BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
ADJUDICATION ORDER NO.: OIAE/IGRD/AO/MS/GK/2022-23/15809

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

Ajay Jain

PAN: ACJPJ6652L

11 Merlin Park, Ballygunj,
Kolkata 700019
West Bengal

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 Jain (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 against the Noticee for the alleged violation of the aforesaid provisions of PFUTP Regulations, 2003.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. A Show Cause Notice bearing reference no. OIAE/IGRD/MJS/20024/2021 dated August 18, 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 EXID15MAR160.00CE 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	EXID15MAR160.00CE	20.85	42000	32.75	42000	100%	60%

7. The abovementioned reversal trades and volumes are illustrated through the dealings of Noticee in one contract viz, "EXID15MAR160.00CE" during the investigation period, as follows**:-**

(a) During the investigation period, 2 trades for 84000 units were executed by the Noticee in the said contract on 20/03/2015.

(b) While dealing in the said contract on 20/03/2015, at 14:36:50.11 hrs the Noticee entered into a sell trade with counterparty Shubham Marketing for 42000 units at Rs.32.75 per unit. At 14:53:45.63 hrs the Noticee entered into a buy trade with the same counterparty, for 42000 units at Rs.20.85 per unit.

(c) The Noticee's two trades while dealing in the above said contract during the investigation period allegedly generated artificial volume of 84000 units, which made up 60% 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/20024/2021 dated August 18, 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 18, 2021 which was also duly delivered to the Noticee.

10. The Noticee responded through Shri Deepanjan Sen, Advocate to the SCN vide letter dated September 01, 2021. The Noticee denied all allegations on the following grounds:

a. SEBI has not provided any evidence/proof in its notice to show that the trades done by him were fraudulent. The trades were executed through a SEBI registered broker on the floor of BSE with due compliance to all the rules and regulations of the exchange at the time.

b. At no point of time was there any warning/observation from the exchange/regulator about the contracts which were executed by his client.

c. Until recently, at no time his client have been informed and / or questioned about the authenticity of the trades in last 5-6 years by any authority.

d. The observation that the contracts are illiquid is totally incorrect. The advocate has submitted that the underlying script in which his client had traded are highly liquid in nature and frequently traded in market. His client traded in contracts of underlying scripts, most of these securities were part of BSE Index at the at time, thus the allegation that his client had deliberately traded in only those options that were illiquid in nature is unfair.

e. For the transaction to be termed fraudulent, as per the definition of fraud, there has to be inducement and SEBI has not even alleged inducement. There is no nexus, directly or indirectly with the counterparty brokers or the clients in the present matter and SEBI has not even alleged this. The trades were done by his client at the screen based platform of BSE without knowing the counterparty broker/client.

f. The trades in question were in the normal course of business by his client.

g. The trades are not deceptive in nature or have any impact on the investors or their investment decision which is a sine qua non of fraud.

h. BSE and SEBI have themselves allowed and permitted trading in Options for 'far months' with a strike price which are at a large variance to current market price. Such parameters are laid down is clearly indicative of fact that options will always be 'in the money' and 'out of the money' and since regulators have themselves permitted trading in same, no adverse inference be drawn against it in this regard.

i. Stock Exchange regularly comes out with list of illiquid scripts in cash segment however, no such list is issued by exchanges or regulator for dealing in stock options contracts. Thus, to fasten the responsibility or allege a single entity that it traded in illiquid option in unwarranted and unfair.

j. Any kind of alleged fictitious/manipulative trade in cash segment may create distorted impression in minds of investors that price of scrip is rising/falling who may invest/divest from said scrip. However, in case of option segment and for every party who makes profit there is a counterparty who makes a loss. There is no question of transfer of beneficial ownership in option segment since at end of settlement cycle on net loss/profit is adjusted, therefore, allegation of creation of artificial or reversal trade is of no consequence in option segment of exchange.

k. His client did not act in concert or in collusion with anyone and nor part of any group of connected with anyone for the purpose of influencing price or for any manipulative activity. There is no connection between it and counterparties to the impugned trades.

l. The inordinate delay in issuing his client has caused prejudice to his client. Thus, the notice deserves to be withdrawn as issued beyond a reasonable period.

m. In view of the above submissions, it is requested that the enquiry proceedings and the penalty proceedings u/s 15 HA be dropped.

