

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA

ADJUDICATION ORDER NO. Order/VR/SS/2022-23/15813

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

In respect of

Vinod Kumar Agrawal HUF, [PAN: AADHV1005R]

56, Nagar Nigam Colony

Agrasen Chowk

Raipur – 492001

Chhattisgarh

In the matter of Dealing in Illiquid Stock Options on the BSE Ltd.

1. BRIEF BACKGROUND OF THE CASE

1. As part of ongoing surveillance, Securities and Exchange Board of India (hereinafter referred to as “SEBI”) came across large scale reversal of trades in stock options contracts in the equity derivatives segment of BSE Ltd. (hereinafter referred to as “BSE”) which led to creation of artificial volume. Subsequent to a preliminary examination into the matter, SEBI passed an Interim Order on August 20, 2015 against 59 entities, which was confirmed by Orders dated July 30, 2016 and August 22, 2016.

2. Meanwhile, SEBI conducted a detailed investigation into the trading activity in illiquid stock options contracts at BSE (hereinafter referred to as “investigation”) for the period between April 01, 2014 and September 30, 2015 (hereinafter referred to as “investigation period”).

3. Pursuant to investigation, it was observed that during the investigation period, a total of 2,91,744 trades comprising 81.41 per cent of all the trades executed in stock

options contracts in the equity derivatives segment of BSE were trades which involved reversal of buy and sell positions by the clients and counterparties in a contract. Further, out of 21,652 entities that had traded in stock options contracts in the equity derivatives segment of BSE during the investigation period, 14,720 entities were involved in executing such reversal trades/non-genuine trades.

4. Vide Order dated April 05, 2018, the proceedings initiated against 59 entities vide the aforementioned Interim Order were disposed of without any further directions, noting that the Adjudication Proceedings initiated by SEBI would adequately meet the ends of justice and regulatory objectives and that SEBI had decided to take appropriate action against all 14,720 entities in phases.

5. The Hon'ble Securities Appellate Tribunal (hereinafter referred to as "SAT"), vide its Order dated October 14, 2019 in the case of R S Ispat Ltd. vs. SEBI observed, *inter alia*, that "*SEBI may consider holding a Lok Adalat or adopting any other alternative dispute resolution process with regard to the illiquid stock options.*"

6. Accordingly, Settlement Scheme 2020 (hereinafter referred to as "Scheme") was framed under the SEBI (Settlement Proceedings) Regulations, 2018 (hereinafter referred to as "Settlement Regulations"), providing a one-time opportunity for settlement of proceedings in the Illiquid Stock Options matter. The Scheme commenced on August 01, 2020 and ended on December 31, 2020. SEBI initiated adjudication proceedings against those whom enforcement actions had been approved and who had not availed of the Scheme. Vinod Kumar Agrawal HUF, having PAN – AADHV1005R (hereinafter referred to as "Noticee"), was one among 14,720 entities against which adjudication proceedings had been so initiated for allegedly violating Regulations 3(a),(b),(c),(d) and 4(1), 4(2)(a) of SEBI (Prohibition of Fraudulent and Unfair Trading Practices related to Securities Markets) Regulations, 2003 (hereinafter referred to as "PFUTP Regulations, 2003"), in the matter of trading in illiquid stock options contracts on BSE.

2. APPOINTMENT OF ADJUDICATING OFFICER

7. SEBI, in exercise of the powers conferred under Section 19 of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "SEBI Act") read with

Section 15-I(1) of the SEBI Act and Rule 3 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as “SEBI Rules”) read with Section 19 of the SEBI Act, appointed the undersigned as the Adjudicating Officer vide order dated July 02, 2021, to enquire into and adjudge under Section 15 HA of the SEBI Act the alleged violations by the Noticee. The proceedings of appointment were communicated to the undersigned vide Communique dated July 06, 2021 to conduct the Adjudication Proceedings in the manner specified under Rule 4 of the SEBI Rules read with sub-sections (1) and (2) of Section 15-I of the SEBI Act.

3. SHOW CAUSE NOTICE, REPLY AND HEARING

8. A Show Cause Notice bearing Number SEBI/HO/DEPA-I/DEPAI-FSEC/P/OW/2021/19187/1 dated August 12, 2021 (hereinafter referred to as “SCN”) was issued to the Noticee under Rule 4(1) of the SEBI Rules to show cause as to why an inquiry should not be held against it and why penalty should not be imposed under Section 15HA of the SEBI Act, 1992 for the violations alleged to have been committed by the Noticee.

