BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/PB/AS/2021-22/14487]

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

Niraj Kumar Kajaria

(PAN: AGCPK9823B)

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 81.38% of all the trades executed in stock options segment of BSE during the IP were non genuine trades. It was observed that Niraj Kumar Kajaria (PAN-AGCPK9823B) (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 and 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. Shri K Saravanan was appointed as Adjudicating Officer in the matter, conveyed vide communique dated April 26, 2021, under section 19 read with section 15-I(1) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act, 1992**”) and rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as “**Adjudication Rules**”) to conduct adjudication proceedings in the manner specified under rule 4 of Adjudication Rules read with section 15-I(1) and (2) of SEBI Act, 1992, and if satisfied that penalty is liable,

impose such penalty deemed fit in terms of rule 5 of Adjudication Rules and section 15HA of SEBI Act, 1992. Pursuant to transfer of Shri K Saravanan, the undersigned was appointed as Adjudicating Officer in the matter, conveyed vide communique dated July 14, 2021.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. A Show Cause Notice ref no SEBI/HO/A&E/EAD/PB/AS/18178/2021 dated August 05, 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 him and why penalty should not be imposed under section 15HA of the SEBI Act, 1992 for the violations alleged to have been committed by Noticee.

5. It was *inter alia* alleged in the SCN that the Noticee had executed 5 non genuine trades in 2 Stock Options contracts which resulted in artificial volume of total 204,000 units. Summary of dealings of the Noticee in 2 Stock 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 (₹)	Total Buy Volume (No. of units)	Avg. Sell Rate (₹)	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	IFCI15JAN38.00CE	1.67	96000	0.1	96000	100	21.43	100	27.91
2	INCM15FEB105.00CEW1	10.1	6000	4.35	6000	100	22.22	100	1.48

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

    (a) The Noticee had executed non genuine trades in 2 contracts, wherein all trades of Noticee in the said 2 contracts were non genuine trades.

    (b) No. of non-genuine trades of the Noticee had significantly contributed to total no. of trades from the market in the aforesaid contracts, as 21.43% to 22.22% of the trades that happened in the aforesaid contracts were due to non-genuine trades executed by the Noticee.

    (c) The entire 100% of volume generated by Noticee in the above contracts was artificial volume, and further, the percentage of artificial volume generated by the Noticee in the above contracts to the total volume from the market in said contracts were in the range of 1.48% to 27.91%. Therefore, substantial volume generated by the Noticee in each of the above contracts were artificial volume.

    (d) Non genuine trades executed by the Noticee in above contracts had significant difference in buy rates and sell rates considering that the trades were reversed on same day.

7. The SCN was served on the Noticee via Speed Post Acknowledgement Due (SPAD) and via email dated August 06, 2021. Vide letters dated August 17, 2021, Noticee intimated appointment of Advocate Bharat Redij as Authorized Representative (AR), and further requested for inspection of *interalia* following documents:

    - Investigation Report along with annexures

- Alerts generated pursuant to the impugned trades
- Basis of observation of there being large scale reversal of trades
- Action taken/proposed against BSE
- Complete Trade and Order Log for the IP
- Correspondence exchanged by SEBI with third party entities
- All other information relevant for determination of issues in the matter
- Statement(s) recorded by SEBI of any person in connection with the subject matter

Further, vide aforesaid letter, Noticee also requested for cross examination of counterparty/directors/authorized persons of the counterparty to impugned trades.

8. Vide letter and email dated November 03, 2021, Noticee was conveyed the following:

……….it is conveyed to you that following are the relied upon documents in the instant proceedings and same have been provided to you along with the SCN issued in the matter:

S. No.	***Particular***	***Annexures to SCN***
1	*Details of all the trades of Noticee in Stock Option Segment of BSE during relevant period.*	*B*
2	*Details of all the alleged non-genuine trades of Noticee in Stock Option Segment of BSE during relevant period.*	*C*
3	*Summary of dealings of the Noticee in contracts wherein Noticee executed non genuine trades.*	*D*

It is noted that the aforementioned documents are the only documents relied upon in the matter. It may be noted that all relevant material relied upon in the instant proceedings have been provided to you. Therefore, it is noted that your request for inspection of documents is not reasonable and the same is being declined.

Further, as regards to the request of cross examination made by the Noticee, following was conveyed:

You also interalia requested for cross examination of counterparty/ Directors/ authorized persons of the counterparty to the impugned trades. In this regard, it is conveyed that no statements made by aforesaid entities have been relied upon in the SCN, so that the request for cross examination is unreasonable and thus, declined.

