BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
ADJUDICATION ORDER NO.: Order/KS/JT/2021-22/15056

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:
Madhumita Dutta
PAN: AFMPD1576M
In the matter of dealings in Illiquid Stock Options at the Bombay Stock Exchange

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as "SEBI") observed large scale reversal of trades in the Stock Options segment of the Bombay Stock Exchange (hereinafter referred to as "BSE") leading to the alleged creation of artificial volume in the stock options segment. In this regard, SEBI conducted an investigation into the trading activity in the illiquid Stock Options segment at the BSE for the period April 01, 2014 to September 30, 2015 (hereinafter referred to as "Investigation Period").

2. It was observed during the course of investigation that a total of 2,91,744 trades comprising 81.38% of all the trades executed in the Stock Options Segment at the BSE during the investigation period were trades which involved reversal of buy and sell positions by the clients and counterparties in a contract on the same day. It was observed that Ms. Madhumita Dutta (hereinafter referred to as "Noticee") was one such client whose reversal trades involved squaring off open positions with a significant difference without any basis for such change in the contract price. The aforesaid reversal trades allegedly resulted into generation of artificial volumes, leading to allegations that the Noticee had violated the provisions of regulations 3(a),(b),(c),(d) and regulations 4(1),4(2)(a) of the SEBI (Prohibition of Fraudulent and Unfair Trading Practices related to Securities Markets) Regulations, 2003 (hereinafter referred to as " PFUTP Regulations, 2003").

APPOINTMENT OF ADJUDICATING OFFICER

3. SEBI initiated adjudication proceedings and appointed the undersigned as Adjudicating Officer under section 15-I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "SEBI Act") read with rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as "Adjudication Rules") vide order dated April 30, 2021 to inquire into and adjudge under section 15HA of the SEBI Act against the Noticee for the alleged violation of the aforesaid provisions of PFUTP Regulations, 2003.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. A Show Cause Notice bearing reference no. SEBI/HO/ISD/P/OW/2021/17655/1 dated August 04, 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 the Noticee and why penalty should not be imposed upon the Noticee under Section 15HA of the SEBI Act for the violations alleged to have been committed by the Noticee.

5. It was *inter alia* alleged in the SCN that the Noticee had executed 2 non genuine trades in 1 Stock Options contract which resulted in artificial volume of total 1,84,000 units. The summary of dealings of the Noticee in the Stock Options contract, in which the Noticee allegedly executed non genuine trades during the Investigation Period, 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 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	UCOB15SEP50.00PEW3	5.2	92000	7.4	92000	100.00	32.39

6. The abovementioned reversal trades and volumes are explained through the dealings of Noticee in the contract "UCOB15SEP50.00PEW3" during the investigation period, as follows:-

   a. *During the investigation period, 2 trades for 1,84,000 units were executed by the Noticee in the said contract on September 14, 2015.*
   b. *While dealing in the said contract on September 14, 2015, at 15:10:48 hrs the Noticee entered into a buy trade with counterparty Artview Vanijya Pvt Ltd for 92,000 units at ₹5.2 per unit. At 15:14:07 hrs, the Noticee entered into a sell trade with the same counterparty, for 92,000 units at ₹7.4 per unit.*
   c. *The Noticee's two trades while dealing in the abovesaid contract during the investigation period allegedly generated artificial volume of 1,84,000 units, which made up 32.39% of total market volume in the said contract during this period.*

7. The Noticee vide email dated August 17, 2021, citing family issues, sought extension of one month for submitting reply to the SCN which was acceded to. Further, Noticee vide email dated September 21, 2021 sought a further extension of 15-20 days.

8. Eventually, the Noticee, vide email dated October 07, 2021, submitted reply to the SCN which is summarized below:

   8.1. Noticee denied all the allegations levelled in the SCN. SCN is bereft of any actual finding of wrongdoing and merely seeks to rely on conjecture and surmises which cannot sustain an allegation as serious as that of fraud under SEBI PIT Regulations. As such, these bald assertions ought to be set aside and any further enquiry into the matter dropped.

