BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
ADJUDICATION ORDER NO.: Order/DM/MA/2022-23/16020

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

In respect of:

Kamal Kishor Maloo HUF

PAN: AAIHK2701C

In the matter of dealings in Illiquid Stock Options at BSE

A. FACTS OF THE CASE

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

2. It was observed during the course of investigation that a total of 2,91,744 trades comprising 81.41% of all the trades executed in the Stock Options Segment at the BSE during the investigation period were trades which involved reversal of buy and sell positions by the clients and counterparties in a contract on the same day. It was observed that Mr. Kamal Kishor Maloo HUF (hereinafter referred to as "**Noticee**") was one such client whose reversal trades involved squaring off open positions with a significant difference without any basis for such change in the contract price. The

aforesaid reversal trades allegedly resulted into generation of artificial volumes, leading to allegations that the Noticee had violated the provisions of Regulations 3(a), (b), (c), (d) and Regulations 4(1), 4(2)(a) of the SEBI (Prohibition of Fraudulent and Unfair Trading Practices related to Securities Markets) Regulations, 2003 (hereinafter referred to as "**SEBI PFUTP Regulations**").

APPOINTMENT OF ADJUDICATING OFFICER

3. SEBI initiated adjudication proceedings and appointed the undersigned as Adjudicating Officer under section 15-I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act**") read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as "**Adjudication Rules**") vide order dated July 02, 2021 to inquire into and adjudge under section 15HA of the SEBI Act against the Noticee for the alleged violation of the aforesaid provisions of PFUTP Regulations, 2003. The appointment of AO was communicated vide order dated July 06, 2021.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. A Show Cause Notice bearing reference no. SEBI/HO/IMD/DOF7/MA/2021/27914/1 dated October 08, 2021 (hereinafter referred to as "**SCN**") was issued to the Noticee under Rule 4(1) of the Adjudication Rules to show cause as to why an inquiry should not be initiated against the Noticee and why penalty should not be imposed on the Noticee under Section 15HA of the SEBI Act for the aforesaid violations of the provisions of regulations 3(a),(b),(c),(d) and regulations 4(1),4(2)(a) of the SEBI PFUTP Regulations alleged to have been committed by the Noticee.

5. The allegations levelled against the Noticee in the SCN, inter alia, are summarised below:

a) The Noticee was one of the entities which indulged in reversal trades which allegedly created false and misleading appearance of trading, generating artificial volumes in the Stock Options Segment of BSE during the investigation period. The Noticee is alleged to have engaged in reversal trades through 03 (three) trades in 01 (one) unique contract, which led to generation of alleged artificial volume of 1,02,000 units.

b) The trades entered by the Noticee were reversed on the same day with same counterparty at a substantial price difference without any basis for significant change in the contract price which indicates that these trades are artificial and are non- genuine in nature.

c) A summary of dealings of Noticee in 01 (one) Stock Option contract in which the said Noticee allegedly executed non-genuine reversal trades during the investigation period, is as follows:-

Table 1: Summary of dealings in contracts wherein the Noticee executed reversal trades

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 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	JSPL15MAR160.00CE	1.6	51000	9.95	51000	100%	3.66%

Note: "Unit" refers to lot size in contract multiplied by number of contracts traded.

d) The abovementioned reversal trade and volumes are illustrated through the dealings of Noticee in one contract viz, “JSPL15MAR160.00CE” during the investigation period, as follows:-

   i. During the investigation period, 03 (three) trades for 1,02,000 units were executed by the Noticee in the said contract on 24/03/2015.

   ii. While dealing in the said contract on 24/03/2015, at 12:55:16.60 hrs, the Noticee entered into 02 (two) sell trade with counterparty JR Properties for 50,000 units at Rs. 9.95 per unit and 1000 units at Rs. 9.9 per unit. At 13:56:05.78 hrs. the Noticee entered into a buy trade/reversal trade with the same counterparty for 51,000 units at Rs. 1.6 per unit.

   iii. The Noticee’s two trades while dealing in the aforesaid contract during the investigation period allegedly generated artificial volume of 1,02,000 units, which made up 3.66% of total market volume in the said contract during this period.

