BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/BM/UR/2021-22/15157]

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
Karuna Rasik Jaitha
(PAN: ACUPJ8288R)

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 2,91,744 trades comprising substantial 81.40% of all the trades executed in stock options segment of BSE during the IP were non genuine trades. The aforesaid non-genuine trades resulted into creation of artificial volume in stock options segment of BSE during the IP. It was observed that Karuna Rasik Jaitha (**PAN- ACUPJ8288R**) (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 observed 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 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. The undersigned was appointed as Adjudicating Officer in the matter, conveyed vide communique dated September 27, 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.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. A Show Cause Notice dated October 20, 2021 (hereinafter referred to as '**SCN**') was issued to the Noticee under Rule 4(1) of the Adjudication Rules to show-cause as to why an inquiry should not be initiated against her 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 2 non genuine trades in 1 Stock Options contract which resulted in artificial volume of total 100000 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	% 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	EXID15JUL150.00CE	1	50000	5	50000	100	14.29	100	10.08

6. From the above table, following was noted as regard to dealings of the Noticee:
   (a) The Noticee had allegedly executed non genuine trades in 1 contract, wherein 100% of all 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 contract, as 14.29% of the trades that happened in the said contract were due to non-genuine trades executed by the Noticee.

(c) 100% of volume generated by Noticee in the above contract was allegedly artificial volume, and further, the percentage of such artificial volume generated by the Noticee in the above contract to the total volume from the market in said contract was 10.08%. Therefore, the Noticee allegedly generated artificial volume in the above contract.

7. The SCN with reference no. EAD-3/BM/UR/ISO-II/29069/2021 was served on the Noticee via Speed Post Acknowledgement Due (SPAD) and via email dated October 20, 2021. The proof of service is on record. Vide letter dated December 06th, 2021, Noticee submitted her reply to the Show Cause Notice and vide letter dated December 09, 2021 Noticee submitted addendum to her reply dated December 06, 2021. Vide letter dated December 30, 2021 Noticee submitted post hearing submissions pursuant to conclusion of hearing. The main contentions made in the aforesaid reply/ post hearing submissions are summarized below:
   - *Noticee denied having violated the PFUTP Regulations.*
   - *She had traded in the stock options segment of the BSE Ltd only once and her volume contribution was negligible.*
   - *Noticee submitted the trades executed by her were genuine and they cannot be termed as non-genuine. She also contended that the word "non-genuine" is not defined in PFUTP Regulations.*
   - *No action has been taken against the Stock exchange.*
   - *She contended that trades were executed on the platform provided by the stock exchange approved by the SEBI.*
   - *She submitted that she was also subjected to various charges and taxes on the transactions.*
   - *She contended the she did not carry out any manipulative transactions in the underlying securities and merely carrying out few trades in option contracts cannot create any false and misleading*

appearance of trading or result in a manipulative or deceptive device as falsely alleged.

- *Noticee contended that though the SCN claims that the trades were reversed at significant price difference, it has only compared the value of premium of the contracts. However in the case of options contract the notional value i.e., the value of Strike Price plus the Premium is to be considered. She further submitted that when the price difference is compared with the notional value, its change is absolutely normal and similar changer are observed in multiple contracts on the exchanges including the one having higher volumes than the alleged contracts of the Noticee. Therefore she submitted, the allegation that there was a significant price difference is incorrect and untenable.*
- *She contended that SEBI has issued Risk Disclosure Document that records risks of trading on the stock options segment of the exchange. She further contended that it can be construed that SEBI was aware of the possible price difference and losses / profits due to lower liquidity and wider spreads.*
- *No price band mechanism was in place for options segment.*
- *She contended that it is untenable to suddenly label these transactions as artificial and non-genuine after a period of 7 years from the date of transaction.*
- *She submitted that the matching of the transaction is merely a co-incidence and was not intentional, non-genuine or manipulative.*
- *The Noticee submitted that she neither knows the counterparty nor she had any relationship, financial or otherwise, with the counterparty.*
- *She contended that it is also not a case in the SCN that other investors were misled due to the trades carried out by the noticee. Further it is not even alleged that third parties suffered any loss due to the transactions carried out by the Noticee. So there was no impact on any other person.*

