BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
ADJUDICATION ORDER NO.: OIAE/IGRD/AO/MS/GK/2021-22/15781

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

Shri Ajay Gupta

PAN: AACHA1539A

279 Model Town

Kanpur 208005

Uttar Pradesh

In the matter of dealings in Illiquid Stock Options at the BSE

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as "SEBI") observed large scale reversal of trades in the Stock Options segment of the Bombay Stock Exchange (hereinafter referred to as "BSE") leading to the alleged creation of artificial volume in the stock options segment. In this regard, SEBI conducted an investigation into the trading activity in the illiquid Stock Options segment at the BSE for the period April 01, 2014 to September 30, 2015 (hereinafter referred to as "Investigation Period").

2. It was observed during the course of investigation that a total of 2,91,744 trades comprising 81.40% of all the trades executed in the Stock Options Segment at the BSE during the investigation period were trades which involved reversal of buy and sell positions by the clients and counterparties in a contract on the same day. It was observed that Shri Ajay Gupta (hereinafter referred to as "Noticee") was one such client whose reversal trades involved squaring off open positions with a significant difference without any basis for such change in the contract price. The aforesaid reversal trades allegedly resulted into generation of artificial volumes, leading to allegations that the Noticee had violated the provisions of regulations 3(a),(b),(c),(d) and regulations 4(1),4(2)(a) of the SEBI (Prohibition of Fraudulent and Unfair Trading Practices related to Securities Markets) Regulations, 2003 (hereinafter referred to as " PFUTP Regulations, 2003").

APPOINTMENT OF ADJUDICATING OFFICER

3. SEBI initiated adjudication proceedings and appointed the undersigned as Adjudicating Officer under section 15-I of the Securities and Exchange Board of India Act, 1992

(hereinafter referred to as “SEBI Act”) read with rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as “Adjudication Rules”) vide order dated July 06, 2021 to inquire into and adjudge under section 15HA of the SEBI Act 1992, against the Noticee for the alleged violation of the aforesaid provisions of PFUTP Regulations, 2003.

<u>SHOW CAUSE NOTICE, REPLY AND HEARING</u>

4. A Show Cause Notice bearing reference no. OIAE/IGRD/MJS/20450/2021 dated August 17, 2021 (hereinafter referred to as “SCN”) was issued to the Noticee under Rule 4(1) of the Adjudication Rules to show cause as to why an inquiry should not be initiated against the Noticee and why penalty should not be imposed upon the Noticee under Section 15HA of the SEBI Act for the violations alleged to have been committed by the Noticee.

5. The trades entered by the Noticee were reversed on the same day with same counterparty at a substantial price difference without any basis for significant change in the contract price which indicates that these trades are artificial and are non- genuine in nature.

6. A summary of dealings of Noticee in RELI15SEP930.00PE Stock Options contracts in which the said Noticee allegedly executed reversal trades during the investigation period, is as follows:-

Summary of dealings in contracts wherein the Noticee executed reversal trades

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	RELI15SEP930.00PE	2.65	25000	8	25000	100%	50%

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

7. The abovementioned reversal trades and volumes are illustrated through the dealings of Noticee in one contract viz, “RELI15SEP930.00PE” during the investigation period, as follows:-

   (a) During the investigation period, 2 trades for 50000 units were executed by the Noticee in the said contract on 03/08/2015.

   (b) While dealing in the said contract on 03/08/2015, at 14:17:24.62 hrs the Noticee entered into a buy trade with counterparty Prm Power & Project Private Limited for 25000 units at Rs.2.65 per unit. At 14:17:28.96 hrs the Noticee entered into a sell trade with the same counterparty, for 25000 units at Rs.8 per unit.

(c) The Noticee's two trades while dealing in the above said contract during the investigation period allegedly generated artificial volume of 50000 units, which made up 50% of total market volume in the said contract during this period.

