BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

(ADJUDICATION ORDER NO: Order/RG/NM/2022-23/15812/13)

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

Ankita Chowdhury

PAN: AHEPR1891H

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

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as **SEBI**) conducted investigation into the trading activity in illiquid stock options on BSE Limited (hereinafter referred to as **BSE**) for the period April 01, 2014 to September 30, 2015 (hereinafter referred to as **Investigation Period/IP**) after observing large scale reversal of trades in the Stock Options segment of the BSE.

2. Pursuant to investigation, it was observed that during the Investigation period total of 2,91,744 trades comprising substantial 81.41% of all the trades executed in stock options segment of BSE were non genuine trades. The aforesaid non genuine trades resulted into creation of artificial volume to the tune of 826.21 crore units or 54.68% of the total market volume in stock options segment of BSE during the IP. It was observed that Ankita Chowdhury (hereinafter referred to as **Noticee**) was one of the various entities who indulged in execution of reversal trades in stock options segment of BSE during the IP. Such trades were observed to be non-genuine in nature and created false and misleading appearance of trading in terms of artificial volumes in stock options segment and therefore were alleged to be manipulative, deceptive in nature. In view of the same, SEBI initiated

adjudication proceedings against the Noticee for violation of the provisions of Regulations 3(a), (b), (c), (d), and 4(1), 4(2)(a) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Markets) Regulations, 2003 (hereinafter referred to as **PFUTP Regulations, 2003**).

APPOINTMENT OF ADJUDICATING OFFICER

3. SEBI 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, 1992**) read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as **Adjudication Rules, 1995**) *vide* order dated July 02, 2021 to inquire into and adjudge under Section 15HA of the SEBI Act, 1992 against the Noticee for the alleged violation of aforesaid provisions of PFUTP Regulations, 2003. The appointment of the AO was communicated *vide* communique dated July 06, 2021.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. A Show Cause Notice dated August 27, 2021 having reference no. AO/RG/NKM/OW/P/21244/1/2021 (hereinafter referred to as **SCN**) was served upon the Noticee under rule 4(1) of the Adjudication Rules, 1995 to show cause as to why an inquiry should not be held and penalty be not imposed against the Noticee under Section 15HA of the SEBI Act, 1992 for the alleged violation of the provisions of Regulation 3(a),(b),(c),(d) and 4(1), 4(2)(a) of the PFUTP Regulations, 2003.

5. It was *inter alia* alleged in the SCN that the Noticee was one of the various entities which indulged in reversal trades which allegedly created false and misleading appearance of trading, generating artificial volumes in Stock Options segment of the BSE during the Investigation Period. Out of the total 4 trades for 5,84,000 units executed in the contract *viz.* SAIL15JUL70.00PE, the Noticee had executed 2 non genuine trades i.e. 1 buy trades and 1 sell trade in the aforesaid contract on July 22, 2015 with same counterparty *viz.*

Yochana Vyapaar Pvt. Ltd. on the same day and with significant price differential in buy and sell rate, which resulted in artificial volume of 2,48,000 units. Summary of dealings of the Noticee in the Stock Option contract, in which the Noticee allegedly executed non genuine trades during the IP are as follows:

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 Non Genuine trades of Noticee in the contract to Noticee's Total trades in the Contract	% of Non Genuine trades of Noticee in the contract to Total trades in the Contract	% 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	SAIL15JUL70.00PE	8.00	1,24,000	12.80	1,24,000	100%	50%	100%	42.47%

6. From the above table, following is noted as regards to dealings of Noticee in the contract "SAIL15JUL70.00PE":
   a) Noticee had executed alleged non-genuine trades in the above contract, wherein 100% trades were non-genuine trades.
   b) No. of non-genuine trades of Noticee significantly contributed to the total no. of trades from the market in the above contract, as a substantial 50% of the trades happened in aforementioned contract were due to alleged non-genuine trades executed by the Noticee.
   c) A substantial 42.47% of volume generated by the Noticee in the above contract was artificial volume.
   d) Alleged non-genuine trades executed by Noticee in above contracts had significant differential in buy rates and sell rates considering that the trades were reversed on same day.

7. By indulging in execution of aforesaid non-genuine reversal trades, the Noticee was alleged to have violated the provisions of Regulation 3(a),(b),(c),(d) and 4(1), 4(2)(a) of the PFUTP Regulations, 2003.

8. The SCN was sent to the Noticee *via* Speed Post Acknowledgement Due (SPAD) and *via* email dated August 31, 2021. *Vide* letter dated September 11, 2021 and September 19, 2021, Noticee submitted its reply to the SCN. Vide hearing notice dated September 28, 2021, an opportunity of hearing was

granted to the Noticee on October 20, 2021 through video conferencing due to Covid-19 pandemic. On the scheduled date of hearing the Authorized Representative on behalf of the Noticee attended the hearing and reiterated the submissions made earlier by the Noticee *vide* its letter dated September 11, 2021 and September 19, 2021. The personal hearing in the matter was completed and hearing minutes are on record.

