BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/BM/JR/2022-23/ 24925]

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

In respect of

Munna Lal Agarwal
PAN: ABMPA7898P

In the matter of Trading in Illiquid Stock Options on BSE

BACKGROUND OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") observed large scale reversal of trades in stock options segment of Bombay Stock Exchange (hereinafter referred to as "**BSE**"). SEBI observed that such large scale reversal of trades in stock options led to creation of artificial volume at BSE. In view of the same, SEBI conducted an investigation into the trading activities of certain entities in illiquid stock options at BSE for the period April 1, 2014 to September 30, 2015 (hereinafter referred to as "**IP**").

2. Pursuant to investigation, it was observed that total of 2,91,744 trades comprising 81.40% of all the trades executed in stock options segment of BSE during the IP were non genuine trades. The aforesaid non-genuine trades resulted into creation of artificial volume in stock options segment of BSE during the IP. It was alleged that Munna Lal Agarwal (PAN- ABMPA7898P) (hereinafter referred to as the "**Noticee**") was one of the various entities who indulged in execution of

reversal trades in stock options segment of BSE during the IP. Such trades were alleged to be non-genuine in nature and created false or misleading appearance of trading in terms of artificial volumes in stock options and therefore were allegedly manipulative, deceptive in nature. In view of the same, SEBI initiated adjudication proceedings against the Noticee for violation of the provisions of Regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003 (hereinafter referred to as "**PFUTP Regulations**").

APPOINTMENT OF ADJUDICATING OFFICER

3. The undersigned was appointed as the Adjudicating Officer **(**hereinafter referred to as "**AO")** vide Order dated November 12, 2021 under Section 19 read with Section 15(I) of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act"**) and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as "**SEBI Adjudication Rules"**) to inquire into and adjudge in the manner specified under Rule 4 of Adjudication Rules read with Section 15-I(1) and (2) of SEBI Act, 1992, and if satisfied that penalty is liable, impose such penalty as deemed fit in terms of Rule 5 of Adjudication Rules and section 15HA of SEBI Act.

SHOW CAUSE NOTICE, REPLY OF THE NOTICEE AND HEARING

4. Show Cause Notice No. EAD-3/BM/JR/36991/1/2022 dated August 8, 2022 (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 them and why penalty should not be imposed under section 15HA of the SEBI Act, for the aforesaid alleged violations.

5. It was *inter alia* alleged in the SCN that the Noticee had executed 12 non genuine trades in 6 Stock Options contract which resulted in artificial volume of total 262000 units. Summary of dealings of the Noticee in the said Options contracts,

in which the Noticee allegedly executed non genuine trades during the I.P, is as follows:

S. No.	Contract Name	Avg. Buy Rate (Rs)	Total Buy Volume (No. of units)	Avg. Sell Rate (Rs)	Total Sell Volume (No. of units)	% of Non Genuine trades of Noticee in the contract to Noticee's Total trades in the Contract	% of Non Genuine trades of Noticee in the contract to Total trades in the Contract	% of Artificial Volume generated by Noticee in the contract to Noticee's Total Volume in the Contract	% of Artificial Volume generated by Noticee in the contract to Total Volume in the Contract
1	OBNK15APR195.00CEW1	18.9	20000	12.1	20000	100	22.22	100	6.9
2	OBNK15APR230.00PEW2	21.2	26000	11.1	26000	100	100	100	100
3	ONGC15APR330.00PEW3	25.5	20000	20.5	20000	100	50	100	50
4	VOLT15APR260.00CEW1	21.1	20000	13.9	20000	100	14.29	100	3.53
5	VOLT15APR300.00PEW1	34.5	25000	23.9	25000	100	33.33	100	38.46
6	VOLT15MAR265.00CE	13	20000	8.5	20000	100	40	100	5.06

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

The Noticee had executed alleged non genuine trades in 6 contracts, wherein all the trades of Noticee in the said contracts were allegedly non-genuine trades. The details of trades in 2 of the contracts are as below:

Contract Name: “OBNK15APR230.00PEW2”

(a) No. of alleged non-genuine trades of the Noticee had significantly contributed to total no. of trades from the market in the above contract, as 100% of the trades that happened in the said contract were due to non-genuine trades executed by the Noticee.