- *Noticee contended that there is no charge of price manipulation in the SCN and without manipulating price of a security or contract no person can gain anything from artificial trades.*
- *Noticee contended that none of her acts fall under the definition of fraud as provided under Regulation 2(1)(c), the Noticee cannot be charged of having violated PFUTP Regulations.*
- *Noticee contended that what punitive actions were taken against the stock brokers, counter party and the exchange.*
- *She contended that the alleged provisions of law in the SCN were not in force at the time of alleged transaction. Sectio 11(2)(4A) which provides the Board with power to levy penalty was introduced in the SEBI act, 1992 by way of 2019 amendment.. Further she submitted that Section 11B of the SEBI Act, 1992 which gives SEBI the power to issue directions introduced the power to levy penalty via the 2019 Amendment with the insertion of Section 11B(2) of the SEBI Act, 1992.*

8. Complaint with Registration no: PMOPG/D/2021/0312758 was registered by the Noticee vide letter dated December 18, 2021 in PMOPG Portal. The said complaint was made against the issuance of Show Cause Notice by SEBI. The said complaint was forwarded to SEBI by the Prime Minister's office for taking action as appropriate.

9. Vide Hearing Notice dated November 30, 2021, the Noticee was advised to appear for hearing on December 15, 2021. The personal hearing was conducted on scheduled date and time, through video conferencing on the Webex platform. During the course of hearing, Authorized Representative of the Noticee contended that the transactions were prior to amendment and therefore no need to impose minimum penalty. The authorized representative for the Noticee requested for time till December 16, 2021 to submit additional submissions pursuant to hearing, which was granted by

the undersigned. The personal hearing in the matter was completed and hearing minutes are on record.

10. Vide reply dated December 06, 2021 Noticee sought additional details like copy of Investigation report, Cross-examination of Broker, BSE, Counterparty Broker, and counterparties, copy of client agreement with Broker etc. Noticee vide email dated December 07, 2021 was conveyed that *"all the information relied upon by the SCN have already been provided to you vide annexures to the said SCN"*

In this regard, reference may be made to the Hon'ble SAT Order in the matter of **Mayrose Capfin Privatte Limited Vs. SEBI** (decided on 30.03.2012) 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 …."*

Further, Hon'ble SAT, in its order dated February 12, 2020, in the matter of **Shruti Vora vs. SEBI** had held that :

> *"Reliance was also made a decision of the Supreme Court in Union of India and Others vs E.Bashyan (1988) 2 SCC 196 which has no bearing to the controversy involved in the present context, in as much as, the said decision relates to a disciplinary proceedings wherein the Supreme Court in Union of India and Others vs*

E.Basyan (1988) 2 SCC 196 which has no bearing to the controversy involved in the present context, in as much as, the said decision relates to a disciplinary proceedings wherein the Supreme Court observed that the inquiry report was required to be made available to the delinquent. An inquiry report is totally distinct and different from an investigation report. The inquiry report considers all the materials in the inquiry proceedings which form the basis of the final order and therefore the said report is required to be made available to the delinquent. In the instant case, the show cause notice relies upon certain documents which have been made available. Thus the investigation report is not required to be supplied. The Learned Counsel has also placed reliance upon a minority view of this tribunal in Price Waterhouse vs Securities and Exchange Board of India decided by this Tribunal in Appeal No.8 of 2011 on June 1, 2011 wherein it was observed that fairness demands that the entire material collected during the course of investigation should be made available for inspection to the person whose conduct was in question and that said material should also be supplied. In our opinion, the said minority view is directly against the decision of the Supreme Court in Natwar Singh case (supra). A bare reading of the provision of the Act and the Rules as referred to above do not provide supply of documents upon which no reliance has been placed by the AO, nor even the principles of natural justice require supply of such documents which has not been relied upon by the AO. 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."

In view of the above the request for copy of documents and cross examination of certain entities was not acceded to.

11. Hearing Notice dated November 30, 2021 was issued to the Noticee, advising her to appear for the hearing on December 14, 2021. The personal hearing was conducted on scheduled date and time through video conferencing. During the course of hearing, the Noticee reiterated submissions made by her vide letter dated November 13, 2021. The Noticee also confirmed thatshe would be submitting additional submissions which were submitted by her vide email dated December 14, 2021. The personal hearing in the matter was completed and hearing minutes are on record.