9. Replies of the Noticee is as follows:

<u>Reply dated 11/09/2021</u>

"1(b)…… the trades alleged to have been executed by me are modified trades as per Annexure B to the Notice… My "client code A128 is appearing in first column under the description CP_MODIFIED CLIENT. The row described as CP_OLD CLIENT is blank. The conclusion is that this trade was originally not executed in my code and my Code A128 was inserted later on by way of a modification by the Trading member. …. the conclusion is that both the trades were initially executed in some other code and that code was modified by the Trading member by my client code. Such being the case, it cannot be alleged that I executed any non-genuine trade and this responsibility of explanation lies on the shoulders of the entity in whose name trade was originally executed. ….. This renders the Notice invalid……

1(c)…… the Notice dated 27 August 2021 contains inaccurate trade details…… a trade executed at 13.58.02 has a TRADE ID 19394 whereas a trade executed earlier in time at 13.57.13 has a TRADE ID 19938. It is not possible for trades executed earlier in time to have a later TRADE ID number as such ID numbers are generated by the trading system chronologically……

2(ii)…… there is no bar notified by either the Exchange or SEBI on squaring off a trade on the same day; and a trade does not become non genuine because it is reversed on the same day……

2(iii)…… It is only a co incidence that the counter party to the reversal trade was the same as in corresponding original trade of Rs 8 and the matching was accidental……

2(iv)…… my alleged non genuine reversal trade is only 1 (one) in number and as per various judicial pronouncements, a single trade has to be treated differently than repeated alleged non genuine trades.

2(vThe derivative contract was introduced by the Bombay Stock Exchange in consultation with SEBI within the available regulatory framework for trading on its anonymous electronic trading platform and was open to all trading participants. The trades executed by me were cleared by the Clearing Corporation of Bombay Stock Exchange, which was empowered not to clear *any trades which were not genuine and not in accordance with law, rules and Regulations, without any hitch as these were considered genuine, and normal transactions. I had traded within the regulatory framework available to traders and investors and deny execution of non-genuine reversal trades in stock Option and also deny having created false or misleading appearance of trading, or artificial volume or trades being manipulative and deceptive in nature. I also submit that no violation of Regulation 3(a), (b), (c) & (d) and 4(i),(2)(a) of PFUTP has occurred……*

2(vi)…… trade executed at prevalent market price cannot be called non genuine……

2(vii)…… the squaring off reversal trade was executed at market price and for this reason the same cannot be called non-genuine even though the counter party to the squaring off reversal trade is the same……

2(viii)…… both my purchase and sale prices did not set up any benchmark but were at market prices with basic trading rationale as already explained……

2(x)…… the profit or loss arising from these trades was settled by the parties to the trade to their respective brokers, who cleared the same through the clearing corporation of BSE, and same was collected/ paid to respective clients by BSE through respective brokers. BSE had collected transaction charges on these transactions, stamp duty was collected by State government through BSE, SEBI had collected turnover fees and the broker had collected his brokerage. This was done for both ends of the transaction. The volume was recorded by BSE and is part of historical data. Thus, the trading was not non genuine or creating false or misleading appearance of trading or artificial volume as the trades were acted upon by all the entities involved including the Regulatory bodies ……

3(i)…… there is only one alleged non genuine reversal trade executed by me and that a single such trade executed by an entity has to be treated differently from several such trades repeatedly executed by an entity……

3(ii)…… the Courts have also laid down certain more judicial factors, besides proximity in time in matching of trade….It has been held in SEBI vs. Kishore R Ajmera, (2016 6 SCC 368) that the proximity of time in matching in a trade per se is not conclusive of violation of PFUTP Regulations unless it is accompanied by several other factors such as huge volume of trade, persistent trading by trader, such trading affecting the decision of investors, effect of such trade on prevailing prices, collusion and meeting of mind between related persons etc. These have also been referred to by the Apex Court later in RAKHI TRADING judgement and earlier also by the Securities Appellate Tribunal in Ketan Parekh vs SEBI as contributing factors ……

i) Huge volume of trade carried out by a trader is an important factor for determining non genuineness of trades……. The percentage of my number *of trades is miniscule as compared to overall number of 2,91,643 non genuine trades…… my reversal total volume of 1,24,000 units or the total volume of 2,48,000 units does not fulfill the heavy volume criteria to render the trade non genuine.*

ii. There was no persistent trading by me and such alleged reversal trade was executed by me only on July 22 2015. Persistent trading means continuous trading carried out by an entity over a number of days at a stretch…..

