BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/BM/GN/2023-24/28585]

UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995.

In respect of

Gharana Distributors Private Limited

(PAN: AADCG6572B)

In the matter of Trading in Illiquid Stock Options on BSE

BACKGROUND OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") observed large scale reversal of trades in stock options segment of Bombay Stock Exchange (hereinafter referred to as "**BSE**"). SEBI observed that such large scale reversal of trades in stock options lead to creation of artificial volume at BSE. In view of the same, SEBI conducted an investigation into the trading activities of certain entities in illiquid stock options at BSE for the period April 1, 2014 to September 30, 2015 (hereinafter referred to as "**IP**").

2. Pursuant to investigation, it was observed that total of 2,91,744 trades comprising 81.40% of all the trades executed in stock options segment of BSE during the IP were allegedly non genuine trades. The aforesaid alleged non-genuine trades resulted into creation of artificial volume in stock options segment of BSE during the IP. It was observed that Gharana Distributors Private Limited (PAN – AADCG6572B) (hereinafter referred to as the "**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 alleged to be non-genuine in nature and created false or misleading appearance of trading in terms of artificial volumes in stock options and therefore were alleged to be manipulative, deceptive in nature. In view of the same, SEBI initiated adjudication proceedings against the Noticee for alleged violation of the provisions of Regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003 (hereinafter referred to as "PFUTP Regulations, 2003").

APPOINTMENT OF ADJUDICATING OFFICER

3. Mr Bithin Mahanta was appointed as Adjudicating Officer in the matter, conveyed vide communique dated July 06, 2021, under section 19 read with Section 15-I(1) of the SEBI Act, 1992 (hereinafter referred to as **"SEBI Act, 1992"**) and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as **"Adjudication Rules"**) to conduct adjudication proceedings in the manner specified under Rule 4 of Adjudication Rules read with Section 15-I(1) and (2) of SEBI Act, 1992, and if satisfied that penalty is liable, impose such penalty deemed fit in terms of Rule 5 of Adjudication Rules and Section 15HA of SEBI Act, 1992. Pursuant to transfer of cases, the undersigned was appointed as the Adjudicating Officer in the matter vide Order dated March 17, 2023.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. A Show Cause Notice dated January 21, 2022 (hereinafter referred to as "SCN") was issued to the Noticee under Rule 4(1) of the Adjudication Rules to show-cause as to why an inquiry should not be initiated against it and why penalty should not be imposed under section 15HA of the SEBI Act, 1992 for the violations alleged to have been committed by the Noticee.

5. It was *inter alia* alleged in the SCN that the Noticee had executed 3 non-genuine trades in 1 Stock Options contract which resulted in artificial volume of total 224000 units. Summary of dealings of the Noticee in the said Options contracts, in which the Noticee allegedly executed non-genuine trades during the I.P, is 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	% o Artificial Volume generated by Noticee in the contract to Noticee's Total Volume in the Contract	% o Artificial Volume generated by Noticee in the contract to Total Volume in the Contract
1	ENGI15MAR190.00CEW2	32.5	112000	20.02	112000	100	42.86	100	32.28

6. From the above table, following was noted as regard to dealings of the Noticee:

(a) The Noticee had executed alleged non genuine trades in 1 contract, wherein all the trades of Noticee in the said contract were allegedly non-genuine trades.

(b) No. of alleged non-genuine trades of the Noticee had significantly contributed to total no. of trades from the market in the above contracts, as 42.86% of the trades that happened in the said contracts were due to non-genuine trades executed by the Noticee.

(c) 100% of volume generated by Noticee in the above contract was alleged to be artificial volume, and further, the percentage of alleged artificial volume generated by the Noticee in the above contract to the total volume from the market in said contracts was 32.28%. Therefore, the Noticee allegedly generated artificial volume in the above contracts.

7. The SCN dated January 21, 2022 with reference no. IMD/DOF3/P/OW/2022/2395/1 was issued to the Noticee and was duly served.