CONSIDERATION OF ISSUES AND FINDINGS

12. I have carefully perused the charges levelled against the Noticee, his reply and the documents / material available on record. The issues that arise for consideration in the present case are:
    (a) Whether the Noticee has violated provisions of Regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of PFUTP Regulations, 2003?
    (b) Does the violation, if any, attract monetary penalty under section 15HA of the SEBI Act, 1992?
    (c) If so, what would be 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?

13. 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 no. 1: Whether the Noticee has violated provisions of Regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of PFUTP Regulations, 2003?

14. I note that allegation against the Noticee is that, while dealing in the stock option contracts at BSE during the IP, she had executed reversal trades which were allegedly non-genuine and the same had resulted in generation of artificial volume in stock option contracts at BSE. Reversal trades are considered to be those trades in which an entity reverses its buy or sell positions in a contract with subsequent sell or buy positions with the same counterparty during the same day. The said reversal trades

are alleged to be non-genuine trades as they are not executed in the normal course of trading, lack basic trading rationale, lead to false or misleading appearance of trading in terms of generation of artificial volumes and hence are deceptive and manipulative.

15. I shall now proceed to deal with the transactions executed by the Noticee in the alleged non-genuine trades.

16. I note from the trade log of the Noticee that she had traded in one contract in the stock options segment of BSE during the IP. It is observed that the Noticee had executed 2 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 100000 units in the said contract. 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	% 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.	EXID15JUL150.00CE	1	50000	5	50000	100	14.29	100	10.08

Note: “Unit” refers to lot size in contract multiplied by number of contracts traded

17. I note from the trade & order log that the Noticee had executed trades in said contract, wherein the percentage of the trades of the Noticee in stock options contract to total trades in the contract was 14.29% in the aforesaid contract. Further, the volume generated by Noticee in the contract amounted to 100% of total volume generated by it in the contract. It is also noted that the volume generated by the Noticee contributed 10.08% of the total volume from the market in the said contract.

18. The details of squaring up done by the Noticee in the contract 'EXID15JUL150.00CE' are as given below :

Trade Date	Client Name	CP Client Name	Trade Time	Trade Rate (Rs.)	Traded Quantity	Buy/Sell by the Noticee
07/07/2015	Karuna Rasik Jaitha	J B Overseas	15:08:27	1	50000	Buy
07/07/2015	J B Overseas	Karuna Rasik Jaitha	15:08:30	5	50000	Sell

19. I note from the trade log details which is given above, that the trades executed by the Noticee in a contract were squared up within 03 seconds, which is a short span of time, with her counter- party. As can be seen from the table, the Noticee on July 07, 2015 at 15:08:27 hrs (Order time of Noticee: 15:08:27 and Counterparty Order time: 15:08:27) entered into 1 buy trade with counterparty viz. J B Overseas for 50000 units at the rate of Rs. 1 per unit in the contract 'EXID15JUL150.00CE'. Thereafter, on the same day, Noticee at 15:08:30 hrs (Order time of Noticee: 15:08:30 and Counterparty Order time: 15:08:30) entered into 1 sell trade with same counterparty for 50000 units at the rate of Rs. 5 per unit in the same contract. It is noted that while dealing in the said contract during the I.P., the Noticee executed reversal trades with same counterparty viz. J B Overseas on the same day, with significant price difference. Thus, the

Noticee, through her dealing in the contract viz. 'EXID15JUL150.00CE' during the I.P., executed non genuine trades which was 14.29% of the total trades from the market in the said contract during the I.P., and thereby, Noticee generated artificial volume of 100000 units which was 10.08% of the volume traded in the said contract from the market during the I.P.

20. Noticee has *interalia* contended that she had traded in the stock options segment of the BSE Ltd only once and her volume contribution was negligible. I note that the impugned stock option contract was illiquid, as stated in the SCN, and also that Noticee's trades in said contract contributed 10.08% artificial volume to the total market volume generated during the IP. 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 her impugned trades. Therefore, Noticee's trades were manipulative and intended to create misleading appearance of trading, so the contentions of Noticee in this regard are are not tenable.