iii. The decision of investors was not affected because of my original or squaring off reversal trades executed by me on July 22 2015 as there was no manipulative effect on prices of either cash market security or derivative contract traded by my, because of the impugned trades. There is no evidence of any influence of my trade in the Notice dated 27 August 2021 either……

iv. Connection or relation between both the parties to the trade resulting in collusion between the two is also an important criteria is determining genuineness or otherwise of the trades as has been judicially held in SEBI v Kishore R Ajmera (2016 6 SCC 368).There cannot be collusion or meeting of mind unless the buyer and seller are connected or related to each other. As per trade data provided for my trades, the counter party to my trades was Yochana Vyapaar Private Limited. The name of counter party to the trades and the counter party broker have appeared before my for the first time by way of the Notice dated August 27 2021. I categorically state that I am not connected or related to the said counter parties and their brokers. No allegation that buyer and seller were related or connected to each other has been made in the Notice nor has any material been brought on record to suggest or justify collusion. In the present case, it is not mentioned in the Notice dated August 27 2021 that any of these direct or circumstantial evidences are present in my case. It has been clearly stated in several decisions like Kishore Ajmera and Rakhi Trading that 'meeting of mind' is very important even in screen based trading and such meeting of mind is not possible without both the parties being related or connected to each other. I cannot be held guilty of charge of non-genuine trade or false and misleading appearance of trading only on the basis of proximity of time in matching a trade with same counterparty. Hence, the test of collusion too fails in my case.

v. ……there was neither mechanism to deter nor a note of caution by BSE about matching trades with the same counter party on the same day……

vi) I am not subjected to any other regulatory action by SEBI or BSE excepting the impugned notice and this reflects my clean record, conduct and a desire to remain within the system while trading on Stock Exchanges.

4: It is submitted, that provisions of Regulations 3 of PFUTP Regulations 2003 are not attracted in my case….. Fraud is defined in Regulation 2(c) and as per the judicial interpretation by the Supreme Court in SEBI vs Kanaiyalal

Baldevbhai Patel and others (2017 15 SCC 1) , the essential requirement to constitute fraud is to induce another person or his agent to deal in securities. The actual act of dealing in securities by the other person by reason of inducement is not relevant but presence of inducement is a sine qua non to constitute fraud. Such presence of inducement can be inferred either directly or indirectly in price movement of concerned scrips or derivative contracts or in trades executed therein, where either the traded price or the traded volume is benchmarked by the investors and then the same benchmark is used by them in taking trading decisions. In the absence of any concrete finding and allegation of fraud in the Notice dated 27 August 2021, allegation of fraud cannot be leveled blandly, neither can charge of manipulation or deception be brought against me.

5…… Regulations 4(1) and (2)(a) of PFUTP Regulations 2003 have no application to my case….. No specific point in the above Regulations has been alleged in the Notice dated 27 August 2021 as violated by me. The allegation made is general. The essence of this Regulation 4(1) and (2)(a) is presence of 'fraud' or 'unfair trade practices.'….. as per the judicial interpretation of fraud in Regulation 2(c), as held by the Supreme Court in SEBI vs Kanaiyalal Baldevbhai Patel and others (2017 15 SCC 1) ,it has no application in my case, and as such there is no fraudulent activity……

6(a)…… The principle of proportionality envisages that a public authority ought to maintain a sense of proportion between his particular goals and the means he employs to achieve those goals. The principle also requires that the efforts of the means and the method adopted must not be disproportionate to the advantage sought. Various tests are applied to achieve this end, such as the Necessity test and the Cost Benefit Balancing test. The basic criteria that emerges from these tests is :-

i) Is the measure suitable to achieve the goal?

ii) Is the measure necessary or are there less stricter measures available to achieve the same goal?

iii) The process of weighing and balancing the surrounding circumstances to answer (i) and (ii).

6(b) Applying the above criteria it is submitted that the use of word 'shall' as appearing in Sec 15HA has to be read as being directory and not being mandatory. Courts have held that where a mandatory interpretation of a word produces absurd results, which was not foreseen by the legislature at the time of enactment of law, the Courts can treat the word as directory only. Reference is made to CIT v B N Bhattacharjee (1979 1 Taxman 348 SC) in this regard. In my case, only 1 trade is involved and interpreting the word ' shall ' in a mandatory manner may result in a minimum penalty of Rs 5 lacs,. Treating 1 trade aberration at par with repeated aberrations could not have been the intention of the Legislature and the present situation where 14,720 entities are involved could not have been foreseen by the Legislature. There *are judicial precedents suggesting treatment of 1 isolated trade differently than repeated trades and these have been referred …. in earlier paragraph…. of this reply. Thus, it is submitted that the word 'shall' as appearing in Sec 15HA should be read as being directory only not requiring imposition of minimum penalty.*

7(i)…… it is submitted that the impugned Notice …. issued on a stale matter, which took place more than 6 years ago in the year 2015,and it has not been issued within a reasonable time period, thus causing serious prejudice to the Noticee.

7(ii) In the present case the alleged infractions occurred in the months of July 2015. The Whole Time Member's Order dated 12/08/2016 records that SEBI had knowledge of the matter of illiquid options trading for the period ending 30 September 2015 as on the date of the order. Thus, the knowledge of the trades executed in July 2015 has been with SEBI for more than 5 years….. This delay of 5 years is solely on account of laxity on the part of the Regulator and this cannot be shielded on the ground that SEBI Act does not prescribe any limitation period for appointing Adjudicating Officer or for initiating action.