   8.2. The impugned trades of the notice were genuine and bonafide, conducted by and on the advice of a registered stockbroker. The said trades were executed on the trading platform of BSE Ltd and were

authorised by the stock exchange/SEBI in terms of the extant rules and regulations governing such trade.

8.3. The trades were conducted on the screen-based anonymous trading platform of the stock exchange, without the knowledge of the counterparty. Further, the prices for buy and sale were very much within the range permitted by the stock exchange/SEBI and the settlement took place through the recognised clearing corporation. As such, the allegation of the trades being non-genuine are prima facie baseless and preposterous.

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

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

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

b. The trading in call & put options, by its very nature is extremely volatile with very fast momentum, and the price movement is highly unpredictable. The investor/ broker is required to be nimble-footed

and make quick decisions including reversal of trades in a short span of time depending on the market momentum and outlook, to be able to maximise profit/ minimise loss. The average buy rate was Rs. 5.2 and the average sale rate was Rs. 7.4 and the total buy/ sale volume was only 92,000 units which cannot be said to be substantial in derivative trading.

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

d. The trades conducted by the Noticee constituted only 32.39% of the total market volume in the said contract. The Noticee's trades by themselves are not substantial; however, considering that the base, i.e., the total volume, itself was small, the Noticee's trades reflect a comparatively higher value in percentage terms. This cannot be a ground to allege that notice intended to generate artificial volumes, particularly when the notice had no way of knowing the total volume in the contract at the time of entering the trade.

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

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

8.7. The Noticee has earned a nominal profit of Rs 2,02,400 only. Therefore, it is illogical and preposterous to presume that any investor would

engage in market manipulation and creation of artificial volume to generate such a nominal profit.

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

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

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

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

8.12. In view of the above, there is no case for holding the proposed inquiry in respect of the Noticee and therefore, prayed that the SCN may kindly be dropped.

8.13. Without prejudice to the above, it is submitted that the Noticee has not earned any amount of disproportionate gain or unfair advantage as a result of the impugned trade; has not caused any loss to any investor and has not indulged in any repetitive trade. Therefore, in the event of the proposed inquiry being held and monetary penalty being levied, it is prayed that considering the facts and circumstances of the case as cited above, a lenient view may be taken and a minimum penalty may be levied as per the provisions of Section 15-J of the SEBI Act.

9. 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 30, 2021. Dr. Manas Shankar Ray, Advocate, the Authorised Representative (hereinafter referred to as 'AR'), appeared on behalf of the Noticee on the stipulated date of hearing through the online Webex platform. During the course of hearing, the AR reiterated the submissions made by the Noticee in her reply dated October 07, 2021 and requested a further time of 2 weeks to make further written submissions.

10. Subsequently, AR, on behalf of Noticee, vide email dated December 11, 2021, made further submissions that contained some additional arguments which are summarized below:
    10.1. The Noticee has conducted only one (1) reversal trade (i.e., 1 buy and 1 sell trade) of 92,000 units each, in one (1) contract, on one (1) day, during the investigation period spanning a long period of eighteen (18) months. Evidently, this is a one-off transaction, involving a miniscule volume, which cannot be said to have any substantial impact on the market in order to warrant the serious allegations of "manipulative, fraudulent and unfair trade practices" under the PFUTP Regulations.
    10.2. The Noticee's buy trade was executed at 15:10:48 hrs. Further, the Noticee's sell trade was executed at 15:14:07 hrs. This shows that there was a gap of about 3:19 minutes between the buy and sell trades of the Noticee. Such large gap in Trade time, by no stretch, can be said to be abnormal in derivative trading. So, the allegation in the SCN and the inference of violation of the PFUTP Regulations by the Noticee is completely unwarranted.
    10.3. During the Investigation Period a total of 2,91,744 trades comprising 81.40% of all trades executed in the Stock Options Segment BSE were found to be non-genuine trades, resulting in creation of artificial volumes to the tune of 826.21 crore units constituting 54.68% of the total market volume of the said segment of BSE during the said period. Needless to mention, such large-scale alleged misuse of the trading platform would

not be possible without the active involvement/ lack of oversight by the Stock Exchange.

