BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/VS/AJ/2021-22/15670]

UNDER SECTION 15-I (2) OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 AND RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995.

In respect of –

Dharam Khurana HUF [PAN: AAFHD4337J] having address at 11, Gokul Marg, Civil Lines, Moradabad- 244001

In the matter of trading in Illiquid Stock Options on BSE

BACKGROUND OF THE CASE

1. The 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**"). SEBI observed that such large scale reversal of trades in stock options lead to creation of artificial volume at BSE. In view 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**")

2. Pursuant to investigations, it was observed that a total of 2,91,744 trades comprising substantial 81.40% of all the trades executed in Stock Options Segment by various clients/entities at BSE during the investigation period were trades which involved reversal of buy and sell positions by the clients and counterparties in a contract on the same day. The reversal trades involved squaring off transactions, but with significant difference in the sell value and buy value of the transactions.

The aforesaid reversal trades allegedly resulted into generation of artificial volumes in the Stock Options Segment at BSE. In view of the large scale reversal of trades that were observed in the illiquid Stock Options Segment at BSE, it is alleged that these trades were non-genuine in nature and have resulted in the creation of artificial volumes in the stock options segment at BSE.

3. It was observed that Dharam Khurana HUF [PAN: AAFHD4337J] (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 investigation period. It was observed that the Noticee had entered into reversal trades with his counterparty which involved squaring-off transaction with significant difference in sell value and buy value of the transaction. Therefore, it is alleged that the Noticee had executed the reversal trades which were non-genuine in nature and has created false or misleading appearance of trading in terms of creation of artificial volume in the Stock Options segment at BSE. In view of same, it is alleged that the Noticee has violated the provision of Regulations 3(a),(b),(c),(d) and Regulation 4(1), 4(2)(a) SEBI (Prohibition of Fraudulent and Unfair Trading Practices related to Securities Markets) Regulations, 2003 (hereinafter, referred to as "**PFUTP Regulations, 2003**").

APPOINTMENT OF ADJUDICATING OFFICER

4. 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, initiated adjudication proceedings and appointed the undersigned as Adjudicating Officer (hereinafter referred to as, "**AO**") under Section 19 read with Section 15-I of the SEBI Act, 1992 (hereinafter referred to as, "**SEBI Act**") read with rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter be referred to as the "**Adjudication Rules**") to inquire into, and adjudge under section 15 HA of the SEBI Act, the alleged violations of the aforesaid provisions of the PFUTP Regulations, 2003, by

the Noticee. The appointment of the AO in the instant matter was communicated vide order dated June 28, 2021.

SHOW CAUSE NOTICE, REPLY AND HEARING

5. A Show Cause Notice (hereinafter referred to as "**SCN**") bearing reference number SEBI/HO/IVD/ID16/AJ/VS/ON/P/2021/15619/1 dated July 19, 2021 was issued to the Noticee in terms of Rule 4 (1) of the Adjudication Rules, to show-cause as to why an inquiry should not be held and penalty not be imposed against the Noticee under section 15 HA of the SEBI Act, for alleged violation of PFUTP Regulations, 2003.

6. The aforesaid SCN was issued through Speed Post Acknowledgement Due (hereinafter referred to as "**SPAD**") to the Noticee and served to the Noticee on July 27, 2021 as per the tracking details obtained from the India Post website.

7. The allegations levelled against the Noticee in the SCN are summarized as under:
   a) The Noticee was one of the entities which indulged in reversal trades which allegedly created false and misleading appearance of trading, generating artificial volumes in the Stock Options Segment of BSE during the Investigation Period.
   b) The Noticee is alleged to have engaged in 1 such reversal trade in 1 unique contract, which led to generation of alleged artificial volume of 145500 units, on March 19, 2015.
   c) The trades entered by the Noticee were reversed on the same day with same counterparties at a substantial price difference without any basis for significant change in the contract price which indicates that these trades are artificial and are non-genuine in nature.
   d) A summary of dealings of Noticee in 1 Stock Option contract in which Noticee allegedly executed non genuine reversal trades during the Investigation Period, provided in the SCN 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	HDBK15MAR1040.00CE	31	72750	42	72750	100%	12.77%

e) By indulging in execution of aforesaid non-genuine reversal trades, the Noticee was alleged to have violated Regulations 3(a),(b),(c),(d), 4(1), 4(2)(a) of the PFUTP Regulations, 2003.