7(iii) Although there is no limitation period prescribed under SEBI Act 1992 or Securities and Exchange Board of India (Procedure for Holding Enquiry and Imposing Penalties) Rules 1995,it has been held in numerous Judgments that where the period of limitation to issue a notice is not prescribed under the relevant law such power must be exercised within a reasonable time. What is reasonable time would depend not only on the facts of each case but also from the nature of the statute, rights and liabilities there under and other relevant facts. The intent of the statute can be inferred from Regulation 18 of SEBI (Brokers and Sub Brokers) Regulations 1992,which requires that every Stock Broker shall preserve the Books of accounts and other records maintained under Regulation 17 for a minimum period of 5 years .No such period is prescribed for the clients but if Stock Brokers ,who are subjected to much more stringent oversight are subjected to a limitation of 5 years for record keeping ,then the inference is that the statute intended this period of 5 years to be the limitation period.

7(iv): Thus, the Notice deserves to be withdrawn as issued beyond a reasonable period. The inordinate delay in issuing Notice has caused prejudice to the Noticee as in the meanwhile valuable rights have accrued upon the Noticee……

8(a)(iii) It is also submitted that Sec 15HA has no application to the present case. ……. It is a trite law that a penalty provision should be construed strictly and not too widely to the prejudice of public and should be applied only in extreme situations. It is not brought on record that fraud was committed by me, or that unfair trade practice was adopted by me. It is therefore, submitted that consequent application of Sec 15 HA is not called for……"

Reply dated 19/09/2021

"…… that the TERMINAL ID has been mentioned as 902 at all the relevant rows in Annexure B to the Notice. It is not possible that the Trading member and counter party Trading Member will have the same Terminal ID…… I may thereafter, be afforded an opportunity of cross examination of the trading member".

CONSIDERATION OF ISSUES AND FINDINGS:

10. I have taken into consideration the facts and circumstances of the case, replies of the Noticee and the material available on record. The issues that arise for consideration in the present case are:

Issue (a): Whether the reversal trades in illiquid Stock Options carried out by the Noticee during the Investigation Period were in violation of Provisions of Regulation 3(a), (b), (c), (d) and 4(1) & 4(2)(a) of the PFUTP Regulations, 2003?

Issue (b): If yes, whether the violation, on the part of the Noticee would attract monetary penalty under Section 15HA of the SEBI Act, 1992?

Issue (c): If yes, what would be the quantum of monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act, 1992, read with rule 5(2) of the Adjudication Rules, 1995?

11. Before proceeding further, I would like to refer to the relevant provisions of the PFUTP Regulations, 2003 as below:

PFUTP Regulations, 2003

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 thereunder;

(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 or 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; …..”

12. Before advancing into the merits of the case, I would like to deal with the contention of the Noticee pertaining to the delay in issuance of SCN and cross examination of the stock broker.

13. With regard to the delay in issuance of SCN, the Noticee has *inter alia* contended that the impugned Notice has been issued on a stale matter, which took place more than 6 years ago in March 2015, and it has not been issued within a reasonable time period, thus causing serious prejudice to the Noticee. It is noted that pursuant to a preliminary examination conducted in the Illiquid Stock Options matter, Interim order was passed by SEBI on August 20, 2015 which was confirmed *vide* Orders dated July 30, 2016 and August 22, 2016. Meanwhile, SEBI initiated a detailed investigation relating to stock options segment of BSE which was completed in the year 2018. The investigation revealed that 14,720 entities were involved in executing non-genuine trades

in BSE's stock option segment during the investigation period. The proceedings initiated *vide* the aforementioned Interim Order were disposed of *vide* final order dated April 05, 2018 also considering that appropriate action was initiated against the said 14,720 entities in a phased manner.

14. 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".*

15. 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.

16. As can be seen from the narration of facts in the foregoing paragraphs, pursuant to appointment of AO on July 06, 2021, SCN was issued on August 27, 2021. In compliance with principles of natural justice, after receipt of reply, an opportunity of personal hearing was scheduled on October 20, 2021 where the Authorized Representative on behalf of the Noticee attended the hearing and reiterated the submissions made earlier by the Noticee.

17. Further, I note that there is no provision under SEBI Act, 1992, which prescribes a time limit for taking cognizance of a breach of the provision of the SEBI Act, 1992 and Rules and Regulations made thereunder. Further, as per Section 11C of SEBI Act, 1992, SEBI can initiate investigation at any point of time, for any period of alleged violation or any period of alleged transactions. I also note that the investigations relating to the PFUTP Regulations, 2003 are complex (considering the volume of transactions, connections and examination of trading of shares, etc.) and time consuming. In this regard, I feel it is pertinent to note that, in the matter of SEBI vs Bhavesh

Pabari (2019) SCC Online SC 294, the Hon'ble Supreme Court of India has, *inter alia*, held that: "*There are judgments which hold that when the period of limitation is not prescribed, such power must be exercised within a reasonable time. What would be reasonable time, would depend upon the facts and circumstances of the case, nature of the default/statute, prejudice caused, whether the third-party rights had been created etc*." Further, I note that the Hon'ble SAT in the matter of Pooja Vinay Jain vs SEBI (Appeal No. 152 of 2019, Date of Decision – 17.03.2020) held that, "*The record would show that all the documents concerning the defense of the appellant were filed by her before the AO. Therefore, for want of any prejudice the proceedings cannot be quashed simply on the ground of delay in launching the same*".