10.4. Complete and relevant documents which are essential for a comprehensive analysis of the impugned trade and its impact on the market have not been provided to the Noticee. The SCN is devoid of any evidence whatsoever and complete and relevant documents/ cross examination of testimonies/ statements (if any) on the basis of which such a serious charge of fraud/ market manipulation can been made have not been provided to the Noticee. In this regard, the Noticee relied upon the judgments of Hon'ble SAT in the matter of HB Stock Holdings Ltd. v. SEBI and Bharat Jayantilal Patel v. SEBI.

10.5. Allegations as serious as fraud and market manipulation ought to be backed up by credible evidence and a finding of actual indulgence in fraud. The onus to prove the allegations levelled in the SCN against the Noticee lies squarely on SEBI, and there is a complete failure on the part of SEBI to discharge its onus in this case. In this regard, the Noticee relied upon the judgments of Hon'ble SAT in the matter of Samir Arora v. SEBI, (2005), Nirmal Bang Securities (P) Ltd. v. SEBI, (2004) and KSL & Industries Ltd v. SEBI (Appeal No. 9 of 2003).

10.6. For an action to constitute a breach of the PFUTP Regulations, there has to be an element of mala fide or wilful intent to defraud. Any action, which being devoid of this *mens rea* and in compliance with regulatory measures ought not to be viewed as an act of fraud.

10.7. The present proceedings are barred in light of the inordinate delay and on account of the doctrine of laches. The SCN in the matter was issued after a period of over seven years. It is humbly submitted that, this, by no stretch, could be construed as a reasonable period of time and hence the SCN deserves to be set aside on this ground alone. In this regard, the Noticee relied upon the judgments of Hon'ble SAT in the matter of Khandwala Securities v. SEBI (Appeal no. 19 of 2012), Subhkam Securities Private Limited. v. SEBI (Appeal no. 73 of 2012), Sanjay Jethalal Soni v. SEBI (Appeal no. 483 of 2018) and HB Stock Holdings Ltd. v. SEBI (Appeal Nos. 114 & 160 of 2012).

10.8. The instant matter pertains to isolated Case of matching trade and there is no sufficient proof of market manipulation. In this regard, the Noticee relied upon the judgment of Hon'ble Supreme Court in the matter of SEBI v. Kishore Ajmera, (2016) and judgements of Hon'ble SAT in the matter of HB Stock Holdings Ltd. v. SEBI and Rajesh Kumar v. SEBI.

10.9. There is absolutely no case made out against the Noticee, and that the submissions made in response to the SCN, in the course of this personal hearing and those specifically contained hereinabove be considered sufficient to not proceed or take any action or pass any direction against the Noticee under the sections/ regulations sought to be invoked as per the SCN, and the SCN be accordingly dropped.

CONSIDERATION OF ISSUES AND FINDINGS

11. I have carefully perused the charges levelled against the Noticee, her 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?

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

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

PFUTP Regulations, 2003

3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

(a) buy, sell or otherwise dealing 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. Noticee submitted that complete and relevant documents which are essential for a comprehensive analysis of the impugned trade and its impact on the market have not been provided to the Noticee. Noticee submitted that the SCN is devoid of any evidence and relevant documents/ cross examination of testimonies/ statements (if any) on the basis of which such a serious charge of fraud/ market manipulation can been made have not been provided to the Noticee. In this regard, the Noticee relied upon the judgments of Hon'ble SAT in the matter of HB Stock Holdings Ltd. v. SEBI and Bharat Jayantilal Patel v. SEBI. Further, Noticee submitted that SCN does not contain a complete copy of order log and does not show the book position and the status of pending buy/

sale orders in the system with quantities involved. I note that details of the documents provided to the Noticee as annexures to the SCN, are as follows:

Sl No	Particular	Annexures to SCN
1.	Details of the reversal trades of Noticee in Stock Options segment of BSE during the investigation period.	B
2.	Summary of analysis of dealings of Noticee in 1 Stock Options contract in which Noticee allegedly executed reversal trades during the investigation period.	C

14. 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...."

