BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

ADJUDICATION ORDER NO. Order/RJ/PG/2021-22/15296

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:
Surbhi Bagaria
[PAN: BVHPB7220C]
137, Bangur Avenue
Block C, Kolkata
PIN: 700 055

In the matter of Illiquid Stock Options at BSE Limited

BACKGROUND

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

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

3. It was also observed that the said non- genuine trades were not restricted to any specific contract or between any specific set of entities. Surbhi Bagaria

(hereinafter referred to as '**Noticee'**) was one of the various entities who indulged in execution of non-genuine trades in Stock Options segment of BSE during the Investigation Period. The dealings of the Noticee during the Investigation Period and the allegations against the Noticee with respect to execution of non-genuine trades are narrated in the following paragraphs.

4. As regards the dealings of Noticee in the Stock Options segment of BSE during the Investigation Period, it was observed that the Noticee had traded in 1 unique contract, in which the Noticee allegedly executed total of 2 non-genuine trades, which resulted in artificial volume of total 72,000 units.

5. Summary of dealings of the Noticee in the Stock Options contract in which the Noticee allegedly executed non genuine trades during the Investigation Period 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 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	INCM15MAR80.00CEW2	11.65	36000	19.4	36000	100%	10.06%

6. From the above table, the following is observed as regards the dealings of the Noticee:
   a) During the Investigation Period, 2 trades for 72,000 units were executed by the Noticee in the said contract on March 11, 2015.

   b) That while dealing in the said contract during the Investigation Period, Noticee executed total 2 reversal trades (1 buy trade + 1 sell trade) with the same counterparty viz, Adarsh Credit Co. Op Society Limited on the same day.

c) Thus, Noticee, through her dealing in the contract viz, "INCM15MAR80.00CEW2" during the Investigation Period, executed 2 non genuine trades and thereby allegedly generated artificial volume of 72,000 units which is 10.06% of the total volume traded in the said contract in the market during the Investigation Period.

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

APPOINTMENT OF ADJUDICATING OFFICER

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

SHOW CAUSE NOTICE, REPLY AND HEARING

9. A Show Cause Notice (hereinafter referred to as '**SCN'**) bearing ref. no. SEBI/HO/EFD2/PROS/P/OW/2021/22649/1 dated September 06, 2021 was issued to the Noticee under Rule 4 of the Adjudication Rules, 1995 to show cause as to why an inquiry be not held against her in terms of Rule 4 of the Adjudication Rules, 1995 and penalty be not imposed under Section 15HA of the SEBI Act, 1992 for the violations alleged to have been committed by her. The SCN was sent to the Noticee vide Speed Post AD and was duly served on the Noticee.

10. In reply, vide email dated September 27, 2021, the Noticee submitted the copy of letter dated September 22, 2021. Vide the said letter, the Noticee requested for additional time to file reply to SCN. In the interest of Justice, vide letter dated October 04, 2021, the Noticee was granted additional time for filing reply to SCN and the opportunity of hearing was also granted on November 18, 2021.

11. In reply to SCN, the Noticee vide email dated November 11, 2021 submitted the copy of letter dated as November 12, 2021 and also submitted copy of letter of Authority dated as November 12, 2021 whereby she authorized her representative to attend hearing and make written as well as oral submissions in the instant matter. The signed letter was received on November 17, 2021 and the same has been taken on record. Vide the said letter, the Noticee, *inter-alia*, submitted as under :

"……………

At the outset and without prejudice to anything stated hereinafter, I deny all the allegations and findings made against me in the said notice, except to the extent specifically admitted by me. Further, I state that nothing contained in the SCN may be deemed to be admitted by me by reason of non traverse or otherwise, save and except what is expressly admitted herein. Additionally, I deny all the allegations and averments contained in the captioned SCN that are contrary to and/ or inconsistent with what is stated herein below.

1) <u>Preliminary Objection:</u> I dealt through SEBI REGISTERED STOCK BROKER and had no direct access or scope for contacting the counterparty to alleged trades as given in the said SCN. I further respectfully submit that SEBI has not provided any evidence or proof to show that my trades were fraudulent. None of the ingredients of the said PFTUP Regulations are attracted in the present case essentially because:

a. The SCN fails to appreciate that when SEBI itself has not discharged its obligations of quick investigation, seeking explanation of the parties at that time, declaring trades in stock *options as illegal at the relevant time, subjecting us to adjudication proceeding at such a belated stage of approx6 years is unfair and unreasonable.*

Even though limitation act does not specify time limit in such case, still as per judicial pronouncements by the SAT and SC, a reasonable period has to be complied with. In support of the submission reliance is placed upon the very recent decision of Securities Appellate Tribunal (SAT) in Ashok Shivlal Rupani vs SEBI and other companion appeals in Appeal No. 417 of 2018 decided on August 22, 2019 wherein the order of penalty was set aside on account of an inordinate delay in the initiation of the proceedings.

