BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO: Order/DD/LP/2021-22/15327]

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:

Vivek Rungta –HUF

(PAN: AADHV5385E)

Having address **–**

Tyre Service Centre

Pokg Ashram, Dhanbad

Jharkhand - 828109

In the matter of

Dealings in Illiquid Stock Options at BSE

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as "SEBI") observed large scale reversal of trades in stock options segment of Bombay Stock Exchange (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 segment at BSE for the period April 01, 2014 to September 30, 2015 (hereinafter referred to as "**Investigation Period**" (IP)).

2. Investigation revealed that during the Investigation Period, a total of 2,91,744 trades comprising 81.41% of all the trades executed in BSE stock options segment were trades which involved reversal of buy and sell positions by the clients and counterparties in a contract on the same day. The aforesaid non-genuine trades resulted in the 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 IP.

3. Vivek Rungta – HUF (PAN: AADHV5385E) (hereinafter referred to as "**Noticee**") was one of the various entities who indulged in the execution of alleged non-genuine trades in the stock options segment at BSE during the above referred investigation period. Such trades were observed to be non-genuine in nature and created false or misleading appearance of trading in terms of artificial volumes in illiquid stock options at BSE and therefore, alleged to be manipulative, deceptive in nature and thus, allegedly violated Regulation 3(a), (b), (c), (d) and 4(1), 4(2) (a) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices related to the Securities Markets) Regulations, 2003 (hereinafter referred to as "**PFUTP Regulations**"). In view of the above reasons, adjudication proceedings have been initiated against the Noticee under the provisions of section 15HA of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act'**).

APPOINTMENT OF ADJUDICATING OFFICER

4. SEBI initiated adjudication proceedings and appointed the undersigned as Adjudicating Officer (hereinafter referred to as, "AO") under section 15(I) of the SEBI Act read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter be referred to as "**Adjudication Rules**") vide Order dated April 30, 2021, to inquire into, and adjudge under section 15HA of the SEBI Act, the alleged violations of the aforesaid provisions of the PFUTP Regulations, by the Noticee. The appointment of the AO was communicated vide Order dated June 28, 2021.

SHOW CAUSE NOTICE, REPLY AND HEARING

5. Show Cause Notice (hereinafter referred to as, the "**SCN**") bearing reference number SEBI/HO/DEPA-I/DEPA-I_RRD/P/OW/2021/16915/1 dated July 28, 2021 was issued to the Noticee under Rule 4(1) of the Adjudication Rules to show cause as to why an inquiry should not be held against it and why penalty, if any, should not be imposed against the Noticee under Section 15HA of SEBI Act for the aforesaid alleged violations of PFUTP Regulations. The SCN was sent to the Noticee vide Speed Post AD and was duly served on the Noticee as per the tracking details obtained from the India Post website.

6. The allegations levelled against the Noticee in the SCN are summarized as below:

    a. The Noticee was one of the entities which indulged in reversal trade which allegedly created false and misleading appearance of trading and generating artificial volumes in the stock options segment of BSE during the Investigation Period.

    b. The Noticee was alleged to have engaged in two such non-genuine trades in one unique contract (LUPL15MAR1860.00CE) on March 20, 2015, which led to generation of alleged artificial volume of 33,500 units.

    c. The trades executed by the Noticee in the above mentioned contract was reversed on the same day with same counterparty at a noticeable price difference in buy and sell rates.

    d. In view of the foregoing, it is alleged that the Noticee, by indulging in execution of reversal trade in stock options with same entity on the same day, which was non-genuine in nature, has created false or misleading appearance of trading in the aforementioned contract traded in the options segment of BSE and therefore, allegedly violated Regulation 3(a), (b), (c), (d), 4(1) and 4(2)(a) of PFUTP Regulations, 2003.

    e. A summary of dealings of the Noticee in the stock options contract in which the Noticee allegedly executed non-genuine reversal trade during the Investigation Period, provided in the SCN is reproduced below:

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.	LUPL15MAR1860.00CE	38	16750	59	16750	100%	17.72%

7. From the above table, following was noted with regard to dealings of the Noticee:

    a. The Noticee had executed two non-genuine trades in one contract, wherein all trades of Noticee in the said contract were non-genuine trades.

    b. Number of non-genuine trades of the Noticee had significantly contributed to total number of trades from the market in the above contract, as 17.72% of the trades that happened in the mentioned contract was due to non-genuine trades executed by the Noticee.

    c. The entire 100% of volume generated by Noticee in the above contract was artificial volume.

    d. Non-genuine trade executed by the Noticee in above contract had noticeable difference in buy and sell rates considering that the trade was reversed on same day.