15. 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."

16. 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 the documents relied upon in the matter were duly provided to the Noticee, along with SCN dated August 04, 2021, so that principles of natural justice have been complied with and thereby the

contentions of Noticee in this regard are without merit. This was also communicated to the Noticee vide letter dated January 19, 2022.

17. The Noticee submitted that the present proceedings are barred in light of the inordinate delay and on account of the doctrine of laches. Noticee has stated that the SCN in the matter was issued after a period of over seven years and this, by no stretch, could be construed as a reasonable period of time and hence the SCN deserves to be set aside on this ground alone. In this regard, the Noticee relied upon the judgments of Hon'ble SAT in the matter of Khandwala Securities v. SEBI (Appeal no. 19 of 2012), Subhkam Securities Private Limited. v. SEBI (Appeal no. 73 of 2012), Sanjay Jethalal Soni v. SEBI (Appeal no. 483 of 2018) and HB Stock Holdings Ltd. v. SEBI (Appeal Nos. 114 & 160 of 2012).

I note that pursuant to a preliminary examination conducted in the Illiquid Stock Options matter, Interim order was passed by SEBI on August 20, 2015 which was confirmed vide Orders dated July 30, 2016 and August 22, 2016. Meanwhile, SEBI initiated a detailed investigation relating to stock options segment of BSE which was completed in the year 2018. The investigation revealed that 14,720 entities were involved in executing non-genuine trades in BSE's stock option segment during the investigation period. The proceedings initiated vide the aforementioned Interim Order were disposed of vide Final Order dated April 05, 2018 also considering that appropriate action was initiated against the said 14, 720 entities in a phased manner.

During the course of hearing in the case of *R. S. Ispat Ltd Vs SEBI*, the Hon'ble Securities Appellate Tribunal (SAT), vide its Order dated October 14, 2019, *inter alia* observed that "*SEBI may consider holding a Lok Adalat or adopting any other alternative dispute resolution process with regard to the Illiquid Stock Options".*

A Settlement Scheme was framed under the SEBI (Settlement Proceedings) Regulations, 2018, which provided one-time opportunity for settlement of proceedings in the Illiquid Stock Options matter. The said scheme was kept open from August 01, 2020 till December 31, 2020. Adjudication proceedings

were initiated against those entities who had not availed of the opportunity of settlement.

18. As per Section 11C of SEBI Act, SEBI can initiate investigation at any point of time, for any period of alleged violation or any period of alleged transactions. I also note that the investigations relating to the PFUTP Regulations, 2003 are complex (considering the volume of transactions, connections, examination of trading of shares and funds, etc.) and time consuming.

Further, I find that the fact of delay in completion of investigation and / or initiation or completion of enforcement proceedings, in itself, cannot be a ground for dropping the proceedings. Only in cases where a Noticee is adversely affected, can such a submission be considered.

In this context, I also find it relevant to refer to the order passed by Hon'ble SAT in the case of Metex Marketing Pvt. Ltd. vs. SEBI (order dated June 4, 2019) wherein Hon'ble SAT held that*:*

"This Tribunal has consistently held that in the absence of any specific provision in the SEBI Act or in the Takeover Regulations, the fact that there was a delay on the part of SEBI in initiating proceedings for violation of any provision of the Act cannot be a ground to quash the penalty imposed for such violation".

In the context of delay in initiating the proceeding, Hon'ble SAT in Mr. Rakesh Kathotia & Ors. vs SEBI vide order dated May 27, 2019 has held the following:
"23. It is no doubt true that no period of limitation is prescribed in the Act or the Regulations for issuance of a show cause notice or for completion of the adjudication proceedings. The Supreme Court in Government of India vs, Citedal Fine Pharmaceuticals, Madras and Others, [AIR (1989) SC 1771] held that in the absence of any period of limitation, the authority is required to exercise its powers within a reasonable period. What would be the reasonable period would depend on the facts of each case and that no hard and fast rule can be laid down in this regard as the determination of this question would depend on the facts of each case.

