BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

ADJUDICATION ORDER NO. Order/RJ/VS/2021-22/14708

UNDER SECTION15-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:

SURABHI MUNDHARA
[PAN No: BTQPM5064A]
12A ANUKUL MUKHERJEE ROAD
BEADON STREET, KOLKATA,
WEST BENGAL, 700006

In the matter of Illiquid Stock Options at BSE Limited

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') observed large scale reversal of trades in Stock Options segment of BSE Limited (hereinafter referred to as '**BSE**') leading to creation of artificial volume. Accordingly, 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 "**Investigation Period**").

2. It was observed that during the Investigation Period, total 2,91,643 trades comprising substantial 81.38% of all the trades executed in Stock Options Segment of BSE were found to be non-genuine trades. The aforesaid non-genuine trades resulted into creation of artificial volume to the tune of 826.21 crore units or 54.68% of the total market volume in Stock Options segment of BSE during the investigation period.

3. It was observed that the said non- genuine trades were not restricted to any specific contract or between any specific set of entities. Ms. Surabhi Mundhara (hereinafter referred to as '**Noticee'**) was one of the various entities who were

indulged in execution of non-genuine trades in Stock Options Segment of BSE during the investigation period.

4. As regards the dealings of Noticee in the Stock Options segment of BSE during the Investigation Period, it was observed that the Noticee had traded in 1 unique contract, in which Noticee had allegedly executed total of 2 non-genuine trades, which resulted in artificial volume of total 52,000 units.

5. 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.	APLT15APR140.00CEW2	12.15	26000	22.85	26000	100	5.1%

6. From the above table, the following is observed as regards the dealings of the Noticee:
   a) During the Investigation Period, 2 trades for 52,000 units were executed by the Noticee in the said contract on March 30, 2015.

   b) That while dealing in the said contract during the Investigation Period, Noticee executed total 2 reversal trades (1 buy trade + 1 sell trade) with same counterparty viz ADARSH CREDIT CO OP SOCIETY LIMITED on the same day.

   c) Thus, Noticee, through her dealing in the contract viz, "APLT15APR140.00CEW2" during the Investigation Period, executed 2 non genuine trades and thereby allegedly generated artificial volume of 52,000 units which is 5.1% of the total volume traded in the said contract in the market during the Investigation Period.

7. In view of the foregoing, it was alleged that the Noticee, indulged in execution of reversal of trades in Stock Options with same entity on the same day. Such trades are non-genuine in nature and have created false or misleading appearance of trading in terms of artificial volumes in stock options and therefore alleged to be manipulative, deceptive in nature. Thus, it was alleged that the Noticee had violated the provisions of Regulation 3(a), 3(b), 3(c), 3(d), 4(1) and 4(2) (a) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as "**PFUTP Regulations, 2003**").

APPOINTMENT OF ADJUDICATING OFFICER

8. Pursuant to investigation, SEBI, after being satisfied that there are sufficient grounds to inquire into the affairs and adjudicate upon the alleged violations as mentioned above, *inter-alia*, in respect of the Noticee, had appointed the undersigned as the Adjudicating Officer vide Order dated April 30, 2021, under Section 19 read with Section 15I(1) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act, 1992**") and Rule 3 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as "**Adjudication Rules, 1995**") to conduct adjudication proceedings in the manner specified under Rule 4 of the Adjudication Rules, 1995 read with Section 15I (1) and (2) of the SEBI Act, 1992 and if satisfied that penalty is liable, impose such penalty as deemed fit in terms of Rule 5 of the Adjudication Rules, 1995 and Section 15HA of the SEBI Act, 1992.

SHOW CAUSE NOTICE, REPLY AND HEARING

9. A Show Cause Notice (hereinafter referred to as '**SCN**') bearing ref. no. PD1/AO/RLJ/VS/14151/1/2021 dated July 01, 2021 was served upon the Noticee under Rule 4 of the Adjudication Rules, 1995 to show cause as to why an inquiry be not held against her in terms of Rule 4 of the Adjudication Rules, 1995 and penalty be not imposed under Section 15HA of the SEBI Act, 1992 for the

violations alleged to have been committed by her. The SCN was sent to the Noticee vide Speed Post AD and was duly served on the Noticee as per the Tracking details obtained from the India Post website. However, no reply was received from the Noticee.

10. Since there was no reply filed by the Noticee, vide notice dated August 02, 2021, in the interest of natural justice and in terms of Rule 4 (3) of the Adjudication Rules, 1995, the Noticee was granted an opportunity of personal hearing on August 20, 2021. In reply, the Noticee vide email dated August 14, 2021 requested for the postponement of the hearing on the ground that the SCN received by her was misplaced at her home and sought additional time to file reply to the SCN. In the interest of Justice, vide email dated August 17, 2021, another opportunity of hearing was granted on August 30, 2021 to the Noticee along with a final opportunity for filing reply to SCN.

11. In reply to the aforementioned Notice dated August 17, 2021, the Noticee vide her email dated August 18, 2021 submitted her reply dated August 18, 2021. Vide her reply the Noticee while seeking some information/documents in the matter, *inter alia,* stated as under:

"……………

6. I, categorically and specifically deny that I have indulged in execution of any non-genuine reversal trades in stock options with the same entities on the same day as alleged or that I had created any false or misleading appearance of trading in stock options as alleged. It is denied that, I have violated the provisions of Regulation 3(a),(b), (c) , (d) 4(1), 4(2)(a) of PFUTP Regulations as alleged.

7. I have traded in the securities market through brokers in the ordinary course. I have been dealing in the stock market for a short period of time but in this period I have never defaulted in meeting my payment or delivery obligations on any occasion. I have an absolutely clean track record in Capital Market.

8. I am a small investor and do not have the power or the muscle to influence the market. I am a law abiding citizen and it is absolutely out of context to cast aspersion that I have manipulated or wrongly influenced the market.

9. The trades pointed out by you are only one or very few trade. It is beyond the realms of possibility that one trade can influence or tantamount to have influenced the market. It *appears to me that some bigger players may have done some wrongful acts and I have been made a scapegoat or caught in the crossfire.*

<u>My Parawise Reply</u>

10. With regard to the observations in Paras 1 & 2 of the Notice, it is submitted that the same are a matter of record.

11. With regard to the observations in Para 3 of the Notice, it is submitted that the surveillance done by SEBI and conducting of investigation by SEBI for the period between 1.4.14 to 30.9.15 are a matter of record. Admittedly, we have not been provided the copy of the 'Investigation Report' based on which the present Notice has been issued, which is in gross violation of principles of natural justice. We reserve our right to seek copy of Investigation Report and reserve our right to file additional reply in the matter pursuant to availability of Investigation Report. As such I request you for the same.

12. With regard to the observations in Para 4 of the Notice, it is submitted that the same are clearly exceedingly vague and sweeping in nature. In any event, we have not indulged in any reversal trades or created any artificial volumes as alleged. All our trading was genuine, bonafide and in the ordinary course of business dehors fraudulent/manipulative intent or design. As already pointed out, it appears that my one single trade has been wrongly clubbed and I may have been caught in crossfire and that I have no knowledge of such practices.

13. With regard to the observations in Paras 5 to 8 of the Notice:

(a) It is denied that we have indulged in any reversal trades which allegedly created false and misleading appearance of trading or generating artificial volumes as alleged.