11. The Noticee was granted an opportunity of personal hearing in the matter on October 26, 2021, at 2:30 PM through the online Cisco webex platform. The said hearing notice was delivered to the Noticee via SPAD and email dated October 01, 2021. The Noticee attended the said hearing and 7 days' time was given for written submissions. The Noticee sought time of further 15 days time to make the submission. The submissions were received from the Noticee on November 15, 2021.

a. The Noticee Shri Ajay Jain responded on November 15, 2021 wherein he has denied all allegations. He has reiterated the same contention.

b. He has raised a technical issue that SCN has been issued after 6 years from the date of the settled transactions and that he has committed 'fraud' in securities market even without the Investigation report being provided by SEBI or even cogent evidence in this regard.

c. He has stated that his trades did not depress the price/ volume of underlying shares in the cash segment.

d. There was no alert from either the broker/SEBI or he would have taken prompt and corrective action.

e. BSE could have annulled the trades with its state of the art surveillance system. This was not done. Thus the trades were genuine and fair.

f. Thus he has summed up that he has acted as a bonafide trader. He believes there has been no grievance by any investor, broker, stock exchange or any other agency concerned with his dealing in the option segment of BSE Ltd.

g. He has submitted that he is a hardcore option trader who is trading in options market of NSE since its launch in 2005.

h. He is an opportunist trader and trade on every opportunity to maximize his profits.

i. He has requested that a lenient view be taken in the matter and he be discharged from captioned proceedings.

12. Before going forward on merits, the technical issue of delay in proceeding is being dealt with as under:

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 18, 2021. A response was received on September 1, 2021 In compliance with principles of natural justice, after receipt of reply, an opportunity of personal hearing was scheduled on October

26, 2021 at 2:30 p.m and upon conclusion of hearing, he was given 7 days to submit additional written submissions (if any). The Noticee sought time of further 15 days time to make the submission. The submissions were received from the noticee on November 15, 2021.

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 justice. Having settled these technical issues raised by the Noticee, I now proceed to deal with issues on merits.

13. The noticee has raised another 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 (along with 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. 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. Further, it is to confirm that no other information other than that provided to the Noticee has been relied upon during this proceeding. All relevant information pertaining to the Noticee has already been provided to the Noticee. Thus, the Noticee's submissions in this regard are untenable.

<u>CONSIDERATION OF ISSUES AND FINDINGS:</u>

14. I have carefully perused the charges levelled against the Noticee, his reply and the documents/material available on record. 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 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?

15. 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 the provisions of Regulations 3(a), (b), (c), (d) and Regulation 4(1), 4(2)(a) of PFUTP Regulations 2003?

16. I note that the allegation against the Noticee is that, he 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 observed 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.

17. 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. I note that the above mentioned trades of the Noticee had resulted in the creation of artificial volume of a total of 84000 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.

18. 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.

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.

19. To illustrate, it is observed that the Noticee had executed a total of 2 trades during the Investigation period in the contract “EXID15MAR160.00CE”. The aforesaid trades were done by the Noticee on March 20, 2015 wherein Noticee sold 42000 units to Shubham Marketing at 14:36:50.11 hrs at the rate of Rs. 32.75 per unit. The Noticee then bought 42000 units from Shubham Marketing at 14:53:45.63 hrs at the rate of Rs. 20.85 per unit. This resulted in 2 trades with total trade quantity of 84000 units at a price of Rs. 32.75 and Rs. 20.85.

Thus, in the above manner, the Noticee executed a total of 2 trades in the contract “EXID15MAR160.00CE” and generated artificial volume of 84000 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.

Date	Buyer	Seller	Buy Order Time	Sell Order Time	Trade Time	Trade Rate (Rs)	Trade Quantity
20/03/2015	Shubham Marketing	Ajay Jain	14:36:50.115549	14:36:49.857561	14:36:50.115549	32.75	42000
20/03/2015	Ajay Jain	Shubham Marketing	14:53:45.630181	14:53:45.320910	14:53:45.630181	20.85	42000

20. I hold that these 2 transactions executed by the Noticee in the 1 Option Contract were synchronized trades, which were reversed within a few of 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.

21. 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.

22. 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......"*

23. Additionally, the Hon'ble Securities Appellate Tribunal (hereinafter referred to as "SAT")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."*

24. 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 2ndparty/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.....”

25. 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.........”*

26. 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.

27. 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 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. By synchronization and reversal trade as has been carried out by the Noticee in the instant case, the price discovery system has been 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.

28. Therefore, the trading behaviour of the Noticee confirms that such trades were not normal and wide variation in prices of the trades in the same contract in a short time without any basis for such wide variation, all indicate that the trades executed by the Noticee were not genuine trades and being non-genuine, created an appearance of artificial trading volumes in respective contracts. 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.

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

29. 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..............."*

30. 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?

31. 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.

32. 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

33. 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 Jain 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.

34. 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.

35. 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.

36. 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 Jain and also to Securities and Exchange Board of India.

DATE: April 05, 2022 **MEDHA SONPAROTE**

PLACE: MUMBAI **ADJUDICATING OFFICER**