8. Upon receiving the SCN, the Noticee vide two separate emails both dated August 10, 2021 submitted that it would be difficult for him to attend the proceedings due to ongoing COVID-19 pandemic and therefore requested 4 weeks' time to file its reply in the matter and requested to provide following documents referred to and relied upon by SEBI in the SCN:
   a) *Investigation report relied upon by SEBI;*
   b) *Oder placement records of the Noticee;*
   c) *Voice recording of the Noticee;*
   d) *KYC of the Noticee;*
   e) *Order logs and trade logs;*
   f) *Copy of compliant if any made by counter party or any investor, alleging losses caused on account of the trades executed by the Noticee;*
   g) *Cross examination of broker, BSE, counter party broker and counter parties;*
   h) *Copy client agreement*
   i) *Any other document referred to and relied upon by SEBI.*

9. In the meantime, Noticee vide its letter dated August 17, 2021, submitted an application for impleading and cross examination of BSE as well as trading member. Noticee also requested for the personal hearing in the matter.

10. Further, the Noticee vide letter dated September 15, 2021 submitted a detailed reply to the SCN which is summarized as under:

a) Noticee raised preliminary objections to the proceedings citing delay in initiating proceedings and stated that:
- the investigation report and documents relied upon by SEBI not provided;
- the creation of artificial or reversal trade is of no consequence in the option segment of exchange
- there is no evidentiary basis for alleging fraud;
- there is no connection/collusion with counter-party;
- investor cannot be punished in any manner because of the negligent approach of BSE;
- reversal trades were not recognized as illegal at relevant time period;
- intermediaries responsible for fraud of illiquid stock options on BSE

b) Noticee further stated that:
- it does not admit having indulged in execution of non-genuine trades or that it generated artificial volume.
- it had executed minuscule trades which have no impact on the market
- the trades were duly settled on the stock exchange.
- it had not made any disproportionate gain or gained any unfair advantage, whether quantifiable or otherwise
- it had not caused any loss to any investor or group of investors as a result of its trades
- he is not a habitual or repetitive defaulter

c) Noticee, therefore, prayed:
- to relive it from the SCN proceedings and discharge it at the earliest

- to implead BSE and Trading Member as a party to the present proceedings
- to grant it an opportunity to cross examine BSE and Trading Member
- to give it leave to file additional documents and make further submissions and
- to grant it an opportunity for personal hearing to be represented through a lawyer.

11. In the interest of natural justice and in terms of the Adjudication Rules, the Noticee was provided with an opportunity of personal hearing on October 05,2021 through Notice of Hearing bearing reference number SEBI/HO/IVD/ID16/AJ/VS/ON/P/2021/25823/1 dated September 27,2021, through the online Cisco webex platform. The Notice of Hearing was served through email on September 30, 2021 and SPAD on October 07, 2021.

12. The Authorized Representatives (AR) of Noticeee, R. V. Legal, Advocates, vide email dated October 02, 2021, filed an authority letter dated October 01, 2021 in the said matter and informed that they would not be able to attend the said hearing as they were occupied with a pre-scheduled arbitration matter on the same day i.e., October 05,2021. A request was therefore made to adjourn and reschedule the personal hearing on any day during the second half of the day (except October 18, 2021). Accordingly, the personal hearing was rescheduled from October 05, 2021 to October 08, 2021. The AR vide email dated October 08, 2021 once again requested to adjourn and reschedule the personal hearing due to another personal hearing on the same day. In view of the request, the personal hearing was rescheduled to October 12, 2021

13. The AR attended the hearing on the scheduled date i.e. October 12, 2021 and reiterated the submissions made through letters of the Noticee dated August 10, 2021, August 17, 2021 and September 15, 2021. Further, the AR submitted a compilation of circulars and judgments which were relied upon by them in the captioned matter and the AR sought no further hearing in the matter. During the proceedings of hearing, the Noticee was provided an opportunity to make

additional submissions, if any, within fifteen days of receipt of the record of proceedings.