(b) Admittedly, all the impugned trades have been executed by me through my brokers on the platform of the stock exchange within the permissible price bands. Post execution of the trades the same have been settled as per the norms of the exchange and the broker has issued contract note for the impugned trades. Therefore, the impugned trades executed by us cannot be alleged to be non-genuine trades.

(c)It is submitted that when the alleged trades took place there was nothing in the public domain about anything amiss in the trades done by us. Further, neither BSE nor SEBI had raised any grievance in public domain about the execution of reversal trades and non- genuine trade in the option segment at that point in time.

(d) All the trades in the stock options were settled in cash through the stock exchange mechanism. Unlike the Cash segment, there is no physical delivery of shares. Therefore, the alleged trading in the stock options cannot be alleged to have created any false or misleading appearance of trading in stock options.

(e) In so far as allegations pertaining to reversal trades are concerned, it may be noted that at the relevant time we were not aware that our trades were in the nature of reversals as alleged. At no point of time, we were aware of any counterparty to our trade, or the trades of any other entities. All our trades were in the anonymous order matching system of the exchange, wherein it is impossible to know the identity of the counterparties. The alleged matching with the counter parties is by coincidence and not by design. Significantly, there is a huge time gap between buy and sell orders, there is a huge time gap between the time of placing the orders and the execution of the trade, clearly demonstrating that there was no intention to match/ reverse the trades. The orders

were languishing in the system for quite a long time and anybody in the market could have picked them up.

(f) It is specifically denied that I had indulged in non- genuine trades in the one contracts as alleged by you. It is reiterated that my trading is genuine, bonafide and in the ordinary course of business dehors fraudulent/ manipulative intent or design.

(g) It may be noted that we are not related or connected in any manner whatsoever to the alleged counter party. We do not have any link/ nexus/relationship/connection/dealing/collusion/arrangement or agreement with the counter party. Even there is nothing in the Notice, to even remotely connect us to the alleged counter parties to our trades. Same completely destroys the allegation of execution of reversal trades.

(h) lt is well settled that in order to establish the allegation of reversal trades nexus between the parties has. to be brought on record. Unless some connection between the parties is established, it cannot be alleged that the alleged reversal trades were carried out with a view to generate artificial volume in the market.

(i) It is submitted that merely because the contribution of our trades resulted in 5.1% to 100% of total market value no adverse inferences can be drawn against me. lt is reiterated that I was trading in the ordinary course and my trading is bonafide, without any intent to create artificial trade. Further, merely because others were not trading in particular stock options on the day when, we were trading resulting in our volume being 5.1% to 100% cannot be ground for drawing adverse inference. The alleged 'reversal' and volume' has to be appreciated in the said backdrop. It appears that you have generalized the concept of reversal trade and there is no room for aberrations.

(j) While levelling allegation with regard to alleged creation of false and misleading appearance of trading, it has been totally ignored and overlooked that there is no allegation in the Notice that as a result of our trading in stock options, we have increased or depressed the price of the underlying shares in the Cash Segment. For instance my dealing in the contract viz. APLT15ARP140.00CEW2 on 30/03/2015 i.e. Alembic Pharmaceuticals Limited had not made any impact on the price of the underlying shares in the Cash Segment. The same is evident from the price volume details of Alembic Pharmaceuticals Limited during the month of March 2015 (Annexure "A").

(k) Moreover, it is requested and demanded that it be clarified to me, on what presumptions and material you have come to the conclusion that I indulged in reversal of the trade on the same day and to the same "counterparty" as it is next to impossible for a small investor like me to know such details or do any manipulation in view of the robust electronic trading software used by the registered brokers and approved by you is in place. In fact, as per my knowledge even for the trading broker it is difficult to know the ultimate buyer.

14. As noted by the Securities Appellate Tribunal in its order dated 12.05.2017 in Shri B. Ramalinga Raju v. SEBI – "There can be no dispute that while determining the rights and obligations of the parties the quasi-judicial authority must adhere to the principles of natural justice which inter alia, includes the obligation to furnish requisite documents on the basis of which charges are framed...."

Further, to allege the creation of artificial volume in the market, it is imperative to show that parties carrying out the trades (alleged to be artificial trades) were *connected to each other or at least shared a common objective of creating artificial volume. Therefore, it is necessary to prove that two contracting parties had struck a deal beforehand, i.e., there was meeting of minds between the two contracting parties.*

In view of the aforesaid observations and submissions, it is stated that the aforesaid allegations against me are baseless, unjustified and prejudiced and are liable to be vacated. To state further, the anonymous systems of the Exchange do not allow a transacting party to know the details of the counter party and hence the allegation of executing reversal trades cannot hold good. Therefore, it is almost impossible to know the identity of the parties in a screen-based transaction. The position has been accepted and affirmed by SEBI before the Joint Parliamentary Committee (JPC) on Stock Market Scam and matters relating thereto, 2001, which tabled its report in the Parliament in December 2002.

To establish charges of fraudulent trading or violation or PFUTP Regulations, it is a settled principle of law that the parties to these trades should collude amongst themselves. In this context reliance is placed on judgments rendered by the Hon'ble Securities Appellate Tribunal: In the matter of M/s. Jagruti Securities Ltd Vs. SEBI and Vintel Securities Pvt. Ltd Vs. SEBI (Appeal No. 219/2009 order dated November 23, 2009).

Hon'ble Securities Appellate Tribunal in the matter of Saroj & Co. proprietor Sanjay Agrawal vs. Securities and Exchange Board of India (SAT Order dated 18.05.2012 Appeal No. 213 of 2011)
"……nexus between the parties for establishing reversal trades has not been brought on record in the present case. The reference to mere matching of a few trades may not necessarily point to fraudulent intention of the appellant. Screen based trading functions on the basis of anonymity and sometimes orders may get matched when trades are executed keeping in mind price, time and volume. But it is important to establish the nexus between the parties, especially so in the case of a broker since he acts according to my directions. Even though a detailed analysis of the trades is part of the adjudication order, the adjudicating officer has not been able to establish a pattern of wrong doing aimed at fraudulent practices in the market. The appellant has been able to analyse each trade which took place during the impugned period of 35 days and show that orders were placed in the normal course of business. The adjudicating officer has not established with sufficient supporting material that that the appellant was a party to a handful of matching trades which have taken place in the course of the trading as directed by the appellant. So, considering the detailed explanations offered by the appellant and the nature of the transactions we are not able to uphold the charge of reversal/ circular trades in the present case."

Further reference is drawn towards the order of S.P.J. Stock Brokers Pvt. Ltd. vs Securities and Exchange Board of India (SAT Order dated 04.09.2013 Appeal No. 52 of 2013) the Hon'ble Securities Appellate Tribunal has inter alia observed that:
"....Mere fact that buy and sell orders between appellant and one group (with whom no connection is attributed) within a time gap of one minute with negligible or no price difference cannot ipso facto lead to conclusion that the trades in question were executed with a view to manipulate the scrip. In absence of any circumstantial evidence to suggest that synchronized trades were executed for purpose of upsetting market equilibrium or to manipulate market, it cannot be inferred that appellant was guilty of violating PFUTP Regulations or Broker Regulations."