9. It was, *inter alia*, alleged in the SCN that 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 stock options contracts in the equity derivatives segment of BSE during the investigation period. The Noticee is alleged to have engaged in reversal trades (two trades, one on the buy side and two on the sell side) in the contract ‘NHPC15MAR26.00CEW2’ (hereinafter referred to as “contract”), which led to generation of artificial volume of 3,20,000 units (buy side + sell side).

10. An analysis of the reversal trades/non-genuine trades by the Noticee was provided in the SCN. During the investigation period, the Noticee executed a total of two trades in the contract for a total of 3,20,000 units on February 27, 2015, of which buy and sale was 1,60,000 units each. While dealing in the said contract on February 27, 2015, at 10:23:34.95 hrs, the Noticee entered into a sell trade with counterparty Maa Amba Towers Ltd. for 1,60,000 units at ₹ 1.35 per unit, which was reversed by a buy trade at 10:45:43.99 hrs with the same counterparty for 1,60,000 units at ₹ 0.05

per unit. It is alleged that two trades for 3,20,000 units executed by the Noticee in the said contract on February 27, 2015 were non-genuine.

11. The Noticee's two trades while dealing in the contract with the same counterparty were reversal trades involving squaring off transactions, but with significant difference in the sell value and buy value of the transactions during the investigation period and allegedly generated an artificial volume of 3,20,000 units, which made up 10.60 per cent of total market volume in the said contract during the investigation period.

Particulars	Description
Name of the Contract	NHPC15MAR26.00CEW2
Average Buy Rate (₹)	0.05
Total Buy Volume (Number of units)	1,60,000
Average Sell Rate (₹)	1.35
Total Sell Volume (Number of units)	1,60,000
Number of Trades by the Noticee in the Contract	2
Number of Non-Genuine Trades by the Noticee in the Contract	2
% of Non-Genuine Trades of the Noticee in the Contract to Noticee's Total Trades in the Contract	100
% of Non-Genuine Trades of the Noticee in the Contract to Total Trades in the Contract	8.00
% of Artificial Volume Generated by the Noticee in the Contract to Noticee's Total Volume in the Contract	100
% of Artificial Volume Generated by the Noticee in the Contract to Total Volume in the Contract	10.60

Note: "Unit" refers to lot size in contract multiplied by number of contracts traded.

12. The SCN was served on the Noticee via Speed Post with Acknowledgement Due (hereinafter referred to as SPAD) and via email dated August 23, 2021, both of which were duly delivered to the Noticee. The Noticee, vide letter dated September 13, 2021, sought four weeks' time to file the reply to the SCN. Considering the request and in the interest of natural justice, the Noticee was granted 15 days' more time than originally granted in the SCN. The Noticee, vide letters dated October 04, 2021 and

October 05, 2021, furnished its replies to the SCN and also sought an opportunity of personal hearing.

13. After considering the material available on record, the undersigned was of the opinion that an inquiry should be held in the matter in accordance with the SEBI Rules. Accordingly, an opportunity of personal hearing was granted to the Noticee on October 20, 2021 and the same was communicated to the Noticee vide Notice of Hearing dated October 14, 2021 via SPAD and email, both of which were duly delivered to the Noticee. Vide e-mail dated October 13, 2021, Kamal Agrawal, Chartered Accountant, Dear Advisory Services Pvt. Ltd., the Authorized Representative (hereinafter referred to as “AR”) of the Noticee communicated his preference to have an in-person hearing.

14. The AR attended the hearing on the scheduled date and reiterated the submissions made vide letters dated October 04, 2021 and October 05, 2021. The contentions made by the Noticee/AR in the submissions are summarised as follows:

- i. The Noticee contended that the SCN had been issued with a delay of more than six years and, therefore, is barred by limitation.
- ii. The Noticee had not been provided with the copy of Investigation Report and all other documents on the basis of which the SCN had been issued.
- iii. On account of the surveillance system at BSE and SEBI, no trade, which is fraudulent/ manipulative and/or non-genuine, etc., can be done by any investor. Also, the BSE has the power to annul trades and these trades in stock options contracts in the equity derivatives segment of BSE had not been annulled. As such, these trades did not attract the provisions of the PFUTP Regulations.
- iv. There is no allegation in the SCN that there was any collusion between the buyer and the seller.
- v. The Noticee executed the trade through a SEBI-Registered Broker on the trading platform of BSE by following all the prescribed procedures. The trades executed by the Noticee were in the normal course of business and no deceptive device was used while executing the said transactions. The trades by the Noticee had not created false or misleading appearance of trading on BSE.
- vi. The various strike prices on the options contracts were in the range prescribed by BSE and the investors trade by paying the premia based on their perceptions.