(b) 100% of volume generated by Noticee in the above contract was alleged to be artificial volume, and further, the percentage of alleged artificial volume generated by the Noticee in the above contract to the total volume from the market in said contract was 100%. Therefore, the Noticee allegedly generated artificial volume in the above contract.

Contract Name: “ONGC15APR330.00PEW3”

(a) No. of alleged non-genuine trades of the Noticee had significantly contributed to total no. of trades from the market in the above contract, as 50% of the trades that happened in the said contract were due to non-genuine trades executed by the Noticee.

(b) 100% of volume generated by Noticee in the above contract was alleged to be artificial volume, and further, the percentage of alleged artificial volume generated by the Noticee in the above contract to the total volume from the market in said contract was 50%. Therefore, the Noticee allegedly generated artificial volume in the above contract.

7. The SCN with reference no. EAD-3/BM/JR/36991/2/2022 was served on the Noticee via digitally signed email dated August 12, 2022. The proof of service is on record.

8. The aforesaid SCN was served to the Noticee which along with indicating the nature of offence alleged to have been committed by the Noticee, also intimated to the Noticee regarding the SEBI Settlement Scheme, 2022. The intimation regarding settlement scheme given to the Noticee is as follows:

a. SEBI has framed the SEBI Settlement Scheme, 2022 pursuant to the Order dated May 13, 2022 passed by the Hon'ble Securities Appellate Tribunal, wherein the following directions were issued to SEBI:

*"**17**. We are, thus, of the opinion that SEBI should reconsider and seriously give a thought in coming out with a fresh scheme under Clause 26 of the Settlement Regulations, 2018. Such scheme can be a onetime scheme for this class of person.* ***The terms of settlement should be attractive so that it could attract the noticees / entities to come forward and settle the matter which will ameliorate the harassment of penalty proceedings to the noticees and at the same time would help to clear the backlog of these pending matters before various AOs.*** *" (Emphasis Supplied)*

b. *"In compliance with the above directions of the Hon'ble Securities Appellate Tribunal, SEBI has introduced a onetime settlement scheme called the SEBI Settlement Scheme, 2022, in terms of regulation 26 of the Securities and Exchange Board of India (Settlement Proceedings) Regulations, 2018 in the matter of Illiquid Stock Options. The said scheme proposes payment of Settlement Amount as per the details given below:*

S No	***Number of Contracts****	***Settlement Amount (Rs.)***
1	*1-5*	*1,00,000/-*
2	*6-50*	*2,00,000/-*
3	*51 and above*	*5,00,000/- base amount + 10,000 per contract*

** You may refer to the relevant Annexure/table of the SCN which contains a summary of the contracts you entered to determine the applicable slab for settlement.*

c. *The period of the SEBI Settlement Scheme, 2022 will commence on August 22, 2022 and will close on November 21, 2022, so as to provide an opportunity for settlement to the entities who have executed reversal trades in the stock options segment of BSE during the period April 01, 2014 to September 30, 2015, against whom enforcement proceedings have been initiated and are pending. In case you wish to avail the benefit of the said*

Scheme, you may access the details of the said Scheme, which would be available on the website of SEBI i.e. [www.sebi.gov.in,](http://www.sebi.gov.in) during the said period.

d. *Necessary application for settlement may be filed within the validity period of the scheme and payment of the settlement amount shall be made online. Additionally, for any clarification in regard to settlement scheme, you may refer to the FAQs at SEBI website or send email to [scheme2022@sebi.gov.in.](mailto:scheme2022@sebi.gov.in)*

e. *In case you do not wish to avail of the facility under the SEBI Settlement Scheme, 2022, the adjudication proceedings in respect of the allegations contained in Part A of the SCN shall resume. Accordingly, an inquiry shall be held against you in terms of Adjudication Rules read with section 15-I of the SEBI Act, and penalty, if any, shall be imposed under section 15HA of the SEBI Act. In such case, you are called upon to file your reply within 30 days of receipt of this Show Cause Notice."*

f. Pursuant to that, vide public notice dated November 21, 2022, it was advertised/informed that "*Considering the interest of entities in availing the Scheme, the competent authority has extended the period of the Scheme till January 21, 2023.*"

9. However, it was observed that Noticee did not avail the SEBI Settlement Scheme. In view of which, the adjudication proceeding against the Noticee was resumed.