9. Vide letter dated November 15, 2021 and email dated November 18, 2021, AR submitted reply to the SCN which has been summarized below:

    - Noticee reiterated its request for inspection of additional documents as regards to the matter. In this regard, Noticee relied upon the judgement of the Hon'ble Securities Appellate Tribunal (hereinafter referred to as **'SAT'**) in the matter of PWC v SEBI and judgement of the Hon'ble Supreme Court in the matter of Trilok Nath vs Union of India.
    - SCN has been issued after an inordinate delay of 6 years of impugned trades, and on this ground alone, SCN must be withdrawn. In this regard, Noticee relied upon the judgement of the Hon'ble Bombay High Court in the matter of Sambhaji Shripati Bankar vs Ramesh

Keshav Ekbote, on the judgement of the Hon'ble Supreme Court in the matter of Bhatinda District Co-op Milk P. Union Ltd vs State of Punjab and on the judgement of the Hon'ble SAT in the matter of Ashlesh Shah vs SEBI.

- Noticee reiterated its request for cross examination of certain entities as regards to the matter. In this regard, Noticee relied upon the judgement of the Hon'ble SAT in the matter of Ramalinga Raju vs SEBI and on the judgement of the Hon'ble Supreme Court in the matter of Andaman Timber Industries vs Commissioner of Central Excise, Kolkata.
- The allegation that Noticee traded only in illiquid stock options is unfair, as the underlying scrip of the impugned contracts were liquid in nature.
- BSE and SEBI have permitted trading in options for 'far months' with a strike price which is at large variance to current market price. Thus, the options will always be 'in the money' or 'out of money'. As regulators have permitted trading with such a pattern, no adverse inference must be drawn.
- As Noticee's trades were reversed with the same counterparty, such trades had no effect on other investors, and hence, the allegation of creating 'misleading appearance' fails.
- BSE had come with Liquidity Enhancement Incentive Programs for enhancing liquidity in equity futures and options segment, effective from September, 2011 to March 31, 2016. Vide Notice dated March

08, 2016, BSE introduced a system which prevented execution of reversal trades. Therefore, because online preventive measures did not exist at the time of impugned trades, no adverse inference must be drawn against Noticee.

- Impugned trades constituted only 0.0001% of the total artificial trades during the IP, which was not sufficient to create misleading appearance of trading.
- As there is no question of transfer of beneficial ownership in options segment, allegation of creation of 'artificial' or 'reversal' trades is inconsequential.
- Noticee does not have connection with counterparties or with any other group of entities. Noticee's trades were carried out on the floor of stock exchange, wherein it is not possible to have knowledge of counterparty to the trade being executed. Also, there was difference in order quantity and time of buy and sell orders. Noticee relied on judgements of the Hon'ble SAT in the matters of Sanjay Agarwal vs SEBI, Smitaben N Shah vs SEBI, Amaresh Pathak vs SEBI, Jagruti Securities vs SEBI and SPJ Stockbroker Pvt Ltd vs SEBI in this regard.
- BSE had settled the trades as they were executed. Further, neither BSE nor any broker involved raised any warning, which indicates that the trades were genuine.

- There was no element of 'inducement' of other investors resulting due to impugned trades. Further, the options segment was illiquid, so other investors could not have been induced.
- No synchronization of trades has been alleged against the Noticee, which is necessary to prove non-genuineness of trades. Noticee relied upon the judgement of the Hon'ble SAT in the matter of Almonds Entertainment vs SEBI in this regard.
- No single instance or observation on specific role of Noticee in alleged reversal has been delineated in the SCN. Noticee relied upon judgement of the Hon'ble Supreme Court in the matter of Commissioner of Central Excise, Bangalore vs M/s Brindavan Beverages (P) Ltd and Ors in this regard.
- Profits and Losses occur in normal course of transactions in options segment, and Noticee had no idea of such profit or losses which were to occur.
- No grievance has been submitted by any investor, broker, stock exchange etc.
- SEBI has discontinued proceedings against brokers and intermediaries, while has not proceeded against BSE at all.
- The mitigating factors mentioned under Section 15J of the SEBI Act, 1992 must be considered and no penalty must be imposed.

Further, vide aforesaid email dated November 18, 2021, AR confirmed its appearance for the personal hearing scheduled on November 22, 2021.

10. Personal hearing in the matter was held on November 22, 2021 via video conferencing over Webex platform. During the course of hearing, AR reiterated the submissions made vide letter dated November 15, 2021. Hearing Minutes are on record.

