BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO: Order/SD/KS/2021-22/14221]

UNDER SECTION 15I 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:

SHUBHAM RUNGTA BENEFICIARY TRUST
PAN: AAMTS5943C

3B Upper Wood Street Kolkata
West Bengal INDIA 700016

In the matter of
Dealings in illiquid stock options at BSE

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') observed large scale reversal of trades in the Stock Options segment of Bombay Stock Exchange (hereinafter referred to as '**BSE**') leading to 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 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 2,91,643 trades comprising 81.38% of all the trades executed in the Stock Options Segment by various entities at 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 also observed that the aforesaid trades resulted into alleged creation of artificial

volume to the tune of 826.21 crore units in the Stock Options segment of BSE during the investigation period. In view of the large scale reversal of trades that were observed in the illiquid Stock Options segment at BSE, it is alleged that these trades were non-genuine in nature.

3. It was observed that Shubham Rungta Beneficiary Trust (hereinafter referred to as "**Noticee**") was one of the various entities who indulged in the execution of alleged non-genuine trades in the Stock Options Segment at BSE during the above referred investigation period. It was observed that Noticee had entered into reversal trades with it's counterparty which involved squaring off transaction with significant difference in sell value and buy value of the transaction. Therefore, it is alleged that Noticee had executed the reversal trades which were non-genuine in nature and have created false or misleading appearance of trading in terms of creation of artificial volume in the Stock Options segment at BSE and therefore, it is alleged that the Noticee has violated the provisions of Regulations 3 (a), (b), (c), (d) and Regulation 4(1), 4(2) (a) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Markets) Regulations, 2003 (hereinafter referred to as "**PFUTP Regulations**"). In view of the above reasons, adjudication proceedings have been initiated against the Noticee under the provisions of section 15HA of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act'**).

APPOINTMENT OF ADJUDICATING OFFICER

4. The undersigned was appointed as the Adjudicating Officer, vide communique dated July 06, 2021 under Section 19 read with Section 15-I of the SEBI Act read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as '**Adjudication Rules**') to inquire into and adjudge under the provisions of section 15HA of the SEBI Act for the aforementioned alleged violation of the provisions of law by the Noticee.

SHOW CAUSE NOTICE, HEARING AND REPLY

5. Show Cause Notice ref. SEBI/HO/EFD1/EFD1_DRA5/P/OW/17100/1/2021 dated July 29, 2021 (hereinafter referred to as 'SCN') was issued to the Noticee in terms of Rule

4 of the Adjudication Rules requiring the Noticee to show cause as to why an inquiry should not be held against it and why penalty, if any, should not be imposed on the Noticee under the provisions of section 15HA of the SEBI Act. The SCN was sent to the Noticee vide Registered Post AD and was duly served on the Noticee as per the Tracking details obtained from the India Post website. The SCN issued to the Noticee, inter alia, mentioned the following-:

i. *It is noted that Noticee was one of the various entities which were indulged in execution of such alleged non-genuine trades in Stock Options Segment of BSE during the Investigation period. Following points deal with the dealings of Noticee during the Investigation period and allegations against it for execution of non-genuine trades.*

Date	Buyer	Seller	Buy Order Time	Sell Order Time	Trade Time	Trade Rate (Rs.)	Trade Quantity
22/07/2015	NARAYAN KUMAR GOYAL (HUF)	SHUBHAM RUNGTA BENEFICIARY TRUST	12:16:16.458849	12:12:53.535958	12:16:16.458849	3.4	60000
22/07/2015	SHUBHAM RUNGTA BENEFICIARY TRUST	NARAYAN KUMAR GOYAL (HUF)	12:39:51.121881	12:39:51.043812	12:39:51.121881	0.15	60000

ii. *It is observed from the table above that the trades entered by the Noticee in the contract of "*UCOB15JUL45.00PE*" on July 22, 2015, with it's counterparty viz. NARAYAN KUMAR GOYAL (HUF) were reversed between the Noticee and the same counterparty on the same day resulting in reversal of trades which are, prima facie, considered to be non-genuine. Therefore, in the process artificial volume in the stock option contract at BSE has been generated by the Noticee through such non-genuine trades. From the table above, it is observed that the artificial volume created as no. of units reversed in non-genuine trades is 120000 units comprising both volume of initial trade and volume of reversal trade, while not considering the volume which is not reversed.*

iii. It is further observed from the trade data of the Noticee that it has allegedly entered into non-genuine trades in 1 contract wherein it executed a total of 2 trades all of which were, prima facie, non-genuine trades. In view of this, it is alleged that such fraudulent trades of the Noticee had resulted into creation of artificial volume of total 120000 units.

