BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

(ADJUDICATION ORDER NO. : Order/BM/LD/2021-22/ 15252)

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

In respect of

Ashutosh Gadodia

(**PAN: AILPG9460H**)

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

<u>BACKGROUND OF THE CASE</u> :

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

2. Pursuant to investigation it was observed that a total of 2,91,744 trades comprising 81.40 % of all the trades executed in the stock options on BSE segment during the investigation period were non genuine trades. It was observed that Ashutosh Gadodia (hereinafter referred to as the "**Noticee**") was one such entity who indulged in execution of reversal trades in stock options segment of BSE during the Investigation period. 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 alleged violation of the provisions of Regulation 3(a),(b),(c),(d) and Regulation 4(1) & 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 has been appointed as the adjudicating officer *vide* order dated September 23, 2021, under Section 19 read with sub-section (1) of Section 15-I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the “**SEBI Act, 1992”**) and Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as the “**Adjudication Rules, 1995**”) to inquire into and adjudge the alleged violation committed by the Noticee, under Section 15HA of the SEBI Act, 1992.

SHOW CAUSE NOTICE, REPLYAND HEARING :

4. A show cause notice ref. EAD-3/BM/LD /ISO-II/29993/2021 dated October 25, 2021 (hereinafter referred to as “SCN”) was served upon the Noticee under Rule 4(1) of the SEBI Adjudication Rules to show cause as to why an inquiry should not be held and penalty not be imposed against the Noticee under Section 15HA of the SEBI Act.

The SCN issued to the Noticee, inter alia , mentioned / alleged the following :

(i) *The Noticee was one of the entities which had indulged in reversal trades which allegedly created false and misleading appearance of trading, generating artificial volumes in stock options segment of the BSE during the Investigation Period.*

(ii) *The Noticee had engaged in 2 instances in 1 unique contract which led to generation of artificial volume in the aforesaid unique contracts.*

(iii) *In the 1 unique contract, the trades entered by the Noticee were reversed with the same counterparty at a substantial price difference without any basis for significant change in the contract price, which indicates that these trades were artificial and non-genuine in nature.*

(iv) *For the purpose of illustration of non-genuine trades and creation of artificial volume by the Noticee, details of trading done by the Noticee in the contract viz. "*GRSM15MAR3550.00PE*" on 18/03/2015 is given below :*

Sl. no	Contract name	Avg. buy rate (Rs.)	Total buy volume (no. of units)	Avg. sell rate (Rs.)	Total sell volume (no. of units)	Total Volume in the Contract	% of Non-genuine trades of the Noticee in the contract to total trades in the contract	% of Artificial volume generated by Noticee in the contract to total volume in the contract
1	GRSM15MAR3550.00PE	10	40000	15	40000	325500	16.67	24.58

(v) *It is observed from the table that the trades entered by the Noticee in the contract of "*GRSM15MAR3550.00PE*" on 18/03/2015 with its counterparty viz. Triune Exhibitors Pvt. Ltd. were reversed between the Noticee and the same counterparty on the same day resulting in reversal of trades which are, prima facie, considered to be as non-genuine. Therefore in the process, artificial volume in the stock option contract at BSE has been generated by the Noticee through such non-genuine trades.*

(vi) *In view of the above, it is alleged that the Noticee, by indulging in execution of reversal trades in Stock Options with same counterparty on the same day, which were non-genuine in nature, has created false or misleading appearance of trading in stock options and therefore allegedly violated Regulation 3(a), (b), (c), (d) and Regulation 4(1) & 4(2)(a) of the PFUTP Regulations, 2003.*

5. The Noticee replied to the SCN vide letters dated November 11, 2021, November 26, 2021 and December 06, 2021 which is summarized as below :

The Noticee submits that :

1) *The impugned Notice dated October 25, 2021, issued under Rule 4(1) of Securities and Exchange Board of India (Procedure for Holding Enquiry and*

Imposing Penalties) Rules 1995 has been issued on a stale matter, which took place more than 6 years ago in March 2015, and it has not been issued within a reasonable time period, thus causing serious prejudice to the Noticee. The investigating agency cannot be given the latitude of protracting the conclusion of investigation without any limit of time.

