BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/AS/VC/2022-23/25244]

UNDER SECTION 15-I OF 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

F6 FINSERVE PVT. LTD.
(PAN: AABCF0080D)

In the matter of Trading Members in Illiquid Stock Options at BSE

BACKGROUND OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as **'SEBI'**) has examined trading in illiquid stock options at BSE for possible violation of the provisions of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **'SEBI Act, 1992'**) and various rules and regulation made thereunder.

2. An Interim Order No. WTM/RKA/ISD/106/2015 dated August 20, 2015 was passed by SEBI in the matter of Illiquid Stock Options restraining 59 persons/entities from buying, selling or dealing in the securities market, either directly or indirectly, in any manner, till further directions. Confirmatory orders dated July 30, 2016, August 22, 2016 and August 24, 2016 (**'Confirmatory orders'**) in this regard, were passed by SEBI confirming the directions issued vide aforementioned Interim order against all 59 persons/entities.

3. The modus operandi that was identified in the Interim order and Confirmatory orders was that certain entities (clients) had continuously made profits and certain entities (clients) had continuously made losses by reversing their trades or executing reversal trades in various individual Stock Options contracts on BSE's Stock Options segment. In the Interim order, these reversal trades were also referred to as "non-genuine trades". Reversal trades executed by clients through broker have been classified as those trades in which an entity (client) reverses its buy or sell positions in a contract with subsequent sell or buy positions with the same counterparty during the same day.

4. Subsequent to passing of aforementioned Interim order against 59 persons/entities, SEBI passed an Interim order dated February 17, 2016 against 22 Trading Members (**"Brokers"**) in the same matter of Illiquid Stock Options. However, the said order was set aside by Hon'ble Securities Appellate Tribunal ("**SAT**") vide its orders dated February 25, 2016, March 04, 2016, March 09, 2016, March 14, 2016, March 15, 2016, March 18, 2016 and April 05, 2016. Pursuant to appeal, in terms of order of Hon'ble Supreme Court dated July 01, 2016, SEBI passed order no. WTM/RKA/ISD/94/2016 dated August 12, 2016 in the matter stating, inter alia, that a final view for appropriate action be taken after completion of ongoing investigation in the matter.

5. Investigation was carried out in the instant matter for the period April 01, 2014 – September 30, 2015 (**'I.P.' / 'investigation period'**), which is same as the examination period referred in the Interim Order dated February 17, 2016 in respect of Brokers in the matter of Illiquid Stock Options.

6. Trade data of BSE's Stock Options segment during the I.P. for the Illiquid Stock Options was analysed to identify reversal trades. Pursuant to analysis it was observed that a total of 2,91,744 non-genuine trades were executed by 14,720 entities through 192 Brokers that resulted in reversal

trades during the I.P. Trade data pertaining to these 2,91,744 non-genuine trades formed the source data for the instant case against brokers.

7. Subsequently, SEBI had initiated Adjudication Proceedings against **F6 Finserve Pvt. Ltd.** (hereinafter referred to as '**Noticee' / 'You**') under Section 15HB of SEBI Act, 1992 for not exercising care and diligence in the conduct of its business while dealing with its clients in violation of Schedule II A (2) of Code of Conduct for Stock Brokers r/w Regulation 9 (f) of the SEBI (Stock Brokers) Regulations, 1992 (hereinafter referred to as **'Broker Regulations')**.

APPOINTMENT OF ADJUDICATING OFFICER

8. In this connection, SEBI vide order dated August 13, 2021 appointed Shri Prasanta Mahapatra, as Adjudicating Officer under Section 15-I (1) of the SEBI Act, 1992 and read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as '**Adjudication Rules'**) read with section 19 of SEBI Act, 1992, to enquire into and adjudge under Section 15HB for the alleged violations by the Noticee. Pursuant to transfer of erstwhile Adjudicating officer Shri Prasanta Mahapatra, vide order dated June 06, 2022, the case has been transferred to the undersigned.

SHOW CAUSE NOTICE, REPLY AND HEARING

9. A Show Cause Notice no. SEBI/EAD8/AS/GD/44036/1/2022 dated August 19, 2022 (hereinafter referred to as '**SCN**') was served on the Noticee, in terms of the provisions of rule 4 of the Adjudication Rules read with section 15-I of the SEBI Act, 1992, requiring the Noticee to show cause as to why an inquiry should not be held in terms of Adjudication Rules read with section 15-I of the SEBI Act, 1992, and penalty, if any, should not be imposed on Noticee under section 15HB of the SEBI Act, 1992 for the aforesaid alleged contraventions done by the Noticee. I note that aforesaid

SCN was sent vide SPAD had returned undelivered with comments "Addressee left without instructions". Subsequently, SCN was sent through email dated August 24, 2022, however, the said email bounce back from the registered email of the Noticee and SCN sent through email returned undelivered.