SUBMISSION BY THE NOTICEE

8. The SCN dated July 28, 2021 was served on the Noticee through speed post and vide email dated August 02, 2021.

9. Vide email dated August 29, 2021, Advocate Anjali Agrawal (hereinafter referred to as "**Authorised Representative**" / "**AR**") submitted the following response on behalf of the Noticee (vide letter dated August 28, 2021) along with the authorization letter by the Noticee authorizing the AR to represent him in this regard:

    a. The sole squaring off reversal trade of 16,750 units in the stock options contract was traded by the Noticee on March 20, 2015 to close the earlier purchased of 16,750 units.

    b. The said derivative contract was introduced by BSE in consultation with SEBI within the available regulatory framework. It was traded on an anonymous electronic trading platform which was open for all trading participants. The trade was cleared by Clearing Corporation which was empowered to not to clear any trade which was not genuine and not in accordance with law, rules and regulations. The Noticee thus, denied execution of non-genuine reversal trading in the said stock option and also denied creating false or misleading appearance of trading.

    c. The sole trade by the Noticee on March 20, 2021 was executed at Rs. 59 with relation to the prevailing price in the underlying cash security on that day.

    d. Squaring off the trade with the same counterparty was a co-incidence only as the contract was a liquid contract on March 20, 2015. For this, the Noticee placed reliance on the Adjudication Order in the matter of **Leaps and Bounds Pvt. Ltd.** (MC/HP/2021-22/12846).

    e. The sole reversal trade was executed at the market price and even if it was matched with the same counterparty, no illegality can be attached to it as it was a market price driven trade. The gain arising from this solitary trade was a sum of Rs 3,51,750 (gross) and it was settled by the parties to the trade to their respective brokers, who cleared the same through the clearing corporation of BSE, and same was collected/ paid to respective clients by BSE through respective brokers.

f. Single alleged reversal trade is different from repeated reversal trades. It has been held judicially that such synchronised trades per se are not illegal and become illegal or non-genuine only when certain other parameters are inferred on preponderance of probability or are actually established. For this, the Noticee placed reliance on the judgement of Hon'ble Supreme Court in the matter of **SEBI Vs. Rakhi Trading Pvt. Ltd.** (CA 1969 of 2011).

g. There was no huge volume of trade carried out by Noticee. It was only 8.86 per cent of the overall market volume. Percentage of reversal trades and artificial volume generated by the Noticee is miniscule as compared to 2,91,643 non-genuine trades. Thus, the Noticee's volume of 16,750 units in alleged non-genuine reversal trade and 33,500 units in alleged artificial volume does not fulfil the heavy volume criteria to be treated as non-genuine trade.

h. The Noticee has not persisted in trading by executing such trades after March 20, 2015 in the said contract or in any other derivative contract or in cash market in any security in a manner which would attract regulatory glare. Being persistent in non-genuine trading over a period of time in same scrip or in overall market is one of the important judicial criteria laid down by Hon'ble Supreme Court in **SEBI Vs. Kishore R Ajmera** (2016 6 SCC 368) and in **SEBI Vs. Rakhi Trading Pvt. Ltd.** (CA1969 of 2011) to determine any violation of PFUTP Regulations.

i. There was no manipulative or distortive effect on prices of either cash market security or the derivative contract traded by the Noticee because of the executed trades on March 20, 2015.