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

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

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

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

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

g. *In my case there is no nexus, directly or indirectly with the alleged counter party ADARSH CREDIT COOP.SOCIETY LTD,WHICH BEING A CO OP.SOCIETY IS NOT AT ALL SUPPOSED OR ALLOWED TO DEAL IN OPTIONS AT ALL .SEBI has not even alleged this .I crave for cross examination of the alleged counterparty and strict proof as to any exchange of cash for alleged non genuine trades; .*

h. *My trading in option segment was low percentage of overall volume in market. The total number of alleged non-genuine trade was only 2which if compared with the alleged reversal trades numbering to 2,91,643, during the said i.p. of 1.4.2014 to 30.9.2015 i.e. spaning over one and half year it is miniscule 0.000685%.Hence, it is erroneous to allege that my trade created artificial volume on BSE.*

i. *I am citing the decision of honble SAT wherein a single trade was held not to be treated as reversal*

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

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

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

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

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

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

3) I humbly submit that, upon reading of the Show Cause Notice, it appears that there are various documents and data that are referred to and relied upon by SEBI in the Captioned proceedings to arrive at an allegation of non genuine/ artificial trades,

4) Be that as it may, I hereby submit my explanations and clarifications with the data/information provided by you and reconciled the same with records available with me in the subsequent paragraphs.

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

- *a. With respect to observation that I have dealt in stock options contracts which are /were illiquid in nature, I submit that if we observe the underlying scrip in which I traded, it can be established that these scrips are highly liquid in nature i.e. frequently traded in market. I traded in contracts of underlying scrip such as INDIACEMENT. In fact, I submit with humility that underlying stock of aforesaid contracts consists of companies which are part of the BSE -200/ 500/ indices of the Bombay Stock Exchange. Thus, to allege that I deliberately traded in only those options which were illiquid in nature is unfair.*
- *b. Apparently, SEBI has held that I transacted in 'illiquid options' on the basis that my trades were squared up at substantial price difference without any basis for significant change in the contract price. However, in that case, it may also be concluded that said trades could have had no effect on other investors or market at large and that such illiquidity would be reason for volatility and alleged 'reversal' transactions since variations in option price would be dramatic if the chosen strike price is thinly traded.*
- *c. I submit that BSE and SEBI have themselves allowed and permitted trading in options for 'far months' with a strike price which are at large variance to current market price. The fact that such parameters are laid down is clearly indicative that options will always be 'in the money' and 'out of money' and since regulators have themselves permitted trading in same, no adverse inference be drawn against me in this regard.*
- *d. It is pertinent to mention that stock exchanges regularly come out with list of illiquid scrips in cash segment. However, no such list is issued by exchanges or regulator for dealing in stock options contracts. Thus, to fasten the responsibility or allege a single entity (myself) that it traded in illiquid option is unwarranted and unfair.*
- *e. I submit with humility that derivative market is 'zero sum game' and thus in each and every case one party will inevitably make profit and counterparty will make loss. In capital market neither BSE nor SEBI can guarantee profit or loss to any individual/ entity. In derivative trading, traders often make profit or loss over a period of time since the market does not always behave as per their prediction/ expectation. Thus, profit and loss is concomitant to trading in derivative segment. The mere fact that I traded in option segment cannot be a ground to rope me into present proceedings.*

6) my trades did not influence the price / volume of underlying shares in cash segment :

- *a. I submit that I trade & invest in the stock market in ordinary course which includes my bona fide trading in option segment. Thus, it is erroneous to allege that my trades created artificial volume on BSE. Going by the logic of SEBI if these were illiquid stock options, then any trade and transaction would look significant. In fact, the impugned trades constituted a miniscule percentage of overall trades.*
- *b. I submit that there was no major movement in price of underlying scrips which itself proves that my trades had no impact on market. Thus, my transactions neither distorted the equilibrium in market nor caused any loss or prejudice to investors at large.*
- *c. With demurer, I submit that any kind of alleged fictitious/ manipulative trade in cash segment may create distorted impression in minds of investors that price of scrip is rising/falling who may invest/ divest from said scrip. However, in case of option segment there is no such effect since each contract expires at end of contract period and for every party who makes profit there is counterparty who makes a loss. There is no question of transfer of beneficial ownership in option segment since at end of settlement cycle only net loss/profit is adjusted. Therefore, in my humble opinion,*

allegation of creation of 'artificial' or 'reversal' trade is of no consequence in option segment of exchange.