The premium amounts have no correlation with the cash segment price of the scrip.

- vii. There is no concept of acquiring beneficial ownership of shares in the equity derivatives segment.
- viii. The trades by the Noticee had no impact whatsoever on the equity cash segment or on the equity derivatives segment.
- ix. BSE had failed in performing its duties.
- x. The allegation of fraud or market manipulation is very serious in nature and, therefore, SEBI is under an obligation to produce sufficient documentary evidence to substantiate the said allegation.
- xi. The Noticee contended that taking into account the provisions of Section 15J of the SEBI Act, no penalty may be imposed or otherwise minimum penalty may be imposed.
- xii. The Noticee cited the judgements in the following cases: a) SAT Appeal No. 102 of 2019 in Sanjay Jethalal Soni vs. SEBI, b) SAT Appeal No. 169 of 2019 in Ashlesh Gunvantbhai Shah vs. SEBI, c) Civil Appeal No. 6003/6004/2012–SC SEBI vs. Price Waterhouse, d) SAT Appeal No. 286 of 2014 - Shri. B. Ramalinga Raju vs. SEBI, e) Supreme Court Civil Appeal No. 11311 of 2013 in Adjudicating Officer, SEBI vs. Bhavesh Pabari, f) Supreme Court Civil Appeal No. 2818 of 2008 in SEBI vs. Kishore R. Ajmera (2016), g) SAT Appeal No. 225 of 2009 in Vikas Ganeshmal Bengani vs. Whole Time Member, SEBI, h) SAT Appeal No. 23 of 2001 in Videocon International Ltd. vs. SEBI (2002), i) Bareilly Electric Supply Co.Ltd. vs. Workmen & Others AIR 1972 SC330, j) Supreme Court Appeal No. 53 of 1938 in Hansraj Gupta vs. Dehra Dun– Mussoorie Electric Tramway Co. Ltd., k) SAT Appeal No. 102 of 2002 in Jagruti Securities Ltd. vs. SEBI and l) SAT Appeal No. 97 of 2019 in Nishith M Shah HUF vs. SEBI.

4. CONSIDERATION OF ISSUES AND FINDINGS

15. I have carefully perused the charges levelled against the Noticee, its reply and the documents / material available on record. The issues that arise for consideration are as follows:

1. 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?

II.Does the violation, if any, attract monetary penalty under section 15HA of the SEBI Act?

III.If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in Section 15J of the SEBI Act?

16. Before proceeding with the case on merits, I would like to deal with the preliminary objections raised by the Noticee with respect to period of limitation and principles of natural justice.

17. As regards the SCN being barred by limitation, I note that the investigation into the trading in stock options contracts in the equity derivatives segment of BSE during the investigation period covered 23,885 unique contracts and a total of 3,58,372 trades by a total of 21,652 entities. Upon completion of the investigation in 2018 which revealed that 14,720 entities were involved in executing reversal trades/non-genuine trades, SEBI had initiated enforcement actions against all 14,720 entities in a phased manner in April 2018 itself. The chronology, as provided under the head Brief Background of the Case, illustrates the progress in the case through various stages and before various fora, rather than the delay.

18. Further, rather than prescribing any time limit for taking cognizance of a violation of the provisions of the SEBI Act and the Rules and the Regulations made thereunder, Section 11C of the SEBI Act empowers SEBI to order at any time an investigation where it has reasonable ground to believe that the transactions in securities are being dealt with in a manner detrimental to the investors or the securities market or any securities market intermediary/participant has committed any violations of the SEBI Act or the Rules and the Regulations made thereunder or the directions issued by SEBI. Section 11C, inserted with effect from October 29, 2002, reads as follows:

“Investigation.