In view of the above, the contentions raised by the Noticee regarding delay in initiation of proceedings is without any merit. Therefore, I note that the preliminary contentions raised by Noticee are liable to be rejected, and I now proceed to consider the matter on merits.

19. I note that allegation against the Noticee is that, while dealing in the stock option contracts at BSE during the IP, she had executed reversal trades which were allegedly non-genuine 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.

20. In this regard, it is observed from the trade log of the Noticee that it had traded in 1 unique contract in the Stock Options segment of BSE during the above mentioned investigation period. These trades of the Noticee involved reversal with the same counterparty on the same day, but at significantly different price. Summary of the reversal trades of Noticee in Stock Options segment of BSE during the investigation period are as follows:

Trade Date	Scrip Name	Buy Client Name	Sell Client Name	Buy Order Time	Sell Order Time	Trade Time	Buy Order Rate (₹)	Sell Order Rate (₹)	Trade Rate (₹)	Traded Qty
14/09/2015	UCOB15SEP50.00PEW3	Madhumita Dutta	Artview Vanijya Pvt Ltd	15:10:46.904636	15:10:48.171245	15:10:48.171245	5.2	5.2	5.2	92000
14/09/2015	UCOB15SEP50.00PEW3	Artview Vanijya Pvt Ltd	Madhumita Dutta	15:14:07.430320	15:14:07.492739	15:14:07.492739	7.4	7.4	7.4	92000

* Note: *"Traded Quantity" or "unit" refers to lot size in contract multiplied by number of contracts traded.*

21. I note from the trade log that the trades executed by the Noticee in the contract "UCOB15SEP50.00PEW3" were squared up within a short span of time. To illustrate, the Noticee on September 14, 2015 at 15:10:48 hrs entered into 1 buy trade with counterparty viz. Artview Vanijya Pvt Ltd for 92,000 units at ₹ 5.2 per unit in the said contract. Thereafter, on the same day, Noticee entered into 1 sell trade with same counterparty at 15:14:07 hrs for 92,000 units at the rate of ₹ 7.4 per unit. It is noted that while dealing in the said contract during the I.P., the Noticee executed reversal trades with same counterparty viz. Artview Vanijya Pvt Ltd on the same day within a time gap of 3 minutes 19 seconds and with price difference in buy and sell rate. Further, it is noted that the buy and sell orders in both trades were placed at almost same time, with time difference being in seconds/microseconds, by the Noticee and counterparty. The Noticee's trades generated artificial volume of 1,84,000 units (buy side + sell side) which made up 32.39% of total market volume in the said contract during this period.

22. Noticee contended that the impugned trades of the Noticee were genuine and bonafide, conducted by and on the advice of a registered stockbroker. The Noticee has also stated that the said transactions appear to have been executed by the stockbroker without any reference to the Noticee, and as such, proximity of time for buy/sell orders and trades is not relevant. The said trades were executed on the trading platform of BSE Ltd and were authorised by the stock exchange/SEBI in terms of the extant rules and regulations governing such trade. Noticee contended that she has engaged in only one instance of trade on one day involving a limited volume during the entire Investigation Period and this by itself shows the Noticee's actions were bonafide and the trades were genuine. Further, Noticee submitted that the trades were a one-off transaction, involving a miniscule volume, which cannot be said to have any substantial impact on the market in order to warrant the serious allegations of "manipulative, fraudulent and unfair trade practices" under the PFUTP Regulations. Noticee submitted that the prices for buy and sale were very much within the range permitted by the stock exchange/SEBI and the settlement took place through the recognised clearing corporation, thereby the allegation of the