10. It was observed that Noticee did not submit his reply to the SCN. In the interest of natural justice, the Noticee was provided an opportunity of hearing vide hearing notice dated February 24, 2023 via SPAD and digitally signed email. The Noticee was advised to appear before the undersigned on March 9, 2023. The personal hearing was conducted on scheduled date and time through video conferencing. During the course of hearing, Noticee made oral submissions and

informed that he would be making his written submissions by March 20, 2023. The Noticee was also informed that it was the final hearing and no further hearing shall be granted in the present matter.

11. The Noticee replied to the SCN vide email dated March 8, 2023 stating, inter alia, the following:

- *I submit that it is for the first time that I received the said SCN vide your mail dated 27th February 2023 along with annexures and hearing notice dated 24th February 2023 granting me a hearing on 9th March 2023.*
- *I Submit that I am a senior citizen of over 75 years of age and to the best of my knowledge I have never undertaken any trades as alleged in the said SCN. Neither I am aware about under which broker these trades are alleged to have been done by me. There are no wrongful gains or profits made by me out of the alleged trades.*
- *Assuming without admitting the alleged trades, I request your attention to the fact that it has been put to my knowledge that there was a Sebi Settlement scheme 2022 which was upto 21st January 2023. Therefore, having not received the SCN in that period or prior to that period, has put me to adversity as I could not seek appropriate legal advise on availing of the Settlement scheme. This is without prejudice to the fact that I have no knowledge of the trades alleged as mine in the SCN.*
- *At the outset I humbly submit that the SCN has been issued after an inordinate delay of more than 6 years from the date of the trades having been executed. I request your attention on various orders of Hon'ble SAT wherein Hon'ble SAT had set aside adjudication orders because of inordinate delay in issuing SCN/ initiating proceedings. I crave leave to refer and rely on such judgements as may be required.*
- *Without prejudice to all the above, I submit that I was an individual investor in the past and had invested money in a variety of investment vehicles (one of which is the stock market) with an expectation of receiving financial returns on the invested amount. However, I am not an investor of stock market anymore*

and I do not even remotely remember the trades alleged as mine in the SCN. I request you to provide me with details of the broker under whom the alleged trades had taken place so that I can try and gather some information.

- *Without prejudice to all that is stated above, I submit that even if the alleged trades in the SCN are assumed to bemine, were on Bombay Stock Exchange Limited. If these scripts, were at no time banned then even if any trades would have been undertaken then, there was no bar on trading in the said scripts. Therefore, it would be too far-fetched for any person like me to assume that these stocks are so called "ill-liquid". The mere fact that BSE allowed trading in these stocks renders the trades as bona fide in these stocks. Moreover, in absence of any warnings, estoppels from BSE, I am at a loss to understand how could one gather the awareness of the stocks being ill liquid.*
- *I further submit that I am in no way related to the alleged counter parties as contended in the SCN. I am not even aware who he/ she/ they are. Also, the said SCN has failed to establish any connection between me and the alleged counter parties except allegations of matching of few trades (and that too two legs of same trade i.e. buy and sell) which to my knowledge I had not undertaken. Hence, allegations against me are based on mere surmises and conjectures.*
- *I further submit that there were no wrongful gains made by me put of the alleged trades even for sake of assumptions. Therefore, no motive is established qua me for the presumptions of non-genuine trades by me.*
- *I submit that the alleged trades if at all would have been executed on the floor of exchange through a registered share broker who has the requisite software as approved by the Exchange. It would be the broker who would be able to provide all clarifications on the alleged trades if at all done in my account. The entire trading process is like blind mechanism as far as buying and/ or selling of staocks by a client through a broker is concerned. Even for sake of assumptions is impossible for me to know who is/ are the counter parties to our trades. I am not aware of the mechanism by which a share broker trades in the market for its clients. According to me, at any given point of time, it is impossible for me to even verify the party and counter party of any transactions. I further*