7) *No relationship with counterparty/parties:-*
   a. *I did not act in concert or in collusion with anyone and nor was I part of any group or connected with anyone for the purpose of influencing price or for any manipulative activity as alleged or otherwise. It is an admitted position that there is no connection whatsoever between me and the counter parties mentioned in SCN to the impugned trades.*
   b. *From the details annexed in the S.C.N I state and assert that I have no 'connection' or 'relation' with any of counterparties to my trade as mentioned in SCN. My trading in stock option segment was independent of any other entities dealing in the same and based on my limited understanding of capital market.*
   c. *All my transactions have been carried out on the online trading platform of stock exchange. Undisputedly, in case of screen-based trading, the automated system itself matches orders on a price-time priority basis and hence it is not possible for anybody to have access over identity of counter party. Since counter party identity is not displayed; one can never have any choice with whom it wants to deal or not to deal.*
   d. *I state, declare and assert that I had no prior meeting of minds with broking entities as well as their clients as mentioned in SCN, nor any contemporaneous knowledge about any alleged wrongdoing. I was not guilty of conduct which is contumacious or dishonest or acted in conscious disregard of law.*
   e. *I would like to draw your kind attention to the matter of Jagruti Securities (2008 SCC online SAT 184) and S.P.J Stockbroker Pvt Ltd (2013 SCC Online SAT 67) wherein it was held that such alleged trades cannot be treated as illegal per se unless there is some cogent connection between the counterparties or there is "mischievous meeting of minds amongst certain parties". I submit that such an element is completely absent in my case.*
   f. *Additionally, I would like to draw your kind attention to Order dated 18.05.2012 passed by the Hon'ble Securities Appellate Tribunal in the matter of Sanjay Agrawal vs. SEBI wherein it was held that in order to establish an allegation of reversal trade between parties a cogent evidence or connection between the parties needs to be established. In my humble submission, in my case, no such connection is established in Show Cause Notice since none exist.*
   g. *I would like to further submit that all my trades in option segment were within prudential norms of exchange and as per procedures and guidelines as prescribed by regulators & exchanges SEBI & BSE. At the relevant time, none of my trades were questioned by the brokers who are SEBI registered intermediaries and frontline gate-keepers of stock exchange. Had I been alerted by the broker or stock exchange i would have taken prompt and immediate corrective measures, if any, at that point of time itself.*
   h. *Further, no cautionary warning, advisory, communication or alarm was raised by BSE at any point of time. There was nothing in the public domain that there is anything amiss in the matter. In fact, with a fool proof and state of the art surveillance system BSE could have annulled the trades at that point of time itself in case it considered that the trades were fraudulent. However, this was not the case, which means that the trades executed by me were genuine and fair.*
   i. *It is pertinent to mention that it is only recently that BSE, vide Notice No.20160308-33 dated 08.03.2016, announced that it has introduced measure for prevention of reversal trades in Equity Derivative Segment effective from 14.03.2016. Thus, in case of potential reversal trade, second leg (latest leg) of a reversal trade shall automatically be cancelled by exchange in an on-line real time basis on trading system. i submit that merely because on-line preventive measure and check & balance did not exist at relevant point of time to avoid inadvertent reversal trades no adverse inference be drawn against me in this regard.*

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

I submit that there is no reason for any allegation that I have violated the provisions of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Markets) Regulations, 2003 or the SEBI Act. I humbly submit that besides recording common/ generic allegations against me, not a single instance or observation on my specific role in alleged reversal trade is delineated in the Show Cause Notice. Such an approach, in my humble submission is bad in law.

9) *Reliance is also placed on judgement of the Hon'ble Supreme Court in the matter of Commissioner of Central Excise, Bangalore vs M/s Brindavan Beverages (P) Ltd. and Ors [Civil Appeal 3417 of 2002] decided on 15.06.2007 in this regard.*

SUMMARY

In summary, with regard to my dealings in stock options on BSE, I would like to clarify as under:

A. *I acted as bona fide trader / investor and have transacted in stock option segment in normal course of my investment/trading activity and my trading in the same was very much within my own financial and risk bearing capacity.*
B. *I submit that in any business activity in stock market, one can either make profit or loss. I humbly submit that at the relevant time I had no idea of any profit or loss in said transactions and I traded in option segment taking into account my 'risk and reward' parameters.*
C. *I am not connected to counterparties of my transactions in option segment and neither do I have any relation with promoters / directors/ key management person of underlying scrip in cash segment.*
D. *I believe there has been no grievance/complaint by any investor, broker, stock exchange or any other agency concerned with respect to my dealings in the option segment on BSE .HENCE IT APPEARS THAT THE SAID SHOW CAUSE NOTICE HAS BEEN ISSUED MERELY ON ASSUMPTIONS AND APPREHENSIONS OF TRANSACTION HAVING ATTRIBUTES OF PFUTP REGULATIONS WHEREAS THE H.C. AND S.C HAVE REPEATEDLY HELD THAT ANY ACTION BASED ON APPREHENSION ONLY IS NOT PERMISSIBLE.*
E. *SEBI has discontinued proceedings against the brokers and intermediaries against whom similar allegations of dealing in illiquid stock options while executing trades on behalf of clients have been levelled. I humbly submit that the same recourse ought to be adopted on an entity like me.*
F. *Speaking for myself, I state that I had followed and complied with all the procedures and requirements of capital market while dealing through SEBI registered intermediary. All the pre-trade, trade and post-trade activities were carried out on the trading, clearing and settlement system of stock exchange which itself has sophisticated on-line surveillance software and systems in place.*

…………..”

