BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

(ADJUDICATION ORDER NO. : Order/BM/LD/2021-22/15320)

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

Ashok Kumar Kapoor HUF

(**PAN: AAGHA3450C**)

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

BACKGROUND OF THE CASE :

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 Ashok Kumar Kapoor HUF (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/29996/2021 dated October 07, 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. "SAIL15JUL70.00CEW2" on 07/07/2015 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	SAIL15JUL70.00CEW2	0.05	104000	1	104000	360000	40	57.78

(v) It is observed from the table that the trades entered by the Noticee in the contract of "SAIL15JUL70.00CEW2" on 07/07/2015 with its counterparty viz. Pioneer Polyfeb 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 18, 2021, December 15, 2021 & December 17, 2021 which is summarized as below :

The Noticee submits that :

- *Investigation report, order placement record, voice recording and other documents relied upon by SEBI was not provided. He relied upon the Hon'ble SAT judgements in the matter of Karvy Stock Broking Ltd. Vs. SEBI.*

- *Cross-examination of Broker, BSE, Counter party broker not provided.*
- *The contention of the Authority that the trading which is illiquid stock options are illegal and unfair is not tenable, as the stock options were freely marketable and were listed in the exchange and the Authority vide its notification dated June 02, 2011 permitted Stock Exchanges to enhance liquidity of illiquid securities in their derivative segments and thereby introduced Liquidity Enhancement Scheme (LEIPS). Therefore such act and / or action of the Authority violates the Right of the HUF under Article 14, 19(1) (g) and 300 A of the Constitution of India.*
- *The trades of the HUF were not fraudulent and do not constitute unfair trade practice.*
- *The modus operandi adopted while trading in stocks was by way of placing orders telephonically to the stock broker and not through punching of saudas directly in the terminal. Therefore there is a possibility that the broker might have committed an error as far as the transaction in question is concerned by routing the transaction through the HUF's account. The HUF cannot be held responsible for the mistakes /fraud committed by the broker using the account of the HUF.*
- *No person has been defrauded because of the impugned trades.*
- *The HUF was not aware of the identity of the counterparty and the fact that the counterparty is the same in both the buy and sale transaction and does not know the counterparty or the company in question.*
- *The HUF's trades were negligible and in the absence of multiple or voluminous transactions, inference of fraud cannot be drawn.*
- *Collusion with counterparties or market manipulation has not been established. Therefore, the HUF cannot be subjected to penalty for fraud or unfair trade practices. The HUF relied on the following judgements:*
  - *Labhu Gohil Vs. SEBI*
  - *Nitshith M. Shah HUF Vs. SEBI, Jagruti Securities Ltd. Vs. SEBI*
  - *Vikas Ganeshmal Bengani Vs. WTM, SEBI.*
  - *Ramod Kumar Agarwal (HUF) Vs. Adjudication Officer*
  - *Kishor V Gandhi Vs. SEBi. Subhkam Securities Private Limited Vs. SEBI*
  - *Dhavani Darshan Kothari & Anr. Vs. SEBI*

> *Adjudication Order of the Hon'ble Adjudicating Officer in Usha Kothari & others.*

- *The HUF also contends that the SCN dated October 7, 2021 was issued after a long delay and thus the proceedings under the said SCN was not sustainable in law. The HUF relied the judgement of the Hon'ble SAT in the matters of Ashok Shivlal Rupani Vs. SEBI and Mr. Rakesh Kathotia & Ors. Vs. SEBI.*
- *The Amendment to the SEBI (PFUTP) Regulations, 2003 came into force in February 2019 vide which the word "Intermediary" was replaced with "Individual Party". Such amendment was prospective in nature and not retrospective. Till the amendment came into force, SEBI was empowered to take actions against intermediary i.e brokers, sub-brokers only. Therefore, SEBI does not have the jurisdiction to send notices to investors for actions/activities undertaken by them during periods prior to February 2019. Thus the SCN issued to the HUF is void.*
- *The HUF denies knowing the counterparty nor was there any meeting of minds as the trades were done on BSE. Hence, the responsibility to prove the malafide intentions lies with SEBI.*
- *No party has complained of any loss caused due to transactions by it .*

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 November 23, 2021. However, the Noticee did not appear for the hearing. In the interest of natural justice, a second hearing was granted to the Noticee on December 17, 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 18, 2021, & December 15, 2021. The AR informed that additional submission would be made post hearing and the same was submitted on December 17, 2021.

<u>CONSIDERATION OF ISSUES AND FINDINGS :</u>

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 allegedly 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 2,08,000 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	SAIL15JUL70.00CEW2	0.05	104000	1	104000	360000	40	57.78

10.2 The details of reversal trades done by the Noticee in the contract "SAIL15JUL70.00CEW2" are as given below :

Trade date	Client name	CP Client name	Trade time	Trade rate	Traded quantity	Buy/Sell
07/07/2015	Ashok Kumar Kapoor HUF	Pioneer Polyfeb Ltd.	12:46:02 hrs	Rs. 1 per unit	1,04,000	Sell
07/07/2015	Ashok Kumar Kapoor HUF	Pioneer Polyfeb Ltd.	13:49:10 hrs	Rs. 0.05 per unit.	1,04,000	Buy