e) In view of the foregoing, it is alleged that Noticee, by indulging in execution of non-genuine reversal of trades in Stock Options with same entity on the same day, created false and misleading appearance of trading in stock options and therefore allegedly violated Regulation 3(a),(b),(c),(d), 4(1) and 4(2)(a) of SEBI PFUTP Regulations”

6. The aforesaid SCN was served on the Noticee via Speed Post Acknowledgement Due (“SPAD”). Thereafter, the Noticee, vide email dated October 24, 2021 acknowledged the receipt of the SCN and submitted the following:

   a. That the violations alleged in the SCN are unfounded and baseless in nature and that the noticee has always been in compliance with SEBI Regulations.

b. That the SCN failed to provide any concrete evidence supporting the allegation that the trades in question were fraudulent in nature and that PFUTP Regulations do not apply to the present case essentially because:

    i. The alleged trades were executed on the floor of BSE with due compliance with all the rules and regulations of BSE. At no point of time was there any warning or any observation about the trade which were executed by the noticee.

    ii. SCN does not show how the particular trade can be termed as fraudulent or non-genuine and the noticee is alleged to be in violation because some other fraudulent trades had taken place at that time. 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.

    iii. There is no nexus or meeting of minds. Directly or indirectly, with the counter party brokers or the clients and none of the trades had any impact on the investors in the larger securities market or the parties involved in the trade or their investment decision which is a *sine qua non* of fraud.

    iv. SCN does not consider particular factual matrix of the noticee’s dealings in stock options segment of BSE. The noticee has been made a victim of the violations in light of other non-genuine trades merely because the noticee made trades during the time period of investigation.

    v. There was a significant time gap between the execution of trades. The stock options market is highly volatile in nature. The trades are executed on the behest of BSE and noticee did not have any role in selling and buying to a particular party of choice.

    vi. The noticee was a new investor in the stock options segment at the time of the alleged violation and the noticee was not aware of low volumes or illiquidity in such options.

    vii. The SCN does not state the reasons, rational, cause of action, locus and invoking of jurisdiction after over 6 years from the dates of settled transactions and therefore the SCN is arbitrary.

c. That the underlying scrip is highly liquid in nature and is frequently traded in the market and thus the allegation of the noticee deliberately trading in this scrip which is illiquid in nature is baseless.
d. That the trades were never intended to be executed with the same counterparty. The noticee held the position in the stock option for more than hour from 12:55:16.60 to 13:56:05.78 on March 24, 2015 and that the noticee made a genuine trading decision. That the trades were not synchronous in nature as the trades were not executed within seconds of each other and the price variation was only due to genuine market forces. In this regard, the noticee sought to bring the attention to Paragraph 20 of Adjudication Order No. Order/MC/RM/2021-22/13490 in respect of – Lalit Kumar Saraf HUF.
e. That it was a mere coincidence that even after a significant time the trade was executed with the same counterparty. That the noticee was not even aware that the trade was made with the same counterparty till the SCN was served on the noticee. The noticee does not have power to trade with a specific counterparty.
f. It is alleged by the SCN that the noticee's trades were in far-off strike prices and that very few entities were trading in such strike rates hence noticee has transacted in illiquid options. However the said trades could not have any impact on other investors or market. No adverse inference can be drawn against the noticee as BSE and SEBI have permitted trading options in 'far months' with a strike price at large variance to current market price. That the dramatic variation in option price could be because the chosen strike price was thinly traded.
g. That the mere fact that the noticee traded in option segment cannot be a ground to initiate any proceedings against the noticee as the derivative market is highly volatile and a 'zero-sum game'.
h. That the alleged artificial volume generated was merely 3.66% and that the noticee was unaware of any such figures until the SCN was issued. That the noticee traded just one day out of one and half year of the investigation period and hence it is erroneous to allege that the noticee's trades created artificial volume on BSE in any manner whatsoever.

i. That the allegation of creation of artificial or reversal trade is of no consequence in option segment of exchange because in option segment each contract expires at the end of contract period and for every party who makes a profit there is a counterparty who makes a loss and there is no transfer of beneficial ownership unlike in cash segment.

j. That the noticee does not have any relationship with nor did he act in concert / collude with the counterparty (J R Properties) or the broking entities for manipulation of the alleged trades. The SCN failed to show that the noticee had any link or connection with the counterparty or the broking entity.