14. The AR of the Noticee vide email dated October 21, 2021, in furtherance to the previous written and oral submissions, requested SEBI to provide the entire order log of the trade date viz. March 19, 2015 and grant them a week's time to file written submissions in the said matter. Further, SEBI was once again requested to consider the application of impleading BSE.

15. In reply to the request of Noticee, *inter-alia* requesting for copy of investigation report, copy of entire order log, opportunity of cross examination, impleading BSE etc., it was clarified to the Noticee vide letter dated October 28, 2021 that:

> *"3. The integrated trade log of BSE is the document relied upon for framing charges in the matter. The relevant portion of the same has already been made part of the SCN issued to you. Please refer to Annexure B and C of the SCN.*
>
> *4. Further, since the instant investigation was not based on the statement of any person, the question of granting cross-examination /or impleadment does not arise"*

16. The AR of the Noticee vide its letter dated November 01, 2021 and email dated December 08, 2021, filed additional submissions which is summarized as under:

    a. A single transaction of the Noticee with a single counter party with whom no connection has been established whatsoever cannot be construed as violation of the PFUTP transactions as held by Hon'ble SAT in the matter of *Vasudev Ramchandra Kamat vs. SEBI.*
    b. SEBI has a power to levy lesser penalty.
    c. A single transaction cannot lead to either price or volume manipulation as held by Hon'ble SAT in the matter of *Indiver Traders Private Limited vs. SEBI.*

d. AO order dated November 30, 2021 in the matter of Abhideep Global Finance Private Limited, may be referred to while deciding the quantum of penalty in the case of the Noticee.

CONSIDERATION OF ISSUES AND FINDINGS

17. On perusal of the material available on record and giving regard to the facts and circumstances of the case and submissions of the Noticee, I record my findings hereunder:

18. The issues that arise for consideration in the instant matter are:

Issue No. 1 **Whether reversal trades in illiquid Stock options carried out by the Noticee during the Investigation Period were in violation of regulations 3(a),(b),(c),(d), 4(1), 4(2)(a) of the PFUTP Regulations, 2003?**

Issue No. 2 **If yes, whether Noticee is liable for imposition of monetary penalty under Section 15HA of SEBI Act?**

Issue No. 3 **If yes, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5(2) of the Adjudication Rules?**

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

"3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

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

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

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

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

4. Prohibition of manipulative, fraudulent and unfair trade practices

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

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

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

20. Before proceeding with the matter on merits, I first deal with the preliminary objections raised by the Noticee.

21. The Noticee has contended that the allegations framed in the SCN relate to the Illiquid Stock Options which was more than 5 years ago. The SCN does not provide any explanation to justify inordinate and unconscionable delay in initiation of proceedings against Noticee. Initiation of proceedings by SEBI after such a long delay, severely prejudices the ability of the Noticee to adequately respond to the SCN. The Noticee had placed reliance upon the judgment of Hon'ble Supreme Court in the matter of Mohamad Kavi Mohamad Amin vs. Fatmabai Ibrahim as well as SAT orders in the matter HB Stockholdings Ltd. vs. SEBI (dated August 27,

2013), Rakesh Kahotia & Ors. Vs SEBI (May 27, 2019), Ashlesh Gunvantbhai Shah Vs. SEBI (dated January 31, 2020), Libord Finance Ltd., vs. Whole Time Member, SEBI (dated March 3, 2008)

22. I note that there is no provision under SEBI Act which prescribes a time limit for taking cognizance of a breach of the provision of SEBI Act and Rules and Regulations made thereunder. Further, as per Section 11C of SEBI Act, SEBI can initiate investigation at any point of time, for any period of alleged violation or any period of alleged transactions. I also note that the investigations relating to the PFUTP Regulations, 2003 are complex (considering the volume of transactions, connections and examination of trading of shares, etc.) and time consuming. In this regard, I feel it is pertinent to note that, in the matter of SEBI Vs Bhavesh Pabari (civil appeal no(s).11311 of 2013), the Hon'ble Supreme Court of India has, inter-alia, observed as follows: *"There are judgments which hold that when the period of limitation is not prescribed, such power must be exercised within a reasonable time. What would be reasonable time, would depend upon the facts and circumstances of the case, nature of the default/statute, prejudice caused, whether the third-party rights had been created etc."*

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

24. Further, I note that during the course of hearing in the case of *R. S. Ispat Ltd Vs SEBI*, the Hon'ble Securities Appellate Tribunal (SAT), vide its Order dated

October 14, 2019, *inter alia* observed that "*SEBI may consider holding a Lok Adalat or adopting any other alternative dispute resolution process with regard to the Illiquid Stock Options*".