From the aforementioned grounds, we state that we have no relation with the counter party whatsoever. There was only one reversal trade out of 2,91,643 which is absolutely *a matter of pure coincidence and therefore on the grounds abovementioned, the adjudication proceeding against me should be dropped.*

15. With regard to trading in the option segment, it may be pointed out that according to the website of BSE, they have full proof surveillance system in place and according to information given on their website the functions of the surveillance department are as follows: (a) Monitoring price and volume movement (volatility) as well as by detecting potential market abuses (fictitious/artificial transactions, circular trading, false and misleading impression, insider trading etc.) at the nascent stage, with a view to minimize the ability of market participants to influence the price of any Security in the absence of any meaningful information &(b) Taking timely actions to manage default risk. The website further provides that BSE having three cells under its surveillance department viz. Price monitoring; Investigation & Position monitoring. Further, in addition to fool proof surveillance mechanism at BSE, they have power under Byelaw No 1.46 of Derivatives Segment to annul the trades in future and option segment wherever they observe that the trades were executed for fraud and/or .willful misrepresentation. All the option trades executed by us were genuine and in accordance with the Rules, Regulations and Byelaws of BSE so same were cleared by surveillance mechanism of BSE and not investigated by BSE under Byelaw No 1.46 (a) and (b) of Derivative for annulment.

16. With regard to calling the transaction volumes 'artificial' in Para 5 of the Notice, the words "artificial" and "non-genuine" are not defined in PFUTP Regulations or any of the Acts / Regulations of SEBI. This leaves me to rely on dictionary meanings of these words to test whether their trades fall under the categories of artificial volume or nongenuine trades. The term "artificial" is defined as "produced by human art or effort, not originating naturally, made or done in imitation of the natural; affected or insincere". The term "non-genuine" is opposite of "genuine" which is defined as "really coming from its reputed source etc., not sham; properly so called; pure bred."

I submit that the trades have all traits of being genuine and therefore cannot be categorized as non-genuine. These trades were executed on the anonymous platform of the Exchange, without any knowledge of counter party, at price ranges that were permitted by the Exchange and SEBI and the obligations arising out of it have been settled through the clearing mechanism of the Exchange.

The next issue for consideration is that whether the concerned trading which has been branded as fraudulent by SEBI, has caused any loss to any other market participants. The stand of SEBI is self-defeating on this issue because the whole premise of SEBI issuing a Notice was that the options in which trading was executed by me were illiquid and no trading was taking place in these options. This makes it clear that there was no public involvement in these options and hence, no harm could have been caused to any other market participants.

.....

20. Lastly, Reference is drawn to the Adjudication Order No. ORDER/BS/AU/2021-22/12610-12611, where the fact of the referred case is very similar with this case since the allegation was regarding reversal trade in illiquid stock resulting in creation of artificial volume. In this order the noticee had no connection with the counterparty and the Adjudication Authority gave the benefit of doubt to Noticee. Relevant extract of the aforesaid order is

"... In absence of any additional evidence other than trading for clients it is difficult to establish the violation of Code of Conduct of the Stock Broker Regulations by Noticee No. 2. Given the fact that allegations against Noticee No. 1 are not established, I am inclined to take a lenient view and give benefit of doubt to Noticee No. 2 as well and consider it not a fit case for imposing penalty."

".... Accordingly, taking into account the aforesaid observations and in exercise of powers conferred upon me under Section 15 I of the SEBI Act read with Rule 5 of the Adjudication Rules and after considering all the facts and circumstances of the case and evidence on record, I conclude that the allegations levelled against the Noticee 1 and 2 do not stand."

Also, a bare perusal of the SEBI Act indicates that it is not mandatory for the Adjudicating Officer to impose a penalty every time he come to conclusion that any person /entity has failed to comply with the specified requirement under the Act and/or the Regulations. Even though Section 15HB of the SEBI Act contain the words "shall be liable to a penalty" there is no strict or mandatory obligation on the part of the defaulter to suffer such penalty. In this regard, we would like to draw attention on the judgement passed by the Hon'ble Supreme Court of India in the matter Superintended and Remembrancer Legal Affairs to Government of West Bengal Vs. AbaniMaity (1979).

Reference is further drawn to the judgment of Hon'ble Supreme Court in the matter of Union of India v. H.C. Goel (AIR 1964 SC 364) which held that: "the principle that in punishing the guilty scrupulous care must be taken to see that the innocent are not punished, applies as much as regular criminal trials as to disciplinary inquiries held under the statutory rules."

In the facts and circumstances, any imposition of penalty on me would be unjustified and unwarranted. In view of the foregoing submissions, it is humbly prayed that the Notice be discharged, and no penalty be imposed.

21. As stated by the Adjudicating Authority, the trades that are alleged to be in violation with the norms are for the period 2014-15, which shows that there is a clear, inordinate delay of 6+ years and therefore the proceeding should be quashed, anyway. Furthermore there are plethora judgments and rulings and directions passed by Hon'ble SAT, Hon'ble High Courts, and Hon'ble Supreme Court of India holding the aforesaid preposition which we would refer at the time of detailed submission/hearing, if required.
...."

12. The Noticee vide her reply dated August 26, 2021 once again reiterated her above submissions and the request for additional documents. In reply to the request of additional documents sought by the Noticee, vide email dated September 02, 2021, the Noticee was communicated that all the documents that have been relied upon in respect of the allegation made against her vide the SCN have already been provided to her as Annexures enclosed therein and no additional document was relied upon. Further, Noticee's attention was drawn to the following findings of the Hon'ble Securities Appellate Tribunal (hereinafter

referred to as '**SAT**'), made in its order dated February 12, 2020, in the matter of **Shruti Vora vs. SEBI**:

"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."

13. It was also brought to the attention of the Noticee that he aforesaid findings have also been reaffirmed by the Hon'ble SAT in its order dated July 17, 2020, in the matter of **Anant R. Sathe vs. SEBI**. Vide the aforesaid email dated September 02, 2021, the Noticee was granted a final opportunity of hearing on September 22, 2021.

14. Vide reply dated September 19, 2021, the Noticee while reiterating her earlier submissions further, *inter alia,* stated as under:

"…….
2. It is evident enough from the figures provided by you , that this entire matter of trading in illiquid stock options in the BSE segment or the execution of reversal trades is all part of a bigger programme and I am only a small independent investor, caught up in the crossfire of some bigger, evil market players. I have always abided by the laws and protocols of trading. My indulgence in trade of a single contract is purely a part of coincidence and does not in any way make me an accomplice in the whole reversal trades incident.

3. Therefore, I intend to once again, present herein the facts of my case and request you to record my responses to the same.
<u>a) It is alleged that I have dealt in executing two trades (one buy trade and one sell trade/ of one contract for 52,000 units on 30/03/2015.</u>

<u>Fact:</u> *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 observed 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 thing s, 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." Going by the intent of the esteemed authority in the stated case, and as such, under the pressing circumstances, only because such reversal trades practice was prevalent in the market then, it is not a cause enough that my execution of trade in a single contract of miniscule value is a part of it. Amongst other things, my absolutely clean track record in Capital Market, the fact that I have traded in the securities market through brokers in the ordinary course, and that I have been dealing in the stock market for a short period of time but in this period I have never defaulted in meeting my payment or delivery obligations on any occasion also express enough of my non-involvement in the alleged practice.*