2) *He requested for certain documents/details and cross examination of Trading Member and the counterparty.*
3) *Both the trades were initially executed in some other code and that code was modified by the Trading Member by his client code.*
4) *There is no bar notified by either the Exchange or SEBI on squaring off a trade on the same day and a trade does not become non genuine because it is reversed on the same day.*
5) *He is not connected or related to the said counter party and its broker and no material has been brought on record to suggest or justify collusion by him. Mere matching with the same counterparty on the same day is not violative of any securities laws and it cannot be held against him unless all the factors enumerated above, combined with factual aspects of his trades are considered together.*
6) *There was only one alleged squaring off reversal trade executed by him. There was no persistence in trading by him in the derivative contract or of a nature to attract provisions of PFUTP Regulations, 2003.*
7) *The essential requirement to constitute fraud is to induce another person or his agent to deal in securities. The actual act of dealing in securities by the other person by reason of inducement is not relevant but presence of inducement itself is a sine qua non to constitute fraud. Such presence of inducement can be inferred either directly or indirectly in price movement of concerned scrips or derivative contracts or in trades executed therein, where either the traded price or the traded volume is benchmarked by the investors and then the same benchmark is used by them in taking trading decisions.*
8) *The profit or loss arising from his trades was settled by the parties to the trade to their respective brokers, who cleared the same through the clearing corporation of BSE, and same was collected / paid to respective clients by BSE through respective brokers. BSE had collected transaction charges on these transactions, stamp duty was collected by State Government through*

BSE, SEBI had collected turnover fees and the broker had collected his brokerage. This was done for both ends of the transaction. The volume was recorded by BSE and is part of historical data. Thus, the trading was genuine and not creating false and misleading appearance of trading or generating artificial volume as the trades were acted upon by all the entities involved including the regulatory bodies.

9) *The trading members who executed the trades or the Bombay Stock Exchange who failed in its supervisory and regulatory role are not being proceeded against.*

6. In the interest of natural justice and in terms of the Adjudication Rules, the Noticee was provided with an opportunity of personal hearing in the matter on December 07, 2021. Authorized Representative ('AR') appeared on behalf of the Noticee on the stipulated date of hearing. During the course of hearing, the AR reiterated the submissions made by the Noticee in his replies dated November 11, 2021, November 26, 2021 & December 06, 2021.

CONSIDERATION OF ISSUES AND FINDINGS :

7. 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 Regulation 3(a), (b), (c), (d) and Regulation 4(1) & 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 ?

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

PFUTP Regulations :

3. Prohibition of certain dealings in securities No person shall directly or indirectly-

(a) buy, sell or otherwise deal in securities in a fraudulent manner;

(b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;

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

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

4. Prohibition of manipulative, fraudulent and unfair trade practices

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

(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:—

(a) indulging in an act which creates false or misleading appearance of trading in the securities market;

Issue No 1 : ***Whether the Noticee has violated provisions of Regulations 3(a), (b), (c), (d) and Regulation 4(1) & 4(2)(a) of PFUTP Regulations, 2003?***

9. I note that allegation against the Noticee is that, while dealing in the stock option contracts at BSE during the IP, he 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 as those trades in which an entity reverse 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, and allegedly lead to false or misleading appearance of trading in terms of generation of artificial volumes, hence, these trades are deceptive and manipulative. From the facts/material made available on record, I find that the reversal trades executed by the Noticee, which were observed in the present case, were undertaken by the Noticee with its counterparty with a predetermined arrangement to book profit or losses respectively, and therefore, the parties to the trades were not trading in the ordinary course of business. Therefore, it is alleged that the Noticee by indulging in such reversal trades with its counterparty in the illiquid stock option segment at BSE has managed to generate artificial volume in the Stock Options segment at BSE during the IP.

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

10.1 I note from the trade log of the Noticee that he had traded in 1 unique contract in the Stock Options segment of BSE during the above mentioned IP. The examination of the Trade log of the Noticee during the relevant period revealed that the Noticee had executed 2 alleged non-genuine trades in respect of 1 contract on the Stock Options segment of BSE. I note that the above mentioned trades of the Noticee had allegedly resulted in creation of artificial volume of 80,000 units in the said 1 contract.

Summary of the alleged non-genuine trades of the Noticee are as follows :

Sl. no	Contract name	Avg. buy rate (Rs.)	Total buy volume (no. of units)	Avg. sell rate (Rs.)	Total sell volume (no. of units)	Total Volume in the Contract	% of Non-genuine trades of the Noticee in the contract to total trades in the contract	% of Artificial volume generated by Noticee in the contract to total volume in the contract
1	GRSM15MAR3550.00PE	10	40000	15	40000	325500	16.67	24.58

10.2 I note from the trade and order log that the trades executed by the Noticee were reversed within a short span of time with the same counterparty on the same day.

