange. Further, all the transactions were correctly shown in the books of accounts and any gain/loss was disclosed in the income tax returns. Moreover, any such manipulative intent has also not been sufficiently established in the SCN. As no false or misleading appearance of trading has been created by the Noticee, the trades are perfectly genuine. Hence, the Noticee is not liable for proceedings under Regulation 4(1) & 4(2)(a).*

(p) *With regard to levy of penalty, Noticee submitted that the he has not made any disproportionate gain or advantage specifically on account of any of the allegations made out in the SCN, no loss was caused by him to a particular investor or group of investors and he has not committed any repetitive default in the instant case. In this regard, Noticee relied upon the observations made by the Hon'ble SAT in order dated August 2, 2019, in the case of P.G. Electroplast Ltd. & Others v. SEBI, wherein it was held that factors under Section 15J are required to be taken into consideration at the time of imposition of penalty, and in case where the party has not acted deliberately, the authority has the discretion to assess whether a penalty should be imposed or not.*

11. In the interest of natural justice, vide notice of hearing dated March 15, 2022, Noticee was granted an opportunity of being heard on March 29, 2022. In

response, Noticee, vide email dated March 30, 2022, requested for opportunity of being heard to be provided him after April 01, 2022. Accordingly, hearing was re-scheduled on April 06, 2022. As per records, it cannot be ascertained whether the hearing took place.

12. Vide Post SCN Intimation (PSI) dated August 18, 2022, Noticee was informed SEBI introduced a Settlement Scheme i.e. SEBI Settlement Scheme, 2022 (hereinafter referred to as "**Settlement Scheme 2022**") in terms of Regulation 26 of the Securities and Exchange Board of India (Settlement Proceedings) Regulations, 2018 (hereinafter referred to as "**Settlement Regulations**"). It was further informed that the Settlement Scheme, 2022 provided a one time opportunity to the entities against whom proceedings had been initiated and appeals against the said proceedings are pending before any forum or authority. The scheme commenced from August 22, 2022 and closed on November 21, 2022. The PSI was issued through SPAD, however, the same was returned undelivered to SEBI with remarks 'left'.

13. Pursuant to that, vide public notice dated November 21, 2022, it was advertised/informed that "*Considering the interest of entities in availing the Scheme, the competent authority has extended the period of the Scheme till January 21, 2023*".

14. However, it was observed that Noticee did not avail the SEBI Settlement Scheme 2022, in view of which, the adjudication proceeding against the Noticee was resumed.

15. Vide notices of hearing dated November 14, 2023 and November 22, 2023, Noticee was granted further opportunities of being heard on November 22, 2023 and November 29, 2023, respectively. However, the said notices of hearing could

not be delivered to the Noticee at his address and returned undelivered to SEBI with remarks 'left'.

16. Subsequently, a second PSI dated March 06, 2024, was issued on the Noticee wherein it was informed to the Noticee that SEBI introduced another Settlement Scheme i.e. SEBI Settlement Scheme, 2024 (hereinafter referred to as "**Settlement Scheme 2024**") in terms of Regulation 26 of Settlement Regulations. It was informed that the Settlement Scheme, 2024 provided opportunity to the entities against whom proceedings had been initiated and appeals against the said proceedings are pending before any forum or authority. The scheme commenced from March 11, 2024 to May 10, 2024. The second PSI issued to the Noticee could not be delivered to the Noticee at his address and it returned undelivered to SEBI with remarks 'left'.

17. Further, vide Public Notice dated May 08, 2024, the Settlement Scheme 2024 was extended till June 10, 2024 by SEBI.

18. It is observed that Noticee did not avail the Settlement Scheme 2024 and accordingly, the adjudication proceeding against the Noticee was resumed. Accordingly, vide hearing notice dated January 01, 2025, an opportunity of hearing in the matter was provided to the Noticee on January 13, 2025. Noticee did not appear for hearing on January 13, 2025, however, vide email dated January 16, 2025, he requested to provide another opportunity of being heard in the matter. Therefore, another opportunity of personal hearing in the matter was granted to Noticee on January 28, 2025. On January 28, 2025, Noticee appeared for the hearing and reiterated the submissions made by him vide letter dated January 27, 2022.