12. The opportunity of hearing was availed by the Noticee on November 18, 2021 through her Authorised Representative (**AR**). The hearing was conducted through video conference mode using Webex platform and the contents of the SCN and the allegations levelled against the Noticee were explained to the AR. The AR reiterated the submissions made in the reply dated November 12, 2021 and submitted that they have no further submissions to make and hearing was concluded accordingly. However, vide email dated November 18, 2021, Noticee made additional submissions which has also been taken on record. Vide the said email, the Noticee, *inter-alia*, submitted as under:

"…………..

please refer to the trailing email containing the minutes of the hearing.

many thanks for granting the hearing and a patient hearing.

As asked for by you to submit the additional points raised besides reiterating all the points in the written reply to the show cause notice, i submit the same as under:

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

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

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

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

3.our plea that the breaking down of the one contract into two trades by you is factually and practically wrong in the context in which the s.c.n. has been issued.

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

4.since sebi has not provided the proof of exchange of cash or call records/cross examination facility with alleged counter party, the allegations of non -genuine trades are treated to be not cogent and only based upon pure conjectures and surmises and hence can not sustain.
Reliance is place on the under noted S.C. verdict in the context of" evidence"
“DigambarVaishnav V/S State of Chattisgarh

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

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

Criminal trial — No conviction on basis of surmises and conjectures or suspicion however grave it may be — Strong suspicion, strong coincidences and grave doubt cannot take place of Legal proof. (Para 15)"
I, therefore request your honour to pass the adjudication order in this light judiciously."

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

CONSIDERATION OF ISSUES AND FINDINGS

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

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

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

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

FINDINGS

15. Before advancing into the merits of the case, I would like to deal with the issue pertaining to the delay as contended by the Noticee.

16. In this regard, I note that as per Section 11C of the SEBI Act, 1992, SEBI can initiate investigation for any alleged violation of the provisions of Acts and Rules and Regulations made thereunder and no limitation has been provided in this regard. I note that the investigations relating to the PFUTP Regulations, 2003 are

complex (considering the volume of transactions, connections and examination of trading of shares, etc.) and time consuming. I note that a large number of entities across the country had committed violation of the PFUTP Regulations, 2003 while dealing in Illiquid Stock Options at BSE during the Investigation Period. Therefore, it took reasonable time in ascertaining the violation by each entity as well as taking further actions. Further, I note that there is no provision under the SEBI Act, 1992 which provides a time limit for taking cognizance of a breach of the provision of the SEBI Act, 1992 and Rules and Regulations made thereunder. In this regard, it is pertinent to note that, in the matter of **SEBI Vs Bhavesh Pabari** {(2019) SCC Online SC 294}, the Hon'ble Supreme Court of India has, *inter alia*, held as follows:

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

17. Further, I note that the Hon'ble Securities Appellate Tribunal (hereinafter referred to as **SAT**) in the matter of **Pooja Vinay Jain vs. SEBI** (Appeal No. 152 of 2019, Date of Decision – March 17, 2020) held that, "*The record would show that all the documents concerning the defense of the appellant were filed by her before the AO. Therefore, for want of any prejudice the proceedings cannot be quashed simply on the ground of delay in launching the same*".

18. The Hon'ble SAT in the matter of **Rajendra Aggarwal v. SEBI,** decided on September 17, 2021, while rejecting the contention of appellant therein that there was inordinate delay of four years in issuance of SCN, has held - *"The investigation was against a large number of entities which apparently took time and ultimately notices were issued to 35 entities. Consequently, we do not find any inordinate delay in the issuance of the show cause notice nor do we find any merit in the contention that there was an inordinate delay."*

19. In this background, I also note that pursuant to a preliminary examination conducted in the Illiquid Stock Options matter, Interim order was passed by SEBI on August 20, 2015 which was confirmed vide Orders dated July 30, 2016 and August 22, 2016. Meanwhile, SEBI initiated a detailed investigation relating to stock options segment of BSE which was completed in the year 2018. The investigation revealed that 14,720 entities were involved in executing non-genuine trades in BSE's stock option segment during the investigation period. The proceedings initiated vide the aforementioned Interim Order were disposed of vide Final Order dated April 05, 2018 and appropriate action was initiated against the said 14, 720 entities in a phased manner.

20. During the course of hearing in the case of **R. S. Ispat Ltd Vs SEBI**, the Hon'ble SAT, vide Order dated October 14, 2019, *inter alia*, observed that *"SEBI may consider holding a Lok Adalat or adopting any other alternative dispute resolution process with regard to the Illiquid Stock Options".*

21. I also note that SEBI had framed a settlement scheme in accordance with the provisions of the SEBI (Settlement Proceedings) Regulations, 2018 which provided a onetime opportunity to the concerned entities to settle the proceedings in the matter of dealings in illiquid Stock Options at BSE. I observe that the said scheme was kept open from August 01, 2020 till December 31, 2020. Subsequently, adjudication proceedings against the entities who did not opt for the settlement in terms of the scheme (including the Noticee) were initiated and, accordingly, the SCN was issued against the Noticee.