10. Subsequently, a notice no. SEBI/EAD8/AS/GD/59864/1/2022 dated November 29, 2022 (hereinafter referred to as **'Notice'**) was served on the Noticee informing about the SEBI Settlement Scheme for Brokers in terms of Regulation 26 of the Securities and Exchange Board of India (Settlement Proceedings) Regulations, 2018 in the matter of Illiquid Stock Options and in case, Noticee do not wish to avail of the facility under the SEBI Settlement Scheme, 2022, Noticee was advised to file a reply to the SCN within 14 days of the receipt of the SCN. I note that aforesaid Notice was sent vide SPAD had also returned undelivered. The settlement window SEBI Settlement Scheme for Stock Brokers – 2022 was closed on January 19, 2023. In this regard, as per available records, I note that Noticee has not availed the aforesaid settlement scheme. Consequently, Adjudication proceedings were resumed in the instant matter.

11. I note that Noticee has neither replied to the SCN nor to the Notice issued. Subsequently in terms of in terms of rule 7(1)(3) of the SEBI Adjudication Rules 1995, the notice regarding issuance of SCN and Hearing opportunity was published in Hindustan Times (English) in New Delhi edition and Gurgaon Mail (Hindi) in Gurgaon edition on March 18, 2023. It was also published in the said newspaper publications that, the Noticee can collect the Show Cause Notice from Enquiry and Adjudication Department-8 (EAD-8), Securities and Exchange Board of India, SEBI Bhavan II, C-7, G Block, BKC, Bandra (E) Mumbai 400051 or by sending an email to the email IDs mentioned in the newspaper publication. It was further published that the said SCN has been published/ uploaded for on www.sebi.gov.in under the section Enforcement: Unserved Summons/ Notices. Vide the said

publication, an opportunity of personal hearing was also granted to the Noticees on March 24, 2023 at the above address, or if Noticees so desire through online platform. However, the Noticees did not submit any response/ reply to the SCN/Hearing notice and also failed to appear for the scheduled hearing.

12. I note that Noticee has neither submitted any reply against the charges levelled in the SCN nor availed hearing opportunity of personal hearing as regards instant adjudication proceedings. I am of the opinion that principles of natural justice have been complied with in the present case. As the said Noticee has chosen not to respond to the SCN, I presume that the Noticee has admitted the charges levelled against it. Therefore, it would be appropriate to proceed in the matter based on material available on record.

13. In this context, I would like to rely upon the findings of the Hon'ble Securities Appellate Tribunal (SAT) in the matter of **Classic Credit Ltd., vs. SEBI** (Appeal 68 of 2003 decided on December 08, 2006) wherein the Hon'ble SAT, *inter alia*, observed that - *"........... the appellants did not file any reply to the second show-cause notice. This being so, it has to be presumed that the charges alleged against them in the show-cause notice were admitted by them".*

14. The Hon'ble SAT has again in the matter of **Sanjay Kumar Tayal & Others vs. SEBI** (Appeal 68 of 2013 decided on February 11, 2014), *inter alia,* observed that – *"………………As rightly contended by Mr. Rustomjee, learned senior counsel for respondents, appellants have neither filed reply to show cause notices issued to them nor availed opportunity of personal hearing offered to them in the adjudication proceedings and, therefore, appellants are presumed to have admitted charges levelled against them in the show cause notices……………..".*

15. In ***Dave Harihar Kirtibhai vs. SEBI*** (Appeal No. 93, 104, 180 and 181 of 2014) dated December 19, 2014, the Hon'ble SAT has held the following: *"...further, it is being increasingly observed by the Tribunal that many persons/entities do not appear before SEBI (Respondent) to submit reply to SCN or, even worse, do not accept notices/letters of Respondent and when orders are passed ex-parte by Respondent, appear before Tribunal in appeal and claim non-receipt of notice and do not appear and/or submit reply to SCN but claim violation of principles of natural justice due to not being provided opportunity to reply to SCN or not provided personal hearing. This leads to unnecessary and avoidable loss of time and resources on part of all concerned and should be eschewed, to say the least. Hence, this case is being decided on basis of material before this Tribunal...".*

16. In view of the observations made by the Hon'ble SAT, I find no reason to take a different view and accordingly, I deem it appropriate to proceed against the Noticee *ex parte*, based on the material available on record and in absence of response of the Noticee, presume that the allegations / charges have been admitted by the Noticee.