CONSIDERATION OF ISSUES AND EVIDENCE

19. I have carefully perused the charges levelled against the Noticee in the SCN, its reply and the material / documents available on record. In the instant matter, the following issues arise for consideration and determination:-

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

II. **Do the violations, if any, on the part of the Noticee attract monetary penalty under section 15HA of SEBI Act?**

III. **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?**

20. Before proceeding further, I would like to refer to the relevant provisions of the PFUTP Regulations:

Relevant provisions of PFUTP Regulations

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 recognised 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 recognised 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 recognised

stock exchange in contravention of the provisions of the Act or the rules and the regulations made thereunder.

4. Prohibition of manipulative, fraudulent and unfair trade practices

(1) Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.

(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely;-

(a) indulging in an act which creates false or misleading appearance of trading in the securities market;

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

21. I note that it is alleged that the Noticee, while dealing in the stock option contracts at BSE during the IP, had executed reversal trades which were allegedly non-genuine trades and the same had resulted in generation of artificial volume in stock option contracts at BSE. Reversal trades are considered to be those trades in which an entity reverses it's buy or sell positions in a contract with subsequent sell or buy positions with the same counterparty during the same day. The said reversal trades are alleged to be non-genuine trades as they are not executed in the normal course of trading, lack basic trading rationale, lead to false or misleading appearance of trading in terms of generation of artificial volumes and hence, are deceptive and manipulative.

22. Noticee has contended that no complaints were received against these trades by the Counter Party. I note that the allegations pertaining to the Noticee's non-genuine trades neither depend nor rely upon the receipt of any Counter Party / investor complaints against the Noticee. Noticee also submitted the trades were carried out on the platform provided by BSE and were executed by him within the stipulated price band and that the said script was never banned from trading and there were no alerts or warnings by the exchange indicating otherwise. In this

regard, it is pertinent to note that since the Noticee has traded in the securities as defined under Securities Contracts (Regulation) Act, 1956, he is obligated to comply with the securities law. The responsibility of ensuring the genuineness of trades rests with the Noticee. The Noticee is expected to act with due diligence and cannot shift responsibility for his own trading decisions onto the exchange and the broker. Hence, the contention of the Noticee in this regard is not tenable.

23. Noticee submitted that his share of volume was almost negligible. He entered into only 2 trades of which is less than 0.000001%. So his contribution in artificial trade volume should be treated as non-considerable. Noticee further submitted that order in the contract was placed to create Buy position at the price of underlying in anticipation that price will increase and profit will be booked by selling at higher price, however, after some time, the price was falling, so to protect the further losses the trade was squared off and a loss of Rs. 225191.34 was booked.

24. From the documents on record, I note that the Noticee entered into two (2) reversal trades in one (1) unique contract (i.e. TGBL15MAR140.00CE) on March 18, 2015, which led to generation of alleged artificial volume of 68,000 units. A summary of the alleged non-genuine trades and reversal trade of the Noticee, in said contract during the investigation period, is as follows:

Contract name	Avg. buy rate (₹)	Total buy volume (no. of units)	Avg. sell rate (₹)	Total sell volume (no. of units)	% of Artificial volume generated by the Noticee in the contract to Noticee's Total volume in the contract	% of Artificial volume generated by the Noticee in the contract to Total volume in the contract
A	**B**	**C**	**D**	**E**	**G**	**H**
TGBL15MAR140.00CE	23.45	34,000	16.85	34,000	100.00%	14.05%

25. On March 18, 2015, the Noticee entered into a buy trade with counterparty Priti Damani for 34,000 units of the contract named 'TGBL15MAR140.00CE' at the rate

of Rs.23.45 per unit at 13:21:44.58 hrs. On the same day, Noticee, at 14:22:00.95 hrs, entered into a sell trade with the same counterparty for 34,000 units of same contract at the rate of Rs.16.85 per unit. It is noted that while dealing in the said contract during the IP, the Noticee executed a total of 2 trades in 1 contract (1 buy trade and 1 sell trade) with same counterparty viz. Priti Damani on the same day and with significant price difference in buy and sell rates. Thus, Noticee, through its dealing in the said contract during the IP, executed 2 non-genuine reversal trades and thereby, the Noticee generated artificial volume of 68,000 units.