iv. From the perusal of the trade data of the alleged non-genuine trades of the Noticee, it is observed that Noticee has allegedly executed non-genuine trades in 1 contract. The total volume *of 120000 units generated by the Noticee in this 1 contract. Due to its alleged non-genuine trades, an Artificial Volume was generated by the Noticee in the Stock Option Segment of BSE. These alleged non-genuine trades, executed by Noticee in above contract, had significant differential in buy rates and sell rates considering that the trades were reversed on same day*

v. *In view of the foregoing, it is alleged that the Noticee, by indulging in execution of reversal trades in Stock Options with same entities on the same day, which were non-genuine in nature, has created false or misleading appearance of trading in the aforementioned contracts traded in the option segment of BSE. In view of the fact that these options contracts were illiquid in nature, having very small volume in trading, the Noticee allegedly created artificial volumes in stock options which was manipulative and deceptive in nature. Therefore, in view of above, it is alleged that the Noticee has violated Regulation 3(a), (b), (c), (d), 4(1) and 4(2)(a) of PFUTP Regulations, 2003*

6. The Noticee vide it's reply dated August 30, 2021, inter alia submitted the following:

<u>Reply dated August 30, 2021</u>

i. *It is submitted that the stock option referred to in the Notice being UCOB 45 PE Expiry 30 July 2015 was traded by us on 22 July 2015 for purchase units of 60,000 and also sale units of 60,000. The 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 same was subject to surveillance and other regulatory supervision of BSE at the first level and SEBI at the next level. The trades executed by us were cleared by the Clearing Corporation, 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 Noticee also denied execution of non-genuine reversal sale trade in stock Option, and also denied having created false or misleading appearance of trading, as per reasons set out by me in succeeding paragraphs. Consequently Noticee submitted that no violation of Regulation 3(a), (b), (c) & (d) and 4(1),(2)(a) of PFUTP has occurred on account of his sale trade.*

ii. *It is submitted that we had put in a bid to sell 60,000 units of UCOB 45 PE Expiry 30 July 2015 @ Rs 3.40 at 12.12.53Hrs on 22 July 2015. This order was a hopeful 'windfall' order which if executed would have given instant gains. Such orders are put all the time by traders in the hope of catching a freak trade of this nature resulting in instant gain. After remaining pending for some time, it was executed against a buy order of 3,04,000 units. Thus, our sale order quantity of 60,000 and the counter party purchase quantity of 3, 04,000 were different and the quantity sold by us and the quantity purchased by counter party did not match. We held on to this position till 12.39.51Hrs when* *we decided to purchase and square off our position in it. Our purchase bid, in nature of squaring off reversal trade was purchased at Rs0.15and was executed in full by the trading system at 12.39.51 Hrs..*

iii. Noticee submitted that trade executed at market price within the market price range available for several days and as the same was executed at market price, the same cannot be called non-genuine.

iv. Noticee submitted that mere fact of squaring off on the same day cannot be held against me. Moreover, it is only a co incidence that the counter party to the trades was the same.

v. if the trades are matched at market price, as is the present case, then whether the counter party is the same or different is immaterial and genuineness of the trade is not affected. If the trades were genuine, then there cannot be artificial volume, creation of false and misleading appearance of trading, deceptive and manipulative practices etc. Our purchase reversal trade thus does not attract any of these.

vi. It is pleaded that this is an erroneous and false basis as the contract UCOB 45 PE Expiry 30 July 2015, was liquid not only on 22 July 2015 but also in terms of overall contract having large volume of 55,92,000 units . It leads that if the contract was liquid with high volume then the foundation of 'illiquid' contract having small volume crumbles and allegations flowing therefrom fail. This is precisely the case in our matter.

vii. It is submitted that the allegation that we created false and misleading appearance of trading, or that these were non genuine trades, or that we created artificial and false volume which was manipulative and deceptive in nature is incorrect and unsupported by evidence.