18. I also note that the Hon'ble SAT in the matter of Bipin R Vora vs SEBI held that, *"As regards the plea of delay and latches and submission that the show cause notice is barred by limitation, I do not find any merit in these contentions as the time and efforts involved in an investigation though may vary from case to case, generally investigations per-se is a time consuming process which invariably involve collection, scrutiny and careful examination of voluminous records/ order-trade details of all the concerned including the exchanges/recording of statements etc. and therefore no time limit can be fixed in this regard to enable a regulator to take appropriate disciplinary action for the safeguard and improvement of the system/market".* Further, with regard to cross examination of the entities, it is noted that no statements/ opinions provided by any person/ witness have been relied upon in the SCN. In view of the aforesaid and considering the facts of the aforesaid matter, I do not find any merit in the contentions of the Noticee.

19. Now I deal with the issues on merit in the instant matter. I note that allegation against the Noticee is that, while dealing in the stock option contracts at BSE during the IP, it had executed reversal trade which were allegedly non-genuine trades 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 and manipulative. Artificial volume is considered to be the volume (no. of units) reversed in both legs of said reversal trades while keeping out the volume, if any, which is not reversed.

20. The Noticee has *inter alia* contended that both the trades were initially executed in some other code and that code was modified by the Trading member by her client code, trades executed earlier in time have a later Trade ID number and Trading member and counter party Trading Member will not have the same Terminal ID. I note that modified client code, trade ID number and terminal ID are conclusive to establish that the trades in question were executed by the Noticee because they are generated in the ordinary course of trading in the stock exchanges after trades are executed. Further, the Noticee in her reply to the SCN, has conceded that the trades in question were executed by it while laying out its contention that the impugned trades were duly settled through the exchange mechanism. Therefore, I note that the contention of the Noticee is devoid of merit.

21. The Noticee contended that there was no bar notified by either the Exchange or SEBI on squaring off a trade on the same day and a trade does not become non genuine because it is reversed on the same day. I note that the Noticee was obligated to ensure genuineness of the trades executed by her on the exchange platform. The aforesaid obligation was mandatory not withstanding any bar notified either by Exchanges or SEBI in this regard.

22. The Noticee stated that it has not violated the PFUTP Regulations as alleged in SCN. I note from the trade log that the Noticee had traded in one contract in the stock options segment of BSE during the investigation period namely SAIL15JUL70.00PE. It is observed that the Noticee had executed two non-genuine trades in the aforesaid contract i.e. one buy trades and one sell trade. I further note that the above mentioned trades of the Noticee had resulted in

the creation of alleged artificial volume of 2,48,000 units in the aforesaid contract. The summary of the non-genuine trades of the Noticee are as follows:

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 Non Genuine trades of Noticee in the contract to Noticee's Total trades in the Contract	% of Non Genuine trades of Noticee in the contract to Total trades in the Contract	% 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	SAIL15JUL70.00PE	8.00	1,24,000	12.80	1,24,000	100%	50%	100%	42.47%

23. It is noted that the Noticee had executed non-genuine trades in the aforesaid contract, wherein the percentage of non-genuine trades of the Noticee in stock option contract to total trades in the said contract was 50%. Further, artificial volume generated by the Noticee in the said contract to Noticee's total volume amounted to the entire 100% of total volume generated in the contracts. It is also noted that artificial volume generated by the Noticee contributed 42.47% of the total volume from the market in the said contract. Non-genuine trades executed by the Noticee in the aforesaid contract had significant difference in buy rate and sell rate considering that the trades were reversed on the same day i.e. July 22, 2015 within a span of few minutes.