8. Vide email dated March 27, 2022, Noticee submitted reply dated March 23, 2022 to the SCN. Contentions made by the Noticee have been summarized below:

i. *Noticee submitted that the allegations / observations contained in the SCN are misconceived and based on surmises, presumptions and incorrect appreciation of facts.*

ii. *Noticee submitted that the impugned trades of the Noticee were genuine and bonafide, conducted by and on the advice of a registered stockbroker. The said trades were executed on the trading platform of BSE Ltd and were authorised by the stock exchange/SEBI in terms of the extant rules and regulations governing such trade.*

iii. *Noticee submitted that the trades were conducted on the screen based anonymous trading platform of the Stock Exchange, without any knowledge of the counterparty; further, the prices for buy and sale were very much within the range permitted by the Stock Exchange / SEBI, and the settlement took place through the recognised clearing corporation. As such, the allegation of the trades being non-genuine are prima facie baseless and preposterous.*

iv. *Notice submitted that the impugned trades are more than 6 years old and no records for the same are readily available. The noticee has never received any alert/ objection from the stock exchange/SEBI or even from the broker with regard to the said trades in the intervening period. Therefore, it is utterly surprising that SEBI has chosen to issue the SCN on a one-off trade after such long lapse of time. It may be note that any further enquiry into the matter or action against the Noticee would also be heavily time barred* *and thus liable to be set aside on the ground of delay and laches, which are well recognised legal principles.*

v. *Noticee submitted that SCN is fraught with conjecture and surmises and makes a bald allegation of fraud concerning, allegedly, 1 reversal trade conducted in 1 contract of illiquid stock option on the same day with the same counterparty at a substantial price difference (para 6 of SCN). It is humbly submitted that this allegation cannot be sustained.*

   a) *Noticee submitted that SCN is silent as to on what basis the concerned stock option is termed as illiquid and why such illiquid option was allowed by the exchange/SEBI to be traded on the exchange platform in the first place, thereby inviting and enabling the investors to trade in the same. In any event, without prejudice to the above, there was simply no occasion for the notice to know that the said stock option was illiquid at the time of trading.*

   b) *The trading in call & put options, by its very nature is extremely volatile with very fast momentum, and the price movement is highly unpredictable. The investor/ broker is required to be nimble-footed and make quick transactions including reversal of trades in a short span of time depending on the market momentum and outlook, to be able to maximise profit/ minimise loss. The average buy rate was Rs. 32.50 and the average sale rate was Rs. 20.02 and the total buy/ sale volume was only 1,12,000 units which cannot be said to be substantial in derivative trading.*

   c) *The choice of counterparty is based on automated price matching mechanism of the exchange and is beyond the control of the investor. Noticee is not in any way related/ connected to the counterparty. The SCN also does not mention any connection/ collusion with the counterparty, let alone giving evidence of any such allegation.*

   d) *The trades conducted by the Noticee constituted only 32.28% of the total market volume in the said contract. The Noticee's trades by themselves are not substantial; however, considering that the base, i.e., the total volume, itself was small, the Noticee's trades reflect a comparatively higher value in percentage terms. This cannot be a ground to allege that notice intended to generate artificial volumes, particularly when the noticee had no way of knowing the total volume in the contract at the time of entering the trade.*

   e) *SCN presumes that the trade to be "without any basis", without taking into consideration the very nature of option trading and without specifying how and why the trade can be termed so. The trades were executed on the basis of the broker's* *advice and the natural hunch and intuition that is a key aspect of trading activities in general.*

vi. *The Noticee submitted that it has engaged in only one instance of trade on one day involving a limited volume during the entire Investigation Period. This by itself shows the Noticee's actions were bonafide and the trades were genuine. Had the Noticee actually intended to rig the market and create artificial volumes, it would have done many more trades involving higher volumes on several trades, which is not the case here.*

vii. *The Noticee submitted that it has suffered a nominal loss of Rs 13,97,760 only. Therefore, it is illogical and preposterous to presume that any investor would engage in market manipulation and creation of artificial volume to not generate profits but rather to incur a loss.*

viii. *During the Investigation Period, the stock exchange and SEBI were, in fact, actively promoting the upcoming derivative option segment (including for illiquid options) by providing various incentives to trading members and other participants with a view to increase retail participation in this segment.*