<u>b) The alleged trades are said to have been executed with one same counter party, namely, ADARSH CREDIT CO OP SOCIETY LIMITED.</u>
***Fact:** I, in this context, reiterate that at the relevant time I was not at all aware that my trades were in the nature of reversals as alleged, because at no point of time, I was aware of any counterparty to my trades, or the trades of any other entities. All my trades were in the anonymous order matching system of the exchange, wherein it is impossible to know the identity of the counterparties. The alleged matching with the counter parties is by coincidence and not by design. I would like to draw your kind attention to the matter of **Jagruti Securities (2008 SCC online SAT 184) and S.P.J Stockbroker Pvt Ltd (2013 SCC Online SAT 67)** wherein it was held that such alleged trades cannot be treated as illegal per se unless there is some cogent connection between the counterparties or there is "mischievous meeting of minds amongst certain parties". I submit that nothing about my case brings out any meeting of minds or mala fide intent and such an element is completely absent in my case. Additionally, I would like to draw your kind attention to Order dated May 18, 2012 passed by the Hon'ble Securities Appellate Tribunal in matter of **Sanjay Agrawal vs. SEBI** wherein it was held that in order to establish an allegation of reversal trade between parties a cogent evidence or connection between the parties needs to be established. In my humble submission, no such connection is established in Show Cause Notice, since none exist.*

<u>c) The alleged trade in a single contract generated an artificial volume of 5.1 % of the total trade volume in the said contract in the market.</u>

***Fact**: There is no role attributed to me in the show cause notice and I am only a small investor. I do not have the power or the muscle to influence the market. The total number of alleged non-genuine trades were 2, in a single contract, which is a meagre part of overall 2,91,643 trades in market (constituting a miniscule 0.0006% of market volume of alleged non- genuine trades). Thus, it is erroneous to allege that my trades created artificial volume on BSE. It cannot be overlooked that a small investor like me, is bearing the brunt of what is a larger manipulative agenda of bigger market players who, unlike me, really deserve to be caught hold of.*
"

15. Vide the aforesaid reply, the Noticee further sought time till second week of October for the hearing stating that she would not be able to appear for hearing in Mumbai and requested that an opportunity of physical hearing be provided in Kolkata.

16. In reply, vide email dated September 27, 2021, the Noticee was clarified that considering the pandemic situation, the Noticee was already granted the options to appear for hearing at the Eastern Regional Office of SEBI at Kolkata or through video conference on webex platform vide Hearing Notice dated September 02, 2021. In view of her request for further time, the Noticee was granted one final opportunity of hearing on October 20, 2021.

17. Vide email dated October 18, 2021, the Noticee confirmed the appearance for the hearing through her authorised representative. The opportunity of hearing scheduled on October 20, 2021 was availed online by the Noticee through her authorised representative ('**AR**'). The hearing was conducted through video conference mode using Webex platform and the contents of the SCN and the allegations levelled against the Noticee were explained to the AR. The AR reiterated the submissions of the reply dated August 18, 2021. The AR requested additional time to make post-hearing submissions. Accordingly, time was granted till October 27, 2021 to submit the same and the hearing was concluded thereby.

18. Subsequently, the Noticee vide email dated November 08, 2021 submitted the additional reply dated October 27, 2021 reiterating her earlier submissions denying the allegations and, *inter alia,* stating as under:

"….

3. *I most respectfully submit the preliminary grounds of objections that were taken hereunder:*

i. As I repeatedly asked for documents/ information that was relied upon in taking up the alleged proceedings against me, SEBI has not provided any evidence or proof to show that my trades were fraudulent or non- genuine in nature, whatsoever in nature. All it shows is a mere reversal of a single trade which is reiterated to be a matter of utter coincidence. To substantiate this contention, attention may be drawn to the principles of natural justice, laid down in the case of Shri B. Ramalinga Raju vs. SEBI decided by Hon'ble SAT on 12.05.2017, wherein it was established that "there can be no dispute that while determining the rights and obligations of the parties the quasi-

judicial authority must adhere to the principles of natural justice which inter alia, includes the obligation to furnish requisite documents on the basis of which charges are framed". Since, no document provided or relied upon by you, evidences enough that the trade entered into by me is a fraudulent or non-genuine in nature.

ii. As stated by the Adjudicating Authority, the trades that are alleged to be in violation with the norms are for the period 2014-15, which shows that there is a clear, inordinate delay of 6+ years and therefore, is barred by limitation, and as such, in any event the instant proceeding should be quashed on this sole ground itself. All these years, I received no intimation of any sort and no communication/observation raising any objection to the alleged trade whatsoever, from any authority including the Bombay Stock Exchange itself or the adjudicating authority. Precipitously, after such an unreasonable delay of action, this SCN is purportedly issued against me alleging and putting in question my trade activities from about six years ago. It, is therefore, on this ground itself and in light of the various decided case laws, recently, by the Hon'ble SAT, as reproduced hereinafter, the instant proceeding ought to be dropped immediately:

In the matter of Ashok Shivlal Rupani & Anr. vs SEBI decided on August 22, 2019, and the appeal filed by miscellaneous parties including one Amul Gagabhai Desai vs. SEBI, Dhiren Dharamdas Agarwal and Krunal Gopaldas Rana vs SEBI, and several others, decided on November 11, 2019, the proceedings and penalty orders were quashed by the Hon'ble SAT on account of inordinate delay in initiation of the proceedings. Similarly, in the matter of Sanjay Jethalal Soni, Krupa Sanjay Soni & Anr. Vs. SEBI, the Hon'ble SAT vide its order passed on November 14, 2019 quashed the impugned penalty order on the basis of inordinate delay in issuing the SCN.

iii. Non-applicability of the SEBI (Prohibition of Fraudulent and Unfair Trading Practices related to Securities Market) Regulation, 2003 ("PFUTP Regulations"), as nothing expressly establishes violation of any of the provisions of the said PFUTP Regulations by me. At the time of hearing, the AR, had attempted to make submissions by explaining provision-wise non applicability in my case, drawing your attention to the paragraph 17 of the detailed response in the reply to the SCN dated 18th August, 2021, and same be taken as a part of my humble submissions thereof.

iv. With reference to paragraph 14 of the reply dated 18th August, 2021, it is established that there is no alleged nexus with the alleged counter party and that matching of a trade on a legitimate platform of trading, is a pure coincidence. It is most humbly submitted that neither I currently have nor I had ever in the past, any relationship/ association/ affiliation with the alleged counter party and I hereby undertake to provide any documentation in the nature of an oath/ affidavit in this regard to your satisfaction in order to prove this contention or otherwise. In furtherance thereof, in the light of established legal position held in ***Saroj & Co. proprietor Sanjay Agrawal vs. SEBI*** *Hon'ble Securities Appellate Tribunal on (18.05.2012)], it was held that "......nexus between the parties for establishing reversal trades has not been brought on record in the present case. The reference to mere matching of a few trades may not necessarily point to fraudulent intention of the appellant. Screen based trading functions on the basis of anonymity and sometimes orders may get matched when trades are executed keeping in mind price, time and volume. But it is important to establish the nexus between the parties, especially so in the case of a broker since he acts according to my directions......". It is therefore, reiterated, that it is impossible for me to know the identity of the counterparties because all my trades were in the anonymous order matching system of the on the platform completely in control and/ or operated by the Bombay Stock Exchange*

("BSE"). In fact, it is stated that the first time, I ever came to know of the identity of the alleged counterparty on the other side was through the mention thereof, in your SCN only.