j. The Noticee submitted that it is not connected or related to the counterparty of the specified trade in the SCN and its broker and thus, the executed trade by the Noticee cannot be termed as non-genuine, synchronised or reversal trades. The Noticee placed reliance on the judgement of Hon'ble Supreme Court in the matter of **SEBI Vs. Kishore R Ajmera** (2016 6 SCC 368) and the following judgements of Hon'ble Securities Appellate Tribunal (SAT) in this regard –

i. **Amaresh Pathak Vs. SEBI** (Appeal No. 322/2020 dated February 16, 2021);
ii. **Almondz Entertainment Pvt. Ltd. Vs. SEBI** (Appeal No. 198 of 2020 dated January 21, 2021)
iii. **Umang Dhanuka Vs. SEBI** (Appeal No. 102 of 2020 dated June 08, 2021.

k. Noticee further submitted that there was neither any mechanism to deter nor a note of caution by BSE about prevention of execution of reversal trades. It is only in the month of March 2016 that BSE put in a mechanism to prevent reversal trade.

l. The Noticee is not subjected to any other regulatory action by SEBI or BSE except in the impugned notice.

m. Regulations 3 and 4 of the PFUTP Regulations, 2003 have no application in the present case as the factual and legal conditions precedent to invocation of these Regulations are absent in the matter.

n. The stringent yardstick of the case of **SEBI Vs. Rakhi Trading Pvt. Ltd.** should not be applied to the matrix of the present case without distinguishing the same from the facts of the present case. The Noticee referred to the judgement of Hon'ble Supreme Court in the matter of **CIT Vs. Sun Engineering Works P Ltd.** (1992 64 Taxman 442 SC) in this regard wherein it was stated that the principles culled from a judgement are to be read and understood in the factual context of the case in consideration before the Court and the same should not be applied blindly to all cases.

o. Weighed on the concept of proportionality, penalty under section 15HA which is minimum Rs. 5 lakh would be highly excessive and the objective of these proceedings can be achieved without resorting to section 15HA. The amount earned/lost in the impugned trades is Rs 3,51,750 which is not a significant amount. The present matter does not require a monetary penal action and other deterrent measures should suffice.

p. The Noticee submitted that the SCN was issued after more than 6 years of alleged transactions and the Noticee should not suffer because of delay on part of SEBI to initiate timely proceedings.

q. The SCN dated July 28, 2021 is an invalid notice on the basis of following factors inter alia as -

i. There was only one reversal trade.
ii. Trade Id is mentioned incorrectly.
iii. The Notice does not specify which offence from the one mentioned in Regulation 3(b) are charged on the Noticee. The Noticee referred to the judgement of **CIT Vs. Manjunatha Cotton and Ginning Factory** (359 ITR 565 (Kar)) and **Commissioner of Central Excise Vs. M/s Brindavan Beverages (P) Ltd. and Ors** (2007 5 SCC 388).

10. Vide Hearing Notice (SEBI/HO/DEPA-II/DEPA-II_CRD/P/OW/2021/000026248/1 dated September 29, 2021) and email dated September 29, 2021, an opportunity of hearing was provided to the Noticee at 11:00 AM on October 14, 2021 through Webex mode.

11. During the hearing the AR reiterated the submission made vide reply dated August 28, 2021.

12. Vide email and letter dated October 14, 2021, the AR filed the following additional submissions in the matter.

a. The alleged trades executed by the Noticee appeared as modified trades as per Annexure B to SCN wherein the Noticee's unique client code is appearing in first column under the modified client. The row for old client code is blank leading to conclusion that trade was originally not executed by the Noticee. The Noticee's client code was inserted later on by way of a modifications by the trading member.

b. The terminal ID for the Noticee and counter party were same as 902. Since two brokers were involved in the buy and sell, the terminal Id of both the brokers cannot be the same as 902.

CONSIDERATION OF ISSUES AND FINDINGS

13. I have taken into consideration, the facts and circumstances of the case, the material available on record and the reply submitted by the Noticee. It was alleged that the Noticee had executed reversal trade, which was non-genuine trade and the same has resulted in the generation of artificial volume in the stock options contract at BSE. In view of the same, it was alleged that Noticee has violated the provisions of Regulations 3(a), (b), (c), (d) and Regulation 4(1), 4(2)(a) of PFUTP Regulations and, therefore, Noticee is liable for penalty under the provisions of Section 15HA of the SEBI Act.