24. In this regard, I note from the trade log that the trades executed by the Noticee in the aforesaid contract were squared up within a short span of time with the same counterparty. To illustrate, the Noticee on July 22, 2015 at 13:57:13 hrs (Order time of the Noticee: 13:57:13 hrs and Counterparty order time: 13:57:13 hrs) had entered into one buy trades with the counterparty *viz*. Yochana Vyapar Pvt. Ltd. for 1,24,000 units at the rate of Rs. 8/- per unit in the aforesaid contract. Thereafter, immediately, on the same day within a gap of few seconds, the Noticee at 13:58:02 hrs (Order time of the Noticee: 13:58:02 hrs and Counterparty order time: 13:58:02 hrs) entered into one sell trade with same counterparty for 1,24,000 units at the rate of ₹ 12.80 per unit in the same contract. It is noted that while dealing in the said contract during the investigation period, the Noticee executed reversal trades with same

counterparty i.e. Yochana Vyapar Pvt. Ltd. on the same day within a gap of few seconds and with a significant price difference in buy and sell rates. Thus, the Noticee, through her dealing in the contract *viz.* “SAIL15JUL70.00PE”, executed non genuine trades which was 50% of the total trades on the market in the said contract and thereby, generated artificial volume of 2,48,000 units which was 42.47% of the volume traded in the said contract during the investigation period. I note that the charges against the Noticee for the aforesaid trades and the provisions of PFUTP Regulations, 2003 alleged to have been violated as stated above have been cogently spelt out in the SCN dated August 27, 2021 which has been served on the Noticee. Therefore, the contentions of the Noticee are devoid of any merit.

25. Further Noticee contended that the trades were executed on anonymous electronic trading platform, open to all trading participants and were subject to surveillance and other regulatory supervision. The trades executed were cleared by the Clearing Corporation of Bombay Stock Exchange, which was empowered not to clear any trades which were not genuine and not in accordance with law, Rules and Regulations, without any hitch as these were considered genuine, and normal transactions. I note, stock exchanges merely provide a platform for carrying out the trades and the clearing corporation affiliated with exchange handle the confirmation, settlement and delivery of transactions, however, the obligation to ensure genuineness of trades as regards instant considerations lies squarely on the Noticee. I note that instant SCN levies the impugned allegations against Noticee, and that permitting of trading by stock exchanges cannot be a ground to absolve Noticee from its obligation to ensure genuineness of trades executed on exchange platform. Thus, the contention of the Noticee in this regards is not tenable.

26. The Noticee has contended that the number of trades is miniscule as compared to overall number of the non-genuine trades, and there was no persistent trading by her and the decision of investors was not affected for reversal trades executed by her. It is very pertinent to state that the said alleged trades were matched with one entity only. I note that it is not mere

coincidence that Noticee could match its trades with the same counterparty with whom it had undertaken first leg of the respective trade. This is the outcome of meeting of minds elsewhere and it was a deliberate attempt to deal in such a fashion.

27. Further, with regard to the Noticee's contention regarding the decision of investors was not affected because of its reversal trades executed, it is noted that the SCN issued to the Noticee did not allege that on account of the trading of the Noticee in the options, there was adverse impact caused to the other investors. Instead the SCN alleged the execution of non-genuine/ reversal trades in the illiquid stock options at BSE, which has already been detailed above. Further, I note that the impugned reversal trades, which were carried out with prior meeting of minds as inferred from the case facts, affected the price discovery and execution of trades as per market mechanism on the stock options segment of BSE. In this regard, I further note the following from the judgement of the Hon'ble SC in the matter of SEBI vs Rakhi Trading Pvt Ltd (supra): "……….*According to SAT, only if there is market impact on account of sham transactions, could there be violation of the PFUTP Regulations. We find it extremely difficult to agree with the proposition. As already noted above, SAT has missed the crucial factors affecting the market integrity, which may bedirect or indirect. The stock market is not a platform for any fraudulent or unfair trade practice. The field is open to all the investors. By synchronization and rapid reverse trade, as has been carried out by the traders in the instant case, the price discovery system itself is affected. Except the parties who have pre-fixed the price nobody is in the position to participate in the trade. It also has an adverse impact on the fairness, integrity and transparency of the stock market*." Therefore, I do not find any merit in the contentions of the Noticee in this regard.

28. The Noticee contended that it is not connected or related to the counterparty and brokers and no allegation that buyer and seller were related or connected to each other has been made in the Notice nor has any material been brought on record to suggest or justify collusion. In this regard, I note that in the screen

based trading, which is virtually anonymous, it may not be ordinarily possible for anyone to enter into such reversal trades. However, considering the precision at which the reversal transactions have taken place i.e. synchronisation of the quantity, order price and order time and sale with significant price variations as observed in the instant matter, the same couldn't have been possible without prior meeting of minds. In this regard, I find it relevant to refer to the decision of the Hon'ble Supreme Court in the matter of SEBI vs. Rakhi Trading Private Ltd., in Civil appeals no., 1969 of 2011 decided on February 8, 2018 wherein it has been 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"*

29. The non-genuineness of these transactions executed by the Noticee is evident from the fact that there was no commercial basis as to why, within a short span of time of few seconds, the Noticee reversed the position with the same counterparty with a significant price difference. I note from the trade log of the Noticee that the Noticee reversed the non-genuine trades within few seconds. Such a short span of time taken for reversing the trades in an illiquid stock option contract suggests the non-genuineness of these trades executed by the Noticee. The fact that the transactions in a particular contract were reversed with the same counterparty within a few seconds indicates a prior meeting of minds with a view to execute the reversal trades at a predetermined price. Since these trades were done in illiquid option contracts, there was no trading in the said contract and hence, there was no price discovery in the strictest terms. The wide variation in prices of the said contracts, within a short span of time of few seconds, is a clear indication that there was pre-determination in the prices by the counterparties while

executing the trades. Thus, it is observed that Noticee had indulged in reversal trades with her counterparty in the stock options segment of BSE and the same were non-genuine trades.