ix. *SCN does not contain a complete copy of order log and does not show the book position and the status of pending buy/ sale orders in the system with quantities involved, which would be required to analyse why the Noticee's stock broker entered into the particular trade. It is also impossible for the noticee/ broker to recollect the exact reason for the trade due to the long lapse of time.*

x. *Noticee has always been fully compliant with SEBI's and Stock Exchange's Rules and Regulations governing trading in the securities market and has not indulged in any malpractice/ misconduct.*

xi. *Noticee has not engaged in any "manipulative, fraudulent and unfair trade practices" and hence has not violated any provision of the PFUTP Regulations. As such, the Noticee is not liable for any monetary penalty under Section 15HA of the SEBI Act, 1992 or for that matter, sanction or penalty of any other kind.*

xii. *Noticee submitted that it has not earned any amount of disproportionate gain or unfair advantage as a result of the impugned trade; has not caused any loss to any investor and has not indulged in any repetitive trade. Therefore, in the event of the proposed inquiry being held and monetary penalty being levied, it is prayed that considering the facts and circumstances of the case as cited above, a lenient view may be taken and a minimum penalty may be levied as per the provisions of Section 15-J of the SEBI Act.*

7. Subsequently, Post SCN intimation (PSI) dated August 12, 2022 was served to the Noticee via SPAD. The aforesaid PSI was served to the Noticee which intimated to the Noticee regarding the SEBI Settlement Scheme, 2022. The intimation regarding settlement scheme given to the Noticee is as follows:

a. SEBI has framed the SEBI Settlement Scheme, 2022 pursuant to the Order dated May 13, 2022 passed by the Hon'ble Securities Appellate Tribunal, wherein the following directions were issued to SEBI:

*"**17**. We are, thus, of the opinion that SEBI should reconsider and seriously give a thought in coming out with a fresh scheme under Clause 26 of the Settlement Regulations, 2018. Such scheme can be a onetime scheme for this class of person.* ***The terms of settlement should be attractive so that it could attract the noticees / entities to come forward and settle the matter which will ameliorate the harassment of penalty proceedings to the noticees and at the same time would help to clear the backlog of these pending matters before various AOs.****" (Emphasis Supplied)*

b. In compliance with the above directions of the Hon'ble Securities Appellate Tribunal, SEBI has introduced a one-time settlement scheme called the SEBI Settlement Scheme, 2022, in terms of Regulation 26 of the Securities and Exchange Board of India (Settlement Proceedings) Regulations, 2018 in the matter of Illiquid Stock Options. The said scheme proposes payment of Settlement Amount as per the details given below:

	ber of Contracts*	**ement Amount (Rs.)**
		000/-
		000/-
	nd above	000/- base amount + 10,000 per contract

** You may refer to the relevant Annexure/table of the SCN which contains a summary of the contracts you entered to determine the applicable slab for settlement.*

c. The period of the SEBI Settlement Scheme, 2022 will commence on August 22, 2022 and will close on November 21, 2022, so as to provide an opportunity for settlement to the entities who have executed reversal trades in the stock options segment of BSE during the period April 01, 2014 to September 30, 2015, against whom enforcement proceedings have been initiated and are pending. In case you wish to avail the benefit of the said Scheme, you may access the details of the said Scheme, which would be available on the website of SEBI i.e. www.sebi.gov.in, during the said period.

d. Necessary application for settlement may be filed within the validity period of the scheme and payment of the settlement amount shall be made online. Additionally, for any clarification in regard to settlement scheme, you may refer to the FAQs at SEBI website or send email to scheme2022@sebi.gov.in

e. In case you do not wish to avail of the facility under the SEBI Settlement Scheme, 2022, the adjudication proceedings in respect of the allegations contained in Part A of the SCN shall resume. Accordingly, an inquiry shall be held against you in terms of Adjudication Rules read with section 15-I of the SEBI Act, and penalty, if any, shall be imposed under section 15HA of the SEBI Act. In such case, you are called upon to file your reply within 30 days of receipt of this Show Cause Notice.

f. Pursuant to that, vide public notice dated November 21, 2022, it was advertised/informed that "*Considering the interest of entities in availing the Scheme, the competent authority has extended the period of the Scheme till January 21, 2023*"

8. However, it was observed that Noticee did not avail the SEBI Settlement Scheme, in view of which, the adjudication proceeding against the Noticee was resumed.