10.3 The details of reversal trades done by the Noticee in the contract "GRSM15MAR3550.00PE" are as given below :

Trade date	Client name	CP Client name	Trade time	Trade rate	Traded quantity	Buy/Sell
18/03/2015	Ashutosh Gadodia	Triune Exhibitors Pvt. Ltd.	12:49:57 hrs	Rs.10 per unit	40,000	Buy
18/03/2015	Ashutosh Gadodia	Triune Exhibitors Pvt. Ltd.	12:50:01 hrs	Rs. 15 per unit.	40,000	Sell

10.4 It is observed from the above table that on 18/03/2015 at 12:49:57 hrs , the Noticee entered into 1 buy trade with counter party viz Triune Exhibitors Pvt. Ltd. for 40,000 units at the rate of Rs 10/- per unit in the contract "GRSM15MAR3550.00PE" . Thereafter, on the same day, the Noticee at 12:50:01 hrs entered into 1 sell trade with same counter party for 40,000 units at the rate of Rs. 15/- per unit in the same contract. It is observed that while dealing in the said contract during the I.P., the Noticee executed reversal trades with the same counter party i.e. Triune Exhibitors Pvt. Ltd on the same day and with significant price difference in buy and sell rate within a short span of time. Thus the Noticee, through its dealing in the above contract during the I.P., executed non genuine trades which was 16.67% of the total trades from the market in the said contract during the I.P., and thereby Noticee generated an artificial volume of 80,000 units which was 24.58% of the total volume traded in the said contract in the market during the I.P.

10.5 The non-genuineness of these transactions executed by the Noticee is evident from the fact that there was no commercial basis to suddenly reverse the position with its counterparty with significant price difference on the same day. The trade reversals in the said case points out to the fact that the party to the transactions, including the Noticee, did not intend to transfer the beneficial ownership and through these orchestrated transactions, the intention of which was not regular trading, other investors have been excluded from participating in these trades/ contracts.

10.6 As already mentioned above, there was very little time gap between the buy and sell orders placed by the Noticee with its counterparty in the above trades. Given the fact that the Stock Option contracts were illiquid in nature at BSE and also in view of the observations made above, I am convinced that Noticee has entered into reversal/non-genuine trades with his counterparty and in the process generated artificial volume in the otherwise illiquid stock option contracts at BSE.

11. The Noticee has *interalia* contended that the impugned Notice dated October 25, 2021, issued under Rule 4(1) of Securities and Exchange Board of India (Procedure for Holding Enquiry and Imposing Penalties) Rules 1995 has been issued on a stale matter, which took place more than 6 years ago in March 2015, and it has not been issued within a reasonable time period, thus causing serious prejudice to the Noticee. The investigating agency cannot be given the latitude of protracting the conclusion of investigation without any limit of time. Further, the Noticee has relied upon several Supreme Court and the Hon'ble SAT judgements where inordinate delay in initiating actions has been found to be a cause to quash proceedings. 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, interalia 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. Subsequently 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 in the matter, conveyed vide communique dated September 27, 2021, SCN was issued on October 25, 2021. In compliance with the principles of natural justice, after receipt of reply, an opportunity of personal hearing was scheduled on December 07, 2021.

Further, in this regard, 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 and so the contentions of Noticee in this regard are without merits.

12. Noticee requested for certain documents/details and cross examination of the Trading Member and the Counterparty. In this regard it is stated that the question of cross-examining anyone may arise only if a proceeding is based on reliance upon recorded statements of persons. Thus, the right of cross-examination cannot be claimed in the instant proceeding because no statement of any party or counter-party or broker/ dealer has either been recorded or relied upon in the captioned proceeding. It is also noted that in view of sub-rule (5) of Rule 4 of the Adjudication Rules, 1995, the Adjudication proceeding is not bound by the provisions of Indian Evidence Act, 1872. Thus, cross-examination could not be granted as a matter of right in the instant proceeding. I also note that the only documents, the relevant trade logs, relied upon in the matter were duly provided to the Noticee along with SCN dated October 25, 2021, and the same are as follows:

Annexure	Copy of relevant documents enclosed with this SCN
B	Integrated trade log of all reversal trades of Noticee in the stock options segment of BSE during the period April 1, 2014 to September 30, 2015

C	Summary of all reversal trades

In this regard, I rely on the judgement of the Hon'ble SAT 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...."*

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

"*Reliance was also made of 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 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 provisions of the Act and the Rules as referred to above do not provide for 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 specially when such documents are not being relied upon."