v. It is submitted that the trades were executed on the online screen based exchange platform with due compliance of the rules and regulations of the exchange within the permissible price band and as such, at no point during or after the execution of the alleged trades even till the date of the SCN, there was no cautionary warning, advisory, communication or alarm or observation issued to me by SEBI / BSE about the scrips / stocks which were executed by me. The trades were, therefore, executed in general course of business.

vi. It is stated and submitted that the SEBI has failed to prove or establish that the price or volume of the scrip in question, was affected in any manner, ever, due to my trading. SEBI has clearly failed to adduce any evidence in this regard either in the SCN or during the course of hearing. It is most appropriate to refer to S.P.J. Stock Brokers Pvt. Ltd. us SEBI decided by Hon'ble SAT on 04.09.2013, wherein it is clearly established that "in absence of any circumstantial evidence to suggest that synchronized trades were executed for purpose of upsetting market equilibrium or to manipulate market, it cannot be inferred that appellant was guilty of violating PFUTP Regulations or Broker Regulations." The value and volume of my trade is so miniscule that it is impossible for me to lead to generation of any volume that impacts the price/volume of the scrip in any manner. In any event, SEBI shall be put to strict proof the same as alleged or at all.

vii. The fact that the trades have been entered into with a basic and common intention to make profit in the general course is set forth with the eventual profit made in the trade. As per the landmark judgement passed by the Hon'ble Supreme Court on 08.02.2018, it was held that "the platform of the stock exchange has been used for a non-genuine trade because trading is always with the aim to make profits. But if one party consistently makes loss and that too in preplanned and rapid reverse trades, it is not genuine; it is an unfair trade practice."
The trades executed by me, are therefore, genuine and were entered into with a basic intent of making profits, within the permissible price bands in due compliance with the rules and regulations thereof. It is therefore, stated on record that no preplanning or malice of any kind was involved in the trades in question, as alleged or at all.

viii. It is stated that no one can overlook the importance of time in the stock market, which fluctuates by the second. Therefore, a time gap of 16 minutes approx. in executing a sell and buy trade, signifies a huge and considerable time gap between the time of placing the orders and the execution of the trade, clearly demonstrating that there was no intention to match/ reverse the trades with the alleged counter party. The orders were languishing in the system for quite a long time and anybody in the market could have picked them up and so, this is a valid enough time gap to prove that the trade is a genuine one.

ix. For the transaction to be termed fraudulent, as per the definition of "fraud", there has to be an "inducement" and SEBI has not even alleged inducement; Therefore, the onus of proving that fraud was involved or was committed falls upon the party alleging so with regard to an act. Nothing such has been evidenced by the SEBI in its SCN or any of the correspondences exchanged thereafter, and so in absence of any such evidence in support of its allegation against me, there is left no basis of making these proceedings against me and therefore the same should be abandoned on this ground alone. To establish this settled principle of law, it is significant to draw your kind attention to

the provisions of Section 103 to 105 of the Evidence Act. The extract of the same is reproduced hereunder:
"103. Burden of proof
1) Whoever desires any court to give judgment as to any legal right or liability, dependent on the existence of facts which he asserts, must prove that those facts exist.
(2) When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person

104. On whom burden of proof lies
The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

105. Burden of proof as to particular fact
The burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person."

It is important to refer to The Court of Appeal in Cooperatieve Centrale Raiffeisen-Boerenleenbank BA, Singapore Branch v. Motorola Electronics Pte Ltd., had clearly held that pursuant to ss. 103 and 105 of the Evidence Act, the legal burden of proof is placed on the party who asserts the existence of any fact in issue or relevant fact.

In the instant case, the SEBI alleging the frivolous allegations against me is nothing but a mere tactic to harass a genuine trader like the undersigned and is being dragged into an unwarranted proceeding, without any basis whatsoever.

To establish charges of fraudulent trading or violation of PFUTP Regulations, it is a settled principle of law that the parties to these trades should collude amongst themselves and same shall be demonstrated by the party framing such allegations. In this context reliance is placed on judgments rendered by the Hon'ble Securities Appellate Tribunal (SAT): In the matter of M/s. Jagruti Securities Ltd Vs. SEBI and Vintel Securities Pvt. Ltd Vs. SEBI (Appeal No. 219/2009 order dated November 23, 2009).

x. In this context, the kind reference was made to the mega case of Union of India v. H. C. Goel {AIR 1964 SC 364}, decided by Hon'ble Supreme Court, it was stated that the principle, that in punishing the guilty scrupulous care must be taken to see that the innocent are not punished, applies as much as regular criminal trials as to disciplinary inquiries held under the statutory rules. Therefore, I yet again, request the judiciary in you, to not let an innocent, small, powerless, uninfluential, genuine investor like me to be punished for a scam that has its root much deeper in the market, involving far bigger players, basis the information provided in the paragraph 3 and 4 of your SCN.

xi. It is pertinent to mention that stock exchanges regularly come out with list of illiquid scrips in cash segment. However, no such list is issued by exchanges or regulator for dealing in stock options contracts. Thus, to fasten the responsibility or allege a single individual investor that she traded in illiquid option is unwarranted and unfair. Further even after the purported transaction no alert was ever issued by the exchange.
…….”

19. In view of the above, noting that sufficient opportunities for submission of reply and personal hearing has been granted to the Noticee, I now proceed further for consideration of Issues.

CONSIDERATION OF ISSUES AND FINDINGS

20. After perusal of the material available on record, I have the following issues for consideration viz.,

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

II. If yes, whether the Noticee is liable for monetary penalty under Section 15HA of the SEBI Act, 1992?

III. If so, what quantum of monetary penalty should be imposed on the Noticee?

FINDINGS

21. Before advancing into the merits of the case, I would like to deal with the issue pertaining to the delay and issues regarding compliance with the principles of natural justice, as contended by the Noticee.

22. The Noticee, contending that there has been an inordinate delay in the instant proceedings has submitted that she places reliance on the Judgments of Hon'ble SAT in the matters of **Ashok Shivlal Rupani & Anr. vs SEBI** decided on August 22, 2019, the appeal filed by miscellaneous parties including one **Amul Gagabhai Desai vs. SEBI, Dhiren Dharamdas Agarwal and Krunal Gopaldas Rana vs SEBI**, and several others, decided on November 11, 2019 and order passed by Hon'ble SAT on November 14, 2019 in the matter of **Sanjay Jethalal Soni, Krupa Sanjay Soni & Anr. Vs. SEBI.** While I have perused all the judgment referred by the Noticee in her submission, the judgment of **Dhiren Dharamdas Agarwal and Krunal Gopaldas Rana vs SEBI** as contended to be decided on

November 11, 2019 by Hon'ble SAT is not existing on the website of Hon'ble SAT and the Noticee has not produced any copy of the same as well.

23. In this regard, I primarily note that as per Section 11C of the SEBI Act, 1992, SEBI can initiate investigation for any alleged violation of the provisions of Acts and Rules and Regulations made thereunder and no limitation has been provided in this regard. I note that the investigations relating to the PFUTP Regulations, 2003 are complex (considering the volume of transactions, connections and examination of trading of shares, etc.) and time consuming. I note that a large number of entities across the country had committed violation of the PFUTP Regulations, 2003. Therefore, it took reasonable time in ascertaining the violation by each entity as well as taking further actions. In view of the fact that there has not been inordinate delay in the instant proceedings, the same is factually different from the cases referred by the Noticee in the para above. Further, I note that there is no provision under the SEBI Act, 1992 which provides a time limit for taking cognizance of a breach of the provision of the SEBI Act, 1992 and Rules and Regulations made thereunder. In this regard, it is pertinent to note that, in the matter of **SEBI Vs Bhavesh Pabari** {(2019) SCC Online SC 294}, the Hon'ble Supreme Court of India has, *inter alia*, held as follows:
"There are judgments which hold that when the period of limitation is not prescribed, such power must be exercised within a reasonable time. What would be reasonable time, would depend upon the facts and circumstances of the case, nature of the default/statute, prejudice caused, whether the third party rights had been created etc."