14. I have carefully perused the charges levelled against the Noticee, its reply and the documents/ material available on record. Before dealing with the issues on merit, I would deal with the issue raised by the Noticee with respect to issuance of the SCN beyond a reasonable period. The Noticee has contended that the SCN has been issued on a stale matter, which took place more than six years ago in the year 2015, and it has not been issued within a reasonable time period, thus causing serious prejudice to the Noticee.

15. Noticee was provided with all relevant and relied upon documents along with Show Cause Notice and the Noticee was provided sufficient time to file its detailed reply and submissions and therefore, no prejudice was caused to the Noticee due to delay. Notwithstanding the same, I also note that there is no provision with prescribed time limit in the SEBI Act which may have the effect of prohibiting SEBI from taking action by issuing Show Cause Notice or passing any order beyond a particular period of time in a given case. Further, as per Section 11C of the 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. I feel it is pertinent to note that, in the matter of **SEBI Vs. Bhavesh**

Pabari (2019) SCC Online SC 294, the Hon'ble Supreme Court of India has, *inter-alia*, observed as follows:

> *"There are judgements which hold that when the period of limitation is not prescribed, such power must be exercised within a reasonable time. What should be the 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."*

16. In the present matter, 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.

    During the course of hearing in the case of ***R. S. Ispat Ltd Vs SEBI***, the Hon'ble 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".*

    Further, 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.

17. As can be seen from the narration of facts in the foregoing paragraphs, pursuant to appointment of AO on April 30, 2021 and communicated vide Order dated June

28, 2021, SCN was issued on July 28, 2021. In compliance with principles of natural justice, after receipt of reply, an opportunity of personal hearing was conducted on October 14, 2021 and upon conclusion of hearing, additional written submissions *(if any)* were received from the Noticee on October 14, 2021.

18. I also note that, on this aspect, in the matter of ***Pooja Vinay Jain vs SEBI*** [Appeal No. 152 of 2019 dated March 17, 2020], Hon'ble Securities Appellate Tribunal has *inter alia* made the following observations –

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

13. In the present case, the appellant neither put a plea of prejudice before the AO nor before us. It was simply stated that since the proceedings were launched by respondent SEBI after a period seven years, the same should be quashed on the ground of delay. The record would show that all the documents concerning the defense of the appellant were filed by her before the AO. Therefore, for want of any prejudice the proceedings cannot be quashed simply on the ground of delay in launching the same. Further, as explained by the learned counsel for the respondent as recorded in paragraph No. 6.4 above, large numbers of entities and transactions were analyzed by SEBI which took some time. In the result, the following order….

Order

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

I find that the aforementioned decision of the Hon'ble Tribunal is squarely applicable to the instant case.

19. Therefore, I note that there is no merit in the preliminary objections made by Noticee, regarding the delay in concluding the instant proceedings.

20. With respect to the submission by the Noticee that the sole trade by the Noticee on March 20, 2021 was executed at Rs. 59 with relation to the prevailing price in the underlying cash security on that day, I noted that the prevailing spot price of Lupin at BSE (Scrip Code 500257) was 1904.50 when the Noticee bought the stock options at 12:34:02.845270 hrs. for 16,750 units @ Rs. 38 per unit. Further, at the time of squaring of 16,750 units @ Rs. 59, the spot price of Lupin was at BSE was 1903.30. The spot traded price of Lupin at BSE on March 20, 2015 during the order and trade time of both buy sell trades of the Noticee are given below:

Scrip code	Scrip name	Trade Date	Trade Time	QTY	Rate
500257	LUPIN LTD	2015-03-20	12:33:51.25922	4	1,904.50
500257	LUPIN LTD	2015-03-20	12:34:07.31158	1	1,903.30
500257	LUPIN LTD	2015-03-20	12:34:07.31158	1	1,903.30
500257	LUPIN LTD	2015-03-20	12:34:07.312018	38	1,903.20
500257	LUPIN LTD	2015-03-20	12:34:07.312018	38	1,903.20
500257	LUPIN LTD	2015-03-20	12:34:07.315079	83	1,903.25
500257	LUPIN LTD	2015-03-20	12:34:07.315079	83	1,903.25
500257	LUPIN LTD	2015-03-20	12:34:57.854341	1	1,901.45
500257	LUPIN LTD	2015-03-20	12:34:57.854341	1	1,901.45

Thus, I find no merit in the contention of the Noticee.