8. In view of the foregoing, it is alleged that Noticee, by indulging in execution of non-genuine reversal of trades in Stock Options with same entities on the same day, created false and misleading appearance of trading in stock options and therefore allegedly violated Regulation 3(a),(b),(c),(d), 4(1), 4(2)(a) of PFUTP Regulations, 2003.

9. The SCN with reference number OIAE/IGRD/MJS/20450/2021 dated August 23, 2021 was issued to the Noticee via Speed Post Acknowledgement Due (SPAD), which was duly served on the Noticee as per the Tracking details obtained from the India Post website and the SCN was also sent to Noticee via email dated August 23, 2021 which was also duly delivered to the Noticee.

10. The Noticee responded to the SCN vide letter dated December 12, 2021 through email dated December 13, 2021. The details of the response to the SCN are given below.

11. The Noticee has raised a technical issue with respect to non-receipt of Investigation Report to the Noticee.

    The Noticee is submitting its reply on the basis of available documents and data. The reply of the Noticee to the captioned SCN is as follows:

    a. The Noticee has denied every allegation contained in the captioned SCN against the Noticee.

    b. The Noticee has not been provided any material/ data of total market volume in Stock Option Segment of BSE during the Investigation Period. The Noticee has also not been provided Trade and Order Log for total 2,91,744 Trades comprising 81.40% of all trades executed in Stock Market Segment of BSE during the Investigation Period which the Noticee's 2 trades (1 buy and 1 sell trades) allegedly found to be non-genuine trades. The Noticee, refutes that the he had executed any non-genuine trades which resulted into creation of artificial volume.

    c. The Trades of the Noticee in option segment of BSE were only in well-known Company. The alleged 2 non genuine Trades (1 buy and 1 sell trades) in option segment of BSE were executed by the Noticee on the anonymous screen based trading platform provided by BSE wherein identity of the counterparty remain undisclosed. The counterparty disclosed in SCN is unknown to Noticee.

    d. BSE has a sophisticated surveillance system and if there had been any reversal of trade, the system could have alarmed BSE to take corrective measures to restrain any non-genuine trades happening in its trading platform. The Noticee has not received any warning or caution letter from BSE for any of the trades executed. Thus, the allegation mentioned above is totally farfetched and is based on presumptions etc.

e. The Noticee had meticulous track record of trading in the securities market and except the captioned SCN the Noticee has not received even a warning letter prior to the issue of the captioned SCN.

f. It is a matter of common knowledge that the option trading platform of the BSE has not been as vibrant as NSE. It is just a coincidence that the Orders placed by the Noticee might have been matched. However, nowhere in the entire SCN it is alleged that the Noticee had any connection / association / relationship with the counterparty.

g. The complete material documents in support of the allegation contained in the captioned SCN have not been made available to the Noticee and is in violation of principles of natural justice.

h. It is alleged in the SCN that SEBI had observed large scale of reversal of trades in Stock Options segment of BSE leading to creation of artificial volume without explaining the same.

i. The trades executed by the Noticee in the BSE Stock Option Segment were in the normal course of business devoid of any fraudulent intentions. In the derivative segment, only those stock and indices are permitted which are very liquid and there is a robust risk mitigation mechanism is in place. Since the Noticee had traded in the Options of very well-known Company which has tradeable position in the market, there was no reason to doubt credibility of the platform provided by the Exchange as approved by SEBI.

j. It is alleged that the Noticee had executed 2 non-genuine trades (1 buy trade and 1 sell trade only) in 1 Unique Contract and therefore the allegation of fraud cannot be alleged against the Noticee for execution of mere 1 buy and 1 sell trades. The said trades were matched with one entity only.

k. In this connection he has stated that he would like to place reliance on the Adjudication Order dated 24-12-2019 **in the matter of Richa Industries Limited, Subhkam Securities Private Limite**d, **Dhvani Darshan Kothari & Anr. vs SEBI (Appeal No. 276 of 2020 decided on January 21, 2021**)

l. It is alleged in the SCN that the Noticee had generated 50% of the volume in 1 Unique Contract. It is to be noted that no price volume data has been annexed with the SCN. It is further submitted that these allegations are merely an eyewash as it does not take into consideration the number of trades and volumes generated in complete Option Segment in BSE in a particular Scrip on a particular day. It may be noted that the stock exchange platform at the relevant point of time gave a choice to write options at various strike prices as per the suitability of the trader. What has been considered in the SCN is only an option with a particular strike price and not the total trading on Option Segment in a particular scrip at the relevant point of time. Thus, the percentages shown in the SCN are misleading and cannot be relied upon.