22. As can be seen from the narration of facts in the foregoing paragraphs, pursuant to appointment of AO on July 02, 2021, SCN was issued to the Noticee on September 06, 2021. In compliance with principles of natural justice an opportunity of personal hearing was granted to the Noticee on November 18, 2021.

23. In view of the aforesaid and considering the facts of the present matter, I do not find any merit in the contentions of the Notice that there has been inordinate delay and that the proceedings deserves to be dropped.

24. Having noted as above, in respect of the issues for consideration before me, I record my findings hereunder taking into consideration the material available on record, giving regard to the facts and circumstances of the case and submissions of the Noticee.

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

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

Regulation 3: - Prohibition of certain dealings in securities

3. No person shall directly or indirectly—

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

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

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

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

Regulation 4: - Prohibition of manipulative, fraudulent and unfair trade practices

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

(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:-
(a) indulging in an act which creates false or misleading appearance of trading in the securities market;

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

27. I note that reversal trades have been considered as those trades in which an entity reverses her 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 and 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 the said reversal trades while keeping out the volume, if any, which is not reversed.

28. Before analyzing the alleged non-genuine transactions executed by the Noticee, I must deal with the submission of the Noticee that SEBI has dropped proceedings against the brokers and intermediaries against whom similar allegations of dealing in illiquid stock options while executing trades on behalf of clients have been levelled. In this regard, I note that the same does not absolve the Noticee with regards to the violations committed by her. Further, the instant proceedings pertains to the trades executed by the Noticee on March 11, 2015 with the same counterparty and the allegation are required to be adjudicated independently. Accordingly, I don't find any merit in the submission made by the Noticee in this regard.

29. I note that the Noticee had executed 2 non-genuine trades in 1 contract on March 11, 2015. The details of non-genuine trades executed by the Noticee are furnished hereunder:

S. No	Contract Name	Avg. Buy Rate (Rs.)	Total Buy Volume (no. of units)	Avg. Sell Rate (Rs.)	Total Sell Volume (no. of units)	% of Artificial Volume generated by Noticee in the contract to Noticee's Total Volume in the Contract	% of Artificial Volume generated by Noticee in the contract to Total Volume in the Contract
1	INCM15MAR80.00CEW2	11.65	36000	19.4	36000	100%	10.06%

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

I. Scrip Name: INCM15MAR80.00CEW2, Trade Date: March 11, 2015

CLIENTNAME	CP_CLIENTNAME	TRADE_TIME	CLIENT ORDER TIME	CP_CLIENT ORDER TIME	TRADE_RATE	TRADED_QTY
SURBHI BAGARIA	ADARSH CREDIT CO OP SOCIETY LIMITED	12:07:12.779688	12:05:09.695357	12:07:12.779688	11.65	36000
ADARSH CREDIT CO OP SOCIETY LIMITED	SURBHI BAGARIA	12:31:32.992810	12:31:32.884053	12:31:32.223604	19.4	36000

(a) I note from the above table that during the Investigation Period, total 2 trades for 72,000 units were executed by the Noticee in the "INCM15MAR80.00CEW2" contract on March 11, 2015.

(b) The Noticee placed a buy order for 36,000 units at a price of ₹ 11.65 per unit and the said order was matched with the sell order (which was for 322000 units, which was also placed at a price of ₹ 11.65 per unit) of counterparty client Adarsh Credit Co Op Limited. I note that the said buy order by the Noticee was placed at 12:05:09.695357 and the sell order was placed by the

Counterparty at 12:07:12.779688. I also note that there was no modification of either price or quantity by either the Noticee or the counterparty and the buy order of the Noticee got executed into trade at 12:07:12.779688 with the counterparty. Subsequently within 24 minutes from the above trade, at 12:31:32.223604, the Noticee placed a sell order for 36,000 units at a price of ₹ 19.4 per unit and the said order was matched with the same counterparty (i.e. Adarsh Credit Co Op Limited), who placed a buy order for the 36000 units at the same price (i.e. ₹ 19.4). I note that the said buy order was placed by the counterparty at 12:31:32.884053 almost at the same time as that of the sell order placed by the Noticee i.e. 12:31:32.223604. I also note that there was no modification of either price or quantity by either the Noticee or the counterparty and the sell order of the Noticee got executed into trade immediately.

(c) Therefore, it is noted that while dealing in the said contract on March 11, 2015, the Noticee at 12:07:12.78 hrs entered into 1 buy trade with counter party viz, Adarsh Credit Co Op Limited for 36,000 units at a rate of ₹ 11.65 per unit. Thereafter, on the same day, within 24 minutes from the above trade, Noticee, at 12:31:32.99 hrs entered into 1 sell trade with the same counterparty for 36, 000 units at a rate of Rs. 19.4 per unit.