25. A Settlement Scheme was framed under the SEBI (Settlement Proceedings) Regulations, 2018, which provided one-time opportunity for settlement of proceedings in the Illiquid Stock Options matter. The said scheme was kept open from August 01, 2020 till December 31, 2020. Adjudication proceedings were initiated against those entities who had not availed of the opportunity of settlement.

26. As can be seen from the narration of facts in the foregoing paragraphs, pursuant to appointment of AO vide communique dated June 28, 2021 SCN was issued on July 19, 2021. In compliance with principles of natural justice, after receipt of reply, an opportunity of personal hearing was scheduled on October 12, 2021 and upon conclusion of hearing, additional written submissions *(if any)* were received from the Noticee on October 21, 2021, November 01, 2021 and December 08, 2021, the present matter is being proceeded upon. Thus, I note that there is no delay in the matter and I find no merits in the aforesaid contentions of the Noticee in this regard.

27. I note that there was another preliminary contention of the Noticee with regards to the supply of documents in the matter. The Noticee has contended that it has not been provided with the investigation report relied upon by SEBI, order placement records of the Noticee, voice recording of the Noticee, KYC of the Noticee, trade/order log, copy of complaint, if any, made by the counter party broker or any investor, alleging losses caused on account of the trades executed by the Noticee, cross examination of broker, BSE, Counter Party Broker and Counter parties, copy of client agreement with broker, as requested by it in its letter(s)/email(s) dated August 10, 2021, and October 21, 2021.

28. In this regard, I note that the question of cross-examining anyone may arise only if a proceeding is based on reliance upon recorded statements of persons. Thus, the

right of cross-examination cannot be claimed in the instant proceeding because no statement of any party or counter-party or broker/ dealer has either been recorded or relied upon in the captioned proceeding. It is also noted that in view of sub-rule (5) of Rule 4 of the Adjudication Rules, 1995 the Adjudication proceeding is not bound by the provisions of Indian Evidence Act, 1872. Thus, cross-examination could not be granted as a matter of right in the instant proceeding. I also note that the only documents, the relevant trade logs, relied upon in the matter were duly provided to the Noticee along with SCN dated July 19, 2021.

29. In this regard, I rely on the judgment of the Hon'ble SAT in the matter of *Mayrose Capfin Private Limited vs. SEBI* (decided on 30.03.2012) wherein it was held that:

"...the principles of natural justice require that the inquiry officer should make available such document and material to the delinquent on which reliance is being placed in the inquiry. It is not necessary for the inquiry officer to make available all the material that might have been collected during the course of investigation but has not been relied upon for proving charge against the delinquent. No prejudice can, therefore, be said to have been caused to the appellant on this count..."

30. I note that the Hon'ble SAT in its order dated February 12, 2020, in the matter of Shruti Vora vs. SEBI held that:

"...in as much as, the said decision relates to a disciplinary proceedings wherein the Supreme Court observed that the inquiry report was required to be made available to the delinquent... Thus the investigation report is not required to be supplied.... In our opinion, the said minority view is directly against the decision of the Supreme Court in Natwar Singh case (supra)".

"A bare reading of the provisions of the Act and the Rules as referred to above do not provide supply of documents upon which no reliance has been placed by the AO, nor even the principles of natural justice require supply of such documents which has not been relied uponby the AO. We are of the opinion that we cannot compel the AO to deviate from the prescribed

procedure and supply of such documents, which is not warranted in law. In our view, on a reading of the Act and the Rules we find that there is no duty cast upon the AO to disclose or provide all the documents in his possession especially when such documents are not being relied upon."