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*".

Therefore, I note that documents relied upon in the matter were duly provided to the Noticee along with SCN dated October 25, 2021 in the matter, so that principles of natural justice have been complied with. Hence the contentions of Noticee in this regard are without merits.

13. The Noticee has contended that both the *trades were initially executed in some other code and that code was modified by the Trading Member by his client code* He contended that the "Modified Client" column in the trade logs demonstrates that all the trades were initially executed in some other client codes and that such codes were modified by the Trading Member by Noticee's client code GVP 1418. I note that modified client code is conclusive to establish that the trades in question were executed by the Noticee because the modified client code is generated in the ordinary course of trading in the stock exchanges after trades are executed. Futher, the Noticee in his reply to the SCN, has conceded that the trades in question were executed by him while laying out his contention that the impugned

trades were duly settled through the exchange mechanisam. Therefore, I note that the contention of the Noticee is devoid of merit.

14. The Noticee contended that there was no bar notified by either BSE or SEBI on squaring off a trade on the same day and a trade does not become non genuine or unlawful merely because it was matched and reversed on the same day with the same party.

I note that the Noticee was obligated to ensure genuineness of the trades executed by him on the exchange platform. The aforesaid obligation was mandatory not withstanding any bar notified either by BSE or SEBI in this regard.

15. The Noticee has contended that he is not connected or related to the said counter party and its broker and no material has been brought on record to suggest or justify collusion by him. Mere matching with the same counterparty on the same day is not violative of any securities laws and it cannot be held against him unless all the factors enumerated above, combined with factual aspects of his trades are considered together. Further, the Noticee has contended that there was only one alleged squaring off reveral trade executed by him and there was no persistence in trading by him in the derivative contract. I note that it is not mere coincidence that Noticee could match his trades with the same counterparty with whom he had undertaken first leg of the impugned trades. This is the outcome of meeting of minds elsewhere and it was a deliberate attempt to deal in such a fashion.

I note in matters dealing with violation of PFUTP Regulations, 2003, the reason as regards execution of non-genuine trades might not be forthcoming. However, the correct test instead, is one of preponderance of probabilities. Here I would like to rely on the judgment of Hon'ble Supreme Court in SEBI v Kishore R Ajmera (AIR 2016 SC 1079) decided on February 23, 2016, wherein it was held that-"...*in the absence of direct proof of meeting of minds elsewhere in synchronized transactions, the test should be one of preponderance of probabilities as far as adjudication of civil liability arising out of the violation of the Act or provision of the Regulations is concerned. The conclusion has to be gathered from various* *circumstances like that volume of the trade effected; the period of persistence in trading in the particular scrip; the particulars of the buy and sell orders, namely, the volume thereof; the proximity of time between the two and such other relevant factors. The illustrations are not exhaustive..."*

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

I note that direct evidence is not forthcoming in the present matter as regards to meeting of minds or collusion of the Noticee with other entities. However, I note that the trading behaviour of the Noticee makes it clear that aforesaid non-genuine trades could not have been possible without meeting of minds at some level.

In this context, I deem it appropriate to refer to the Hon'ble SAT order dated July 14, 2006, in the case of Ketan Parekh vs. SEBI (Appeal no. 2/2004), wherein the Hon'ble SAT has held that-"*The nature of transactions executed, the frequency with which such transactions are undertaken, the value of the transactions, the conditions then prevailing in the market are some of the factors which go to show the intention of the parties. This list of factors, in the very nature of things, cannot be exhaustive. Any one factor may or may not be decisive and it is from the cumulative effect of these that an inference will have to be drawn*."

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), which had similar case facts, 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....."*

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."*

In a similar case of Radha Malani where adjudication order was passed in the matter of dealings in illiquid stock options at BSE, the said order was challenged before the Hon'ble SAT. Hon'ble SAT in its judgement dated November 24, 2021 in the said case dismissed the appeal and observed "*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")*. The observation made in the aforesaid judgement applied to facts and circumstances of the present case. Hence the contention of the Noticee is not tenable.