21. The Noticee raised a question on the validity of the trade log stating that the Terminal Id mentioned in Annexure B of the SCN for the both the Noticee and its counterparty is same and since two brokers are involved in the buy and sell terminal Ids of both the brokers cannot be the same. In this regard, I noted that Terminal Id is allocated by an Exchange to the Trading Member and to determine its uniqueness, Terminal ID has to be paired with the Member Number for the corresponding Terminal Id. Thus, I find this contention of the Noticee also without any merit.

22. The issues that arise for consideration in the present case are:
   a. Whether the Noticee has violated provisions of regulations 3(a), (b), (c), (d), 4 (1) and 4(2) (a) of PFUTP Regulations, 2003?
   b. Does the violation, if any, attract monetary penalty under section 15HA of the SEBI Act, 1992?

c. 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, 1992?

FINDINGS

23. 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:

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 PFUTP Regulations?

24. Before moving forward, the relevant provisions of PFUTP Regulations, 2003 allegedly violated by the Noticee and as mentioned in the SCN are reproduced below

"PFUTP Regulations,2003

3. *Prohibition of certain dealings in securities*

No person shall directly or indirectly—

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

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;

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;

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 manipulative, fraudulent or an unfair trade practice in securities markets.

[Explanation.– For the removal of doubts, it is clarified that any act of diversion, misutilisation or siphoning off of assets or earnings of a company whose securities are listed or any concealment of such act or any device, scheme or artifice to manipulate the books of accounts or financial statement of such a company that would directly or indirectly manipulate the price of securities of that company shall be and shall always be deemed to have been considered as manipulative, fraudulent and an unfair trade practice in the securities market.]

(2) Dealing in securities shall be deemed to be a manipulative, fraudulent or an unfair trade practice if it involves any of the following:

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

25. From the facts/material on record, the allegation against the Noticee is that, while dealing in the stock options contract at BSE during the IP, it had executed reversal trade on the same day, which was allegedly non-genuine trade and the same had resulted in generation of artificial volume in stock options contracts at BSE. Reversal trades are those trades in which an entity places its buy or sell positions in a contract with subsequent sell or buy positions with the same counterparty during the same day. These reversal trades are alleged to be non-genuine trades as they:

   a. lack basic trading rationale;
   b. lead to false or misleading appearance of trading in terms of generation of artificial volumes and hence are deceptive and manipulative.

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

27. Summary of the reversal trades of the Noticee in contract 'LUPL15MAR1860.00CE' in the stock options segment of BSE during the investigation period are as follows:

Trade Date	Stk Price	Expiry	Buy Clt. Name	Sell Clt. Name	Buy Ord. Time	Sell Order Time	Buy Ord. Rate	Sell Ord. Rate	Buy Ord. Qty	Sell Ord. Qty	Trd. Time	Traded Qty	Trd Rate
Mar 20, 2015	1860	2015-03-26	Vivek Rungta	Jaideep Halwasiya	12:34:02.845270	12:34:02.657168	38	38	16750	50250	12:34:02.845270	16750	38
Mar 20, 2015	1860	2015-03-26	Jaideep Halwasiya	Vivek Rungta	12:34:07.157416	12:34:07.145465	59	59	50250	16750	12:34:07.157416	16750	59

Stk. – Strike, Trd. – Trade, Clt. – Client, Quantity – Qty

Note: "Traded Quantity" or "Unit" refers to lot size in contract multipled by number of contracts traded.

a. The Noticee had traded in one unique contract of LUPL15MAR1860.00CE on March 20, 2015.