21. Noticee submitted the trades executed by her were genuine and they cannot be termed as non-genuine. She also contended that, she has not violated PFUTP Regulations, and also the word "non-genuine" is not defined in PFUTP Regulations. I note that non-genuineness of trades executed by the Noticee is evident from the fact that there was no commercial basis as to why, within a short span of three seconds the Noticee reversed the position with her counterparty with a significant price difference. Reversing the trades in an illiquid Stock Option contract in such a short span of time suggests the non-genuiness of these trades. It has been noted that there was no change in beneficial ownership of the volume reversed in non genuine trades of Noticee as positions of both the

parties in these trades were squared off among themselves only, and no open positions were carried forward. Hence, the volume generated in 2 non genuine reversal trades of Noticee was artificial volume which created misleading appearance of trading. It is pertinent to note that Regulation 4(2)(a) of PFUTP Regulations states that dealing in securities will be deemed to be a fraudulent and unfair trade practice if it involves "indulging in an act which creates false or misleading appearance of trading in the securities market". It is also pertinent to note that artificial volume generated from the said trades shows non-genuine appearance of trading in aforesaid contract to the unsuspecting investors. These non genuine and deceptive trades are covered under the definition of 'fraud' and dealing of Noticee noted hereinabove were 'fraudulent' as defined under regulation 2(1)(c) of SEBI PFUTP Regulations, 2003.

Thus, the term "non-genuine" has no strict definition. The definition of the said term has to be construed, understood and interpreted in reference to the context in which it is used. Therefore, the contentions of Noticee in this regards is without merits.

In this regard, it is pertinent to refer to the decision of the Hon'ble Supreme Court of India in the matter of **Securities and Exchange Board of India v. Rakhi Trading Private Limited** (Civil Appeal Nos. 1969, 3174-3177 and 3180 of 2011 dated February 08, 2018) wherein, the Hon'ble Supreme Court while cumulatively analysing reversal transactions held that,

> *"From the facts before us, it is clear that the traders in question did not intend to transfer beneficial ownership and therefore these trades are non- genuine. Rather than allowing the market forces to operate in their natural course, the traders repeatedly carried out the impugned transactions which deprived other market players*

from full participation. The repeated reversals and predetermined arrangement to book profits and losses respectively, made it clear that the parties were not trading in the normal sense and ordinary course. Resultantly, there has clearly been a restriction on the free and fair operation of the market forces in the instant case…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… one does not have to labour much on the meaning of unfair trade practices in securities. 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."

22. The Noticee contended no action has been taken against the Stock exchange. It may be noted that the remit of the current proceedings are in terms of the adjudication order which was made available to the Noticee. Further, the instant proceeding against the Noticee does not depend upon the outcome of proceedings against any other entity. Thus, the contentions of the Noticee in this regard is not tenable.

23. Noticee contended that trades were executed on the platform provided by the stock exchange approved by the SEBI. 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 adjudication proceedings levy 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.

24. Noticee submitted that she was also subjected to various charges and taxes on the transactions. I note from the above that the said transactions are not in question but genuineness of trades is in question. Thus the contention of notice is not tenable.

25. Noticee contended that though the SCN claims that the trades were reversed at significant price difference, it has only compared the value of premium of the contracts. In the case of options contract the notional value i.e., the value of Strike Price plus the Premium is to be considered. She further submitted that when the price difference is compared with the notional value, its change is absolutely normal and similar changes are observed in multiple contracts on the exchanges including the one having higher volumes than the alleged contracts of the Noticee. I note that as regards instant considerations, the market value i.e. premium, which is the rate at which contracts were bought and sold on exchange platform are relevant. Notional value represents the total underlying amount of the derivative, which is much larger than the market value of contracts, and is not relevant as regards instant considerations. For a given strike price, the premium cannot vary widely within a short span of time of 3 seconds without significant movment in the underlying price or change in other factors which determine the option price. The Noticee has not provided any justification of such price movement. Therefore I find no merit in the contentions of the Noticee.

26. Noticee contended that SEBI has issued Risk Disclosure Document that records risks of trading on the stock options segment of the exchange. She further contended that it can be construed that SEBI was aware of the possible price difference and losses / profits due to lower liquidity and

wider spreads. I note that SEBI being the regulator, regulates the Indian capital market. Stock exchanges merely provide a platform for carrying out the trades and the clearing corporation affiliated with exchange handles the confirmation, settlement and delivery of transactions, however, the obligation to ensure genuineness of trades as regards instant considerations lies squarely on the Noticee.