31. Further, the Hon'ble SAT in the matter of *Anant R* Sathe *Vs SEBI* (Appeal No. 150 of 2020) vide Order dated July 17, 2020 has reaffirmed the principle elucidated in the judgment of Shruti Vora's case, which has been reproduced herein above and ruled that "*the Authority is required to supply the documents that they rely upon while serving the show cause notice which in the instant case has been done and which is sufficient for the purpose of filing an efficacious reply in his defence".*

32. I note that the only document, the relevant integrated trade log, relied upon in the matter were duly provided to the Noticee along with SCN dated July 19, 2021 and was clarified to the Noticee vide letter dated October 28, 2021. Therefore, the contention of the Noticee in this regard are without merits.

Issue No. I Whether reversal trades in illiquid Stock options carried out by the Noticee during the Investigation Period were in violation of regulations 3(a),(b),(c),(d), 4(1), 4(2)(a) of the PFUTP Regulations, 2003?

33. I now proceed to consider the matter on merits. I note that the allegation against the Noticee is that, while dealing in the stock option contracts at BSE during the investigation period, the Noticee had executed reversal trades which were allegedly non-genuine trades and the same had resulted in generation of artificial volume in stock option contracts at BSE. I note that 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 & manipulative. Artificial volume is considered to be the volume (no. of units) reversed in both legs of said reversal trades while keeping out the volume, if any, which is not reversed.

34. I shall now proceed to deal with the transactions executed by the Noticee in the alleged non-genuine trades. The allegation that the Noticee carried out reversal trades is directly supported by evidence from the trade log records in Annexures B and C of the SCN. Noticee is seen to have indulged in 1 reversal trade in 1 contract on March 19, 2015.

35. I note from the integrated trade log of the Noticee that it had traded in one unique contract in the stock options segment of BSE during the investigation period. The Noticee had executed two non-genuine trades in this one contract. I further note that the aforesaid trades of the Noticee had resulted in the creation of artificial volume of a total of 145500 units in the said contract. A summary of the non-genuine trades of the Noticee 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	HDBK15MAR1040.00CE	31	72750	42	72750	100%	12.77%

36. I note that the Noticee executed a total of two trades (1 sell trade and 1 buy trade) while dealing in the above said contract during the Investigation Period. This generated an artificial volume of 145500 units which made up 12.77% of total market volume in the said contract during the period.

37. To illustrate, on March 19, 2015, the Noticee executed a sell trade for 72750 units at rate of Rs. 42.00 per unit at 13:45:39.43 hrs. with counterparty viz., NEM Sagar

Resources Private Limited of the contract named "HDBK15MAR1040.00CE". Thereafter, on the same day, at 13:45:43.64 hrs. Noticee executed a buy trade, for 72750 units at 31.00 per unit in the same contract with the same counterparty. The aforesaid reversal trades were executed within few minutes of each other, generating artificial volumes to the extent of 145500 units in the said contract.

38. I also note from the Annexures to SCN that the buy and sell orders in the aforesaid trades were placed within fraction of second of each other. I also note that there is wide variation in the prices of 2 legs of the reversal trades i.e. Rs. 42.00 at 13:45:39.43 hrs. and then Rs. 31.00 at 13:45:43.64 hrs., without there being any justification for the wide variation in prices.

39. The Noticee has contended that it has no connection/collusion with the counterparty. I note that, it is not mere coincidence that the Noticee could match its trades with the same counterparty with whom it had undertaken first leg of the respective trades. I note that though direct evidence is not available in the present matter as regards to meeting of minds or collusion of the Noticee with other entities the genuineness of trading has to be determined based upon circumstantial evidence involving multiple factors such as trading pattern, liquidity and volatility in the scrip /contract, etc. In this context, the Hon'ble SAT vide its order dated July 14, 2006, in the case of Ketan Parekh vs. SEBI (Appeal no. 2/2004) observed 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."*

40. Further, in SEBI v Kishore R Ajmera (AIR 2016 SC 1079), Hon'ble Supreme Court 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..."