m. The trades of the Noticee are genuine and and were executed on the anonymous platform of the Exchange, without any knowledge of counterparty, at price ranges that were permitted by the Exchange / SEBI and the obligations arising out of it have been settled through the clearing mechanism of the Exchange.

n. Furthermore, SCN is bad in law as the same has been issued after a period of more than 6 years from the date of execution of trades by the Noticee. BSE is a first stage Regulator and claims that it has most scientific and surveillance mechanisms. Similarly, SEBI as Regulator of all Stock Exchanges, of all intermediaries and of all the entities who deal in securities market has also a sophisticated Surveillance System. He had not received a single Caution Letter either from BSE and/or SEBI in this matter. Thus, this delay has caused extreme mental agony and highly prejudices the case of the Noticee as justice delayed is justice denied. Recently, the Hon'ble Supreme Court of India and the Hon'ble Tribunal took a tough stand against inordinate delay and latches in quasi-judicial proceedings.

o. None of the acts or trades executed by the Noticee fall under the definition of fraud as provided in regulation 2(1) (c) of PFUTP Regulation. These trades executed are genuine trades and the Noticee cannot be alleged to have violated any PFUTP Regulations.

p. The Noticee has further drawn attention to the Judgements passed by the Hon'ble Tribunal in the matter of KSL & Industries Ltd. vs. SEBI. Vintel Securities Pvt Ltd vs. SEBI, Dhvani Darshan Kothari & Anr in SAT.

q. The Noticee further denies that he has violated the Regulation 3(a), (b), (c), (d) and 4 (1), 4 (2) (a) of the PFUTP Regulations. In this context he has reiterated the submissions given in the earlier response and has requested that the present proceedings be quashed since no primary violation of any PFUTP Regulations is made out against the Noticee and the genuineness of the trades has also been explained hereinabove. He has requested to consider below mentioned submissions on the quantum of penalty.

r. He has stated that there is no restriction or bar in the SEBI Act which prohibits an Adjudicating Officer to impose lesser penalty than Rs. 5,00,000/- under Section 15HA of the SEBI Act. He has placed reliance on the Judgement of Hon'ble Apex Court dated

28-02-2019 in Civil Appeal No. 11311 of 2013 in the matter of Adjudicating Officer, SEBI v/s Bhavesh Pabari, Roofit Industries Ltd, Siddharth Chaturvedi & Ors.

s. The Noticee also requested to consider the factors enumerated in Section 15J of the SEBI Act, 1992. He has cited the Adjudication Order dated 30-11-2018 against Mr. Jai Prakash Agarwal.

t. He requested to either drop the proceedings or impose lesser penalty the Rs. 5 Lacs.

12. In the interest of natural justice and in order to conduct an inquiry in terms of Rule 4 (3) of the Adjudication Rules, vide Notice with reference number OIAE/IGRD/MJS/30355/2021 dated October 27, 2021, an opportunity of personal hearing was granted in the matter on November 24, 2021. The hearing was re scheduled to December 15, 2021 at the request of adjournment of 3 weeks by the Noticee due to a family marriage function. Mr. Shri Ajay Gupta appeared for hearing attended the hearing at 2:30 PM on December 15, 2021 through the online Cisco webex platform and 7 days were given to him for written submission, if any.

13. He has subsequently submitted that the trades matched due to low liquidity in that contracts (Contract Name RELI15SEP930.00PE) when they initiated the trades, they put their bidding on screen and their trade got executed.