30. The Noticee contended that the allegation of fraud cannot be leveled blandly as the trades were on discovered price and did not setup any new benchmark to act as inducement and consequent fraud and there is no evidence that there was market manipulation. It is very pertinent to state that the said trades were matched with one entity only. I note that it is not mere coincidence that Noticee could match her trades with the same counterparty with whom it had undertaken first leg of the respective trade. This is the outcome of meeting of minds elsewhere and it was a deliberate attempt to deal in such a fashion. Here I would like to rely on the judgment of Hon'ble Supreme Court in SEBI v Kishore R Ajmera (AIR 2016 SC 1079) decided on February 23, 2016, wherein it was 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 the trade effected; the period of persistence in trading in the particular scrip; the particulars of the buy and sell orders, namely, the volume thereof; the proximity of time between the two and such other relevant factors. The illustrations are not exhaustive..."*

31. The Hon'ble Supreme Court further held in the same matter that – "*It is a fundamental principle of law that proof of an allegation levelled against a person may be in the form of direct substantive evidence or, as in many cases, such proof may have to be inferred by a logical process of reasoning from the totality of the attending facts and circumstances surrounding the allegations/charges made and levelled. While direct evidence is a more certain basis to come to a conclusion, yet, in the absence thereof the Courts cannot be helpless. It is the judicial duty to take note of the immediate and proximate facts and circumstances surrounding the events on which the*

charges/allegations are founded and to reach what would appear to the Court to be a reasonable conclusion therefrom. The test would always be that what inferential process that a reasonable/prudent man would adopt to arrive at a conclusion."

32. I note that though direct evidence is not forthcoming in the present matter regarding meeting of minds or collusion of the Noticee with other entities, the trading behaviour of the Noticee makes it clear that aforesaid non-genuine trades could not have been possible without meeting of minds at some level. In this context, I deem it appropriate to refer to the Hon'ble SAT order dated July 14, 2006, in the case of Ketan Parekh vs. SEBI (Appeal no. 2/2004), wherein the Hon'ble SAT has held that - *"The nature of transactions executed, the frequency with which such transactions are undertaken, the value of the transactions, the conditions then prevailing in the market are some of the factors which go to show the intention of the parties. This list of factors, in the very nature of things, cannot be exhaustive. Any one factor may or may not be decisive and it is from the cumulative effect of these that an inference will have to be drawn."*

33. I place my reliance on the judgment of the Hon'ble Supreme Court in the matter of SEBI vs Rakhi Trading Private Limited (Civil Appeal Nos. 1969, 3174-3177 and 3180 of 2011 decided on February 8, 2018), in which the Hon'ble Supreme Court held that - *"Considering the reversal transactions, quantity, price and time and sale, parties being persistent in number of such trade transactions with huge price variations, it will be too naive 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….."*

34. Further, the Hon'ble SAT in its judgement dated September 14, 2020 in the matter of Global Earth Properties and Developers Pvt Ltd relied upon the

aforesaid judgement of Hon’ble Supreme Court and held that, *“It is not a mere coincidence that the Appellants could match the trades with the counter party with whom he had undertaken the first leg of respective trade. In our opinion, the trades were non-genuine trades and even though direct evidence is not available in the instant case but in the peculiar facts and circumstances of the present case there is an irresistible inference that can be drawn that there was meeting of minds between the Appellants and the counter parties, and collusion with a view to trade at a predetermined price.”* The Hon’ble SAT reaffirmed its stand taken in Global Earth Properties and Developers Pvt Ltd vs SEBI (Appeal No. 212 of 2020), in its judgment dated November 24, 2021 in the matter of Radha Malani vs. SEBI (appeal no. 698 of 2021), has held the that *“Having heard the learned counsel for the appellant, in our view the controversy involved in the present appeal is squarely covered by a decision of this Tribunal in Global Earth Properties and Developers Pvt. Ltd. vs. SEBI (Appeal No. 212 of 2020 decided on September 14, 2020). In view of the aforesaid, the appeal is dismissed with no order as to costs.”.* Thus, the submission of the Noticee cannot be accepted.

35. Further, I would like to rely on the judgement of Hon’ble Supreme Court passed in the case of SEBI vs. Rakhi Trading Private Ltd. (supra), wherein the Apex Court held that “*the entities were engaged in a fraudulent and unfair trade practice while dealing in Options and hence were liable for violation of SEBI (PFUTP) Regulations”.* 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.