CONSIDERATION OF ISSUES AND FINDINGS

11. 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?

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

    PFUTP Regulations, 2003

    3. Prohibition of certain dealings in securities

    No person shall directly or indirectly—

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

    (b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or

deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;

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

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

4. Prohibition of manipulative, fraudulent and unfair trade practices

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

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

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

13. 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 trades and the same had resulted in generation of artificial volume in stock option contracts at BSE. Reversal trades are considered to be those trades in which an entity reverses 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.

14. Noticee has *interalia* contended that SCN has been issued after an inordinate delay of 6 years of execution of impugned trades, and on this ground alone, SCN must be withdrawn. In this regard, Noticee relied upon the judgement of the Hon'ble Bombay High Court in the matter of Sambhaji Shripati Bankar vs Ramesh Keshav Ekbote, on the judgement of the Hon'ble Supreme Court in the matter of Bhatinda District Co-op Milk P. Union Ltd vs State of Punjab and on the judgement of the Hon'ble SAT in the matter of Ashlesh Shah vs SEBI. I note that there are no timelines prescribed in the SEBI Act, 1992 for initiating the adjudication proceedings. 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 the delay in issuance of SCN did not cause prejudice against the Noticee as contended by him, and therefore, contentions of Noticee in this regard are without merits.

15. Further, Noticee requested for inspection of certain additional documents pertaining to the matter *interalia* including Investigation Report, alerts generated pursuant to the impugned trades, basis of observation of execution of large scale reversal of trades, action taken/proposed against BSE and Complete Trade and Order Log for the IP. In this regard, Noticee relied upon the judgement of the Hon'ble SAT in the matter of Price Waterhouse & Co. And Ors. vs SEBI and judgement of the Hon'ble Supreme Court in the matter of Trilok Nath vs Union of India. I note that vide email dated November 03, 2021, it was conveyed to the Noticee that all documents relied upon in the issuance of SCN had already been provided as Annexures to the SCN dated August 05, 2021. I note that details of the documents provided to the Noticee as annexures to the SCN, which were conveyed to the Noticee vide aforesaid email, are as follows:

S. No.	Particular	Annexures to SCN
1	Details of all the trades of Noticee in Stock Option Segment of BSE during relevant period.	B
2	Details of all the alleged non-genuine trades of Noticee in Stock Option Segment of BSE during relevant period.	C
3	Summary of dealings of the Noticee in contracts wherein Noticee executed non genuine trades.	D

16. 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...."

17. 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 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."

18. 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 August 05, 2021 in the matter, so that principles of natural justice have been complied with and the contentions of Noticee in this regard are without merits.

19. Noticee also *interalia* requested for cross examination of certain entities as regards to the matter, and relied upon the judgement of the Hon’ble SAT in the matter of Ramalinga Raju vs SEBI and on the judgement of the Hon’ble Supreme Court in the matter of Andaman Timber Industries vs Commissioner of Central Excise, Kolkata. In this regard, I note that, as conveyed to the Noticee vide email dated November 03, 2021, no statements made by aforesaid entities were relied upon in the SCN, so that the request for cross examination was unreasonable and was denied therefor. Therefore, I note that the preliminary contentions raised by Noticee above are liable to be rejected, and I now proceed to consider the matter on merits.

20. I note from trade log of the Noticee that he had traded in 6 unique contracts in the stock options segment of BSE during the IP. It is observed that the Noticee has allegedly executed 5 non-genuine trades in the said 2 contracts. I further note that the above mentioned trades of the Noticee had

resulted in the creation of artificial volume of 2,04,000 units in the said 2 contracts. Summary of non-genuine trades of the Noticee is as follows:

S. No.	Contract Name	Avg. Buy Rate (₹)	Total Buy Volume (No. of units)	Avg. Sell Rate (₹)	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	IFCI15JAN38.00CE	1.67	96000	0.1	96000	100	21.43	100	27.91
2	INCM15FEB105.00CEW1	10.1	6000	4.35	6000	100	22.22	100	1.48

21. It is noted that the Noticee had executed non-genuine trades in 2 contracts, wherein the percentage of non-genuine trades of the Noticee in stock options contracts to total trades in the contracts was in the range of 21.43% to 22.22% in the aforesaid contracts. Further, artificial volume generated by Noticee in the contracts amounted to the entire 100% of total volume generated by him in the aforesaid contracts. It is also noted that artificial volume generated by the Noticee contributed significantly in the range of 1.48% to 27.91% of the total volume from the market in the said contracts. Non-genuine trades executed by the Noticee in the above contracts had significant difference in buy rates and sell rates considering that the trades were reversed on the same day.