b. The Noticee placed a buy order at 12:34:02.845270 hrs. for 16,750 units @ Rs. 38 per unit. Buy order placed by the entity matched immediately with a sell order already placed by 'Jaideep Halwasiya' of 50,250 units at 12:34:02.657168 hrs.

c. Thereafter, within approximately 5 seconds, at 12:34:07.145465 hrs., the Noticee reversed its position by placing a sell order for 16,750 units @ Rs. 59 which got executed immediately with a buy order of 50,250 units placed at 12:34:07.157416 by the same counterparty 'Jaideep Halwasiya'.

d. These trades executed by the Noticee in the above contract were reversed on the same day within 5 seconds.

e. The entire 100% of volume generated by the Noticee in the above contract was artificial volume and further, artificial volume of 33,500 units (including both buy and sell side) generated by the Noticee made up 17.72 per cent of the total market volume in the said contract.

28. I note from the table at para 26 above that while dealing in the contract of 'LUPL15MAR1860.00CE" on March 20, 2015, the Noticee engaged in reversal trade (altogether two trades, one on the buy side and another on the sell side), which led to generation of alleged artificial volume of 33,500 units (buy side + sell side). These trades of the Noticee involved reversal with the same counterparty within approximately 5 seconds, but at a noticeable price difference.

29. The buying of illiquid stock options by the Noticee and subsequent reversal trade with the same counterparty for the same quantity, within approximately 5 seconds with a 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 trade, in itself, exhibits abnormal market behaviour and defies economic rationality. I note from the above trading pattern of the Noticee that it has deliberately made misuse of trading platform for creating artificial volume in the illiquid stock options.

30. The Noticee has contended that the SEBI or the respective exchange platforms have not put in place any price band mechanism in the options segment, thereby, leading to an inexorable conclusion that the prices at which the alleged trades took place and were executed are genuine. Further, it was also submitted that in the screen based trading system, which is virtually anonymous, it is not possible for anyone to enter into such reversal trades. However, considering the precision at which the reversal transactions had taken place, I am of the view that it will be too naïve to hold that just because these transactions were executed through exchange trading platform, within the price band mechanism, such trades were genuine and anonymous. Such conclusion would be over-looking the prior meeting of minds involving synchronization of buy and sell order w.r.t. the transactions entered into by the Noticee with its counterparty and such reversal trading is clearly violative of the transparent norms of trading in the securities market.

31. In view of the above observations, I hold that the said transactions executed by the Noticee in the said stock options contract were synchronized, non-genuine trades, in which positions were reversed within a small time gap with prior meeting of mind between the parties to the trade.

32. 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 08, 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. 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."*

33. 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.

34. In the same matter, Hon'ble Supreme Court had further stated that-

"*Having regard to the fact that the dealings in the stock exchange are governed by the principles of fair play and transparency, one does have to labour much on the meaning of unfair trade practices in securities. Contextually and in simple words, it means a practice which does not conform to the fair and transparent principles of trades in the stock market. In the instant case, one party booked gains and the other party booked a loss. Nobody intentionally trades for a loss. An intentional trading for loss per se, is not a genuine dealing in securities. 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 losses and that too in a pre-planned manner and rapid trades, it is not genuine……"*

35. In this context, I would also like to rely on the judgment of the Supreme Court in the matter of **SEBI v. Kishore R Ajmera** {(2016)} 6 SCC 368: AIR 2016 SC 1079} wherein, the Hon'ble Supreme Court has held that:

" ….. *According to us, knowledge of who the 2nd party/client or the broker is, is not relevant at all. While the screen based trading system keeps the identity of the parties anonymous it will be too naïve to rest the final conclusions on the said basis which overlooks a meeting of minds elsewhere. Direct proof of such meeting of minds elsewhere would rarely be forthcoming. 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….."*

36. Additionally, the Hon'ble Securities Appellate Tribunal in its Order dated September 14, 2020 in the matter of **Global Earth Properties and Developers Pvt Ltd Vs SEBI** (Appeal No. 212 of 2020) relied upon the aforesaid Order 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*."