k. That the trades were made by the automated online trading models and the noticee had no role to play in execution of the trades with the same counterparty.

l. That the Hon'ble Supreme Court's decision in SEBI vs Rakhi Trading Private Limited (Civil Appeal Nos. 1969, 3174-3177 and 3180 of 2011 decided on February 08, 2018) states that there needs to be a meeting of minds for a violation of reversal trades. That the SCN fails to show how two parties who trade more than an hour later will have prior meeting of minds with the broking entity or the counterparty to make a fraudulent or non-genuine trade.

m. Further, the noticee mentioned that Hon'ble SAT in the matter of Jagruti Securities (2008 SCC online SAT 184) and S.P.J Stockbroker Pvt. Ltd (2013 SCC Online SAT 67) has clearly observed that such alleged trades cannot be treated as illegal per se unless there is 'mischievous meeting of minds amongst certain parties'. Moreover, the noticee submitted that as per SAT's order dated May 18, 2012 in the matter of Sanjay Agrawal vs SEBI a cogent connection needs to be established between parties to establish an allegation of reversal trade.

n. That there was nothing in the public domain that there is anything amiss in the matter and that the trades executed by the noticee are genuine and fair as BSE with its surveillance system could have annulled the trades at that point in time only if it considered that the trades were fraudulent. The alleged trades were within prudential norms of stock exchange and were in compliance with guidelines prescribed by SEBI and BSE. There was no cautionary warning etc.

o. That the SCN did not point to a single instance or observation on the noticee's specific role in the alleged reversal trades and the SCN only alleges generic allegations against the noticee.

p. That the SCN is bad in law as there is no specificity in the allegations, that Hon'ble Supreme Court's judgment in the case of Commissioner of Central Excise, Bangalore vs. Mls Brindavan Beverages (P) Ltd. And Ors. (Civil Appeal 3417 of 2002) decided on June 15, 2007 has inter alia observed that *"… there was nothing specific as to the role of the respondent… the arrangements as alleged have not been shown to be within the knowledge of the respondent… show cause notice is the foundation on which the department has to build up its case. In the instant case, what the appellant has tried to highlight is the alleged connection between the various concerns. That is not sufficient to proceed against the respondents unless it is shown that they were parties to the arrangements, if any…"*

q. That even if the Adjudicating Officer were to hold that the trades were in violation of the PFUTP Regulations, the noticee submitted (without admitting the allegations) that the wider market was not involved in the trades executed by the noticee and there is no clear way of ascertaining the impact on the wider securities market. Hence, the noticee submitted that any alleged violation on behalf of the noticee had not been non-genuine or fraudulent and that the noticee is merely a victim of the circumstances.

r. That there had been no grievance by any investor, broker or stock exchange with respect to their dealing in the option segment of BSE Ltd.

s. That on basis of submissions made by the noticee no enquiry be initiated against it as it had not violated any of the provisions of the SEBI Act or the Regulations made thereunder.

t. That the noticee requested the Adjudicating Officer to provide it an opportunity of being heard in the matter before taking any decision against the noticee.

7. In the interest of natural justice and in terms of the Adjudication Rules, the Noticee was provided with an opportunity of personal hearing in the matter on November 30, 2021, through the online Webex platform. During the course of the hearing, the noticee reiterated the submissions made by the Noticee in its reply dated October 23, 2021 and would also submit additional details within 15 days from November 30, 2021. Thereafter, Noticee vide email dated April 08, 2022 reiterated the aforesaid submissions.

B. CONSIDERATION OF ISSUES AND FINDINGS

8. I have taken into consideration the facts and circumstances of the case, the material /documents made available on record and the submissions of the Noticee. The issues that arise for consideration in the instant case are:

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

   (b) Issue No. II: Does the violation, if any, attract monetary penalty under section 15HA of the SEBI Act?

   (c) Issue No. III: 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?

9. Before advancing into the merits of the case, I would like to look through the backdrop of issuance of the SCN which consists of a series of legal and judicial developments.

10. 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.

11. 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".