24. Further, I note that the Hon'ble SAT in the matter of **Pooja Vinay Jain vs. SEBI** (Appeal No. 152 of 2019, Date of Decision – March 17, 2020) held that, "*The record would show that all the documents concerning the defense of the appellant were filed by her before the AO. Therefore, for want of any prejudice the proceedings cannot be quashed simply on the ground of delay in launching the same*".

25. I also note the following ruling of the Hon'ble SAT in the matter of **Rajendra Aggarwal v. SEBI,** decided on September 17, 2021, in which the appellant's contention regarding 4 years time taken in issuance of SCN was rejected and it was held - *"The investigation was against a large number of entities which apparently took time and ultimately notices were issued to 35 entities. Consequently, we do not find any inordinate delay in the issuance of the show cause notice nor do we find any merit in the contention that there was an inordinate delay."*

26. In this background, I also note that a total of 14,720 entities were involved in the generation of artificial volume by executing non-genuine / reversal trades in the illiquid Stock Options segment at BSE during the investigation period. Initiation of proceedings against the said 14,720 entities is a humungous task and therefore, considering the available resources, the proceedings were initiated against the entities in a staggered manner. I also note that SEBI had framed a settlement scheme in accordance with the provisions of the SEBI (Settlement Proceedings) Regulations, 2018 which provided a onetime opportunity to the concerned entities to settle the proceedings in the matter of dealings in illiquid Stock Options at BSE. I observe that the said scheme was kept open for a period of, initially, 3 months (commencing from August 01, 2020) and then extended till December 31, 2020 to enable the entities to avail the benefit of the scheme in view of the disruptions caused due to the Covid-19 pandemic. Subsequently, adjudication proceedings against the entities who did not opt for the settlement in terms of the scheme (including the Noticee) were initiated and, accordingly, the SCN was issued against the Noticee.

27. In view of the aforesaid and considering the facts of the present matter, I do not find any merit in the contentions of the Notice that there has been unreasonable delay and that the proceedings deserves to be dropped.

28. Further, in respect of the submissions of the Noticee requesting for the Investigation Report and seeking other information, the reference was also made by her to the judgment of the Hon'ble SAT in the matter of **B. Ramalinga Raju**

vs. SEBI decided by Hon'ble SAT on May 12, 2017, as noted above. However, as communicated to her vide email dated September 02, 2021, the subsequent Judgment of Hon'ble SAT dated February 12, 2020, in the matter of **Shruti Vora vs. SEBI** has cleared the legal position on the same and relying on the same, it was communicated to the Noticee that all the documents that have been relied upon in respect of the allegation made against her vide the SCN had already been provided to her as Annexures enclosed therein and no additional document was relied upon. In view of the same, I am of the view that principle of natural justice have been duly complied in respect of the instant proceedings.

29. Having noted as above, in respect to the issues for consideration before me, I record my findings hereunder taking into consideration, the material available on record and giving regard to the facts and circumstances of the case and submissions of the Noticee.

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

30. Before moving forward, it is pertinent to refer to the relevant provisions of the PFUTP Regulations, 2003, which reads as under:

Regulation 3: - Prohibition of certain dealings in securities

3. 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 thereunder;

(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 thereunder.

Regulation 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;*

31. It has been alleged that the Noticee had indulged in execution of reversal of trades in Stock Options with same entity on the same day. Such trades are non-genuine in nature and have created false or misleading appearance of trading in terms of artificial volume in stock options and therefore alleged to be manipulative, deceptive in nature.

32. I note that reversal trades have been considered as 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 non-genuine trades as they are not executed in normal course of trading, lacks basic trading rationale, and lead to false or misleading appearance of trading in terms of generation of artificial volume, hence are deceptive and manipulative. Artificial volume is considered to be the volume (no. of units) reversed in both legs of said reversal trades while keeping out the volume, if any, which is not reversed.

33. I note that the Noticee had executed 2 non-genuine trades in 1 contract on March 30, 2015. The details of non-genuine trades executed by the Noticee are furnished hereunder:

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.	APLT15APR140.00CEW2	12.15	26000	22.85	26000	100	5.1%

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

I. Scrip Name: APLT15APR140.00CEW2, Trade Date: 30/03/2015

CLIENTNAME	CP_CLIENTNAME	TRADE_TIME	TRADE_RATE	TRADED_QTY
SURABHI MUNDHARA	ADARSH CREDIT CO OP SOCIETY LIMITED	09:44:00.756972	12.15	26000
ADARSH CREDIT CO OP SOCIETY LIMITED	SURABHI MUNDHARA	10:00:32.717595	22.85	26000

(a) I note from the above table that during the investigation period, Noticee was party to total 2 trades for 52,000 units executed in the "APLT15APR140.00CEW2" contract on March 30, 2015.

(b) The Noticee placed a buy order for 26,000 units at a price of ₹ 12.15 per unit and the said order was matched with the sell order (which was also placed at a price of ₹ 12.15 per unit) of counterparty client ADARSH CREDIT CO OP SOCIETY LIMITED. I note that the said buy order by the Noticee was placed at 09:43:23.503192 almost at the same time as that of the entry of the sell order by the Counterparty. I also note that there was no modification of either price or quantity by either the Noticee or the counterparty and the buy order of the Noticee got executed into trade immediately with the counterparty. Subsequently within 16 minutes from the above trade, at 10:00:32.717595, the Noticee placed a sell order for 26,000 units at a price of ₹ 22.85 per unit and the said order was matched with the same counterparty (i.e. ADARSH CREDIT CO OP SOCIETY LIMITED), who placed a buy order for the same quantity (i.e. 26,000) and price (i.e. ₹ 22.85).

(c) Therefore, it is noted that while dealing in the said contract on March 30, 2015, the Noticee at 09:44:00.75 hrs entered into 1 buy trade with counter party viz, ADARSH CREDIT CO OP SOCIETY LIMITED for 26,000 units at a rate of ₹ 12.15 per unit. Thereafter, on the same day, within 16 minutes from the above trade, Noticee, at 10:00:32.72 hrs entered into 1 sell trade with the same counterparty for 26,000 units at a rate of ₹ 22.85 per unit.

(d) From the above, it is noted that while dealing in the said contract during the investigation period, the Noticee executed reversal trades through 1 buy trade and 1 sell trade with the same counterparty viz ADARSH CREDIT CO OP SOCIETY LIMITED, on the same day.

(e) Thus, the Noticee, through her dealing in the contract viz, "APLT15APR140.00CEW2" during the investigation period, executed 2 non genuine trades thereby generated artificial volume of 52,000 units which is 5.1% of the volume traded in the said contract from the market during the investigation period.