22. I note from the trade log that the trades executed by the Noticee in a contract were squared up within a short span of time with his counterparties. To illustrate, the Noticee on January 30, 2015 at

10:14:31.99 hrs entered into 1 sell trade with counterparty viz. Mammon Concast Pvt Ltd for 6,000 units at the rate of ₹4.35 per unit in the contract INCM15FEB105.00CEW1. Thereafter, on the same day, Noticee entered into 1 buy trade with same counterparty at 10:43:34.26 hrs for 6,000 units at the rate of ₹10.1 per unit.

23. It is noted that while dealing in the said contract during the I.P., the Noticee executed reversal trades with same counterparty viz. Mammon Concast Pvt Ltd on the same day and with significant price difference in buy and sell rates. Thus, the Noticee, through his dealing in the contract viz. "INCM15FEB105.00CEW1" during the I.P., executed non genuine trades which was 22.22% of the total trades from the market in the said contract during the I.P., and thereby, Noticee generated artificial volume of 12,000 units which was 1.48% of the volume traded in the said contract from the market during the I.P.

24. Noticee has contended that BSE and SEBI have permitted trading in options for 'far months' with a strike price which is at large variance to current market price. Thus, the options would always be 'in the money' or 'out of money', and as trading with such pattern is permitted, no adverse inference must be drawn. I note that the non-genuineness of these transactions executed by the Noticee is evident from the fact that there was no commercial basis as to why, within a short span of time, the Noticee reversed the position with his counterparties with significant price difference. I note from the trade log of the Noticee that the time taken by

the Noticee for reversing the non-genuine trades ranged from 17 minutes 55 seconds to 29 minutes 02 seconds, on the same day. Such a short span of time taken for reversing the trades in an illiquid stock option contract suggests the non-genuineness of these trades executed by the Noticee. The fact that the transactions in a particular contract were reversed with the same counterparty indicates a prior meeting of minds with a view to execute the reversal trades at a pre-determined price. 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 wide variation in prices of the said contracts, within a short span of time, without substantial variation in the price of the underlying scrip to justify the aforesaid variation. It is a clear indication that there was pre-determination in the prices by the counterparties while executing the trades. Thus, it is observed that Noticee had indulged in reversal trades with his counterparties in the stock options segment of BSE and the same were non-genuine trades.

25. Noticee has *interalia* contended that Profits and Losses occur in normal course of transactions in options segment, and Noticee had no idea of such profit or losses which were to occur, so that allegations of execution of manipulative trades are unfounded. Noticee has also contended that no synchronization of trades has been alleged against the Noticee, and that synchronization of trades is necessary to prove non-genuineness of trades. Noticee relied upon the judgement of the Hon’ble SAT in the matter of Almonds Entertainment vs SEBI in this regard. I note that execution of

synchronized trades has not been alleged against the Noticee, and that all the trades executed by Noticee in the impugned contracts were in the form of reversal trades, in which the buy and sell rates had substantial difference without any trading strategy or changes in price of underlying scrip to justify the same as per the records. I note that considering the nature of trades in *toto* along with attending circumstances, it is discernible that the aforesaid reversal trades were non-genuine, and were executed without the intention of mere change in rights to exercise the impugned contract. Therefore, I note that aforesaid contentions are liable to be set aside on the above grounds.

26. Noticee has *interalia* contended that he did not have connection with counterparties or with any other group of entities as regards to the impugned trades. Further, Noticee's trades were carried out on the floor of stock exchange, wherein it is not possible to have knowledge of counterparty to the trades being executed. Also, there was difference in order quantity and time of buy and sell orders. Noticee relied on judgements of the Hon'ble SAT in the matters of Sanjay Agarwal vs SEBI, Smitaben N Shah vs SEBI, Amaresh Pathak vs SEBI, Jagruti Securities vs SEBI and SPJ Stockbroker Pvt Ltd vs SEBI in this regard. 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...*"

27. 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."*

28. 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."*

29. 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….."

30. 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.*"

31. Noticee has contended that BSE had settled the trades as they were executed, and that neither BSE nor any broker involved raised any warning, which indicates that the trades were genuine. Noticee has also contended that no grievance has been submitted by any investor, broker, stock exchange, etc. as regards to the impugned trades. Noticee has also contended that the impugned reversal trades could be executed as BSE had not introduced any measures to prevent execution of reversal trades. I note that Noticee was obligated to ensure genuineness of the trades executed by him on the exchange platform. The aforesaid obligation was mandatory not withstanding any warning issued by BSE or other

intermediaries, any grievance submitted by any investor or any preventive measures installed by SEBI in this regard.