state that there was no alert from the broker or the Exchange which would prompt me to take any caution or create an alarm for any scrips. Under these circumstances, it is erroneous to conclude that I had executed non-genuine trades which resulted in artificial volume.

- *I submit the trades on the floor of the exchange are through blind mechanism wherein the trading system prevents a member who places any orders from identifying the counter-party member or client and thus ensures anonymity of trades. Hence, it is highly unlikely that even for sake of assumptions I could be aware about counter party of any of my trades even if I had undertaken. Many times matching of miniscule quantity of trades on a given day is coincidental and by no stretch of imagination can the trades be termed as non-genuine or for creating artificial volume. Even by a bare perusal it is pertinent to note that there is a huge time difference between the alleged buy and sell trades. Therefore, any price variation in the meantime, is a market phenomenon on which an investor could not have any control. Furthermore, the percentage of the alleged trades compared to market volume and contracts may have lower in absence of heavy trade volumes on the platform of the Exchange about which I am not aware of nor have the means and resources to find out thereon."*

12. On the scheduled date of personal hearing the authorised representative of the Noticee appeared and reiterated the submissions made vide email dated March 8, 2023. Pursuant to the personal hearing the Noticee vide email dated March 14, 2023 reiterated the submissions made vide email dated March 8, 2023.

CONSIDERATION OF ISSUES AND FINDINGS

13. I have carefully perused the charges levelled against the Noticee, his reply and the documents / material available on record. The issues that arise for consideration in the present case are:
    (a) Whether the Noticee has violated provisions of Regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of PFUTP Regulations, 2003?
    (b) Does the violation, if any, attract monetary penalty under section 15HA of the SEBI Act, 1992?

(c) If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in section 15J of the SEBI Act, 1992?

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

PFUTP Regulations, 2003

3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

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

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

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

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

4. Prohibition of manipulative, fraudulent and unfair trade practices

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

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

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

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

15. Before going into the merits of the case, I shall ddeal with the preliminary submission of the Noticee wherein he had stated that he had received the copy of the SCN for the first time vide email on February 27, 2023. I observe that the email id of the Noticee as per the records of SEBI is agarwalmunnalal@gmail.com. I find that the copy of the SCN was sent to the said address and the notification of delivery is on record. Subsequently, the hearing notice was also issued to the same address and the reply of the Noticee was also sent from agarwalmunnalal@gmail.com. Therefore, the contention of the Noticee that it had not received the SCN in August 2022 and failed to avail the settlement scheme is not acceptable.

16. Further, the intimation regarding the 2022 Settlement Scheme was given not only through the SCN dated August 10, 2022 but also by Public Notice. Thus I note that sufficient opportunity of availing the settlement was given to the Noticee, which he did not avail.

14. The Noticee further contended that the SCN in the matter was issued after 6 years of the execution of impugned trades. In this regard, 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.

15. 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".*

16. Further, another settlement scheme was introduced pursuant to the order of Hon'ble SAT dated May 12, 2022. The details of SEBI settlement scheme is given at paragraph 8 above.

17. As can be seen from the narration of facts in the foregoing paragraphs, pursuant to appointment of AO on November 12, 2021, SCN was issued on August 8, 2022, which also gave details regarding SEBI Settlement scheme, 2022. As Noticee did not avail the SEBI Settlement Scheme, 2022, adjudication proceedings were resumed against the Noticee. Pursuant to which, in compliance with principles of natural justice, an opportunity of personal hearing was scheduled on March 9, 2023.