10.3 It is observed from the above table that on 07/07/2015 at 12:46:02 hrs , the Noticee entered into 1 sell trade with counter party viz Pioneer Polyfeb Ltd. for 1,04,000 units at the rate of Rs 1/- per unit in the contract "SAIL15JUL70.00CEW2" . Thereafter, on the same day, the Noticee at 13:49:10 hrs entered into 1 buy trade with same counter party for 1,04,000 units at the rate of Rs. 0.05/- 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. Poineer Polyfeb 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 40% of the total trades from the market in the said contract during the I.P., and thereby Noticee generated an artificial volume of 2,08,000 units which was 57.78% 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 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. Noticee has *interalia* contended that the SCN dated October 7, 2021 was issued after a long delay and thus the proceedings under the said SCN was not sustainable in law. The Noticee relied on the judgement of the Hon'ble SAT in the matters of Ashok Shivlal Rupani Vs. SEBI and Mr. Rakesh Kathotia & Ors. Vs. SEBI and Cross-examination of Broker, BSE, Counter party broker not provided. 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 07, 2021. In compliance with the principles of natural justice, an opportunity of hearing was granted to the Noticee on November 23, 2021. However, the Noticee did not appear for the hearing. The Noticee's reply to the SCN dated November 18, 2021 was received on November 24, 2021. Thereafter a second hearing was granted to the Noticee on December 17, 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 contended that Investigation report, order placement record, voice recording and other documents relied upon by SEBI was not provided. Further, Noticee contended that Cross-examination of Broker, BSE, Counter party broker not provided. The Noticee relied upon the Hon'ble SAT judgements in the matter of Karvy Stock Broking Ltd. Vs. SEBI. 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 7, 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 07, 2021, so that principles of natural justice have been complied with and the contentions of Noticee in this regard are without merits.

13. The Noticee denies knowing the counterparty nor was there any meeting of the minds as the trades were done on the BSE . Hence, the responsibility to prove the malafide intention lies with SEBI. I note that it is not mere coincidence that Noticee could match his trades with the same counterparties 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."*

14. Noticee has contended that the Noticee's trades were negligible and in the absence of multiple or voluminous transaction, inference of fraud cannot be drawn. I note that the allegation in the instant matter is not regarding the total number of trades executed by the Noticee but whether the trades executed by the Noticee in the concerned illiquid contract were non-genuine or not, thus leading to generation of artificial volumes. Therefore,I dismiss the contention of Noticee in this regard.

15. Noticee also contended that the trades were not fraudulent and did not constitute unfair trade practice. Further, no person has been defrauded because of the impugned trades. In this regard, I rely on the judgement 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 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.

16. Noticee contended that the allegation of the Authority that the trading which in illiquid stock options are illegal and unfair is not tenable, as the stock options were freely marketable and were listed in the exchange and the Authority vide its notification dated June 02, 2011 permitted Stock Exchanges to enhance liquidity of illiquid securities in their derivative segments and thereby introduced Liquidity Enhancement Scheme (LEIPS). In this regard, I note that the issue under examination is whether the trades executed by the Noticee in the concerned illiquid option contract were non-genuine or not, thus leading to generation of artificial volumes. Therefore, I dismiss the contention of the Noticee in this regard.

17. Noticee has contended that no party has complained of any loss caused due to transactions by him. I note that the Noticee was obligated to ensure genuineness

of the trades executed by it on the exchange platform. The aforesaid obligation was mandatory notwithstanding any complaint of any loss caused due to its transactions.

18. Noticee has contended that the modus operandi adopted by the Noticee while trading in stocks was by way of placing orders telephonically to the stock broker and not through punching of saudas directly in the terminal. Therefore there is a possibility that the broker might have committed an error as far as the transaction in question is concerned by routing the transaction through the Noticee's account. Hence the Noticee cannot be held responsible for the mistakes /fraud committed by the broker using the account of the Noticee. I note that notwithstanding aforesaid facts, the Noticee was under the obligation of ensuring genuineness of the concerned trades executed and cannot put the onus on others, so the contentions in this regard are without merits.

19. Noticee has further contended t*he Amendment to the SEBI (PFUTP) Regulations, 2003 came into force in February 2019 vide which the word "Intermediary" was replaced with "Individual Party". Such amendment was prospective in nature and not retrospective. Till the amendment came into force, SEBI was empowered to take actions against intermediary i.e brokers, sub-brokers only. Therefore, SEBI does not have the jurisdiction to send notices to investors for actions/activities undertaken by them during periods prior to February 2019. Thus the SCN issued to the HUF is void.* I note that the amendment by the Finance Act, 2018 w.e.f. March 08, 2019 pertains to imposition of penalty under Section 11B of the SEBI Act, 1992. The imposition of penalty for violations of the SEBI (Prohibition of Fraudulent and Unfair Trading Practices relating to Securities Markets) Regulations, 2003, under Adjudication proceedings has already been prescribed under Section 15HA of the SEBI Act, 1992 and applicable for all persons dealing in the security market. Hence, contention of the Noticee that the SCN issued by SEBI is void, as it has send notices to investors for actions/activities undertaken by them during periods prior to February 2019, is untenable.

20. 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* ?

21. 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* ?

22. 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*.]

23. 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.

24. 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.

25. 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. Ashok Kumar Kapoor HUF 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.

26. 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)	

27. 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.

28. 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.

29. In terms of Rule 6 of the Adjudication Rules, a copy of this order is sent to the Noticee viz. Ashok Kumar Kapoor HUF and also to Securities and Exchange Board of India.

Date: **March 08, 2022** **BARNALI MUKHERJEE**

Place: **Mumbai** **ADJUDICATION OFFICER**