26. 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, the Noticee reversed the position with the same counterparty with significant price difference on the same day. The fact that the transactions in a particular contract were reversed with the same counterparty indicates a prior meeting of minds with a view to execute the reversal trades at a pre-determined price. Since these trades were done in illiquid option contract, there was negligible trading in the said contract and hence, there was no price discovery in the strictest terms. The wide variation in prices of the said contract, 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. Thus, it is observed that Noticee had indulged in reversal trades with its counterparty in the stock options segment of BSE and the same were non-genuine trades.

27. Noticee has further submitted that there are no connections whatsoever between him and the said counter party and the SCN also fails to point out or establish any relation between the Noticee and the counter party. Noticee further submitted that due to the anonymous trading system, it is not possible for anybody to have access over identity of the counter parties. He stated that it is a matter of absolute coincidence that the trades were matched with the said Counter Party. Noticee also submitted that as per Regulation 2(c) as interpreted by the Supreme Court in

SEBI v. Shri Kanaiyalal Patel, requires an element of "inducement" to be proved before holding that a person is guilty of fraud. The Hon'ble Securities Appellate Tribunal in S. Gopalakrishnan v. SEBI has held that "it must be proved by cogent evidence that the appellants are guilty of "inducement". In the absence, of any evidence, the charge of fraud is not proved, nor the provisions of Regulation 3 and 4 of PFUTP Regulations applicable". He submitted that in the present case, there is no indication by the SCN of any inducement by Noticee to any other person to deal in fraudulent securities.

28. I note that it is not mere coincidence that the Noticee could match his trades with the same counterparty with whom he had undertaken first leg of the respective trades. The fact that the transactions in a particular contract were reversed with the same counterparty for the same quantity of units, indicates a prior meeting of minds with a view to execute the reversal trades at a pre-determined price. It is further noted that direct evidence is not forthcoming in the present matter as regards to meeting of minds or collusion with other entities inter-alia the counterparties or agents/fronts. However, trading behaviour as noted above make it clear that aforesaid non-genuine trades could not have been possible without meeting of minds at some level.

29. Here, I would like to rely on the judgment of Hon'ble Supreme Court in **SEBI v 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."* It was further held

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.*"

30. The observations made in the aforesaid judgment of Hon'ble Supreme Court apply with full force to the facts and circumstances of the present case. Therefore, applying the ratio of the above judgments, it is observed that the execution of trades by the Noticee in the illiquid options segment with such precision in terms of order placement, time, price, quantity etc. and also the fact that the transactions were reversed with the same counterparty clearly indicates a prior meeting of minds with a view to execute the reversal trades at a pre-determined price. The only reason for the wide variation in prices of the same contract, within short span of time was a clear indication that there was pre-determination in the prices by both the counterparty when executing the trades. Thus, the nature of trading, as brought out above, clearly indicates an element of prior meeting of minds and therefore, a collusion of the Noticee with its counterparty to carry out the trades at pre - determined prices.

31. It is also relevant to refer to judgement of the Hon'ble Securities Appellate Tribunal in the matter of **Ketan Parekh vs SEBI** (in Appeal No. 2 of 2004; date of decision July 14, 2006):

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

32. In this regard, reliance is placed on judgment of Hon'ble Supreme Court in the matter in respect of **SEBI v Rakhi Trading Private Limited**, Civil Appeal Nos. 1969, 3174-3177 and 3180 of 2011 decided on February 8, 2018 on similar factual situations, which inter-alia states 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….."