18. I further note that there are no timelines prescribed in the SEBI Act, 1992 for the purpose of identifying trades as non-genuine. In this regard, I feel 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 that "*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*." Thus, I note that the period of 6 years to issue SCN from the alleged transaction does not cause delay and no prejudice has been caused to the Noticee.

17. I note that allegation against the Noticee is that, while dealing in the stock option contracts at BSE during the IP, he had executed reversal trades which were allegedly non-genuine and the same had resulted in generation of artificial

volume in stock option contracts at BSE. Reversal trades are considered 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.

19. In the instant matter I shall now proceed to deal with the transactions executed by the Noticee in the alleged non-genuine trades.

18. I note from the trade log of the Noticee that he had traded in six contracts in the stock options segment of BSE during the IP. It is observed that the Noticee had allegedly executed 12 non-genuine trades in 6 contracts. I further note that the above mentioned trades of the Noticee had resulted in the creation of artificial volume of 262000 units in the said contracts. Summary of non-genuine trades of the Noticee is as follows:

S. No.	Contract Name	Avg. Buy Rate (Rs)	Total Buy Volume (No. of units)	Avg. Sell Rate (Rs)	Total Sell Volume (No. of units)	% of Non Genuine trades of Noticee in the contract to Noticee's Total trades in the Contract	% of Non Genuine trades of Noticee in the contract to Total trades in the Contract	% of Artificial Volume generated by Noticee in the contract to Noticee's Total Volume in the Contract	% of Artificial Volume generated by Noticee in the contract to Total Volume in the Contract
1	OBNK15APR195.00CEW1	18.9	20000	12.1	20000	100	22.22	100	6.9

2	OBNK15APR230.00PEW2	21.2	26000	11.1	26000	100	100	100	100
3	ONGC15APR330.00PEW3	25.5	20000	20.5	20000	100	50	100	50
4	VOLT15APR260.00CEW1	21.1	20000	13.9	20000	100	14.29	100	3.53
5	VOLT15APR300.00PEW1	34.5	25000	23.9	25000	100	33.33	100	38.46
6	VOLT15MAR265.00CE	13	20000	8.5	20000	100	40	100	5.06

19. It is noted that the Noticee had allegedly executed non-genuine trades in aforesaid six contracts, wherein the percentage of alleged non-genuine trades of the Noticee in stock options contract to total trades in the contract was upto 100% for some contracts. Further, alleged artificial volume generated by Noticee in the contracts amounted to 100% of total volume generated by him in the contract.

20. The details of squaring up done by the Noticee in the contract "**OBNK15APR230.00PEW2**" is given below:

Table A

Trade Date	Client Name	CP Client Name	Trade Time	Trade Rate (Rs.)	Traded Quantity	Buy/Sell by the Noticee
26/03/2015	MUNNA LAL AGARWAL	BIMLA SURJEWALA	14:44:45	21.2	26000	Buy
26/03/2015	BIMLA SURJEWALA	MUNNA LAL AGARWAL	14:44:38	11.1	26000	Sell

21. The details of squaring up done by the Noticee in another contract "**ONGC15APR330.00PEW3**" is given below:

Table B

Trade Date	Client Name	CP Client Name	Trade Time	Trade Rate (Rs.)	Traded Quantity	Buy/Sell by the Noticee
26/03/2015	MUNNA LAL AGARWAL	KULBIR SINGH SURJEWALA	14:41:28	25.55	20000	Buy
26/03/2015	KULBIR SINGH SURJEWALA	MUNNA LAL AGARWAL	14:41:15	20.5	20000	Sell

22. I note from the trade log details which is given above, that the trades executed by the Noticee in a contract were squared up within less than 15 seconds, with his counter- party. For instance, as can be seen from the table A above, for the contract "**OBNK15APR230.00PEW2**", the Noticee on March 26, 2015 at 14:44:38 hrs entered 1 sell trade with counterparty viz. Bimla Surjewala for 26000 units at the rate of Rs. 11.1 per unit. Thereafter, on the same day, Noticee at 14:44:45 hrs entered into 1 buy trade with same counterparty for 26000 units at the rate of Rs. 21.2 per unit in the same contract. It is noted that while dealing in the said contract during the I.P., the Noticee executed reversal trades with same counterparty viz. Bimla Surjewala on the same day, with significant price difference. Thus, the Noticee, through his dealing in the contract viz. "**OBNK15APR230.00PEW2"** during the I.P., executed non genuine trades which was 100% of the total trades from the market in the said contract during the I.P., and thereby, Noticee generated artificial volume of 52000 units which was 100% of the volume traded in the said contract from the market during the I.P.