14. Everyone wants to get profit from this trade, so they also kept their positions till date desired prices levels comes. But there was very low liquidity on screen, so when they saw a counter quote at screen, they immediately square off their position. They were unaware that counter trade client is same with whom their initial trade has happened. It was purely co incidence. They would like to reiterate that the trades done by them are as per market view and they have no ill intention and they assure such trade will not be repetitive in future.

CONSIDERATION OF ISSUES AND FINDINGS:

16. I have carefully perused the charges levelled against the Noticee, his reply and the documents/material available on record. The issues that are raised 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 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?

17. Before moving forward, the relevant provisions of law allegedly violated by the Noticee and as mentioned in the SCN are reproduced below:--

PFUTP Regulations

3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

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

(b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a 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;

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

18. a. The notice has raised a technical issue of copy of investigation report and other requisite documents and that details have not been submitted. In this regard, I observed that the SCN issued to the Noticee (alongwith the Annexures thereto) contains the trade and order details relevant to the alleged non-genuine reversal trades executed by the Noticee. The facts culled from the findings of investigation undertaken by SEBI which have led to crystallization of charges under the PFUTP Regulations against the Noticee form a part of the SCN and its Annexure. No other information other than that provided

to the Noticee has been relied on during this proceedings and all relied upon information has already been provided to the Noticee.

b. A reasonable opportunity of being heard has been provided to the Noticee to respond to the allegations in the SCN based on facts relevant to the Noticee and any additional information the Noticee may have had pertaining to its own trading behavior as brought out in the SCN. Therefore, I find no merit in the Noticee's contention that it has not been provided with relevant material/documents based on which the SCN has been issued, or that the AO provided a hearing opportunity without considering the reply of the Noticee. Thus the Noticee's submissions in this regard are suitably addressed.

19. Further regarding the delay mentioned by the notice, it is stated that

a. 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.

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

c. 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.

d. As can be seen from the narration of facts in the foregoing paragraphs, pursuant to appointment of AO on July 6, 2021, SCN was issued on August 23, 2021. In compliance with principles of natural justice, after receipt of reply, an opportunity of personal hearing was scheduled on November 24, 2021 at 2.30. a.m. The Noticee requested for adjournment by 3 weeks as he was not available due to a family marriage function. The meeting was scheduled for December 15, 2021 and the Noticee has furnished submissions on December 12, 2021 and attended the hearing.

e. Thus it can be held that there has been no delay and that the Noticee has been provided due notice to present his contention and thus satisfies the principle of natural justices. Having settled these technical issues raised by the Noticee, I now proceed to deal with issues on merits.

20. I note that the allegation against the Noticee is that, it had executed reversal trades while dealing in the stock option contracts at BSE during the IP, which were allegedly non-genuine and had resulted in the creation of artificial volume in the stock options contracts at BSE. Reversal trades are considered as those trades in which an entity reverse 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 alleged to be non-genuine trades as they are not executed in the normal course of trading, lack basic trading rationale, and allegedly lead to false or misleading appearance of trading in terms of generation of artificial volumes, hence these trades are deceptive and manipulative. From the facts/material made available on record, I find that reversal trades executed by the Noticee, which were observed in the present case, were undertaken by the Noticee with its counterparty with a predetermined arrangement to book profit or losses respectively, and therefore, the parties to the trades were not trading in the normal sense and ordinary course of business. Therefore, it is alleged that the Noticee by indulging in such reversal trades with its counterparty in the illiquid stock option segment at BSE has managed to generate artificial volume in the Stock Options segment at BSE during the investigation period.

21. In this regard, it is observed from the trade log of the Noticee that it had traded in 1 contract in the Stock Options segment of BSE during the above mentioned investigation period. The examination of the Trade log of the Noticee during the relevant period revealed that it had executed 2 non-genuine trades in 1 contract in the Stock Options segment of BSE.