CONSIDERATION OF ISSUES AND FINDINGS

17. I have carefully perused the charges levelled against the Noticee in the SCN and material available on record. The issues that arise for consideration in the present case are as follows:

    I. Whether the Noticee has violated the provisions of Schedule II A (2) of the Code of Conduct for Stock Brokers read with regulation 9 (f) of the SEBI (Stock Brokers) Regulations, 1992?

    II. Does the violation, if any, attract monetary penalty under section 15HB of the SEBI Act, 1992?

III. If so, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15-J of the SEBI Act, 1992 read with Rule 5(2) of the Adjudication Rules?

18. Before proceeding further, it is pertinent to refer to the relevant provisions which are alleged to have been violated. The said provisions are reproduced hereunder:

<u>SEBI (Stock Brokers) Regulations, 1992</u>

Conditions of registration.

9. *Any registration granted by the Board under regulation 6 shall be subject to the following conditions, namely, -*

(f) he shall at all times abide by the Code of Conduct as specified in Schedule II; and

<u>SCHEDULE II</u>

<u>SEBI (Stock Brokers) Regulations, 1992</u>

<u>CODE OF CONDUCT FOR STOCK BROKERS</u>

<u>[Regulation 9]</u>

A. General.

(2) Exercise of due skill and care: A stock-broker shall act with due skill, care and diligence in the conduct of all his business.

19. I note that BSE had issued notice to all the Trading Members casting an obligation upon them to, *inter alia*, monitor and report reversal of trades in derivatives segment. BSE notice no 20130307-21 (addressed to all the trading members) dated March 07, 2013 pertaining to “e-Boss“, inter alia, indicated the list of alerts that will be generated by BSE which includes reversal of trades in derivatives segment. Further, in terms of the aforesaid notice every broker was necessarily required to frame a surveillance policy,

inter alia, covering suspicious/manipulative activity identification and reporting process.

20. The aforesaid BSE notice also casts obligation on the Trading Member to monitor and report alerts specifically mentioning the following:

"

…..
The trading members are hereby further informed that the aforementioned transactional alerts are indicative in nature and the trading members can derive their own alerts in addition to the said transactional alerts as per their surveillance policy.

……

Monitoring and reporting:
1. For effective monitoring, Trading Member shall:
a. Frame a surveillance policy covering:
i….
ii….
iii. Suspicious / Manipulative activity identification and reporting process.
iv…..

b. The surveillance policy of the Trading Member shall be approved by its Board (in case of corporate trading member), Partners (in case of partnership firms) or Proprietor (in case of sole proprietorship firm) as the case may be.
c. A quarterly MIS shall be put up to the Board (in case of corporate trading member), Partners (in case of partnership firms) or Proprietor (in case of sole proprietorship firm) on the number of alerts pending at the beginning of the quarter, generated during the quarter, disposed off during the quarter and pending at the end of the quarter. Reasons for pendency shall be discussed and appropriate action taken. Also, the Board (in case of corporate trading member), Partners (in case of partnership firms) or Proprietor (in case of sole proprietorship firm) shall be apprised of any exception noticed during the disposition of alerts.
d. The surveillance process shall be conducted under overall supervision of its Compliance Officer.
e. Designated directors / partners / proprietor / Compliance Officer would be responsible for all surveillance activities carried out by the Trading Member and for the record maintenance and reporting of such activities.

2. Internal auditor of Trading Member shall review the surveillance policy, its implementation, effectiveness and review the alerts generated during the period of audit. Internal auditor shall record the observations with respect to the same in their report."

21. In terms of the aforesaid notice no 20130307-21 dated March 07, 2013, all the Brokers are required to necessarily frame a surveillance policy so as to identify and report suspicious/manipulative activities. However, BSE vide email dated November 06, 2020, submitted that no broker had reported any suspicious transactions to it being executed on Stock Options segment of BSE during I.P. Investigations reveal that none of the brokers generated any alerts or reported any reversal of trades executed by their respective clients. Thus, by not having system in place to identify repeated trade reversals which they were required to do as per the aforesaid notice of BSE, the brokers facilitated those clients in executing fraudulent transactions in the illiquid stock options of BSE, who transferred profits and losses to each other in a pre-meditated manner.