11C. (1) Where the Board has reasonable ground to believe that— (a) the transactions in securities are being dealt with in a manner detrimental to the investors or the securities market; or (b) any intermediary or any person associated with the securities market has violated any of the provisions of this Act or the rules or the regulations

made or directions issued by the Board thereunder, it may, at any time by order in writing, direct any person (hereafter in this section referred to as the Investigating Authority) specified in the order to investigate the affairs of such intermediary or persons associated with the securities market and to report thereon to the Board.”

19. Next, I would like to refer to the decision of the Hon'ble SAT in the matter of Rajendra Aggarwal vs. SEBI, decided on September 17, 2021, wherein the Hon'ble SAT while rejecting the contention of the Noticee therein regarding delay of four years in issuance of SCN, has, inter alia, held that:

“13. On issue of delay, we find that the show cause notice was issued in the year 2013 and the trades were executed in 2009. 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 in the delivery of the impugned order after the last date of hearing by the AO.”

20. Lastly, I place my reliance on the Judgement of the Hon'ble Supreme Court of India in Adjudicating Officer, SEBI vs. Bhavesh Pabari.

“36. ...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.”

21. In view of the above, the preliminary objections made by the Noticee regarding the delay in the issuance of the SCN hold no merit.

22. Further, the Noticee argued that SEBI has withheld information or documents on the basis of which the allegations are made in the SCN and not allowed cross examination of witness/es. I note that all the documents relied upon to draw the allegations of reversal trades/non-genuine trades by the Noticee in stock options contract in the equity derivatives segment of BSE had been provided to the Noticee as Annexures to the SCN, viz., i) Details of the trades of the Noticee in stock options contract in the equity derivatives segment of the BSE during the investigation period,

ii) Details of non-genuine reversal trades of the Noticee in stock options contract in the equity derivatives segment of the BSE during the investigation period and iii) Analysis of the non-genuine dealings of the Noticee in the stock options contract during the investigation period. Thus, the Noticee was provided with all data and documents, including the details of its trades, which were relied upon while issuing the SCN. There were neither any statements recorded of any of the 14,720 entities nor any witnesses during the investigation.

23. I place reliance on the Judgement of Hon'ble SAT in the case of Mayrose Capfin Pvt. Ltd. vs. Securities and Exchange Board of India (Appeal No. 20 of 2012) dated March 30, 2021.

"5. 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".

24. Since all relevant documents relied upon in the SCN and sufficient for the purpose of filing a reply to the SCN have been provided to the Noticee, I am of the opinion that the principles of natural justice have been duly complied with. Now I would deal with the issues that arise for consideration in the present case.

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?

25. The relevant provisions of the PFUTP Regulations allegedly violated by the Noticee, and as mentioned in the SCN, are reproduced below:

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;”

26. It has been alleged that the Noticee had indulged in execution of reversal of trades in stock options contracts with the same entity on the same day at a substantial price difference within a span of 22 minutes 09 seconds. Such trades are non-genuine in nature and have created false or misleading appearance of trading in terms of artificial volume in stock options contracts and, therefore, alleged to be manipulative and deceptive in nature. On perusal of the material available on record and giving regard to the facts and circumstances of the case and submissions by the Noticee, I record my findings hereunder:

- i. Reversal trades have been considered as those trades in which an entity reverses its buy or sell positions in a contract with subsequent sell or buy positions with the same counterparty during the same day. The said reversal trades are non-genuine trades as they are not executed in normal course of trading, lack basic trading rationale, lead to false or misleading appearance of trading in terms of generation of artificial volume and, hence, are deceptive and manipulative. The artificial volume is considered to be the volume (i.e., number