12. A Settlement Scheme was framed under the SEBI (Settlement Proceedings) Regulations, 2018, which provided one-time opportunity for settlement of proceedings in the Illiquid Stock Options matter. The said scheme was kept open from August 01, 2020 till December 31, 2020. Adjudication proceedings were initiated against those entities who had not availed of the opportunity of settlement.

13. As can be seen from the narration of facts in the foregoing paragraphs, pursuant to appointment of AO vide Order dated July 02, 2021, SCN was issued on October 08, 2021. Thus, the Adjudication Proceeding was initiated after a series of legal and judicial developments. In compliance with principles of natural justice, after receipt of reply, an opportunity of personal hearing was scheduled on November 30, 2021 and upon conclusion of hearing, additional written submissions were received from the noticee on April 08, 2022 wherein the noticee reiterated the earlier submissions.

14. Noticee has inter-alia contended that there was an inordinate delay in issuing SCN to the Noticee and therefore SCN is arbitrary. I note that there is no provision under

SEBI Act which prescribes a time limit for taking cognizance of a breach of the provision of SEBI Act and Rules and Regulations made thereunder. Further, as per Section 11C of SEBI Act, SEBI can initiate investigation at any point of time, for any period of alleged violation or any period of alleged transactions. I also note that the investigations relating to the SEBI PFUTP Regulations are complex (considering the volume of transactions, connections and examination of trading of shares, etc.) and time consuming. 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, observed 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."*

15. 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 - 17.03.2020) 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."*

16. I also note that the Hon'ble SAT in the matter of Bipin R Vora vs SEBI held that, *"As regards the plea of delay and latches and submission that the show cause notice is barred by limitation, I do not find any merit in these contentions as the time and efforts involved in an investigation though may vary from case to case, generally investigations per-se is a time consuming process which invariably involve collection, scrutiny and careful examination of voluminous records/ order-trade details of all the concerned including the exchanges/recording of statements etc. and therefore no time limit can be fixed in this regard to enable a regulator to take appropriate disciplinary action for the safeguard and improvement of the system/market."*

17. In view of the above, Adjudication Proceedings were initiated and SCN was issued in the instant matter after the aforesaid series of legal and judicial developments.

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

18. Before moving forward, it is pertinent to refer to the relevant provision of the PFUTP Regulations which are alleged to have been violated. The said provisions are reproduced hereunder-

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;

19. I note that the allegation against the Noticee is that, while dealing in the stock option contracts at BSE during the Investigation Period, the Noticee had executed reversal trades which were allegedly non-genuine trades and the same had resulted in generation of artificial volume in stock options contracts at BSE. Reversal trades are 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.

20. I note from the trade log of the Noticee that the Noticee had traded in 1 unique contract in stock options segment of BSE during the Investigation Period. It is observed that the Noticee had executed 3 non-genuine trades in 1 contract. I further note that the above mentioned trades of the Noticee had resulted in the creation of artificial volume of a total of 1,02,000 units in the said 1 contract. The summary of the non-genuine trades of the Noticee are 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/ reversal trades of noticee in the contract to noticee's total trades in the contract	% of non-genuine trades/ reversal 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.	JSPL15MAR160.00CE	1.6	51000	9.95	51000	100%	12%	100%	3.66%

Note: *"Unit" refers to lot size in contract multiplied by number of contracts traded.*

21. It is noted that the Noticee had executed non-genuine trades in 1 contract, wherein the percentage of non-genuine trades of the Noticee to the total trades in the contract was 12%. Further, the artificial volume generated by the Noticee in the contract amounted to a substantial 100% of total volume generated by the Noticee in the contract. 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. It is also noted that artificial volume generated by the Noticee contributed 3.66 % to the total volume from the market in the said contract. The non-genuine trades executed by the Noticee in the above contract had significant difference between buy and sell rates considering that the trades were reversed on the same day.