9. In the interest of natural justice, the Noticee was provided an opportunity of hearing vide hearing notice dated April 25, 2023 via SPAD and digitally signed email, which was duly delivered to the Noticee via SPAD. The Noticee was advised to appear before the undersigned on May 18, 2023, however, the Noticee did not appear for hearing. Subsequently, another opportunity of hearing was provided to Noticee on June 16, 2023 vide email dated May 31, 2023, the delivery of which is on record, however, the Noticee did not appear for the hearing.

10. I am of the view that the principles of natural justice have been adhered to, as the SCN and the Hearing Notice were duly served upon the Noticee and sufficient opportunity was granted to it to appear for the personal hearing.

CONSIDERATION OF ISSUES AND FINDINGS

11. I have carefully perused the charges levelled against the Noticee, its reply and the documents / material available on record. The issues that arise for consideration in the present case are:

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

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

(c) If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in section 15J of the SEBI Act, 1992?

12. 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 there under;

(c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;

(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.

4. Prohibition of manipulative, fraudulent and unfair trade practices

(1) Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.

(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:—
(a) indulging in an act which creates false or misleading appearance of trading in the securities market;

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

13. Before proceeding to the merits of the case, I shall deal with the contention of delay. I note 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. Further, another settlement scheme was introduced pursuant to the order of Hon'ble SAT dated May 12, 2022. The details of SEBI settlement scheme is given at paragraph 8 above.

17. I further note that there are no timelines prescribed in the SEBI Act, 1992 for the purpose of identifying trades as non-genuine. 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*."

18. As can be seen from the narration of facts in the foregoing paragraphs, pursuant to appointment of erstwhile AO on July 06, 2021, SCN dated January 21, 2022 was issued to the Noticee. Upon closure of SEBI Settlement scheme, 2022 on January 21, 2023, and in compliance with principles of natural justice, an opportunity of personal hearing was scheduled on May 18, 2023 and June 16, 2023. Hence, there has been no delay as alleged by the Noticee.

19. I further note that Noticee submitted that SCN does not contain a complete copy of order log and does not show the book position and the status of pending buy/ sale orders in the system with quantities involved. I note that details of the documents provided to the Noticee as annexures to the SCN and to the , are as follows:

    a. Extract of Integrated trade log of all reversal trades of Noticee in the stock options segment of BSE during the period April 01, 2014 to September 30, 2015.
    b. Summary of all reversal trades.

20. Further, I note that along with Hearing Notice dated April 25, 2023, copy of the Show Cause Notice dated January 21, 2022, Post SCN Intimation dated August 12, 2022 and the following annexures were provided in the CD, as well as through email:

    a. Extract of Integrated trade log of all reversal trades of Noticee in the stock options segment of BSE during the period April 01, 2014 to September 30, 2015.
    b. Summary of all reversal trades.
    c. Relevant potion of the Investigation Report, and
    d. Copy of the Hon'ble SAT order dated May 13, 2022

21. In this regard, I rely on the judgement of the Hon'bleSAT in the matter of Mayrose Capfin Private Limited Vs. SEBI (decided on 30.03.2012) wherein it was held that:
    ".....................the principles of natural justice require that the inquiry officer should make available such document and material to the delinquent on which reliance is being placed in the inquiry. It is not necessary for the inquiry officer to make available all the material that might have been collected during the course of investigation but has not been relied upon for proving charge against the delinquent. No prejudice can, therefore, be said to have been caused to the appellant on this count...."

22. Further, the Hon'ble SAT, in its order dated February 12, 2020, in the matter of Shruti Vora vs. SEBI held that:
    We are of the opinion that we cannot compel the AO to deviate from the prescribed procedure and supply of such documents, which is not warranted in law. In our view, on a reading of the Act and the Rules we find that there is no duty cast upon the AO to disclose or provide all the documents in his possession especially when such documents are not being relied upon."