trades being non-genuine are prima facie baseless and preposterous. However, the non-genuineness of these transactions executed by the Noticee is evident from the fact that there was no commercial basis as to why, within a short span of time, the Noticee reversed the position with her counterparty. The fact that the transactions in a particular contract were reversed with the same counterparty indicates a prior meeting of minds with a view to execute the reversal trades at a pre-determined price. It may be noted that as the Noticee has stated that the trades were conducted by and on the advice of a registered stockbroker, the Noticee is not alleging unauthorised trades. Consequently, the statement that the transactions appear to be executed without reference to the Noticee appears contradictory and devoid of merit. Since these trades were done in illiquid option contracts, there was no trading in the said contract and hence, there was no price discovery in the strictest terms. The wide variation in prices of the said contract, within a short span of time, is a clear indication that there was pre-determination in the prices by the counterparties while executing the trades. The fact that the buy and sell orders were placed by the Noticee and counterparty with a time difference of seconds/microseconds, strongly indicates meeting of minds. Thus, it is observed that Noticee had indulged in reversal trades with her counterparty in the stock options segment of BSE and the same were non-genuine trades.

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

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

25. Further, Noticee has contended that the said trades did not cause any loss to any investor. I note that in the instant matter, the allegations pertaining to the violation of impugned provisions of PFUTP Regulations, 2003 are not contingent upon any losses incurred by investors.

26. Noticee has also contended the choice of counterparty is based on automated price matching mechanism of the exchange and is beyond the control of the investor. Noticee has also stated that she is not in any way related/ connected to the counterparty and the SCN also does not mention any connection/ collusion with the counterparty, let alone giving evidence of any such allegation. Further, Noticee has contended that the trades were conducted on the screen-based anonymous trading platform of the stock exchange, without the knowledge of the counterparty. I note that it is not mere coincidence that Noticee could match her trades with the same counterparty with whom she had undertaken first leg of the trades. It indicates meeting of minds.

27. In this context, I would like to rely on the judgment of the Hon'ble Supreme Court of India in SEBI vs Kishore R Ajmera (AIR 2016 SC 1079), wherein it was held that:

"…in the absence of direct proof of meeting of minds elsewhere in synchronized transactions, the test should be one of preponderance of probabilities as far as adjudication of civil liability arising out of the violation of the Act or provision of the Regulations is concerned. The conclusion has to be gathered from various circumstances like that volume of the trade effected; the period of persistence in trading in the particular scrip; the particulars of the buy and sell orders, namely, the volume thereof; the proximity of time between the two and such other relevant factors. The illustrations are not exhaustive..."

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

28. In the instant matter, I note that though direct evidence regarding meeting of minds or collusion of the Noticee with the counterparty is not forthcoming, the trading behaviour of the Noticee, as detailed earlier, makes it clear that the aforesaid non-genuine trades could not have been possible without meeting of minds at some level. In this context, I deem it appropriate to refer to the order dated July 14, 2006 passed by Hon'ble SAT, in the case of Ketan Parekh vs SEBI (Appeal no. 2/2004), wherein, Hon'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. Further, I place my reliance on the judgment of Hon'ble Supreme Court in the matter in respect of SEBI v Rakhi Trading Private Limited (Civil Appeal Nos. 1969, 3174-3177 and 3180 of 2011 decided on February 8, 2018), in which the Hon'ble Supreme Court held that –

"Considering the reversal transactions, quantity, price and time and sale, parties being persistent in number of such trade transactions with huge price variations, it will be too naive to hold that the transactions are through screen-based trading and hence anonymous. Such conclusion would be over-looking the prior meeting of minds involving synchronization of buy and sell order and not negotiated deals as per the board's circular. The impugned transactions are manipulative/deceptive device to create a desired loss and/or profit. Such synchronized trading is violative of transparent norms of trading in securities…..".