22. It was noted that upon analyzing the source data, the data was segregated based on scenarios so as to identify scenario-wise violations by a broker. Scenarios in which the source data was segregated is as given below:

Summary of scenarios

Scenario	**Particulars**	**Count of Brokers**	**Total number of non-genuine trades (both client and counterparty client)**	**Cumulative non-genuine trades through Brokers after removing duplicates (same broker for both clients)**	**As a % of total transactions**
1	Same Broker for both clients on both legs of trade reversal	19	8,528	4,264	0.74
2	Different Broker for both clients on both legs of trade reversal	189	5,74,900	5,74,900	99.25

Scenario	Particulars	Count of Brokers	Total number of non-genuine trades (both client and counterparty client)	Cumulative non-genuine trades through Brokers after removing duplicates (same broker for both clients)	As a % of total transactions
3	Trade reversals involving three Brokers	8	60	59	0.01
	Total	**192***	**5,83,488**	**5,79,223**	**100**

*Note – There are 3 unique brokers appearing in Scenario 1 and the remaining 16 brokers of Scenario 1 are overlapping with 189 unique brokers appearing in Scenario 2. Accordingly, total Brokers through whom 2,91,744 non-genuine trades have been executed is 3+189 = 192 brokers. Names of 8 brokers appearing in scenario 3 are overlapping with names appearing in either Scenario 1 or Scenario 2.

23. I note that allegation against the Noticee is that it did not exercise due skill, care and diligence in the conduct of its business while dealing with its clients during the IP and it had facilitated reversal trades which were allegedly non-genuine and the same had resulted in generation of artificial volume in stock option contracts at BSE. Reversal trades are considered to be those trades in which an entity reverses its buy or sell positions in a contract with subsequent sell or buy positions with the same counterparty during the same day. The said reversal trades are alleged to be non-genuine trades as they are not executed in the normal course of trading, lack basic trading rationale, lead to false or misleading appearance of trading in terms of generation of artificial volumes and hence are deceptive & manipulative.

24. I note from the trade data of the Noticee that during the investigation period, the clients of the Noticee had engaged in 317 non genuine reversal trades in 48 unique contracts wherein the position taken were reversed with the same counterparty on the same day, at a substantial price difference. The aforementioned non-genuine reversal trades by the clients of Noticee were falling in the Scenario 2 as described above i.e. different broker for both

clients on both legs of trade reversal in respective illiquid stock option contract of BSE.

25. The same is illustrated through the dealings of one of the clients of the Noticee in the contract viz, “AUPL15AUG800.00CE” executed on December 11, 2015 during the Investigation Period, mentioned as follows:

Sl. No.	Client Pan	Client Name	CP PAN	CP Client Name	Order Time	CP Order Time	Trade Time	Trade Rate	Traded Qty	Member Name	CP Member Name
1	AAIPM7321C	AKSHI MITTAL	BHDPS2618M	KUMER SINGH	12:36:52.079379	12:36:52.079379	12:36:52.079379	12.5	500	F6 FINSERVE PVT. LTD.	LKP SECURITIES LTD.
2	BHDPS2618M	KUMER SINGH	AAIPM7321C	AKSHI MITTAL	12:42:49.922890	12:42:49.922890	12:42:50.848334	5	1000	LKP SECURITIES LTD.	F6 FINSERVE PVT. LTD.
3	AAIPM7321C	AKSHI MITTAL	BHDPS2618M	KUMER SINGH	12:36:40.399160	12:36:40.399160	12:36:40.399160	12.55	1000	F6 FINSERVE PVT. LTD.	LKP SECURITIES LTD.
4	BHDPS2618M	KUMER SINGH	AAIPM7321C	AKSHI MITTAL	12:41:41.429663	12:41:41.429663	12:41:43.965413	2	500	LKP SECURITIES LTD.	F6 FINSERVE PVT. LTD.

26. I note from the above table that trade reversals were executed between clients Akshi Mittal and Kumer Singh through Brokers F6 Finserve Pvt. Ltd. (Noticee) and LKP Securities Ltd. respectively indicating 4 non-genuine trades that were executed in the aforesaid contract. It is further noted that reversal trades were executed by the clients through their respective brokers through same modus operandi on 2 instances on the same day.

27. The non-genuineness of these transactions executed by the clients of the Noticee is evident from the fact that there was no commercial basis as to why, within a short span of time, the clients of the Noticee reversed the position with its counterparties with significant price difference.

28. The Noticee’s contribution to number of non-genuine trades and artificial volume in the above contract is as shown below.

S. No.	Entity Name	Artificial volume through non genuine trades	Number of Non genuine trades
1	F6 Finserve Pvt. Ltd. (Noticee)	3000	4

29. I note that during the investigation period, the clients of the Noticee had executed 317 such non genuine reversal trades in 48 different contracts, wherein the positions taken were reversed with the same counterparty on the same day, at a significant price difference. Thus, despite the repeated reversals of identical quantity and with substantial difference in price on the same day, the Noticee failed to notice them as they did not have any system in place to identify trade reversals.