23. I also note that the Hon'ble SAT in the matter of Anant R Sathe Vs SEBI (Appeal No. 150 of 2020) vide Order dated July 17, 2020 reaffirmed the principle elucidated in the judgment of Shruti Vora's case, which has been reproduced above and held that: "*the Authority is required to supply the documents that they rely upon while serving the show cause notice which in the instant case has been done and which is sufficient for the purpose of filing an efficacious reply in his defence".*

24. Therefore, I note that the documents relied upon in the matter were duly provided to the Noticee, along with SCN dated January 21, 2022, PSI dated August 12, 2022 and Hearing Notice dated April 25, 2023 so that principles of natural justice have been complied with and thereby the contentions of Noticee in this regard are without merit.

25. Therefore, I note that the preliminary contentions raised by Noticee are liable to be rejected, and I now proceed to consider the matter on merits.

26. 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 trades 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 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, lead to false or misleading appearance of trading in terms of generation of artificial volumes and hence, are deceptive and manipulative.

27. I note from the trade log of the Noticee that it had traded in three contracts in the stock options segment of BSE during the IP. It is observed that the Noticee had allegedly executed 3 non-genuine trades in 1 contract. I further note that the above mentioned trades of the Noticee had resulted in the creation of artificial volume of 224000 units in the said contracts. Summary of non-genuine trades of the Noticee is 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	% o Artificial Volume generated by Noticee in the contract to Noticee's Total Volume in the Contract	% o Artificial Volume generated by Noticee in the contract to Total Volume in the Contract
1	ENGI15MAR190.00CEW2	32.5	112000	20.02	112000	100	42.86	100	32.28

28. It is noted that the Noticee had allegedly executed non-genuine trades in said contract, wherein the percentage of alleged non-genuine trades of the Noticee in stock options contracts to total trades in the contract was 42.86% in the aforesaid contracts. Further, alleged artificial volume generated by Noticee in the contracts amounted to 100% of total volume generated by it in the contracts. It is also noted that alleged artificial volume generated by the Noticee contributed 32.28% of the total volume from the market in the said contracts.

29. The details of squaring up done by the Noticee in the contract 'ENGI15MAR190.00CEW2' are as given below :

Trade Date	Client Name	CP Client Name	Trade Time	Trade Rate (Rs.)	Traded Quantity	Buy/Sell by the Noticee
09/03/2015	GHARANA DISTRIBUTORS PRIVATE LIMITED	JAI ANNANYA INVESTMENTS PRIVATE LIMITED	12:16:06.115979	32.5	112000	Buy
09/03/2015	JAI ANNANYA INVESTMENTS PRIVATE LIMITED	GHARANA DISTRIBUTORS PRIVATE LIMITED	12:42:09.548405	20.05	42000	Sell
09/03/2015	JAI ANNANYA INVESTMENTS PRIVATE LIMITED	GHARANA DISTRIBUTORS PRIVATE LIMITED	12:41:43.850734	20	70000	Sell

i. As can be seen from the table above, the trades executed by the Noticee in the contract were squared up within a short span of time, with the same counterparty. Noticee on

March 09, 2015 at 12:16:06 hrs (Order time of Noticee: 12:16:05; and Counterparty Order time: 12:16:06) entered into a buy trade with counterparty viz. JAI ANNANYA INVESTMENTS PRIVATE LIMITED for 112000 units at the rate of ₹ 32.5 per unit in the contract 'ENGI15MAR190.00CEW2'. Thereafter, on the same day, Noticee entered into two sell trade at 12:41:43 hrs and 12:42:09 hrs for 70000 and 42000 units respectively (total 112000 units) with counterparty viz. JAI ANNANYA INVESTMENTS PRIVATE LIMITED at the rate of ₹ 20 and ₹ 20.05 per unit respectively.

ii. These trades were entered into with the same counterparty in the same contract. It is noted that while dealing in the said contract during the IP, the Noticee executed reversal trades with same counterparty viz. JAI ANNANYA INVESTMENTS PRIVATE LIMITED on the same day, with significant price difference. Thus, the Noticee, through its dealing in the contract viz. 'ENGI15MAR190.00CEW2' during the I.P., executed non genuine trades which was 42.86% of the total trades from the market in the said contract during the I.P., and thereby, Noticee generated artificial volume of 224000 units which was 32.28% of the volume traded in the said contract from the market during the I.P.