Date	**Buyer**	**Seller**	**Buy Order Time**	**Sell Order Time**	**Trade Time**	**Trade Rate (Rs)**	**Trade Quantity**
03/08/2015	Ajay Gupta	Prm Power & Project Private Limited	14:17:24.07	14:17:24.62	14:17:24.62	2.65	25000
03/08/2015	Prm Power & Project Private Limited	Ajay Gupta	14:17:28.91	14:17:28.96	14:17:28.96	8	25000

I note that the abovementioned trades of the Noticee had resulted in the creation of artificial volume of a total of 50000 units in the given 1 contract. Further, it is observed that the trade executed by the Noticee was squared up within a short span of time with the same counterparty i.e. trade was reversed within few minutes on the same day. Thus, it is observed that Noticee had indulged in reversal trades with its counterparty in the stock option segment of BSE and the same were non-genuine trades.

22. Further, it is observed that these trades were squared up by the Noticee with its counterparty with a significant price difference. The non-genuineness of these transactions executed by the Noticee is evident from the fact that there was no commercial basis to suddenly, within a matter of few seconds, reverse the position with its counterparty with significant price difference when the value of the underlying had not undergone any significant change.

The trade reversals in the said case points out to the fact that the parties to the transactions, including the Noticee, did not intend to transfer the 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/ contracts.

23. As already mentioned above, there was very little time gap between the buy and sell orders placed by the Noticee with its counterparty in different trades. The time gap between both the trades was few minutes on the same day. Given the fact that the Stock Option contracts were illiquid in nature at BSE and also in view of the observations made above, I am convinced that Noticee has entered into reversal/non-genuine trades with its counterparty and in the process also generated artificial volume in the otherwise illiquid stock option contracts at BSE.

24. To illustrate, it is observed that the Noticee had executed a total of 2 trades during the Investigation period in the contract “RELI15SEP930.00PE”. The aforesaid trades were done by the Noticee on August 03, 2015 wherein Noticee bought 25000 units from Prm Power & Project Private Limited at 14:17:24.62 hrs at the rate of Rs. 2.65 per unit. The Noticee then sold 25000 units to Prm Power & Project Private Limited at 14:17:28.96 hrs at the rate of Rs. 8 per unit. This resulted in 2 trades with total trade quantity of 50000 units at a price of Rs. 2.65 and Rs. 8. Thus, in the above manner, the Noticee executed a total of 2 trades in the contract “RELI15SEP930.00PE” and generated artificial volume of 50000 units through such non-genuine and reversal trades. It is also observed that, out of the 2 trades done through 1 unique contract, the Noticee was instrumental in contributing significantly towards the total volume recorded on BSE in the said contracts.

25. It is observed that the 2 transactions executed by the Noticee in the 1 Option Contract were synchronized trades, which were reversed within minutes with prior meeting of mind between the parties to the trade. Needless to mention the fact that these transactions were manipulative/deceptive device with a view to create a desired loss and/or profit in the books of the party to the transactions and in the process, artificial volumes were also generated through such contracts.

26. At this juncture, it is pertinent to refer to the decision of the Hon’ble Supreme Court of India in the matter of **Securities and Exchange Board of India v. Rakhi Trading**

Private Limited (Civil Appeal Nos. 1969, 3174-3177 and 3180 of 2011 dated February 08, 2018) wherein, the Hon'ble Supreme Court while cumulatively analyzing the reversal transactions held that, 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."*

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.

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

"........quantity, time and significant variation of prices, without major variation in the underlying price of the securities clearly indicate that Respondent's trades are not genuine and had only misleading appearance of trading in the securities market.........."

"35.... 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......"

28. Additionally, the Hon'ble Securities Appellate 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 counterparty 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."

29. In this context, I also find it relevant to refer to the decision of Hon'ble Supreme Court in the matter of Securities and Exchange Board of India 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....."*

30. In the same matter, the Hon'ble Supreme Court, has further held that, *"......... In the absence of direct proof of meeting of minds elsewhere in synchronized transactions, the test should be one of preponderance of probabilities as far as adjudication of civil liability arising out of the violation of the Act or provision of the Regulations is concerned. The conclusion has to be gathered from various circumstances like that volume of trade effected; the period of persistence in trading in a particular scrip; the particulars of buy and sell orders, namely the volume thereof; the proximity of time between the two and such relevant factors........."*

31. 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. 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, price, quantity etc. 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 is observed that in respect of these trades executed in the illiquid stock options contract, the only reason for the wide variation in prices of the same contract and execution time within seconds was a clear indication that there was pre-determination in the prices by both the counterparties when executing the trades.