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. I find it pertinent to note that the Adjudication order no. Order/AP/SS/2021-22/13331 dated September 6, 2021 passed in respect of Radha Malani in the matter of dealings in Illiquid Stock Options at BSE was challenged before the Hon'ble SAT. Hon'ble SAT, in its judgement dated November 24, 2021 in the matter of Radha Malani vs. SEBI **(**Appeal No. 698 of 2021), dismissed the appeal and opined that - "*in our view the controversy involved in the present appeal is squarely covered by a decision of this Tribunal in Global Earth Properties and Developers Pvt. Ltd. vs. SEBI (Appeal No. 212 of 2020 decided on September 14, 2020)*."

32. The observations made in the aforesaid judgments apply to the facts and circumstances of the present case. Therefore, I am convinced that the execution of trades by the Noticee in the illiquid options segment with such precision in terms of order placement, time, price, quantity etc. and also the fact that the transactions were reversed with the same counterparty clearly indicates a prior meeting of mind with a view to execute the reversal trades at a pre-determined price.

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

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

34. Pursuant to detailed analysis as brought out above, it is established that reversal trades are not normal transactions and it clearly demonstrates beyond reasonable doubt that the Noticee had intentionally executed these trades and manipulated the volume by artificial trading pattern in the contract UCOB15SEP50.00PEW3. The trading of the Noticee in the instant matter was abnormal and was clearly designed to create artificial volumes in the illiquid stock options, fail to justify any of the normal strategies of hedging/ speculation/ arbitrage. In my view, the abuse of such financial instruments cannot be tolerated and needs to be dealt with strictly. Accordingly, 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.

35. The Hon'ble Supreme Court of India in the matter of SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC) 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…".

36. 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 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.

If so, what would be the quantum of monetary penalty that can be imposed on the Noticee?

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

Factors to be taken into account by the adjudicating officer.
15J. While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-
(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

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

(c) the repetitive nature of the default.

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

38. The SCN 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, it is worth considering that entities involved in these non-genuine trades have either booked gain or loss and the gain or loss appears to be of notional in nature. Generally, there is little or negligible participation of the public in the trading in illiquid stock option contracts. Hence, the impact of these non-genuine trades has not been considered. When the impact of artificial volume created by the two counterparties is seen as a whole, it is not possible from the material on record to quantify the amount of disproportionate gain or unfair advantage resulting from the artificial trades between the counter parties or the consequent loss caused to investors as a result of the default. However, I note that the Noticee had entered into non-genuine trades (comprising two trades), which created an appearance of artificial trading volumes in respective contract at pre-meditated prices.

39. Considering, the facts of the matter as discussed earlier, I am of the view that imposition of minimum penalty as prescribed under Section 15HA of the SEBI Act would be commensurate for the present matter.

ORDER

40. 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 the following penalty under section 15HA of the SEBI Act, 1992 on the Noticee for violation of the provisions of Regulations 3(a), 3(b), 3(c), 3(d), 4(1), and 4(2)(a) of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003 relating to securities market:

Name of the Noticee	**Violation provisions**	**Penalty**
Madhumita Dutta **[PAN: AFMPD1576M]**	Regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of PFUTP Regulations, 2003	**Rs.5,00,000/-** (Rupees Five Lakh only)

41. 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:

(i) Demand Draft 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 – 1 (EFD 1), Division of Regulatory Action – 4 (DRA 4), SEBI Bhavan, Plot No. C4-A, 'G' Block, Bandra Kurla Complex (BKC), Bandra (East), Mumbai – 400051. The Noticee shall provide the following details while forwarding DD/ payment information:

Sl. No.	**Particulars**	**Details**
1	Name of the Case / Matter	
2	Name and PAN of the Payee	
3	Date of Payment	
4	Amount Paid	
5	Transaction Number	
6	Bank Name and Account Number	
7	Purpose of Payment	Payment of penalty under AO proceedings

OR

(ii) 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. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated 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.

44. In terms of the provisions of Rule 6 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995, a copy of this order is being sent to the Noticee namely, Madhumita Dutta [PAN: AFMPD1576M] and also to the Securities and Exchange Board of India, Mumbai.

Date: February 23, 2022 **KRANTI SARDESAI**

Place: Mumbai **ADJUDICATING OFFICER**