30. Noticee contended that the impugned trades of the Noticee were genuine and bonafide, conducted by and on the advice of a registered stockbroker. The said trades were executed on the trading platform of BSE Ltd and were authorised by the stock exchange/SEBI in terms of the extant rules and regulations governing such trade. Noticee contended that it has engaged in only one instance of trade on one day involving a limited volume during the entire Investigation Period and this by itself shows the Noticee's actions were bonafide and the trades were genuine. Further, Noticee submitted that the trades were a one-off transaction, involving a miniscule volume, which cannot be said to have any substantial impact on the market in order to warrant the serious allegations of "manipulative, fraudulent and unfair trade practices" under the PFUTP Regulations. Noticee submitted that the prices for buy and sale were very much within the range permitted by the stock exchange/SEBI and the settlement took place through the recognised clearing corporation, thereby the allegation of the trades being non-genuine are prima facie baseless and preposterous. However, 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, the Noticee reversed the position with its counterparty. The fact that the transactions in a particular contract were reversed with the same counterparty indicates a prior meeting of minds with a view to execute the reversal trades at a pre-determined price. It may be noted that as the Noticee has stated that the

trades were conducted by and on the advice of a registered stockbroker, the Noticee is not alleging unauthorised trades. Consequently, the statement that the transactions appear to be executed without reference to the Noticee appears contradictory and devoid of merit. 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 contract, within a short span of time, is a clear indication that there was pre-determination in the prices by the counterparties while executing the trades. The fact that the buy and sell orders were placed by the Noticee and counterparty within a short span of time, strongly indicates meeting of minds. Thus, it is observed that Noticee had indulged in reversal trades with its counterparty in the stock options segment of BSE and the same were non-genuine trades.

31. Noticee has also contended that volume contributed by reversal trades to the total contract volume are not substantial. I note that the impugned stock option contract was illiquid, as stated in the SCN, and also that the artificial volume generated by Noticee as a proportion of total market volume in the contract was 32.28%.This points to the contribution of Noticee, irrespective of quantum of reversal trades or volume generated, in the creation of misleading appearance of trading through it impugned trades.

32. Noticee has also contended that the trading in call & put options, by its very nature is extremely volatile with very fast momentum, and the price movement is highly unpredictable. I note that even though the exchange mechanism for option contracts allows wider range in prices, Noticee's buy and sell trades were executed within a short time gap on the same day with a substantial price difference without any change in the price of underlying scrips, with the same counterparty. It is agreed that a wider price range in buy and sell rates may not indicate manipulation ipso facto. However, in the instant case, the facts as regards reversal trades have been considered in totality to allege violation of provisions of PFUTP Regulations, 2003.

33. Noticee has contended that it has never received any alert or objection from the Stock Exchange/ SEBI or even broker with regard to the said trades during the period. I note that Noticee was obligated to ensure genuineness of the trades executed by it on the exchange platform. The aforesaid obligation was mandatory not withstanding any warning issued by Stock Exchange or Stock Broker in this regard.

34. Further, Noticee has contended that the said trades did not cause any loss to any investor. I note that in the instant matter, the allegations pertaining to the violation of impugned

provisions of PFUTP Regulations, 2003 are not contingent upon any losses incurred by investors.

35. The Noticee submitted that the broker and the stock exchange had invited and incentivized trading members and their clients to execute trades in F&O segment of the stock exchange which had illiquid securities. The Noticee stated that as a result of such incentives, lay investors such as the Noticee were lured to invest in the scheme through SEBI registered intermediaries who at the relevant time convinced the clients to participate in such transactions. I note that the Noticee's contentions imply that there is no dispute that the impugned trades were definitely executed by the Noticee. Thus, the Noticee's contentions do not establish any denial of the charges made in the SCN.

36. Noticee has also contended the choice of counterparty is based on automated price matching mechanism of the exchange and is beyond the control of the investor. Noticee has also stated that it is not in any way related/ connected to the counterparty and the SCN also does not mention any connection/ collusion with the counterparty, let alone giving evidence of any such allegation. Further, Noticee has contended that the trades were conducted on the screen-based anonymous trading platform of the stock exchange, without the knowledge of the counterparty. 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 trades. It indicates meeting of minds.