27. Noticee contended that no price band mechanism was in place for options segment. I note that instant adjudication proceedings levy the impugned allegations against Noticee, and that absence of any preventive mechanism cannot be a ground to absolve Noticee from her obligation to ensure genuineness of trades executed on exchange platform. 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. There was no significant change in the price of the underlying scrip to justify the wide variation in prices of the said contracts. The wide variation in prices of the said contracts, within such a short span of time, is a clear indication that there was pre- determination in the prices by the counterparties while executing the trades. Therefore contention of the Noticee in regards is not tenable.

28. Noticee contended that it is untenable to suddenly label these transactions as artificial and non-genuine after a period of 7 years from the date of transaction. 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.

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".*

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.

As can be seen from the narration of facts in the foregoing paragraphs, pursuant to appointment of AO on September 23, 2021, SCN was issued on October 25, 2021. In compliance with principles of natural justice, after receipt of reply, an opportunity of personal hearing was scheduled on December 14, 2021 and upon conclusion of hearing, additional written submissions were received from the noticees on December 14, 2021. 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."

I note that the Hon'ble SAT in the matter **of Pooja Vinay Jain vs SEBI** (Appeal No. 152 of 2019 decided on March 17, 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"

I also note that the Hon'ble SAT in the matter of **Bipin R Vora vs SEBI** (decided on March 22, 2006) 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* ".

I note that there was no delay the way it has been argued by the Noticee, so the contentions of Noticee in this regard are without merits.

29. Noticee submitted that the matching of the transaction is merely a co-incidence and was not intentional, non-genuine or manipulative. She further submitted that she neither knows the counterparty nor she had any relationship, financial or otherwise, with the counterparty.

I note that considering the precision at which the reversal transactions have taken place i.e. reversal of the quantity, order price and order time and sale with price variations as observed in the instant matter, the same couldn't have been possible without prior meeting of mind. In this regard, I find it relevant to refer to the decision of 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 as under:

> *"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 Supreme Court has also held in the aforesaid Judgment that the 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, 2003.

The Hon'ble SAT in its judgment dated September 14, 2020 in the matter of **Global Earth Properties and Developers Pvt Ltd Vs** SEBI (Appeal No. 212 of 2020) also relied upon the aforesaid judgment 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 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 following:

> "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."

Keeping in mind the dicta of the Hon'ble Supreme Court as reproduced above; I see no reason to take a different view in the present case. In view of the foregoing, I hold that the Noticee had indulged in execution of reversal trades in Stock Options with same entitiy on the same day, which are non-genuine in nature and have created false and misleading appearance of trading in terms of artificial volumes.

Further, I note that it is not a mere coincidence that Noticee could match its trades (with the corresponding price and quantity entered by both the Noticee and counterparty being equal) with the same counterparty with whom Noticee had undertaken first leg of the respective trades. It indicates meeting of minds. 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 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."

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 behavior of the Noticee 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'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."

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.

In line with the aforesaid judgements of Hon’ble SAT and Hon’ble Supreme Court, 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.

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 minds with a view to execute the reversal trades at a pre-determined price. The only reason for the wide variation in prices of the same contract, withn a day was a clear indication that there was pre-determination in the prices by both the counterparty when executing the trades. Thus, the nature of trading, as brought out above, clearly indicates an element of prior meeting of minds and therefore, a collusion of the Noticee with its counterparty to carry out the trades at pre-determined prices

30. Noticee contended that it is also not a case in the SCN that other investors were misled due to the trades carried out by the noticee. Further it is not even alleged that third parties suffered any loss due to the transactions carried out by the Noticee. I note 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 third party. Instead the SCN alleged the execution of non genuine/ reversal trades in the illiquid stock options at BSE, which has been detailed above. Therefore, I do not find any merit in the contentions of the Noticee in this regard. 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 judgment 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 be direct 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."*

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 SC 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." Considering the abovementioned judgements and the fact that the Noticee has executed 2 non genuine transactions in the matter, I note that the contentions of Noticee in this regard, are liable to be rejected.

Further, 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 –

"...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...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. Noticee contended that there is no charge of price manipulation in the SCN and without manipulating price of a security or contract no person can gain anything from artificial trades. I note that the instant SCN deals with allegations of misleading appearance of trading and generation of artificial volume, and that no charge of price manipulation has been made against the Noticee.