32. Noticee has also contended that impugned trades constituted only 0.0001% of the total artificial trades during the IP, which was not sufficient to create misleading appearance of trading. I note that, as stated in the SCN, the percentage of artificial volume generated by Noticee in given contract to total volume in the contracts during the IP ranged from 1.48% to 27.91%. Also that, the percentage of artificial volume generated by Noticee in both the contracts to Noticee's total volume in the contracts was 100% in both the contracts. Therefore, Noticee's trades generated significant artificial volume in the impugned contracts, so that the contentions of Noticee in this regard are without merits. Noticee has also contended that the allegation that trades were executed in illiquid stock options segment does not hold ground, as the underlying scrip of the contracts were illiquid in nature. I note that the instant allegations have been framed basis the trading pattern exhibited by Noticee in stock options segment of BSE, and that price of the underlying scrip, which forms a separate class of security, is not relevant as regards instant considerations.

33. Further, Noticee has contended that as there is no question of transfer of beneficial ownership in options segment, allegation of creation of artificial trades is inconsequential. I note that in the F&O segment, execution of a trade results in change of rights over the contract, so that the impugned reversal trades, which were executed without intention of actual change in

rights over such contracts are non-genuine. I note that the Hon'ble SC in the matter of SEBI vs Rakhi Trading Pvt Ltd (supra) held that,

No doubt, as in the case of trade in a scrip in the cash segment, there is no physical delivery of the asset. However, even in the derivative segment there is a change of rights in a contract. In the instant case, through reverse trades, there was no genuine change of rights in the contract…………………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

Therefore, I note that contentions of Noticee in this regard are without merits.

34. Noticee has also contended that as the impugned trades were reversed with the same counterparty, such trades had no effect on other investors, and that there was no element of 'inducement' of other investors resulting due to impugned trades. Further, the options segment was illiquid, so other investors could not have been induced. In this regard, I rely on the judgement of the Hon'ble SC in the matter of SEBI vs Rakhi Trading (supra) in this regard, wherein it was held that,

Respondent-Rakhi Trading and Kasam Holding on facts are found to have been engaged in non-genuine transactions creating appearance of trading. If the factum of manipulation is established, it will necessarily follow that the investors in the market have been induced to buy or sell and that no further proof in this regard is required. The market, as already observed, is so widespread 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 the Board cannot be imposed with a burden which is impossible to be discharged.*

I note from the preceding paragraphs that in the instant matter, Noticee had executed manipulative trades, so that the contentions of Noticee in this regard are without merits.

35. Noticee has contended that the SCN makes generic allegations against the Noticee, and that specific role of the Noticee has not been delineated in the SCN. In this regard, Noticee relied upon judgement of the Hon'ble SC in the matter of Commissioner of Central Excise, Bangalore vs M/s Brindavan Beverages (P) Ltd and Ors. I note that the allegations against the Noticee have been cogently spelt out in the SCN, wherein it has been alleged that he executed non-genuine reversal trades in two stock options contracts and had contributed to artificial volume in the said contracts. Also, the evidences relied upon as regards aforesaid allegations have been provided as annexures to the SCN. Therefore, I note that the role of Noticee *qua* execution of reversal trades has been clearly laid out in the SCN, so that contentions of Noticee in this regard are without merits.

36. Therefore, the trading behaviour of the Noticee confirms that such trades were not normal and wide variation in prices of the trades in the same contract in a short time without any basis for such wide variation, all indicate that the trades executed by the Noticee were not genuine trades and being

non-genuine, created an appearance of artificial trading volumes in 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. 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:

    *[1][**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 [2][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].

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:-

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[1] Inserted by the SEBI (Amendment) Act, 2002, w.e.f.29-10-2002.

[2] Substituted for the words ―twenty-five crore rupees or three times the amount of profits made out of such failure, whichever is higher‖ by the Securities Laws (Amendment) Act, 2014, w.e.f. 08-09-2014

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. However, Noticee has entered into 5 non-genuine trades in 2 stock option contracts which demonstrates the repetitive nature of default on his part.

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 regulations 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
Niraj Kumar Kajaria PAN:AGCPK9823B	regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of PFUTP Regulations, 2003	₹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. Niraj Kumar Kajaria and also to the Securities and Exchange Board of India.

Date: December 13, 2021 | **PARAG BASU**
Place: Mumbai | **ADJUDICATING OFFICER**