30. I further note that even though the broker may not know the counterparty client or counterparty broker in a transaction, however, the fact that certain quantity transacted by his client is getting reversed within the same day in a repeated manner should have alerted the Noticee. Thus, there is clear lapse on part of Noticee.

31. In light of the aforementioned findings and illustrations, I find that Noticee has assisted its clients in premeditatedly performing fraudulent transactions in the stock market without having a mechanism in place to recognize repeated trade reversals by its clients. Thus, I find that Noticee failed to exercise reasonable care and diligence in the conduct of their business when dealing with their clients and failed to put the essential measures in place to detect and stop trade reversals in order to generate alerts.

32. In view of the above, I hold that Noticee has failed to exercise care and diligence in the conduct of business while dealing with its clients and therefore not in compliance with Schedule II A (2) of the Code of Conduct

for Stock Brokers r/w regulation 9 (f) of the SEBI (Stock Brokers) Regulations, 1992.

Issue II. Does the violation, if any, attract monetary penalty under section 15HB of the SEBI Act, 1992?

33. In the light of findings and observations made against the Noticee brought out in the foregoing paragraphs, it is evident that the Noticee has violated Schedule II A (2) of the Code of Conduct for Stock Brokers r/w regulation 9 (f) of the SEBI (Stock Brokers) Regulations, 1992.

34. I find from the material available on record that the Noticee has failed in performing its duties as a registered stock broker and also failed to adhere to high standards of service to its clients by not exercising due skill, care and diligence in the conduct of all his business. The above violation makes the Noticee liable for monetary penalty under the provisions of section 15HB of the SEBI Act, 1992.

35. In this regard, reliance is placed upon the judgment of Hon'ble Supreme Court of India in the matter of **SEBI Vs. Shri Ram Mutual Fund** [2006] 68 SCL 216(SC) which inter-alia has 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...".

36. The aforesaid violations, makes the Noticee liable for penalty under section 15HB of the SEBI Act, 1992. The contents of the said provisions of law is reproduced herein below:

SEBI Act, 1992

Penalty for contravention where no separate penalty has been provided.

15HB. *Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees*

Issue III. If so, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15-J of the SEBI Act, 1992 read with Rule 5(2) of the Adjudication Rules?

37. While determining the quantum of penalty, it is important to consider the factors stipulated in Section 15-J of the SEBI Act, 1992 and Section 23-J of the SC(R) Act, 1956, which reads as under: -

<u>SEBI Act, 1992</u>

Factors to be taken into account while adjudging quantum of penalty

15J *While adjudging quantum of penalty under 15-I or section 11 or section 11B, the Board or the adjudicating officer shall have due regard to the following factors, namely :—*

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to an investor or group of investors as a result of the default;

(c) the repetitive nature of the default.

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

38. In the present matter, it is noted that no quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of such default by the Noticee. With respect to the repetitive nature of the default, I find that vide Adjudicating order dated May 31, 2019, a penalty of Rs. 89,00,000 (Rupees Eighty Nine Lakh only) was imposed on the Noticee for violation of provisions of SEBI Act, 1992, SEBI PFUTP Regulations, Brokers Regulations and SEBI Circulars. Further, from the material available on record, it may not be possible to ascertain the exact monetary loss to the investors on account of noncompliance of SEBI regulations by the Noticee, however the investigation findings do bring out a number of trades and illiquid stock options contracts executed by the clients of the Noticee instances where the Noticee has not been complying with the requirements of SEBI regulations. Nevertheless, I cannot ignore the fact that the Noticee was under a statutory obligation to abide by the provisions of the SEBI Act, 1992, rules and regulations and circulars / directions issued thereunder, which it failed to do during the investigation period.

ORDER

39. After taking into consideration all the facts and circumstances of the case, in exercise of powers conferred upon me under Section 15-I (2) of the SEBI Act, 1992 read with Rule 5 of the Adjudication Rules, I hereby impose a penalty of ₹2,00,000/- (Rupees Two Lakhs only) upon the Noticee i.e., F6 Finserve Pvt. Ltd., under Section 15HB of the SEBI Act, 1992.

40. The said penalty imposed on the Noticee, as mentioned above, is commensurate with the violation committed by the Noticee and acts as a deterrent factor for the Noticee and others in protecting the interest of investors.

41. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order through online payment facility available on the website

of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link:

ENFORCEMENT → ORDERS → ORDERS OF AO → PAY NOW

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

43. In terms of Rule 6 of the Adjudication Rules, copy of this order is sent to the Noticee and also to SEBI.

Place: Mumbai **ASHA SHETTY**

Date: March 31, 2023 **ADJUDICATING OFFICER**