33. Therefore, the trading behaviour of the Noticee confirms that such trades were not normal indicating that the trades executed by the Noticee were not genuine trades and being non-genuine, created an appearance of artificial trading volumes in respective contract. In view of the above, I find that the allegation of violation of Regulations 3(a), (b), (c) and (d), and 4(1), 4(2)(a) of PFUTP Regulations by the Noticee stands established.

Issue No. 2: Do the violations, if any, on the part of the Noticee attract monetary penalty under Section 15HA of the SEBI Act?

34. With regard to levy of penalty, Noticee submitted that the he has not made any disproportionate gain or advantage specifically on account of any of the allegations made out in the SCN, no loss was caused by him to a particular investor or group of investors and he has not committed any repetitive default in the instant case. In this regard, Noticee relied upon the observations made by the Hon'ble SAT in order dated August 2, 2019, in the case of P.G. Electroplast Ltd. & Others v. SEBI.

35. In this regard, I find that the allegation of violations that were established in the case relied upon by Noticees are different from the violations that have been established in the present case of Noticees. Hence, I note that the said case does not stand on the same footing as the given case of Noticees. Thus, considering the findings that the Noticee, as mentioned above, has executed non-genuine trades resulting in the creation of artificial volume, thereby violating the provisions of Regulation 3(a), (b), (c) & (d) & Regulation 4(1) and 4(2)(a) of the PFUTP Regulations and in terms of the judgement of Hon'ble Supreme Court of India in the matter of **SEBI Vs. Shriram Mutual Fund** [2006] 68 SCL 216 (SC) decided on May 23, 2006 wherein it was 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. A breach of civil obligation which attracts penalty in the nature of fine under the provisions of the Act and the Regulations would immediately attract the levy of penalty irrespective of the fact whether contravention must made by the defaulter with guilty intention or not*'', I am convinced that it is a fit case for imposition of monetary penalty under the provisions of Section 15 HA of the SEBI Act which reads 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.

Issue No. 3: If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in section 15J of the SEBI Act?

36. While determining the quantum of penalty under Section 15HA of the SEBI Act, it is important to consider the factors as stipulated in Section 15J of the SEBI Act which read as under: -

Factors to be taken into account while adjudging quantum of penalty.

15J. While adjudging quantum of penalty under 15-I or section 11 or section 11B, the Board or 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 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. As established above, the trades of the Noticee were non-genuine in nature and created a misleading appearance of trading in the aforesaid contract. I note that 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. Further, the material available on record does not demonstrate any repetitive default on the part of the Noticee. However, considering that the 2 non-genuine trades entered by the Noticee in 1 contract led to creation of artificial trading volumes which had the effect of distorting the market mechanism in the Illiquid Stock Options segment of BSE, I find that the aforesaid violations were detrimental to the integrity of securities market and therefore, the quantum of penalty must be commensurate with the serious nature of the aforesaid violations.

ORDER

38. In view of the above, after considering all the facts and circumstances of the case including the submissions of the Noticee and findings elaborated hereinabove, and the factors mentioned in the provisions of section 15J of the SEBI Act, I, in exercise of the powers conferred upon me under section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, conclude that the proceedings against the Noticee stands established in terms of the provisions of the SEBI Act. Hence, in view of the charges established under the provisions of the SEBI Act, I, hereby impose monetary penalty of **₹ 5,00,000/- (Rupees Five Lakh Only**) on the Noticee (Pankaj Kumar Agarwal) under section 15HA of SEBI Act for the violation of Regulations 3(a), (b), (c) and (d), 4(1), 4(2)(a) of PFUTP Regulations. I am of the view that the said penalty is commensurate with the violations committed by Noticee.

39. The Noticee shall remit/pay the said amount of penalty within 45 days of receipt of this order in either of the way, such as by following the path at SEBI website www.sebi.gov.in:

ENFORCEMENT >Orders >Orders of AO> PAYNOW;

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

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

ASHA SHETTY

Digitally signed by ASHA SHETTY
Date: 2025.03.25 10:30:07 +05'30'

Place: Mumbai **ASHA SHETTY**

Date: March 25, 2025 **ADJUDICATING OFFICER**