37. In this context, I would like to rely on the judgment of the Hon'ble Supreme Court of India in SEBI vs Kishore R Ajmera (AIR 2016 SC 1079), 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..."

The Hon'ble Supreme Court of India further held in the said case 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."*

38. In the instant matter, I note that though direct evidence regarding meeting of minds or collusion of the Noticee with the counterparty is not forthcoming, the trading behaviour of the Noticee, as detailed earlier, makes it clear that the 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 order dated July 14, 2006 passed by Hon'ble SAT, in the case of Ketan Parekh vs SEBI (Appeal no. 2/2004), wherein, Hon'bleSAT 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."

39. Further, I place my reliance on the judgment of Hon'ble Supreme Court in the matter in respect of SEBI v 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.....".

40. 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."

41. I find it pertinent to note that the Adjudication order no. Order/AP/SS/2021-22/13331 dated September 6, 2021 passed in respect of Radha Malani in the matter of dealings in Illiquid Stock Options at BSE was challenged before the Hon'ble SAT. Hon'ble SAT, in its judgement dated November 24, 2021 in the matter of Radha Malani vs. SEBI (Appeal No. 698 of 2021), dismissed the appeal and opined that -"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)."

42. The observations made in the aforesaid judgments apply to the facts and circumstances of the present case. Therefore, 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 trades at a pre-determined price.

43. Therefore, the trading behaviour of the Noticee confirms that such trades were not normal and wide variation in prices of the trades in the same contract in a short time without any basis for such wide variation, all indicate that the trades executed by the Noticee were not genuine trades and being non-genuine, created an appearance of artificial trading volumes in the contract. I am inclined to note that the aforesaid trades of Noticee were non-genuine and have created false or misleading appearance of trading in terms of artificial volume in stock options and therefore the same are manipulative and deceptive in nature. In view of above, I conclude that the Noticee had violated the provisions of Regulations 3 (a), (b), (c), (d), 4(1) and 4(2)(a) of PFUTP Regulations.

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

44. Considering the findings that the Noticee as mentioned above has executed non-genuine trades resulting in the creation of artificial volume, thereby violating the provisions of

Regulation 3(a), (b), (c) & (d) & Regulation 4(1) and 4(2)(a) of the PFUTP Regulations, 2003 and in terms of the judgement of Hon'ble Supreme Court of India in the matter of SEBI Vs. Shri RAM Mutual Fund[2006] 68 SCL 216(sc) decided on May 23, 2006 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...*" I am convinced that it is a fit case for imposition of monetary penalty under the provisions of Section 15 HA of SEBI Act which reads as under:

Penalty for fraudulent and unfair trade practices.

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

Issue (c): If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in Section 15J of the SEBI Act, 1992?

45. While determining the quantum of penalty under Section 15HA of SEBI Act, it is important to consider the factors as stipulated in Section 15J of the SEBI Act which reads as under:

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

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

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

(c) the repetitive nature of the default.

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

I observe, that the material 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, the Noticee has entered into 3 non-genuine trades which demonstrates the violation of PFUTP Regulations, 2003.

ORDER

46. Having considered 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 power conferred upon me under section 15-I of the SEBI Act, 1992 read with rule 5 of the Adjudication Rules, 1995, I hereby impose following penalty under section 15HA of the SEBI Act, 1992 on the Noticee:

Name of the Noticee	Violation provisions	Penalty
Gharana Distributors Private Limited PAN:AADCG6572B	Regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of PFUTP Regulations, 2003	₹ 5,00,000/- (Rupees Five Lakhs only)

I am of the view that the said penalty is commensurate with the lapse/omission on the part of the Noticee.

47. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order either through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link:

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48. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, SEBI may initiate consequential actions including but not limited to recovery proceedings under section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties.

49. In terms of the provisions of rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticee viz. Gharana Distributors Private Limited and also to the Securities and Exchange Board of India.

Date: August 09, 2023 **BARNALI MUKHERJEE**

Place: Mumbai **ADJUDICATING OFFICER**