- of units) reversed in both legs of the said reversal trades while keeping out the volume, if any, which is not reversed.
- ii. On February 27, 2015, the Noticee had entered into a total of two trades in the contract, of which one was a purchase transaction of 1,60,000 units of the contract and the other was a sale transaction of 1,60,000 units of the contract. Thus, the Noticee had squared off its entire position during the day itself.
 - iii. While dealing in the contract on February 27, 2015, the Noticee engaged in reversal trades, which led to generation of alleged artificial volume of 3,20,000 units (sell side + buy side). These trades of the Noticee involved reversal with the same counterparty on the same day, but at significantly different prices.
 - iv. At 10:18:39.019570 hrs, the Noticee placed a sell order (Order Type: L) for 1,60,000 units @ ₹ 1.35 per unit. At 10:23:34.958197 hrs, Maa Amba Towers Ltd. placed a buy order (Order Type: L) for 10,60,000 units @ ₹ 1.40 per unit. The pending sell order of the Noticee got executed at 10:23:34.958197 hrs @ ₹ 1.35 per unit against the buy order of 10,60,000 units placed by Maa Amba Towers Ltd.
 - v. At 10:45:41.867285 hrs, Maa Amba Towers Ltd. placed a sell order (Order Type: L) for 10,60,000 units @ ₹ 0.05 per unit. Within 22 minutes 09 seconds of the Noticee concluding its sale transactions, at 10:45:43.993345 hrs, the Noticee placed a buy order (Order Type: L) for 1,60,000 units @ ₹ 0.05 per unit and the entire order quantity of the Noticee got matched and resulted in a trade at 10:45:43.993345 hrs @ ₹ 0.05 per unit against the pending sell order from the same counterparty, Maa Amba Towers Ltd.
 - vi. On February 27, 2015, in the equity cash segment of BSE, the scrip of NHPC Ltd. opened at ₹ 20.65 touched a day's high of ₹ 21.30 and a day's low of ₹ 20.65 and closed at ₹ 21.25.
 - vii. The Noticee's two trades generated an artificial volume of 3,20,000 units (buy side + sell side), which made up 10.60 per cent of total market volume in the said contract.
 - viii. Overall, the artificial volume accounted for 100 per cent of the Noticee's total volume in the contract.

Particulars	Sell	Buy
Trade Date	27/02/2015	27/02/2015
Scrip Name	NHPC15MAR26.00CEW2	NHPC15MAR26.00CEW2
Strike Price (₹)	26.00	26.00
Expiry	2015-03-12	2015-03-12
Buy Client Name	Maa Amba Towers Ltd.	Vinod Kumar Agrawal HUF
Sell Client Name	Vinod Kumar Agrawal HUF	Maa Amba Towers Ltd.
Buy Order Time	10:23:34.958197	10:45:43.993345
Order Type	L	L
Sell Order Time	10:18:39.019570	10:45:41.867285
Order Type	L	L
Trade Time	10:23:34.958197	10:45:43.993345
Buy Order Rate (₹)	1.4	0.05
Sell Order Rate (₹)	1.35	0.05
Trade Rate (₹)	1.35	0.05
Buy Order Qty	10,60,000	1,60,000
Sell Order Qty	1,60,000	10,60,000
Traded Qty	1,60,000	1,60,000

Note: “*Traded Quantity*” or “*unit*” refers to lot size in contract multiplied by number of contracts traded.

27. The securities market performs a major role in the growth of modern economies. In India also, the securities market has become the avenues for wealth creation, wealth management and wealth distribution. Like elsewhere, in India also, the equity derivatives market is a very important segment of the securities market and brings together hedgers, speculators and arbitrageurs. Unlike the equity cash segment where settlement happens on T+2 basis, in the equity derivatives segment the investor can take a position for a longer time horizon at a significantly low investment. However, equity derivatives market is more sophisticated. A harmonious interaction of all categories of traders (i.e., hedgers, speculators and arbitrageurs), and not just a handful of players belonging to any one of the three categories, helps in the discovery of equilibrium price.

28. The initial sale of illiquid stock options by the Noticee and the subsequent reversal trade (buy) with the same counterparty for the same quantity, within a short

span of time (22 minutes 09 seconds) with a significant difference in sell value and buy value of the stock options contract, in itself, made it evident that the Noticee was not trading based on any fundamental view of the economy/stock market/company. The non-genuine trades by the Noticee accounted for 3,20,000 units, which alone accounted for 10.60 per cent of the total volume in the contract. I note that the Noticee had made deliberate misuse of the trading platform for creating artificial volume in the otherwise illiquid stock options contracts in the equity derivatives segment of BSE.

29. By undertaking the reversal trades, there was no change of rights in the contract. Such trades could be classified as artificial/non-genuine, as there was no intention to acquire the right embedded in the contract.

30. I found that the Noticee squared off the position during the day in a timespan of less than half-an-hour at a price significantly different from the price at which the first trade happened. Also, both the Noticee and the counterparty quoted exactly the same price (₹ 0.05 per unit) for the second leg of the reversal trade. Moreover, the significant difference in the prices at which both the trades had been undertaken in such a short timespan looks quite odd, considering that there had been neither any significant changes in the fundamentals of the underlying stock nor any significant changes in the price of the underlying stock. Such price volatility is not in the interests of the genuine investors. By creating such artificial volume at volatile prices, the market integrity is adversely affected.