viii. Noticee submitted that a single reversal or synchronized trade does not become non genuine just because it has been matched with the same counter party 'within seconds'. 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 in RAKHI TRADING judgement as contributing factors.

ix. Noticee submitted that Huge volume of trade carried out is an important factor for determining non genuineness of trades. There is no huge volume of trade carried out by us.

x. Being persistent in trading over a period of time is one of the important criteria laid down by Supreme Court in both SEBI v Kishore R Ajmera(2016 6 SCC 368), and also in SEBI v Rakhi Trading Pvt Ltd(CA 1968 of 2011) , to determine whether violation of PFUTP Regulations 2003 has occurred and whether trades executed are non-genuine. Repeated trades of this nature were found in both these cases. As ours is a solitary instance of such trade occurring on only one day, persistent trader label is not applicable to us. Even the RAKHI TRADING judgement was in context of ' repeated' trading and ' consistent profits or losses' and not in context of solitary instance of trade.

xi. it cannot be alleged that our trades were not genuine or that we created false or misleading appearance of trading or that we induced investors into trading in these contracts by way of deceptive and manipulative trades and thus this criteria of manipulative or distortive effect on prices in determining non genuineness of the trade also fails.

xii. We categorically state that we are not connected or related to the said counter party and its broker. As collusion is an essential ingredient to constitute 'meeting of mind', in rendering a reversal trade non genuine, the trades executed by us cannot be called synchronised or reversal trade in absence of collusion between the counter party and ourselves. 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

xiii. it is submitted that 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. Our trades were for Rs 3.40, and Rs0.15 for a total quantity of 1,20,000 units (60,000 units bought and 60,000units sold) and the same were within the price range determined for the day by BSE and SEBI. There was, thus, no infringement of any Bye law or Regulation by us in this regard. As a matter of fact, it is only in the month of March 2016 that BSE put in a mechanism to prevent a reversal trade, implying that such trades were permissible till then.

xiv. The other important factor to be considered is that we are not subjected to any other regulatory action by SEBI or BSE excepting the impugned notice and this reflects our clean record, conduct and a desire to remain within the system while trading on Stock Exchanges.

xv. Noticee also referred to various judgments viz.,

(a) Judgment of Supreme Court in respect of Commissioner of Central Excise vs. M/s Brindavan Beverages (P) Ltd. and Ors [2007 5 SCC 388)decided on June 15,2007.

(b) Karnataka High Court in CIT v. Manjunatha Cotton and Ginning Factory (359 ITR 565 (Kar)

(c) SAT Order in Almondz Entertainment Pvt Ltd v SEBI (Appeal 198 of 2020 dated 21.01.2021) and SAT Order in the matter of Umang Dhanuka v SEBI (Appeal 102 of 2020 dated 8 June 2021)

(d) SAT Order in the matter of Amaresh Pathak vs SEBI (Appeal no 322/2020 dated 16.02.2021)

xvi. Noticee further submitted that the ratio of Supreme Court Judgment in SEBI v Rakhi Trading Pvt Ltd (CA 1969 of 2011) should not be applied to the matrix of my case without distinguishing the same from the facts of our case.

xvii. Noticee also weighed on concept of proportionality and submitted that in a situation adverse to us, penalty under sec 15 HA , which is Rs 5 lacs minimum would be highly excessive and the objective of these proceedings can be achieved without resorting to Sec 15 HA and other deterrent measures should suffice.

xviii. Noticee also submitted that Show Cause Notice has not been issued within a reasonable time period, thus causing serious prejudice to the Noticee as several of my rights and liabilities have crystallized and attained finality.

7. In terms of adjudication rules, the Noticee was provided with an opportunity of personal hearing in the matter on September 23, 2021, through the online Cisco webex platform. Further, Advocate Anjali Agarwal appeared as the Authorized Representative ('**AR**') on behalf of the Noticee on the stipulated date of hearing. During the course of hearing, the AR reiterated the submissions made by the Noticee in it's reply dated August 30, 2021.

CONSIDERATION OF ISSUES AND FINDINGS:

8. I have taken into consideration the facts and circumstances of the case, the material available on record and the reply submitted by the Noticee. It 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, it is alleged that Noticee has violated the provisions of Regulations 3(a), (b), (c), (d) and Regulation 4(1), 4(2)(a) of PFUTP Regulations and, therefore, it is alleged that Noticee is liable for penalty under the provisions of Section 15HA of the SEBI Act.