37. The observations made in the aforesaid judgments of Hon'ble Supreme Court apply with full force to the facts and circumstances of the present case. I note that while direct evidence may not be forthcoming in the present matter as regards to meeting of minds or collusion of the Noticee with other entity, there is guidance

from the aforesaid order of the Hon'ble Supreme Court where it lays emphasis on the 'preponderance of probabilities' in each case to arrive at a decision considering the following:

a. the isolated trade and reversal in the same option contract;

b. the same counter party being involved in both the trades;

c. the noticeable difference in the buy and sell rate within same day;

d. The substantial difference in the buy and sell rate within a span of five seconds and

e. the high volume of trade in turn creating an artificial volume of 33,500 units.

I cannot but conclude the trades have been executed with an ulterior motive to create artificial volume and are not genuine.

38. It is also the submission of the Noticee that it was not related or connected with any of the counterparties in any manner whatsoever. However, considering the precision at which the reversal transactions had taken place, the noticeable price differential at which the orders were placed by both the parties to the trade, I am of the view that it is not a mere coincidence that Noticee could match its trades (with the corresponding price and time) with the same counterparty. It indicates meeting of minds.

In this context, I would like to rely on the judgment of the Hon'ble Supreme Court of India in ***SEBI vs Kishore R Ajmera*** (AIR 2016 SC 1079), wherein it was held that:
"*…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."*

39. In the instant matter, I note that though direct evidence regarding meeting of minds or collusion of the Noticee with the counterparty is not forthcoming, the trading behaviour of the Noticee, as detailed earlier, makes it clear that the aforesaid non-genuine trades could not have been possible without meeting of minds at some level. In this context, I deem it appropriate to refer to the order dated July 14, 2006 passed by 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 transaction executed, the frequency with which such transactions are undertaken, the value of the transactions, whether they involve circular trading and whether there is real change of beneficial ownership, 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. In line with the above judgements of Hon'ble SAT and Hon'ble Supreme Court, I note from the foregoing findings that the trading pattern of the Noticee in terms of 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 through non-genuine trades.

41. 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), wherein the Apex Court held that:

"The stock market is not a platform for any fraudulent or unfair trade practice. The field is open to all the investors. By synchronization and rapid reverse trade, as has been carried out by the traders in the instant case, the price discovery system

itself is affected. Except the parties who have pre-fixed the price nobody is in the position to participate in the trade. It also has an adverse impact on the fairness, integrity and transparency of the stock market."

42. The observations made in the aforesaid judgments apply to the facts and circumstances of the present case. Therefore, applying the ratio of the above judgments, I am convinced that the execution of trades by the Noticee in the illiquid options segment with such precision in terms of order placement time and price and also the fact that the transactions were reversed with the same counterparty clearly indicates a prior meeting of mind with a view to execute the reversal trade at a pre-determined price. It was also a transaction 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.

43. Therefore, I am inclined to note that the aforesaid trades of Noticee were non-genuine and have created false or misleading appearance of trading in terms of artificial volume in stock options and therefore the same are manipulative, deceptive in nature.

44. In view of above, I find 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.

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

45. Pursuant to detailed analysis as brought out above, it is established that trades by Noticee 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 'LUPL15MAR1860.00CE' where the total of two trades executed by Noticee during the Investigation Period in the said contract were non-genuine.

46. 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. 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.

47. The trading behaviour of the Noticee confirms that such trades were not normal and not-genuine trades and created an appearance of artificial trading volumes in respective contract. In view of the above, I find that the allegation of violation of regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of PFUTP Regulations, 2003 by the Noticee stands established.

48. The Hon'ble Supreme Court of India in the matter of **SEBI Vs. Shri Ram Mutual Fund** [2006] 68 SCL 216(SC) 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…".

49. 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. 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 which read as under.

Penalty for fraudulent and unfair trade practices

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

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

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

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.