Thus, the nature of trading, as brought out above, clearly indicates an element of prior meeting of minds and therefore, a collusion of the Noticee with its counterparty to carry out the trades at predetermined prices. It is not possible to comprehend the reason for which the Noticee would enter into an option contract with a strike price far away from the current market price of the underlying except for the fact that Noticee wanted to execute non-genuine trades.

Issue (b): Does the violation, if any, attract monetary penalty under section 15HA of the SEBI Act, 1992?

32. I have taken into consideration the facts and circumstances of the case, the material available on record. It is alleged that the Noticee had executed reversal trades, which were non-genuine trades and the same has resulted in the generation of artificial volume in the Stock Option contracts at BSE. In view of the same, the Noticee has violated the provisions of Regulations 3(a), (b), (c), (d) and Regulation 4(1), 4(2) (a) of PFUTP Regulations.

    In this context, reliance is placed upon the order of the Hon'ble Supreme Court of India in the matter of Chairman, SEBI Vs Shriram Mutual Fund { [2006]5 SCC 361 } – wherein the Hon'ble Supreme Court of India 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.............."

33. In view of the above, I conclude that the Noticee is liable for monetary penalty under the provisions of Section 15HA of the SEBI Act, which reads as under:

    Penalty for fraudulent and unfair trade practices.

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

Issue (c): If so, what would be 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?

34. In this regard, the provisions of Section 15J of the SEBI Act and Rule 5 of the Adjudication Rules require that while adjudging the quantum of penalty, 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.

35. Clearly, from the above observations, the Noticee was instrumental in the creation of artificial volume in the illiquid stock option contracts at BSE during the investigation period by executing reversal / non-genuine transactions in the illiquid stock options segment at BSE. It is not possible from the material available on record to quantify the amount of loss caused to genuine investors as a result of the reversal trades/ non-genuine trades executed by the Noticee with its counterparty. From the manner in which Noticee executed the above mentioned transactions, the Noticee has violated the statutory provisions of law.

ORDER

36. Having considered all the facts and circumstances of the case, the material available on record and the factors mentioned 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 Adjudication Rules, hereby impose a penalty of Rs.5,00,000/- (Rupees Five Lakh only) on the Noticee viz., Shri Ajay Gupta under the provisions of Section 15HA of the SEBI Act for the violation of Regulations 3(a), (b), (c), (d), 4(1) and 4(2) (a) of the PFUTP Regulations. I am of the view that the said penalty is commensurate with the default committed by the Noticee.

37. The Noticee shall remit / pay the said amount of penalty within 45 (forty five) days of the receipt of this order either by way of Demand Draft (DD) 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 -I (EFD), Division of Regulatory Action -I [EFD1-DRA-3] SEBI Bhavan, Plot No.C4-A,‘ G’ Block, Bandra Kurla Complex (BKC), Bandra (East), Mumbai –400 051 and also send an email to tad@sebi.gov.in with the following details:

1. Case Name:	
2. Name of Payee:	
3. Date of payment:	
4. Amount Paid:	
5.Transaction No:	
6. Bank Details in which payment is made:	
7. Payment is made for: (like penalties /disgorgement/recovery/Settlement amount and legal charges along with order details)	

Or

Payment can also be made online by following the below path at SEBI website www.sebi.gov.in ENFORCEMENT → Orders → Orders of AO → Click on PAY NOW or at https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html.

38. 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, 1992 for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

39. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is sent to the Noticee viz., Shri Ajay Gupta and also to Securities and Exchange Board of India.

DATE: March 31, 2022 **MEDHA SONPAROTE**

PLACE: MUMBAI **ADJUDICATING OFFICER**