9. Before proceeding with the matter on merits, I first deal with the preliminary issues raised by the Noticee regarding delay in proceedings., Regarding the statement made by the Noticee in the reply given by the Noticee dated August 30, 2021 that, the show cause notice has been issued on a stale matter which took place for more than 6 years from 2015 and had not been issued within reasonable period of time. In this regard, I would like to rely upon the order of Hon'ble SAT in the matter of Bipin R Vora vs SEBI, wherein it 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 many vary from caste to caste, 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.*"

10. I have further seen that Noticee was provided with all relevant and relied upon documents along with Show Cause Notice and the Noticee was provided enough time to file its detailed reply and submissions. Notwithstanding the same, I also note that there is no provision with prescribed time limit in the SEBI Act which may have the effect of prohibiting SEBI from taking action by issuing Show Cause Notice or passing any order beyond a particular period of time in a given case.

11. Further, I note that in Ravi Mohan & Ors. v. SEBI and other connected appeals decided on August 08, 2013, Hon'ble SAT while referring to its own decision in HB Stockholdings Ltd. v. SEBI(Appeal no. 114 of 2012) decided on August 27, 2013 and decision of Hon'ble Supreme Court in Collector of Central Excise, New Delhi v. Bhagsons Paint Industry (India)reported in2003 (158) ELT 129 (S.C.),held as under:

"....Based on decision of this Tribunal in case of HB Stockholdings Ltd. vs. SEBI (Appeal no. 114 of 2012 decided on 27.08.2013) it is contended on behalf of the appellants that in view of the delay of more than 8 years in issuing the show cause notice, the impugned order is liable to be quashed and set aside. There is no merit in this contention, because, this Tribunal while setting aside the decision of SEBI on merits has clearly

held in para 20 of the order, that delay itself may not be fatal in each and every case. Moreover, the Apex Court in case of Collector of Central Excise, New Delhi vs. Bhagsons Paint Industry (India) reported in 2003 (158) ELT 129 (S.C) has held that if there no statutory bar for adjudicating the matter beyond a particular date, the Tribunal cannot set aside the adjudication order merely on the ground that the adjudication order is passed after a lapse of several years from the date of issuing notice…."

12. The decision of Hon'ble SAT in the aforesaid case, were reiterated by it, in a subsequent order in the matter of Kunal Pradip Savla & Ors. v. SEBI (Appeal no. 231 of 2017) decided on April 13, 2018.

13. In view of the aforesaid judgments, I conclude that there is no merit in the preliminary objections made by Noticee, regarding the delay in concluding the instant proceedings.

14. 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;

15. Reversal trades are considered as those trades in which an entity reverse it's 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 it's counterparty with a predetermined arrangement to book profit or losses respectively, and therefore, the parties to the trades were not trading in the normal sense and ordinary course of business. Therefore, it is alleged that the Noticee by indulging in such reversal trades with it's 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.

16. 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 abovementioned trades of the Noticee had resulted in the creation of artificial volume of a total of 120000 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 eight seconds on the same day. Thus, it is observed that Noticee had indulged in reversal trades with it's counterparty in the stock option segment of BSE and the same were non-genuine trades.

17. Further, it is observed that these trades were squared up by the Noticee with it's counterparty with a significant price difference. The non-genuineness of these transactions executed by the Noticee is evident from the fact that suddenly, within a matter of few seconds, reverse the position with it's 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 it's counterparty in different trades. The time gap between both the trades ranged from few seconds 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 it's counterparty and in the process also generated artificial volume in the otherwise illiquid stock option contracts at BSE.

18. To illustrate, it is observed that the Noticee had executed a total of 2 trades during the Investigation period in the contract "UCOB15JUL45.00PE". The aforesaid trades were done by the Noticee on July 22, 2015 wherein the counterparty viz. Narayan Kumar Goyal (HUF) was the same for buying as well as selling side to the Noticee. Further Noticee has gained Rs. 1,94,900/- gross in such trade admitted by him in it's reply at para. 3 page no. 16 of it's reply dated August 30, 2021. This resulted in 2 trades with total trade quantity of 120000 units at a price of Rs. 3.4 and Rs. 0.15. Thus, in the above manner, the Noticee executed a total of 2 trades in the contract "UCOB15JUL45.00PE" and generated artificial volume of 120000 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.