32. Noticee contended that none of her acts fall under the definition of fraud as provided under Regulation 2(1)(c), the Noticee cannot be charged of having violated PFUTP Regulations. It is noted that the trading behaviour of the Noticee confirms that such trades were not normal and wide variation in prices of the trades in the same contract in a short time without any basis for such wide variation, all indicate that the trades executed by the Noticee were not genuine trades and being non-genuine, created an appearance of artificial trading volumes in respective contracts and thus such trades are fraud within the meaning of Regulation 2 (1) (c) of PFUTP regulations. Therefore, I am of the considered view that Noticee has committed a fraud, as per SEBI PFUTP regulations 2003.

33. Noticee contended that no punitive actions were taken against the stock brokers, counter party and the exchange. It may be noted that the remit of the current proceedings are in terms of the Communique dated September 27, 2021 appointing the adjudicating officer, already made

available to the Noticee. Given the above the proceedings cannot travel beyond the authority granted therein. Thus, taking action against BSE or stock broker is not within the authority of the current proceedings. Noticee's contentions also imply that merely because other entities in the securities market may or may not have been involved in violating PFUTP Regulations, 2003, initiating a particular proceeding against the Noticee should necessarily be treated as unfair. I note that even if there are numerous violators in the securities market, it does not follow that SEBI must proceed against all entities in a single proceeding. Similarly, Adjudication proceedings are not vitiated merely because each violator is proceeded against in separate and distinct proceedings.

34. Noticee contended that the alleged provisions of law in the SCN were not in force at the time of alleged transaction. Section 11(2)(4A) which provides the Board with power to levy penalty was introduced in the SEBI act, 1992 by way of 2019 amendment.. Further she submitted that Section 11B of the SEBI Act, 1992 which gives SEBI the power to issue directions introduced the power to levy penalty via the 2019 Amendment with the insertion of Section 11B(2) of the SEBI Act, 1992. I note that the current adjudication proceedings have been intiated under Section 15-I of the SEBI Act, 1992. Therefore the contention of the Noticee in this regards is without merits.

35. Therefore, the trading behaviour of the Noticee confirms that such trades were not normal indicating that the trades executed by the Noticee were not genuine trades and being non-genuine, created an appearance of artificial trading volumes in respective contracts. In view of the above, I find that the allegation of violation of regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of PFUTP Regulations, 2003 by the Noticee stands established.

Issue No 2: Does the violation, if any, attract monetary penalty under Section 15HA of the SEBI Act, 1992?

36. 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 od the judgement of the 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…".*

37. In view of the same, I am convinced that it is a fit case for imposition of monetary penalty on the Noticee under the provisions of section 15HA of the SEBI Act, 1992 which read 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 [1][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 3: 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?

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

Factors to be taken into account by the adjudicating officer.

15J. While adjudging quantum of penalty under section 15-I, 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 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.

39. 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. The said violation is not repetitive in nature.

40. Therefore, I note that Noticee indulged in execution of reversal trades in stock options contracts in the IP which were non-genuine and created false and misleading appearance of trading in terms of artificial volumes in stock options, leading to violation of Regulation 3(a),(b),(c),(d) and 4(1),(2)(a) of the PFUTP Regulations, 2003.

ORDER

41. 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
Karuna Rasik Jaitha PAN: ACUPJ8288R	Regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of PFUTP Regulations, 2003	Rs 5,00,000/- (Rupees Five Lakh only)

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

42. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, OR through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link:
ENFORCEMENT → Orders → Orders of AO → PAY NOW

43. The aforesaid Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to "The Division Chief (Enforcement Department 1 DRA-2), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C – 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.". The Noticee shall also provide the following details while forwarding DD / payment information:
- Name and PAN of the Noticee
- Name of the case / matter

- Purpose of Payment – Payment of penalty under AO proceedings
- Bank Name and Account Number
- Transaction Number

44. 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.

45. In terms of the provisions of rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticee viz. KARUNA RASIK JAITHA and also to the Securities and Exchange Board of India.

Date: February 24, 2022	**BARNALI MUKHERJEE**
Place: Mumbai	**ADJUDICATING OFFICER**