23. The non-genuineness of these transactions executed by the Noticee is evident from the fact that there was no commercial basis as to why, within a short span of time, the Noticee reversed the position with his counterparties with significant price difference on the same day. The fact that the transactions in a particular contract were reversed with the same counterparties indicates a prior meeting of minds with a view to execute the reversal trades at a pre-determined price. Since these trades were done in illiquid option contract, there was negligible 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. Thus, it is observed that Noticee had indulged in reversal trades with his counterparty in the stock options segment of BSE and the same were non-genuine trades.

24. I further note that it is not mere coincidence that the Noticee could match his trades with the same counterparty with whom he had undertaken first leg of the respective trades. The fact that the transactions in a particular contract were reversed with the same counterparty for the same quantity of units, indicates a prior meeting of minds with a view to execute the reversal trades at a pre-determined price. This is the outcome of meeting of minds elsewhere and it was a deliberate attempt to deal in such a manner. I note in matters dealing with violation of PFUTP Regulations, 2003, the reason as regards execution of non-genuine trades might not be immediately forthcoming. However, the correct test instead, is one of preponderance of probabilities. Here I would like to rely on the judgment of **Hon'ble Supreme Court in SEBI v Kishore R Ajmera** (AIR 2016 SC 1079) decided on February 23, 2016, wherein it was held that-*"...According to us, knowledge of who the 2nd party / client or the broker is, is not relevant at all. While the screen based trading system keeps the identity of the parties anonymous it will be too naïve to rest the final conclusions on the said basis which overlooks a meeting of minds elsewhere. Direct proof of such meeting of minds elsewhere would rarely be forthcoming...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…"*

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

26. The observations made in the aforesaid judgment of Hon'ble Supreme Court apply with full force to the facts and circumstances of the present case. Therefore, applying the ratio of the above judgments, 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 minds with a view to execute the reversal trades at a pre-determined price. The only reason for the wide variation in prices of the same contract, within short span of time was a clear indication that there was pre-determination in the prices by both the counterparty when executing the trades. Thus, the nature of trading, as brought out above, clearly indicates an element of prior meeting of minds and therefore, a collusion of the Noticee with its counterparty to carry out the trades at pre-determined prices

27. I note the Hon'ble SAT in the matter **of Ketan Parekh vs SEBI (order dated July 14, 2006)** held that, "*In other words, if the factum of manipulation is established it will necessarily follow that the investors in the market had been induced to buy or sell and that no further proof in this regard is required. The market, as already observed, is so wide spread that it may not be humanly possible for the Board to track the persons who were actually induced to buy or sell securities as a result of manipulation and law*

can never impose on the Board a burden which is impossible to be discharged. This, in our view, clearly flows from the plain language of Regulation 4 (a) of the Regulations."

28. I also place my reliance on the judgment of Hon'ble Supreme Court in the matter of **SEBI v Rakhi Trading Private Limited** (Civil Appeal Nos. 1969, 3174-3177 and 3180 of 2011 decided on February 8, 2018), in which it was 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…."*

29. Further, the Hon'ble SAT in its order dated September 14, 2020 in the matter of **Global Earth Properties and Developers Pvt Ltd** relied upon the Hon'ble Supreme Court judgement in the matter of SEBI v Rakhi Trading Private Limited (Civil Appeal Nos. 1969, 3174-3177 and 3180 of 2011 decided on February 8, 2018), 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.*"

30. Noticee contended that he is not aware of the transactions with respect to reversal of trades in Stock Options segment of the BSE in any manner whatsoever. In this regard, I find that the details of trades were obtained by the exchanges from the demat account of the Noticee only. The Noticee is fully responsible of the transactions happening through his Demat account, thus he

cannot raise the contention that he was not aware of the said transactions. I note that the contention of the Noticee is nothing but an after-thought merely canvassed to escape from the consequences of the present proceedings.