31. Considering the trades, quantities and prices at which the trades had happened, the short timespan between the buy transaction and the sell transaction and the client-counterparty remaining the same in the trades, I cannot presume that such trades can otherwise happen in an illiquid segment of the securities market in its normal course and, thereby, overlook the prior meeting of minds between the parties to the trade somewhere. It is well accepted 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 the civil liability arising out of the violations of the securities laws are concerned.

32. I have noted that the Noticee has not contested the details of the trades executed by it in the stock options contracts in the equity derivatives segment of BSE. I also found that the Noticee has not offered any rational for having reversed its position in the contract within a short span of time during the day. Therefore, I have to conclude that the trades executed by the Noticee in the contract were non-genuine and would tantamount to a manipulative or deceptive device.

33. I now refer to the relevant portions of the Judgment of the Hon'ble Supreme Court of India in SEBI vs. Rakhi Trading Pvt. Ltd.

Pronounced by His Lordship Justice Kurian Joseph

1. Fairness, integrity and transparency are the hallmarks of the stock market in India.

35. Protection of interest of investors should necessarily include prevention of misuse of the market. Orchestrated trades are a misuse of the market mechanism. It is playing the market and it affects the market integrity.

36. The trade reversals in this case indicate that the parties did not intend to transfer beneficial ownership and through these orchestrated transactions, the intention of which was not regular trading, other investors have been excluded from participating in these trades. The fact that when the trade was not synchronizing, the traders placed it at unattractive prices is also a strong indication that the traders intended to play with the market.

37. In the instant case, through reverse trades, there was no genuine change of rights in the contract....From the facts before us, it is clear that the traders in question did not intend to transfer beneficial ownership and therefore these trades are non genuine.

38. Rather than allowing the market forces to operate in their natural course, the traders repeatedly carried out the impugned transactions which deprived other market players from full participation. The repeated reversals and predetermined arrangement to book profits and losses respectively, made it clear that the parties were not trading in the normal sense and ordinary course. Resultantly, there has clearly been a restriction on the free and fair operation of market forces in the instant case.

39. Regulation 2(1)(c) defines fraud. Under Regulation 2(1) (c)(2) a suggestion as to a fact which is not true while he does not believe it to be true is fraud. Under Regulation 2(1) (c)(7), a deceptive behaviour of one depriving another of informed consent or full

participation is fraud. And under Regulation 2(1)(c)(8), a false statement without any reasonable ground for believing it to be true is also fraud. In a synchronised and reverse dealing in securities, with predetermined arrangement to book loss or gain between pre-arranged parties, all these vices are attracted.

40. Such trading also involves an act amounting to manipulation of the price of the security in the sense that the price has been artificially and apparently prefixed. The price does not at all reflect the value of the underlying asset. It is also a transaction in securities entered into without any intention of performing it and without any intention of effecting a change of ownership of such securities, ownership being understood in the limited sense of the rights in the contract.

41. 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.

Pronounced by Her Ladyship Justice R. Banumathi

25. In the quasi-judicial proceeding before SEBI, the standard of proof is preponderance of probability.

26. There was no possibility of such perfect matching of quantity, timing, prices etc. between the same parties unless there was prior meeting of minds or a specific understanding/arrangement between the parties.

32. Abnormal difference between the prices at which the trades were executed without corresponding effect on the price of the underlying security, shows that the option in which the party traded was not in demand in the market. It is unusual that the trades were transacted with such huge profits when there was no change in the underlying prices. These trade transactions obviously only aimed at carrying out manipulative objective.

33. Once the reversal transactions are shown to be non-genuine or shown to be fictitious creating a false or misleading appearance in the market for ulterior purpose and that the stock market was misused by such manipulative device, this is in clear violation of the provisions of PFUTP Regulations, 2003.