41. The Hon'ble Supreme Court further observed 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.*"

42. The trading pattern as found in this case in illiquid Stock Options cannot occur just by accident or coincidence. The trading behavior of the Noticee in this case makes it clear that aforesaid trades of the Noticee could not have been possible without prior meeting of minds. The synchronized trading by the Noticee with same counterparty at almost the same time for same quantity and reversal of transaction with wide variation in price of the reversed trades in the same contract in a short time without any basis, all indicate that the trades executed by the Noticee were not genuine trades and being non-genuine, created an appearance of artificial trading volumes in the contracts in question. In view of the fact that these options contracts were illiquid in nature, having very small volume in trading, the Noticee created artificial volumes in Stock Options which was manipulative and deceptive in nature. Once the Noticee has been found to have indulged in such reversal

transactions in illiquid Stock Options it is liable for its acts and omissions. Thus, I reject such contentions of the Noticee.

43. The Noticee has raised several contentions regarding his order being executed by the trading member, he was not aware about operating features of trading or prevailing liquidity in stock options or spread between buying/selling rates or volume, his trading member informed him that orders would be executed within circuit limits then imposed by BSE, intermediaries were responsible for fraud of illiquid stock options on BSE etc.

44. In this regard, I note that the Hon'ble Supreme Court in Rakhi Trading (supra) case held that such undesirable transactions would certainly include unfair practices in trade and thus, orchestrated trades are a misuse of the market mechanism. The Hon'ble Supreme Court further observed that – *"The non-genuineness of these transactions is evident from the fact that there was no commercial basis to suddenly, within a matter of minutes, reversal transaction when the value of the underlying had not undergone any significant change".*

45. Thus, the Noticee's aforementioned contentions are devoid of any merit and rejected hereby.

46. The Noticee has further contended that one reversal trade does not amount to violation of PFUTP Regulations. In this regard, I note that Hon'ble SAT in the matter of Radha Malani vs SEBI (Appeal No. 698 of 2021) vide Order dated November 24, 2021 has upheld the Adjudication Order dated September 06, 2021 wherein the case facts involved one reversal trade in one contract. Thus, I find no merit in the above contention of the Noticee.

47. I further 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, clearly demonstrates the manipulative practice by the

Noticee by using the stock exchange platform to carry out non-genuine trades with the aim to execute such trades for various manipulative purposes.

48. I note that the Hon'ble Supreme Court in the matter of SEBI vs. Rakhi Trading Private Ltd. (supra), also held that –*"The platform of the stock exchange has been used for a non-genuine trade. Trading is always with the aim to make profits. But if one party consistently makes loss and that too in pre-planned and rapid reverse trades, it is not genuine; it is an unfair trade practice". "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."*

49. Further, the Hon'ble SAT in its judgment dated September 14, 2020 in the matter of ***Global Earth Properties and Developers Pvt Ltd*** relied upon the aforesaid judgment of 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."*

50. The contentions that no regulatory/disciplinary action has been taken against him in the past by SEBI or NSE or BSE, he cannot be penalized for the fraud of illiquid stock options on BSE and BSE as first level regulator was responsible for fraud in illiquid stock options does not absolve the Noticee from responsibility for carrying out reversal trades which generated artificial volume without change of beneficial

ownership. The trading volumes generated by the aforesaid trades of the Noticee were non-genuine and artificial.

51. Therefore, from the foregoing paragraphs and observations/finding and considering the manner of placing buy and sell orders in a synchronised manner within seconds of each other, reversal of the trades within a short time on the same day, and wide variation in prices of the trades in the same contract in a short time without any basis for such wide variation, I find that the trades executed by the Noticee were not genuine trades and being non-genuine, created an appearance of artificial trading volumes in respective contracts.

52. I find that the Noticee by engaging in non-genuine transactions which created a misleading impression of trading in respective contracts, dealt in the stock options contracts in a fraudulent manner in violation of Regulation 3(a) and 4(1) of the PFUTP Regulations, 2003. Further, I find it relevant to refer to the decision of the Hon'ble Supreme Court in the matter of *Securities and Exchange Board of India* v. *Shri Ram Mutual Fund* [(2006) 68 SCL 216(SC) decided on May 23, 2006, 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…."*

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

AND

Issue No. III : If the answer to Issue No. II is in affirmative, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5(2) of the Adjudication Rules?