35. It is the submissions of the Noticee that she had traded in the ordinary course through her stock broker on the platform of the exchange within the permissible price bands, the trades settled as per the norms of the exchange, the broker had issued the contract notes in respect of the same and accordingly, her trades cannot be alleged to be non-genuine trades. Emphasising that her trades were genuine in nature and cannot be termed fraudulent, she has submitted that the BSE exchange has a *full proof surveillance department* and drawn reference to some of the mechanism in place along with the provisions of their bylaws to annul the fraudulent trades. In this regard, I refer to the pattern of impugned trades and note that the Noticee had bought and sold option contract with the same counter party and also reversed the trades in 16 minutes from her earlier buy trade, at substantial price difference. Such pattern of dealings suggests beyond doubt that they were not driven by market factors. The buying of illiquid stock options by the Noticee and subsequent reversal trade with the same entity for the same quantity, within a short span of time with a significant

difference in buy and sell value of stock options, in itself, exhibits abnormal market behaviour and defies economic rationality. Therefore, I am not inclined to accept the above submissions of the Noticee.

36. As noted above, Noticee had executed non- genuine trades in 1 contract viz., APLT15APR140.00CEW2, where all the trades were non genuine trades and the Noticee contributed to 5.1% artificial volumes. Non genuine trades executed by the Noticee in above contracts had significant differential in buy rates and sell rates considering that the trades were reversed immediately on the same day.

37. I note from the above trading pattern of the Noticee that Noticee has deliberately made misuse of trading platform for creating artificial volume in the illiquid stock options. While the Noticee has contended that the trades were in ordinary course, no justifiable rationale has been given by her for entering into such transactions as the behaviour exhibited by the Noticee defies the logic and basic economic sense. The fact that the counterparties are same corroborates that the trades were not genuine and executed for manipulative purpose.

38. The non-genuineness of these transactions executed by the Noticee is evident from the fact that there was no justifiable reason as to why, within a short span of time (viz. approx. 16 minutes), the Noticee reversed the position with the same counterparty client with a significant price difference. Such short span of time in reversing the trades in the contract suggests the non-genuineness of these trades executed by the Noticee. The fact that the orders of the Noticee and the counterparty matched with such precision (considering that there was a perfect match of price (both legs of the transaction) and quantity (in the second leg of transaction) as well as a short time difference between placing of the orders by the Noticee and counterparty indicates a prior meeting of minds with a view to execute the reversal trades at a predetermined price. Since these trades were done in illiquid option contracts, there was very little trading in the said contract and hence, there was no price discovery in the strictest terms.

39. The wide variation in prices of the said contracts, 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 and the submission of the Noticee that she was not connected to the counterparty and her trades were merely a coincidence cannot be acceptable. Also in light of the same, the submissions of the Noticee stating that her trades were in normal course of trading, genuine, *bonafide*, dehors fraudulent/manipulative intent or design and that she was not aware that her trades were in reversal nature does not merit any consideration in her favour. Therefore, in view of the foregoing observations, I note that the Noticee had indulged in reversal trades with her counterparty in the stock options segment of BSE and the same were non-genuine trades.

40. The non-genuine and deceptive transactions of these entities are covered under the definition of 'fraud' and the dealings of the Noticee as discussed herein above were "fraudulent", as defined under regulation 2(1)(c) of the PFUTP Regulations, 2003 and prohibited under the provisions of Regulations 3(a), 3(b), 3(c) , 3(d) , 4(1) and 4(2)(a) of the PFUTP Regulations, 2003.

41. In support of her submissions as noted in the pre-paras, the Noticee has placed reliance on various judgments of the Hon'ble SAT i.e. Order in the matter of **Jagruti Securities vs SEBI** (2008 SCC online SAT 184), **S.P.J Stockbroker Pvt Ltd vs. SEBI** (2013 SCC Online SAT 67), **Vintel Securities Pvt. Ltd. Vs SEBI** (Appeal No. 219/2009 order dated November 23, 2009) and **Sanjay Agrawal vs. SEBI (**SAT Order dated 18.05.2012 Appeal No. 213 of 2011). Having taken into consideration the aforementioned submissions of the Noticee, considering the facts and circumstances of the instant case as brought out in the pre-paras and the judgments cited by the Noticee, I find it relevant to refer to the decision of Hon'ble Supreme Court in the matter of **SEBI vs. Rakhi Trading Private Ltd.**, in Civil appeals no., 1969 of 2011 decided on February 8, 2018 wherein, it has been held that the price discovery system itself was affected by synchronization and rapid reverse trade, which also had the impact of excluding other investors from participating in the market. The Supreme Court, therefore found that the traders having engaged in a fraudulent and unfair trade practice while dealing in

securities, are hence liable to be proceeded against for violation of Regulations 3(a), 4(1) and 4(2)(a) of the PFUTP Regulations, 2003. The Apex Court also held that "*considering the reversal transactions, quantity, price and time and sale, parties being persistent in the number of such trade transactions with huge price variations, it will be too naïve to hold that the transactions are through screen-based trading and hence anonymous. Such conclusion would be over-looking the prior meeting of minds involving synchronization of buy and sell order and not negotiated deals as per the Board's circular. The impugned transactions are manipulative/deceptive device to create a desired loss and/or profit. Such synchronized trading is violative of transparent norms of trading in securities."*

42. The Hon'ble SAT in its judgment dated September 14, 2020 in the matter of **Global Earth Properties and Developers Pvt Ltd Vs SEBI** (Appeal No. 212 of 2020) also relied upon the aforesaid judgment of the Hon'ble Supreme Court and held that *"…It is not a mere coincidence that the Appellants could match the trades with the counter party with whom he had undertaken the first leg of respective trade. In our opinion, the trades were non-genuine trades and even though direct evidence is not available in the instant case but in the peculiar facts and circumstances of the present case there is an irresistible inference that can be drawn that there was meeting of minds between the Appellants and the counter parties, and collusion with a view to trade at a predetermined price*."

43. The Hon'ble SAT has reaffirmed the aforesaid findings in its judgment dated November 24, 2021 in the matter of **Radha Malani vs. SEBI** (appeal no. 698 of 2021), wherein the Hon'ble SAT has held the following:

    "Having heard the learned counsel for the appellant, in our view the controversy involved in the present appeal is squarely covered by a decision of this Tribunal in Global Earth Properties and Developers Pvt. Ltd. vs. SEBI (Appeal No. 212 of 2020 decided on September 14, 2020).

    In view of the aforesaid, the appeal is dismissed with no order as to costs."

44. Therefore, the aforesaid contentions of the Noticee contending that her trades were carried out through registered stock broker and executed on the exchange of platform and therefore are genuine in nature are devoid of any merit.

45. Further, I note that it is not a mere coincidence that Noticee could match her trades (considering the corresponding price, time of entering the orders and the quantity (being same in one leg)) with the same counterparty with whom Noticee had undertaken first leg of the respective trades. It indicates meeting of minds. In this context, I would like to rely on the judgment of the Hon'ble Supreme Court of India passed in the case of **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..."*

46. 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."*

47. In the instant matter, I note that though direct evidence regarding meeting of minds or collusion of the Noticee with the counterparty is not forthcoming, the trading behavior of the Noticee makes it clear that the aforesaid non-genuine trades could not have been possible without meeting of minds at some level. In this context, I deem it appropriate to refer to the order dated July 14, 2006 passed by Hon'ble SAT, in the case of **Ketan Parekh vs. SEBI** (Appeal no. 2/2004), wherein, Hon'ble SAT has held that:

"The nature of transactions executed, the frequency with which such transactions are undertaken, the value of the transactions, the conditions then prevailing in the market are some of the factors which go to show the intention of the parties. This list of factors, in the very nature of things, cannot be exhaustive. Any one factor may or may not be decisive and it is from the cumulative effect of these that an inference will have to be drawn."