19. The Noticee has contended that they were unaware of it's counter party as the trading is screen based. Further, in the screen based trading system, which is virtually anonymous, it is not possible for anyone to enter into such reversal trades. However, considering the precision at which the reversal transactions had taken place, the quantity, price and time and sale, party in a trade transaction with huge price variation, I am of the view that it will be too naïve to hold that these transactions are through platform of the screen-based trading and hence anonymous. Such conclusion would be over-looking the prior meeting of minds involving synchronization of buy and sell order w.r.t the transactions entered into by the Noticee with it's counterparty and such synchronized trading is clearly violative of the transparent norms of trading in the securities market. In view of the above observations, I hold that all the 2 transactions executed by the Noticee in the 1 Option Contract were synchronized trades, which were reversed within a fraction of seconds 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. As per the material available, the Noticee made a profit of Rs. 1,94,900/- as result of these trades.

20. I note that Noticee has submitted that ratio 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) should not be applied to instant case because of vast difference in factual matrix in both cases. However, I do not agree with the contention of the Noticee, because in Rakhi Trading Judgment, 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.

21. 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……”*

22. 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 counter party with whom it 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."*

23. In this context, I also find it relevant to refer to the decision of Hon'ble Supreme Court in the matter of ***Securities and Exchange Board of India v. Kishore R Ajmera*** *{(2016)} 6 SCC 368 : AIR 2016 SC 1079}* wherein, the Hon'ble Supreme Court has held that , " ….. *According to us, knowledge of who the 2nd party/client or the broker is, is not relevant at all. While the screen based trading system keeps the identity of the parties anonymous it will be too naïve to rest the final conclusions on the said basis which overlooks a meeting of minds elsewhere. Direct proof of such meeting of minds elsewhere would rarely be forthcoming. The test, in our considered view, is one of preponderance of probabilities so far as adjudication of civil liability arising out of violation of the Act or the provisions of the Regulations framed thereunder is concerned….."*

24. 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……."*

25. 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 it's 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 very far away from the current market price of the underlying except for the fact that Noticee wanted to execute non-genuine trades.

26. 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.

27. Therefore, from the foregoing paragraphs and the observations/findings contained therein, I hold that the Noticee has violated the provisions of Regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of PFUTP Regulations, 2003

28. 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, it 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.*

29. 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.

30. 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 it's counterparty. From the manner in which Noticee executed the above mentioned transactions, the Noticee has violated the statutory provisions of law. 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…………...."

31. I note that in the reply dated 30-08-2021 and during the personal hearing, AR had reiterated that the Principle of Proportionality and also mentioned the criteria while deciding the quantum of penalty. AR further reiterated that the profit of Rs. 1,94,900/- is not significant amount. Further, the Noticee has not traded repeatedly and therefore, penalty under sec 15 HA, which is Rs. 5 lakh minimum would be highly excessive and the objective of these proceedings can be achieved without resorting to Sec 15 HA.

32. However, I do not see any merit in the said argument and would like to rely upon the order of Hon'ble Securities Appellate Tribunal (hereinafter referred to as "SAT") dated September 14, 2020 in the matter of ***Global Earth Properties and Developers Pvt Ltd Vs SEBI (Appeal No. 212 of 2020)*** since, the facts of the case are similar to the instant matter. In the matter of ***Global Earth Properties and Developers Pvt Ltd Vs SEBI***, hon'ble SAT held that "*It was urged by the learned counsel for the Appellants that the penalty awarded is excessive and harsh and, therefore, prayed that in the event the order is affirmed the Tribunal may consider reducing the penalty amount taking into consideration the financial status of the Appellants and the negligible transactions executed by the Appellants.*

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

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

ORDER

34. 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. Shubham Rungta Beneficiary Trust 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.

35. 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

36. 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.

37. 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.

38. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is sent to the Noticee viz. Shubham Rungta Beneficiary Trust and also to Securities and Exchange Board of India.

Place: Mumbai
Date: November 18, 2021

SANDEEP P DEORE
ADJUDICATING OFFICER