I find it appropriate to deal with Issue No. II and III together in the following paragraphs.

53. As it has been established that the Noticee violated provisions of Regulations 3(a), 4(1) and 4(2) (a) of the PFUTP Regulations, 2003; hence I am of the view that the same warrants imposition of monetary penalty upon the Noticee under Section 15 HA of the SEBI Act text of which is produced as under:

Penalty for fraudulent and unfair trade practices

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

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

Factors to be taken into account by the adjudicating officer

15J. 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. Explanation.—For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section

55. Noticee had submitted that SEBI has a power to levy lesser penalty and relied upon AO order dated November 30, 2021 in the matter of Abhideep Global Finance Private Limited. In this regard, I note that the amendment to the SEBI Act, with respect to "Penalty for fraudulent and unfair trade practices", specifying minimum

penalty was effective from September 8, 2014 and the impugned trades of the Noticee took place after the said amendment i.e., on March 19, 2015. Hence, the submission made by Noticee is not accepted.

56. As established above, the trades by the Noticee were non genuine in nature and created a misleading appearance of trading. I note that the trading was in illiquid stock option contracts where there was negligible participation by the public. Investigation has shown amount of profit / loss of the counterparties to the trades as a result of the non-genuine trades. However, considering that the violation by the Noticee is creation of artificial trading volumes by trading between two counterparties and wider market is not involved in the trades, the trades are such that one of the counterparty books a profit while the other counterparty books a loss. Hence, it would be appropriate to consider the impact of these transactions between the two counterparties in totality. When the impact of artificial volumes created by the two counterparties is seen as a whole, it is not possible from material available on record to quantify the amount of disproportionate gain or unfair advantage resulting from the artificial trades between the counterparties or the consequent loss caused to investors as a result of the default.

57. The Noticee has contributed to artificial volumes in 1 contract on 1 day during the Investigation Period. Therefore, taking into account the facts and circumstances of this matter, and the proportion of trading by the Noticee as compared to the total volume of reversal trades in the market during the Investigation Period, I am of the view that a penalty of Rs. 5,00,000 (Rupees Five Lakh only) under Section 15HA of the SEBI Act will be commensurate with the violations committed by the Noticee.

ORDER

58. After taking into consideration all the facts and circumstances of the case, the material available on records, the factors mentioned in Section 15J of the SEBI Act, 1992 and in exercise of powers conferred upon me under Section 15I (2) of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose a penalty

of Rs5,00,000- (Rupees Five Lakh only) upon the Noticee, i.e. Dharam Khurana HUF, under Section 15HA of the SEBI Act, for violation of Regulations 3(a),(b),(c),(d) and Regulation 4(1), 4(2)(a) SEBI (Prohibition of Fraudulent and Unfair Trading Practices related to Securities Markets) Regulations, 2003.

59. I am of the view that the said penalty is commensurate with the lapse/omission on the part of the Noticee.

60. The Noticee 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

61. In case of any difficulties in payment of penalties, the Noticee may contact the support at portalhelp@sebi.gov.in

62. The Noticee shall forward the aforesaid Demand Draft or the details / confirmation of penalty so paid to the Division Chief Enforcement Department -1, Division of Regulatory Action –3 of SEBI. SEBI Bhavan, Plot No.C4-A,'G' Block, Bandra Kurla Complex (BKC), Bandra (East), Mumbai–400051 and also send an emai lto tad@sebi.gov.in with the following detail:

- Name of the case / matter
- Name and PAN of the entity (Noticee)
- Date of Payment
- Amount Paid
- Purpose of Payment – Payment of penalty under AO proceedings
- Bank Name and Account Number
- Transaction Number

63. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, SEBI may initiate consequential actions including but not limited to recovery proceedings under Section 28A of SEBI 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.

64. In terms of Rule 6 of the Adjudication Rules, a copy of this Adjudication Order is being sent to the Noticee and also to Securities and Exchange Board of India.

DATE: March 29, 2022 **VIKAS SUKHWAL**

PLACE: MUMBAI **ADJUDICATING OFFICER**