36. In line with the aforesaid judgements of Hon’ble Supreme Court and Hon’ble SAT, I note from the foregoing findings that the trading pattern of the Noticee in terms of volume of reversal trades, proximity of buy/sell and subsequent reversal evidences the indulgence of the Noticee beyond a reasonable doubt

of the manipulative intent in creation of artificial volume. Further, the dealings by Noticee only in such options contracts which was illiquid clearly demonstrates the manipulative intent to use stock exchange platform to carry out non-genuine trades with the aim to execute such trades for manipulative purposes.

37. In this regard, I would like to rely on the judgement of Hon'ble Supreme Court in the matter of SEBI vs. Rakhi Trading Private Ltd.(supra) decided on February 8, 2018, where Apex Court held that, *"The stock market is not a platform for any fraudulent or unfair trade practice. The field is open to all the investors. By synchronization and rapid reverse trade, as has been carried out by the traders in the instant case, the price discovery system itself is affected. Except the parties who have pre-fixed the price nobody is in the position to participate in the trade. It also has an adverse impact on the fairness, integrity and transparency of the stock market."*

38. I note that dealing in Illiquid stock options not only displays an unreal picture of market activity to other investors but also defeats the basic premise of screen based electronic trading system and price discovery mechanism by execution of pre-decided reversal trades at irrational/arbitrary prices. Such activity deliberately or otherwise damages market integrity apart from presenting wrong picture of liquidity to gullible investors which could affect their trading/investment decisions. Options as financial instruments, ordinarily, provide hedging avenues to investors. The trading of the Noticee in the instant matter was abnormal and was clearly designed to create artificial volumes in the illiquid stock option contracts, fail to justify any of the normal strategies of hedging/ arbitrage. In my view, the abuse of such financial instruments, which are made available to the investors for the purpose of protection of their investment portfolios from the risks of adverse price movement, needs to be dealt with strictly. I also note that while the stock exchange provides a platform for carrying out the trades, the obligation to ensure genuineness of the trades executed on the exchange platform primarily lies on the Noticee.

39. In view of the above, 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 the contract i.e. SAIL15JUL70.00PE. In view of the above, I find that the allegation of violation of provisions of Regulation 3(a), (b), (c), (d), 4(1) and 4(2)(a) of PFUTP Regulations, 2003 by the Noticee stands established. The Hon'ble Supreme Court of India in the matter of SEBI Vs Shri Ram Mutual Fund [2006] 68 SCL 216(SC) held that "…*In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant..*"

40. In view of the aforesaid judgment of the Hon'ble Supreme Court, I am convinced that, in the instant matter, the Noticee is liable for monetary penalty under the provisions of Section 15HA of the SEBI Act, 1992 which reads as follows:

15HA. Penalty for fraudulent and unfair trade practices.
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.

41. While determining the quantum of penalty under Section 15HA of the SEBI Act, 1992, the following factors stipulated in Section 15J of the SEBI Act, 1992, have to be given due regard:

(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 of an adjudicating officer 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.

42. I observe that the material / documents made available on record does not quantify any disproportionate gains or unfair advantage, if any, made by the Noticee and the losses, if any, suffered by the investors due to such violations on part of the said Noticee. However, Noticee has entered into two non-genuine trades in one stock option contract during the investigation period. Therefore, I note that the Noticee indulged in execution of reversal trades in stock options on BSE during the Investigation Period which were non-genuine and created false and misleading appearance of trading in terms of artificial volumes in stock options, leading to violation of provisions of Regulation 3(a), (b), (c), (d), 4(1) and 4(2)(a) of PFTUP Regulations, 2003.

ORDER

43. After taking into consideration all the facts and circumstances of the case, the material available on record, the factors mentioned in Section 15J of the SEBI Act, 1992 and 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, 1995, I hereby impose a penalty of ₹5,00,000/- (Rupees Five Lakh only) upon the Noticee i.e. Ankita Chowdhury (PAN: AHEPR1891H), under Section 15HA of the SEBI Act, 1992 for violation of provisions of Regulation 3(a), (b), (c), (d), 4(1) and 4(2)(a) of the PFUTP Regulations, 2003.

44. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order through Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, or the 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. In case of any difficulties in payment of penalties, the Noticee may contact the support at portalhelp@sebi.gov.in.

45. The Noticee shall forward the aforesaid Demand Draft / payment confirmation details to the Division Chief, Enforcement Department-I (EFD), Division of Regulatory Action -I [EFD1-DRA-1] 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 the ‘Payer / Noticee’ along with PAN of Noticee	
3	Date of Payment	
4	Amount Paid	
5	Transaction No.	
6	Bank Name and Account No.	
7	Purpose of payment	

46. In the event of failure to pay the aforesaid amount of penalty within 45 days of receipt of this Order, recovery proceedings may be initiated under Section 28A of the SEBI Act, 1992 for realization of the said penalty amount along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties.

47. In terms of the provision of Rule 6 of the Adjudication Rules, 1995, a copy of this order is being sent to the Noticee and also to the Securities and Exchange Board of India.

Place: Mumbai **RAJESH GUJJAR**

Date: April 06, 2022 **ADJUDICATING OFFICER**