(d) From the above, it is noted that while dealing in the said contract during the Investigation Period, the Noticee executed reversal trades through 1 buy trade and 1 sell trade with the same counterparty viz Adarsh Credit Co Op Limited, on the same day.

(e) Thus, the Noticee, through its dealing in the contract viz, “INCM15MAR80.00CEW2” during the Investigation Period, executed 2 non genuine trades and thereby, the Noticee generated artificial volume of 72,000 units which is 10.06% of the volume traded in the said contract during the Investigation Period.

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

The buying of Illiquid Stock Options by the Noticee and subsequent reversal trade with the same counterparty, within 24 minutes, with a significant difference in buy and sell value of stock options, where order time and order price were matched by both the parties for both legs of the reversal trades and in second leg of transactions the order quantity was also matched, which itself, exhibits abnormal market behaviour and defies economic rationality. Therefore, I am inclined to note that the aforesaid trades of Noticee were non genuine and have created false and misleading appearance of trading in terms of artificial volume in stock options.

32. As noted above, Noticee had executed non- genuine trades in 1 contract viz., INCM15MAR80.00CEW2, where all the trades of Noticee were non genuine trades and the Noticee contributed to 10.06% artificial volumes in the contract. Non genuine trades executed by the Noticee in above contracts had significant difference in buy rates and sell rates considering that the trades were reversed within a 24 minutes on the same day.

33. It is the submission of the Noticee that execution of one trade cannot be treated as synchronized/circular or reversal trade. In support of her argument Noticee relied upon the order of the Hon'ble SAT dated January 21, 2021 in the matter of **Almondz Enterainment Pvt. Ltd.** (Appeal No. 198 of 2020). In this regard, I have perused the aforesaid order and note that the said decision of the Hon'ble SAT cannot be made applicable in the present matter as the facts of the present matter are distinguishable. In the case of Almondz the charges of synchronized trading could not be established for the lack of evidence. In the said case, the Hon'ble SAT also found the findings of the two adjudicating officers contradictory to the same set of acts. Considering this aspect, the Hon'ble SAT set aside the order. However, in the instant case the Noticee had bought option contract with the same counter party and reversed her trade within a short span of time from her earlier buy trade. Further, the price and the time of placing orders was also matched in illiquid stock options in itself shows that trades were non-genuine, as matching of these orders appear to be

practically impossible unless there is a prior meeting of mind between the Noticee and her counterparty. Therefore, the findings in the above decision of the Hon'ble SAT is not applicable in the light of the facts of instant case as stated above.

34. The Noticee also contended that the Stock Option contract in which she traded was highly liquid in nature and therefore, it cannot be said that trades had been executed in Illiquid Stock Option contract. It is also submitted by the Noticee that the underlying scrip in which she traded was also highly liquid. In this regard, I note that the underlying scrip may be liquid however the option contract in which the Noticee traded was illiquid, where there was very little trading in the said contract. Further, I note from the above trading pattern of trades that orders of the Noticee and her counterparty matched with such precision indicates a prior meeting of minds and no justifiable reason has been given for entering into such transactions by the Noticee as the behaviour exhibited by the Noticee defies the logic and basic economic sense. Had market been liquid with large number of investors, the manipulative scheme would not have been possible as the Noticee would not be able to square off its position with the same counterparty. The fact that the counterparties are same corroborates that the trades were not genuine and executed for manipulative purpose.

35. The Noticee has contended that the trades were executed through the stock exchange platform and hence genuine. In this regard, I note that the execution of trades on exchange platform, *ipso facto*, does not establish the genuineness of trades or preclude execution of artificial and non- genuine trades. The non-genuineness of these transactions executed by the Noticee is evident from the fact that there was no justifiable reason as to why, within a short span of time, the Noticee reversed the position with the same counterparty with a significant price difference. Such short span of time in reversing the trades in the contract suggests the non-genuineness of these trades executed by the Noticee. The fact that the orders of the Noticee and its counterparty matched with such precision (considering that there was a perfect match of price 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, where there was very little trading in the said contract, there was no price discovery in the strictest terms. Therefore, it is observed that the Noticee had indulged in reversal trades with its counterparty in the Stock Options segment of BSE and the same were non-genuine trades.