31. I note that the impugned reversal trades, which were carried out with prior meeting of minds as inferred from the case facts, affected the price discovery and execution of trades as per market mechanism on the stock options segment of BSE. In this regard, I further note the following from the judgement of the Hon'ble Supreme Court in the matter of SEBI vs Rakhi Trading Pvt Ltd (supra):*"……….According to SAT, only if there is market impact on account of sham transactions, could there be violation of the PFUTP Regulations. We find it extremely difficult to agree with the proposition. As already noted above, SAT has missed the crucial factors affecting the market integrity, which may be direct or indirect. 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."*

32. Therefore, the trading behaviour of the Noticee confirms that such trades were not normal indicating that the trades executed by the Noticee were not genuine trades and being non-genuine, created an appearance of artificial trading volumes in respective contracts. In view of the above, I find that the allegation of violation of regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of PFUTP Regulations, 2003 by the Noticee stands established.

Issue No 2: Does the violation, if any, attract monetary penalty under Section 15HA of the SEBI Act?

33. Considering the findings that the Noticee as mentioned above has executed non-genuine trades resulting in the creation of artificial volume, thereby violating the provisions of Regulation 3(a), (b), (c) & (d) & Regulation 4(1) and 4(2)(a) of the PFUTP Regulations, 2003 and in terms of the judgement of Hon'ble Supreme Court of India in the matter of **SEBI Vs. Shriram Mutual Fund**[2006] 68 SCL 216(sc) decided on May 23, 2006 held that '' "*In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant…"* I am convinced that it is a fit case for imposition of monetary penalty under the provisions of section 15 HA of SEBI Act which reads as under:

> ***Penalty for fraudulent and unfair trade practices.***
> *15HA. If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty which shall not be less than five lakh rupees but which may extend to twenty - five crore rupees or three times the amount of profits made out of such practices, whichever is higher.*

Issue 3: If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in section 15J of the SEBI Act?

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

15J. *While adjudging quantum of penalty under [15-I or section 11 or section 11B, the Board or the adjudicating officer] shall have due regard to the following factors, namely:—*

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

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

(c) the repetitive nature of the default.

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

35. I observe, that the material available on record does not quantify any disproportionate gains or unfair advantage, if any, made by the Noticee and the losses, if any, suffered by the investors due to such violations on part of the said Noticee. However, the Noticee has executed non-genuine trades in 6 contracts which demonstrates the violation is repetitive in nature.

ORDER

39. Having considered all the facts and circumstances of the case, the material available on record and the factors mentioned in section 15J of the SEBI Act, in exercise of power conferred upon me under section 15-I of the SEBI Act read with rule 5 of the Adjudication Rules, 1995, I hereby impose following penalty of Rs. 5,00,000/- (Rupees Five Lakh only) under section 15HA of the SEBI Act on the Noticee. I am of the view that the said penalty is commensurate with the lapse/omission on the part of the Noticee.

40. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order 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

41. The aforesaid Noticee shall forward the details / confirmation of penalty so paid to "The Division Chief (Enforcement Department 1 DRA-2), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C – 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.". The Noticee shall also provide the following details while forwarding payment information:

- Name and PAN of the Noticee
- Name of the case / matter
- Purpose of Payment – Payment of penalty under AO proceedings
- Bank Name and Account Number
- Transaction Number

42. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, SEBI may initiate consequential actions including but not limited to recovery proceedings under section 28A of the SEBI Act for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties.

43. In terms of the provisions of rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticee viz. Munna Lal Agarwal and also to the Securities and Exchange Board of India.

Date: March 27, 2023	**BARNALI MUKHERJEE**
Place: Mumbai	**ADJUDICATING OFFICER**