35. *An act to fall within Regulation 4(2)(a), it is not necessary that the transactions entered into by the party was with intention to manipulate the market and that the market was in fact manipulated. Market manipulation is a deliberate attempt to interfere with the free and fair operation of the market and create artificial, false or misleading appearances with respect to the price, market, product, security and currency.*

36. *If the factum of manipulation is established, it will necessarily follow that the investors in the market have been induced to buy or sell and that no further proof in this regard is required. The market, as already observed, is so widespread that it may not be humanly possible for the Board to track the persons who were actually induced to buy or sell securities as a result of manipulation and the Board cannot be imposed with a burden which is impossible to be discharged.*

38. *The smooth operation of the securities market and its healthy growth and development depends upon large extent on the quality and integrity of the market. Unfair trade practices affect the integrity and efficiency of the securities market and the confidence of the investors. Prevention of market abuse and preservation of market integrity are the hallmark of securities law.*

34. I now refer to the relevant portions of the Judgment of the Hon'ble SAT in Global Earth Properties and Developers Pvt. Ltd. vs. SEBI.

12. *Such execution of trades, in our opinion, are non-genuine trades and creates artificial volumes giving misleading appearance. The reversal of trades executed by the Appellant cannot be called a normal trading transaction in as much as these trades were reversed within a short span ranging from a few seconds to a few minutes with the same counter parties. By no stretch of imagination it can be held to be a mere coincidence that the Appellants trades matched consistently with the same counter parties unless there was a meeting of minds with a view to trade at a predetermined time. Such kind of transaction, in our opinion, is a manipulative device and is also synchronised trading.*

20. *From the aforesaid cumulative analysis of the reversed transactions with the counter party, quantity, time and significant variation of the price clearly indicates that the trades were non-genuine and had only misleading appearance of trading in the securities market without intending to transfer the beneficial ownership. One finds it to be naive to presume that the perception of the two counter parties to a trade*

changed within few seconds/minutes and positions were interchanged and the contracts were changed where one party made profit and the other party ended up making losses every time without prior meeting of mind. It is not a mere coincidence that the Appellants could match the trades with the counter party with whom he had undertaken the first leg of respective trade. In our opinion, the trades were non-genuine trades and even though direct evidence is not available in the instant case but in the peculiar facts and circumstances of the present case there is an irresistible inference that can be drawn that there was meeting of minds between the Appellants and the counter parties, and collusion with a view to trade at a predetermined price.

35. In view of the analysis as provided in the discussion above and the conclusions drawn from the Judgement of the Hon'ble Supreme Court of India and the Judgement of the Hon'ble SAT in very similar/same matter, I find that the allegation of violations by the Noticee of the provisions of Regulations 3 (a), 3(b), 3(c), 3 (d), 4 (1) and 4 (2) (a) of PFUTP Regulations stands established.

36. I have noted that BSE had taken several steps, viz., introduction of Reversal Trade Prevention Check ("RTPC") and Price Reasonability Check ("PRC") functionality for the stock options segment, discontinuation of weekly stock options contracts, reduction in number of strikes in the stock options segment, etc.

37. In view of the 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 PFUTP Regulations.

II.Does the violation, if any, attract monetary penalty under Section 15HA of the SEBI Act?

38. In the foregoing paragraphs, based on an analysis of the data and perusal of the documents, I concluded that the Noticee had violated the provisions of Regulations 3 (a), 3(b), 3(c), 3 (d), 4 (1) and 4 (2) (a) of PFUTP Regulations.

39. One of the hallmarks of the trading platforms of the Indian stock exchanges is the price discovery mechanism based on the large number of orders placed by the anonymous buyers and sellers. Such trading behaviour by the Noticee had hampered the price discovery mechanism and created artificial volume, making the trading

platform no longer fair and equitable for all the investors who had been participating/otherwise would have participated.

40. I also rely on the Judgement of the Hon'ble Supreme Court of India in the matter of SEBI vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC) wherein it was held that: *"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulation is established and hence the intention of the parties committing such violation becomes wholly irrelevant. A breach of civil obligation which attracts penalty in the nature of fine under the provisions of the Act and the Regulations would immediately attract the levy of penalty irrespective of the fact whether contravention must made by the defaulter with guilty intention or not. We also further held that unless the language of the statute indicates the need to establish the presence of mens rea, it is wholly unnecessary to ascertain whether such a violation was intentional or not."*

41. Accordingly, I am convinced that it is a fit case for imposition of monetary penalty on the Noticee under the provisions of Section 15HA of the SEBI Act, 1992.

III.If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in Section 15J of the SEBI Act?

42. The relevant provisions of law are reproduced below:

"SEBI Act - 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".*

SEBI Act - 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.”