36. It is also the submission of the Noticee that there is no evidence to establish that the trades executed by the Noticee were non-genuine, and the violation is allegedly based on the whims and fancies and therefore, adjudication proceeding should be dropped. In support of this argument, Noticee relied on the Judgment of the Hon'ble Supreme Court in **Digambar Vaishnav v/s Sate of Chhattisgarh** [2019 AIR (SC) 1367] as regards the proof required to prove the allegations. In this regard, I note that the said judgement deals with the burden of proof required in the criminal proceedings and the instant proceedings are civil in nature. Furthermore, the judgement relied upon by the Noticee culled out the principles of burden of proof in criminal proceedings and the same has no applicability to the adjudication proceedings, which are civil in nature. It is a settled law that in civil proceedings, the test is one of preponderance of probability. The Hon'ble Supreme Court in the matter of **SEBI vs Kishore R Ajmera** (AIR 2016 SC 1079), has held that *".....The test, in our considered view, is one of preponderance of probabilities so far as adjudication of civil liability arising out of violation of the Act or the provisions of the Regulations framed thereunder is concerned. Prosecution under Section 24 of the Act for violation of the provisions of any of the Regulations, of course, has to be on the basis of proof beyond reasonable doubt."* In the instant case, the trading pattern as discussed above in itself establishes that the trades executed by the Noticee are manipulative and non-genuine in nature and therefore, the same is in violations of the PFTUP Regulations 2003.

37. Further, with respect to the reversal of trades carried out by the Noticee, I note that the Hon'ble Supreme Court in the matter of **SEBI vs. Rakhi Trading Private Ltd.**, in Civil appeals no., 1969 of 2011 decided on February 8, 2018 held that the price discovery system itself was affected by synchronization and rapid reverse trade, which also had the impact of excluding other investors from participating in the market. The Supreme Court, therefore found that the traders having engaged in a fraudulent and unfair trade practice while dealing in securities, are hence liable to be proceeded against for violation of Regulations 3(a), 4(1) and 4(2)(a) of the PFUTP Regulations, 2003. The Apex Court also held that "*considering the reversal transactions, quantity, price and time and sale, parties being persistent in the number of such trade transactions with huge price variations, it will be too naïve to hold that the transactions are through screen-based trading and hence anonymous. Such conclusion would be over-looking the prior meeting of minds involving synchronization of buy and sell order and not negotiated deals as per the Board's circular. The impugned transactions are manipulative/deceptive device to create a desired loss and/or profit. Such synchronized trading is violative of transparent norms of trading in securities."*

38. The Hon'ble SAT in its judgment dated September 14, 2020 in the matter of **Global Earth Properties and Developers Pvt Ltd Vs SEBI** (Appeal No. 212 of 2020) also relied upon the aforesaid judgment of the Hon'ble Supreme Court and held that *"…It is not a mere coincidence that the Appellants could match the trades with the counter party with whom he had undertaken the first leg of respective trade. In our opinion, the trades were non-genuine trades and even though direct evidence is not available in the instant case but in the peculiar facts and circumstances of the present case there is an irresistible inference that can be drawn that there was meeting of minds between the Appellants and the counter parties, and collusion with a view to trade at a predetermined price*."

39. The Hon'ble SAT has reaffirmed the aforesaid findings in its recent order dated November 24, 2021 in the matter of **Radha Malani vs. SEBI** (appeal no. 698 of 2021) and order dated January 13, 2022 in the matter of **Shruti Saraogi vs. SEBI**

(Appeal No. 814 of 2021) while dealing with similar facts involving trading in Illiquid Stock Options during the same Investigation Period as in the instant matter.

40. Considering the judgements of the Hon'ble Supreme Court and the Hon'ble SAT as reproduced above, I see no reason to take a different view in the present case. In view of the foregoing, the non- genuineness of these trades is evident from the placement time of the orders and price by the Noticee and the counterparty i.e. approximately same for both the parties, I hold that the Noticee had indulged in execution of reversal trades in Stock Options with same entitiy on the same day, which are non-genuine in nature and have created false and misleading appearance of trading in terms of artificial volumes.

41. It is also the submission of the Noticee that she is not knowing the counterparty or any relative of the counterparty and that she does not have any connection with Counterparty. To support her argument, the Noticee has relied on the orders of the Hon'ble SAT in the matter of **Jagruti Securities** (2008 SCC Online SAT 184), **S.P.J Stockbroker Pvt. Ltd.** (2013 SCC Online SAT 67) and **Sanjay Agrawal vs SEBI** (decided on 18.05.2012). In this regard, I note that in the screen based trading, the manipulative and fraudulent intent can be inferred from various factors such as conduct of the party, pattern of transactions, etc. I note that it is not a mere coincidence that Noticee could match its trades with the same counterparty with whom it had undertaken first leg of the respective trades. It indicates meeting of minds. In this context, I would like to rely on the judgment of the Hon'ble Supreme Court of India in **SEBI Vs Kishore R Ajmera** (supra), 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...*"

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

43. I note that though direct evidence regarding meeting of minds or collusion of the Noticee with the counterparty is not forthcoming, the trading behaviour of the Noticee makes it clear that the aforesaid non-genuine trades could not have been possible without meeting of minds at some level. In this context, I deem it appropriate to refer to the order dated July 14, 2006 passed by the Hon'ble SAT in the case of **Ketan Parekh vs. SEBI** (Appeal no. 2/2004), wherein, Hon'ble SAT has held that:

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

44. Further, I would like to rely on the judgement of Hon'ble Supreme Court passed in the case of **SEBI vs. Rakhi Trading Private Ltd**. (*supra)*, wherein the Apex Court held that "*the entities were engaged in a fraudulent and unfair trade practice while dealing in Options and hence were liable for violation of SEBI (PFUTP)*

Regulations". The Hon'ble Apex Court has also held that in the absence of direct proof of meeting of minds, the test should be one of preponderance of probability and also stated that the conclusion has to be gathered from various circumstances like volume of trade, period of persistence of trading, particulars of buy and sell orders, proximity of time between the two and such other relevant factors.