16. The Noticee has also contended that the essential requirement to constitute fraud is to induce another person or his agent to deal in securities. Such presence of inducement can be inferred either directly or indirectly in price movement of

concerned scrips or derivative contracts or in trades executed therein, where either the traded price or the traded volume is benchmarked by the investors and then the same benchmark is used by them in taking trading decisions. In this regard, I note the following from the judgment of the Hon'ble SAT in the matter of Ketan Parekh vs SEBI (supra): "*In other words, if the factum of manipulation is established it will necessarily follow that the investors in the market had been induced to buy or sell and that no further proof in this regard is required. The market, as already observed, is so wide spread that it may not be humanly possible for the Board to track the persons who were actually induced to buy or sell securities as a result of manipulation and law can never impose on the Board a burden which is impossible to be discharged. This, in our view, clearly flows from the plain language of Regulation 4 (a) of the Regulations*."

In view of the abovementioned judgement, the contention of the Noticee in this regard, is not tenable.

17. The Noticee has contended that the impugned trades were duly settled through the exchange mechanism with proper settlement of profits/losses with the payment of requisite transaction charges and stamp duty. Thus, the trading was genuine and did not create false and misleading appearance of trading or generating artificial volume as the trades were acted upon by all the entities involved including the regulatory bodies. I note that the allegations against the Noticee does not relate to profit-making but pertains to the reversal trades executed by him, on the same day with same counterparty with substantial price difference between the buy and sell rates without any change in the price of the underlying scrips, leading to generation of artificial volume, thus creating false and misleading appearance of trading.

18. The Noticee has contended that the trading members who executed the trades or the BSE who failed in its supervisory and regulatory role are not being proceeded against. It may be noted that the remit of the current proceedings are in terms of the Communique dated September 27, 2021 appointing the Adjudication 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 trading members 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 Regulation, 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, adjudicating proceedings are not vitiated merely because each violator is proceeded against in separate and distinct proceedings.

19. Therefore, I find that the allegations of violation of Regulation 3(a), (b), (c) & (d) and Regulation 4(1) & 4(2)(a) of the 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* ?

20. 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) and Regulation 4(1) & 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 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* ?**

21. 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*.]

22. I observe that it is not possible from the material available on record to quantify the amount of loss caused to genuine investors as a result of the reversal trades/ non-genuine trades executed by the Noticee with its counterparty. However, the Noticee has entered into 2 non-genuine trades which demonstrates the violation of PFUTP Regulations, 2003.

23. Therefore, I note that Noticee indulged in execution of reversal trades in the stock options contract 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 Regulation 4(1) & 4(2) (a) of the PFUTP Regulations, 2003.

24. Having considered all the facts and circumstances of the case, the material available on record and the factors mentioned in the preceding paragraphs, I, in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, hereby impose a penalty of Rs. 5,00,000/-- (Rupees Five Lakhs Only) on the Noticee viz. Ashutosh Gadodia under the provisions of Section 15HA of the SEBI Act for the violation of Regulation 3(a), (b), (c) & (d) and Regulation 4(1) & 4(2) (a) of the PFUTP Regulations, 2003. I am of the view that the said penalty is commensurate with the default committed by the Noticee.

25. The Noticee shall remit / pay the said amount of penalty within 45 (forty five) days of the receipt of this order either by way of Demand Draft (DD) in favour of "SEBI – Penalties Remittable to Government of India", payable at Mumbai and the said DD should be forwarded to the Division Chief, Enforcement Department -I (EFD), Division of Regulatory Action -I [EFD1-DRA-2] SEBI Bhavan, Plot No.C4-A,' G' Block, Bandra Kurla Complex (BKC), Bandra (East), Mumbai –400 051 and also send an email to tad@sebi.gov.in with the following details :

1	Case Name	
2	Name of the Payee	
3	Date of Payment	
4	Amount Paid	
5	Transaction No.	
6	Bank Details in which payment is made	
7	Payment is made for (like penalties/disgorgement / recovery/ settlement amount and legal charges along with order details)	

26. Payment can also be made online by following the below path at SEBI website www.sebi.gov.in ENFORCEMENT → Orders → Orders of AO → Click on PAY NOW or at https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html.

27. 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.

28. In terms of Rule 6 of the Adjudication Rules, a copy of this order is sent to the Noticee viz. Ashutosh Gadodia and also to Securities and Exchange Board of India.

Date: **February 28, 2022** | **BARNALI MUKHERJEE**

Place: **Mumbai** | **ADJUDICATING OFFICER**