51. In view of the facts and available material on record, I am inclined to rely upon the order of Hon'ble Securities Appellate Tribunal dated September 14, 2020 in the matter of ***Global Earth Properties and Developers Pvt Ltd Vs SEBI (Appeal No. 212 of 2020)*** since, the facts of the case are similar to the instant matter. In the matter of ***Global Earth Properties and Developers Pvt Ltd Vs SEBI***, Hon'ble SAT held that:

"*It was urged by the learned counsel for the Appellants that the penalty awarded is excessive and harsh and, therefore, prayed that in the event the order is affirmed the Tribunal may consider reducing the penalty amount taking into consideration the financial status of the Appellants and the negligible transactions executed by the Appellants.*

In this regard we have perused the orders passed by the AO. We find that the AO has taken into consideration not only the factors contained in Sec. 15J of the SEBI Act but has also taken into consideration the number of total trades, the artificial volume generated, the loss incurred, etc while imposing the penalty. It may be *stated here that the minimum penalty under Sec. 15HA is Rs.5 Lacs and maximum penalty is Rs. 25 crores or three times the profit made. We find that the AO has exercised its discretion which is neither harsh nor arbitrary. We do not find any error in the quantum of penalty imposed by the AO.*"

52. It is further noted that, in **Radha Malani vs. SEBI** (Appeal No. 698/2021), vide Order dated November 24, 2021, SAT relying upon its aforesaid Order in the matter of **Global Earth Properties and Developers Ltd**. dismissed an appeal filed against an Order wherein monetary penalty was imposed against a person who had executed 1 (one) buy and 1 (one) sell trade in 1 (one) Option Contract with the same counterparty within a very short span of time but with a substantial price difference between the buy order and sell order. These trades were also executed in the illiquid stock options listed at BSE. Thereafter, SAT in **Shruti Saraogi vs. SEBI** (Appeal No. 814 of 2021) vide order dated January 13, 2022 while dealing with similar facts in an Illiquid stock options matter again relied upon its aforesaid Order in the matter of **Global Earth Properties and Developers Ltd.** to dismiss an appeal filed by a person who was imposed with a monetary penalty in the impugned Order for the dealings in illiquid stock options which were in the nature of reversal trades. The facts involved in the said matters are similar to the facts involved in the present matter and therefore these orders of SAT are squarely applicable to the present matter also.

53. Therefore, by considering creation of artificial volume by the Noticee, I have no hesitation to impose the minimum penalty prescribed under the relevant provisions of the SEBI Act.

ORDER

54. Having considered all the facts and circumstances of the case, the material available on record, the factors mentioned in section 15J of the SEBI Act and in exercise of power conferred upon me under section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose following penalty under section 15HA of the SEBI Act on the Noticee:

Name of the Noticee	Violation provisions	Penalty
Vivek Rungta (HUF) (PAN: AADHV5385E)	Regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of PFUTP Regulations	**Rs.5,00,000/-** (Rupees Five Lakh only)

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

55. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of:

a) Demand Draft in favour of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai, and the said DD should be forwarded to the Division Chief, Enforcement Department – 1 (EFD 1), Division of Regulatory Action – 4 (DRA 4), SEBI Bhavan, Plot No. C4-A, ‘G’ Block, Bandra Kurla Complex (BKC), Bandra (East), Mumbai –400051. The Noticee shall provide the following details while forwarding DD/ payment information:

S. No.	Particulars	Details
1.	Name of the Case / Matter	
2.	Name and PAN of the Payee	
3.	Date of Payment	
4.	Amount Paid	
5.	Transaction Number	
6.	Bank Name and Account Number	
7.	Purpose of Payment	Payment of penalty under AO proceedings

Above details also may be forwarded through email to tad@sebi.gov.in

OR

b) Payment can also be made online by following the below path at SEBI website www.sebi.gov.in on the following path, by clicking on the payment link:

ENFORCEMENT→ Orders → Orders of AO → PAY NOW

In case, further assistance required for payment of penalties, the Noticee may contact the support at portalhelp@sebi.gov.in

56. 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.

57. 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 the Noticee namely, Vivek Rungta HUF [PAN: AADHV5385E] and also to the Securities and Exchange Board of India, Mumbai.

Date: March 10, 2022 **DEEPALI DIXIT**

Place: Mumbai **ADJUDICATING OFFICER**