45. In line with the aforesaid judgements of Hon'ble SAT and Hon'ble Supreme Court, I note from the foregoing findings that the trading pattern of the Noticee in terms of volume of reversal trades, proximity of buy/sell and subsequent reversal evidences the indulgence of the Noticee, beyond a reasonable doubt, of the manipulative intent in creation of artificial volume. Further, the dealings by Noticee only in such options contracts which was illiquid clearly demonstrates the manipulative intent to use stock exchange platform to carry out non-genuine trades with the aim to execute such trades for manipulative purposes.

46. I am of the considered view that the scheme, plan, device and artifice employed by the Noticee in this case of executing reversal trades in illiquid stock options tantamount to fraud on the securities market in as much as it involves non-genuine and manipulative transactions in securities and misuse of the securities market.

47. In this regard, I would like to rely on the judgement of Hon'ble Supreme Court in the matter of **SEBI vs. Rakhi Trading Private Ltd**. (*Supra*) where Apex Court observed 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."*

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

49. It is established that the Noticee by indulging in reversal trades which are manipulative, unfair, fraudulent and non-genuine, in nature, had created artificial volumes in the contracts and therefore, misused the exchange trading platform. In view of above, I conclude that the Noticee had violated the provisions of Regulations 3 (a), 3(b), 3(c), 3 (d), 4 (1) and 4 (2) (a) of the PFUTP Regulations, 2003 and the submission of the Noticee that trades were genuine and executed on the exchange platform is not tenable.

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

50. Pursuant to detailed analysis as brought out above, it is established that reversal trades are not normal transactions and it clearly demonstrates beyond reasonable doubt that the Noticee had intentionally executed these trades and manipulated the volume by artificial trading pattern in the contract INCM15MAR80.00CEW2. That all the trades executed by the Noticee during the Investigation Period in the said contract were non genuine trades.

51. I am of the view that the misuse of stock options as shown above not only displays an unreal picture of market activity to other investors but also defeats the basic premise of screen based electronic trading system and price discovery mechanism by repeated execution of pre decided reversal trades at irrational / arbitrary prices. Moreover, the impact of such trading on the traded volume and the price of stock options contracts is huge. Such activity deliberately or otherwise damages market integrity apart from presenting wrong picture of liquidity to gullible investors which could affect

their trading/investment decisions. In my view, the abuse of such financial instruments, which are made available to the investors for the purpose of protection of their investment portfolios from the risks of adverse price movement, cannot be tolerated and needs to be dealt with strictly.

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

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

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

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

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

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

While adjudging quantum of penalty under section 15 - I, the Adjudicating Officer shall have due regard to the following factors, namely:

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

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

54. I observe that the material and documents made available on record does not quantify any disproportionate gains or unfair advantage, if any, made by the Noticee and the losses, if any, suffered by the investors due to such violations on part of the said Noticee. However, Noticee has entered into 2 non-genuine trades in 1 stock option contract during the Investigation Period.

55. At last, the Noticee has submitted that, at most, she may be reprimanded. However, after due consideration of the facts of the matter as discussed above, I am of the view that imposition of minimum penalty as provided under Section 15 HA of the SEBI Act, 1992 would be commensurate with the violations committed by the Noticee.

ORDER

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

57. The said penalty imposed on the Surbhi Bagaria, as mentioned above, shall commensurate with the violation committed by her.

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

ENFORCEMENT → Orders → Orders of AO →PAY NOW

59. Surbhi Bagaria shall forward said Demand Draft or the details / confirmation of penalty so paid to the "The Division Chief, Division of Regulatory Action-3, Enforcement Department (EFD1 – DRA III), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C –4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai –400 051" and shall provide the following details while forwarding DD/ payment information:

   a) Name and PAN of the entity
   b) Name of the case / matter
   c) Purpose of Payment – Payment of penalty under AO proceedings
   d) Bank Name and Account Number
   e) Transaction Number

60. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under Section 28A of the Securities and Exchange Board of India Act, 1992 for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

61. In terms of the provisions of Rule 6 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995, a copy of

this order is being sent to Surbhi Bagaria and also to the Securities and Exchange Board of India, Mumbai.

March 03, 2022 **Ratan Lal Jat**
Mumbai **Adjudicating Officer**