43. Earlier, I concluded that the Noticee had entered into non-genuine trades in stock options contract during the investigation period, which created a false and misleading appearance of trading volumes in the respective contract at prices significantly different for both legs of the transactions and having no correlation with the price trend in the underlying scrip. It is not possible to quantify the amount of losses caused to the investors due to such violations by the Noticee from the material / documents made available on record. In this context, I place my reliance on the Judgement of the Hon'ble Supreme Court of India in *Adjudicating Officer, SEBI vs. Bhavesh Pabari*.

“11. ...We, therefore, hold and take the view that conditions stipulated in clauses (a), (b) and (c) of Section 15-J are not exhaustive and in the given facts of a case, there can be circumstances beyond those enumerated by clauses (a), (b) and (c) of Section 15-J which can be taken note of by the Adjudicating Officer while deciding the quantum of penalty.

12. At this stage, we must also deal with and reject the argument raised by some of the private appellants that the conditions stipulated in clauses (a) to (c) of Section 15-J are mandatory conditions which must be read into Section 15-A to Section 15-HA in the sense that unless the conditions specified in clauses (a) to (c) are satisfied, penalty cannot be imposed by the Adjudicating Officer under the substantive provisions of Sections 15-A to 15-HA of the SEBI Act. The argument is too far-fetched to be accepted. Section 15-J of the SEBI Act enumerates by way of illustration(s) the factors which the Adjudicating Officer should take into consideration for determining the quantum of penalty imposable. The imposition of penalty depends upon satisfaction of the substantive provisions as contained in Sections 15-A to Section 15-HA of the SEBI Act.”

44. Thus, it is evident that the provisions of clauses (a), (b) and (c) of Section 15J are illustrative in nature and have to be taken into account whenever such circumstances exist. The Adjudicating Officer, upon satisfied that the Noticee indulged in fraudulent and unfair trade practices relating to securities and in exercise of powers

under Section 15-I(2) of the SEBI Act, may impose a penalty prescribed under Section 15HA of the SEBI Act, which shall not be less than ₹ 5,00,000 but which may extend to ₹ 25,00,00,000 or three times the amount of profits made out of such practices, whichever is higher. Hence, I conclude that it is appropriate to impose the minimum penalty, as prescribed under Section 15HA, on the Noticee.

5. ORDER

45. After taking into consideration the nature and gravity of the violations established in the preceding paragraphs, I, in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the SEBI Rules, hereby, impose the following penalty under Section 15HA of the SEBI Act, 1992 on the Noticee:

Name of the Noticee	Proven Violations	Penalty
Vinod Kumar Agrawal HUF [PAN: AADHV1005R]	Regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of PFUTP Regulations, 2003	₹ 5,00,000/- (Rupees Five Lakh Only)

46. I am of the view that the said penalty is commensurate with the violations by the Noticee.

47. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this Order either by way of Demand Draft (hereinafter referred to as “DD”) or by availing the e-payment facility offered by SEBI.

48. In case of DD, the DD shall be drawn in favour of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai, and the Noticee shall send the said DD, along with a covering letter mentioning the details of the AO Order, to the “The Division Chief, Division of Regulatory Action-3 (DRA-3), Enforcement Department-1 (EFD-1), Securities and Exchange Board of India, SEBI Bhavan II, Plot No. C-7, “G” Block, Bandra Kurla Complex, Bandra (East), Mumbai, Maharashtra, Pin Code - 400 051”.

49. The payment of penalty can also be made online by following the below path at SEBI website <https://www.sebi.gov.in> ENFORCEMENT → Orders → Orders of AO → Click on PAY NOW or at

<https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html>.

50. The Noticee shall, after making online payment of the penalty, provide the following details to SEBI by an e-mail addressed to tad@sebi.gov.in:

Sl. No.	Particulars	Description
1	Name of the Case	
2	Name and PAN of the Noticee	
3	Date of Payment	
4	Amount Paid	
5	Transaction Number	
6	Details of Bank Account from which Payment has been made	
7	Purpose of Payment	Payment of Penalty under AO Order

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

52. In accordance with Rule 6 of the SEBI Rules, a copy of this Order is being sent to the Noticee, viz., Vinod Kumar Agrawal HUF, and also to Securities and Exchange Board of India.

DATE: APRIL 06, 2022

PLACE: MUMBAI

VENKATESWARAN RAMAKRISHNAN

ADJUDICATING OFFICER