48. Further, I would like to rely on the judgement of Hon'ble Supreme Court passed in the case of **SEBI vs. Rakhi Trading Private Ltd**. (*supra)*, wherein the Apex Court held that "*the entities were engaged in a fraudulent and unfair trade practice while dealing in Options and hence were liable for violation of SEBI (PFUTP) Regulations".* The Hon'ble Apex Court has also held that in the absence of direct proof of meeting of minds, the test should be one of preponderance of probability and also stated that the conclusion has to be gathered from various circumstances like volume of trade, period of persistence of trading, particulars of buy and sell orders, proximity of time between the two and such other relevant factors.

49. In line with the aforesaid judgements of Hon'ble SAT and Hon'ble Supreme Court, I note from the foregoing findings that the trading pattern of the Noticee in terms of volume of reversal trades, proximity of buy/sell and subsequent reversal evidences the indulgence of the Noticee beyond a reasonable doubt of the manipulative intent in creation of artificial volume. Further, the dealings by Noticee in such illiquid options contracts in the nature as noted above clearly demonstrates the manipulative intent to use stock exchange platform to carry

out non-genuine trades with the aim to execute such trades for manipulative purposes.

50. In this regard, I would like to rely on the judgement of Hon'ble Supreme Court in the matter of **SEBI vs. Rakhi Trading Private Ltd.** (*supra)*, where Apex Court held that, *"The stock market is not a platform for any fraudulent or unfair trade practice. The field is open to all the investors. By synchronization and rapid reverse trade, as has been carried out by the traders in the instant case, the price discovery system itself is affected. Except the parties who have pre-fixed the price nobody is in the position to participate in the trade. It also has an adverse impact on the fairness, integrity and transparency of the stock market."*

51. In view of the aforesaid, considering the adverse impact of the non-genuine trades by the Noticee on the fairness, integrity and transparency of the stock market, the submissions of the Noticee that she was a small investor and that she had carried out few trades which would not have influenced the market does not warrant any consideration in her favour.

52. From the foregoing, it is established that the Noticee by indulging in reversal trades on the stock exchange platform which are manipulative, unfair, fraudulent and non-genuine, in nature, had created artificial volumes in the contracts. 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 the PFUTP Regulations, 2003.

ISSUE - II: If yes, whether the Noticee is liable for monetary penalty under Section 15HA of the SEBI Act, 1992?

53. From the 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 APLT15APR140.00CEW2.

54. I am of the view that the misuse of stock options as shown above not only displays an unreal picture of market activity to other investors but also defeats the basic premise of screen based electronic trading system and price discovery mechanism by repeated execution of pre decided reversal trades at irrational / arbitrary prices. Such activity deliberately or otherwise damages market integrity apart from presenting wrong picture of liquidity to gullible investors which could affect their trading/investment decisions. In my view, the abuse of such financial instruments, which are made available to the investors for the purpose of protection of their investment portfolios from the risks of adverse price movement needs to be dealt with strictly.

55. I find that the Noticee by indulging in execution of reversal trades in Stock Options with same entity on the same day, had created artificial volume, leading to false and misleading appearance of trading in the illiquid stock options at BSE and therefore violated the provisions of Regulations 3 (a), 3(b), 3(c), 3 (d), 4 (1), and 4 (2) (a) of the PFUTP Regulations, 2003. Accordingly, 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 hereunder.

Section 15HA of the SEBI Act, 1992 - Penalty for fraudulent and unfair trade practices

> *"If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty which shall not be less than five lakh rupees but which may extend to twenty five crore rupees or three times the amount of profits made out of such practices, whichever is higher".*

ISSUE – III: If so, what quantum of monetary penalty should be imposed on the Noticee?

56. While determining the quantum of monetary penalty under Section 15HA of the SEBI Act,1992, I have considered the factors stipulated in Section 15-J of the SEBI Act,1992, which reads as under:

" Section 15J - Factors to be taken into account by the Adjudicating Officer

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."

57. I observe that the material / documents made available on record does not quantify any disproportionate gains or unfair advantage, if any, made by the Noticee and the losses, if any, suffered by the investors due to such violations on part of the said Noticee. The Noticee has also submitted before me that there was no public involvement in these options in which the Noticee had traded and that there was no loss was caused to any other market participants. However, Noticee has entered into non-genuine trades in nature and created false and misleading appearance of trading volumes in respective contract at pre- mediated price in illiquid stock options. The Noticee has also drawn reference to one of the Adjudication Orders of SEBI bearing No. ORDER/BS/AU/2021-22/12610-12611 contending that the Noticee was exonerated based on the benefit of doubt extended to him. However, the same is factually different and also does not warrant any consideration in favour of the Noticee in the facts and circumstances concluded in the instant matter. It is also the contention of the Noticee that it is not mandatory for the Adjudicating Officer to impose penalty every time it is concluded that an entity has failed to comply with the specific requirement under the Act and/ or regulations and in this regard has cited the judgments of Hon'ble Supreme Court in the matter of **Superintended and Remembrancer Legal Affairs to Government of West Bengal Vs. AbaniMaity** (1979) and in the matter of **Union of India v. H.C. Goel** (AIR 1964 SC 364).

58. I have carefully perused the aforesaid judgment cited by the Noticee. However, at this juncture, I find it pertinent to place reliance upon the Order of the Hon'ble Supreme Court in the matter of Chairman, **SEBI Vs Shriram Mutual Fund** {[2006]5 SCC 361} – where the Hon'ble Supreme Court of India 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…..” . Therefore, I am of the view that the Noticee is liable for penalty for the violations as concluded above.

59. Considering, the facts of the matter as discussed earlier, I am of the view that imposition of minimum penalty as prescribed under section 15 HA of the SEBI Act, 1992 would be commensurate with the violations committed by the Noticee.

ORDER

60. After taking into consideration the nature and gravity of the violations established in the preceding paragraphs and in exercise of the powers conferred upon me 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, I hereby impose a penalty of ₹ 5,00,000 (Rupees Five Lakhs Only) on Surabhi Mundhara, under Section 15HA of the Securities and Exchange Board of India Act, 1992, for the 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 Relating to Securities Market) Regulations, 2003.

61. The said penalty imposed on Surabhi Mundhara, as mentioned above, shall commensurate with the violation committed by her.

62. Surabhi Mundhara 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 SEBI website www.sebi.gov.in on the following path, by clicking on the payment link:

ENFORCEMENT → Orders → Orders of AO →PAY NOW

63. Surabhi Mundhara shall forward said Demand Draft or the details / confirmation of penalty so paid to the "The Division Chief, Division of Regulatory Action-3, Enforcement Department (EFD1 – DRA III), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C –4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai –400 051" and shall provide the following details while forwarding DD/ payment information:

    a) Name and PAN of the entity
    b) Name of the case / matter
    c) Purpose of Payment – Payment of penalty under AO proceedings
    d) Bank Name and Account Number
    e) Transaction Number

64. 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 Securities and Exchange Board of India 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.

65. 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 Surabhi Mundhara and also to the Securities and Exchange Board of India, Mumbai.

January 06, 2022
Mumbai

Ratan Lal Jat
Adjudicating Officer