22. Upon perusing the trade log, I note that the trades executed by the Noticee in the contract were squared up within the same day with the same counterparty. To illustrate, on March 24, 2015, at 12:51:45.242893 hrs., the Noticee placed 01 (one) sell order for 1000 units at a price of ₹9.9 per unit and on the same day at 12:53:31.149441 hrs., the Noticee placed another sell order for 50000 units at a price of ₹9.95 per unit and the said orders were matched with the buy order (which was for 2,39,000 units at a price of ₹9.95 per unit) of counterparty client J R Properties. I note that the said buy order was placed at 12:55:16.602828 hrs., i.e. within a few seconds of the entry of the sell limit

order by the Noticee. The said trade was executed at 12:55:16.602828 hrs. I note that the sell limit order of the Noticee got executed into trade immediately upon the entry of the buy limit order by the counterparty. On the same day subsequently, at 13:52:23.651690 hrs., the noticee placed a buy limit order for 51000 units at a price of ₹1.6 per unit and the said order was matched with the same counterparty (i.e. J R Properties), who placed a sell order for 239000 units at the same price i.e. ₹1.6. I note that the said sell limit order was placed by the J R Properties at 13:56:05.785127 hrs. i.e. within a few seconds of the entry of the buy order by the Noticee. The said trade was executed at 13:56:05.785127 hrs. I note that the buy limit order of the Noticee got executed into trade immediately upon the entry of the sell limit order by the counterparty.

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 the same day, the Noticee reversed the position with the same counterparty client with a significant price difference. Such reversal of trades in an illiquid stock option 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 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. 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. Therefore, it is observed that the Noticee had indulged in reversal trades with the counterparty in the stock options segment of BSE and the same were non-genuine trades.

24. The Noticee has inter alia contended that the transactions have been carried out on the platform provided by SEBI regulated stock exchange i.e. BSE and it was impossible for the Noticee to know who counterparty brokers or clients were as the trades were executed on screen based platform of BSE. The Noticee has contended that he is

not related to the alleged counter party and that the said SCN has failed to establish any connection between the Noticee and the alleged counter party and that he was made a victim of the trading mechanism. The Noticee has contended that at no point of time was there any warning or any observation about the trade which were executed by the noticee. The Noticee has contended that the SCN does not show how the particular trade can be termed as fraudulent or non-genuine and that 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. The Noticee has also contended that there was a significant time gap between the execution of trades and that the trades are executed on the behest of BSE and noticee did not have any role in selling and buying to a particular party of choice. The noticee has contended that he had held the position in the stock option for more than hour, that the trades were not synchronous in nature as the trades were not executed within seconds of each other and the price variation was only due to genuine market forces, the SCN fails to show how two parties who trade more than an hour later will have prior meeting of minds with the broking entity or the counterparty to make a fraudulent or non-genuine trade. The noticee has contended that the alleged artificial volume generated was merely 3.66% and that the noticee traded just one day out of one and half year of the investigation period. The noticee has also contended that the SCN did not point to a single instance or observation on the noticee's specific role in the alleged reversal trades, that wider market was not involved in the trades executed by the noticee and there is no clear way of ascertaining the impact on the wider securities market. The noticee has also contended that there had been no grievance by any investor, broker or stock exchange with respect to their dealing in the option segment of BSE Ltd.

25. I note that it is not a mere coincidence that Noticee could match his trades with the same counterparty with whom he had undertaken first legs 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 in SEBI Vs Kishore R Ajmera (AIR 2016 SC 1079),

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

26. The Hon'ble Supreme Court of India 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*."

27. 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, as detailed earlier, makes it clear that the aforesaid non-genuine trades could not have been possible without meeting of minds at some level. In this context, I find it pertinent to refer to the Hon'ble SAT Order dated July 14, 2006 in the matter of Ketan Parekh Vs SEBI (Appeal No. 2 of 2004), wherein the Hon'ble SAT has held that "…*The nature of transactions executed, the frequency with which such transactions are undertaken, the value of the transactions, the conditions then prevailing in the market are some of the factors which go to show the intention of the parties. This list of factors, in the very nature of things, cannot be exhaustive. Any one factor may or may not be*

decisive and it is from the cumulative effect of these that an inference will have to be drawn."

28. In the matter of SEBI Vs Rakhi Trading Pvt Ltd (Civil Appeal no, 1969 of 2011, 3174-3177 of 2011 and 3180 of 2011, decided on February 08, 2018), the Hon'ble Supreme Court of India 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. Additionally, 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) 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*."

30. In this regard, I would also like to rely on the judgement of Hon'ble Supreme Court in the matter of SEBI vs Rakhi Trading Private Ltd. (supra), wherein the 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."

31. The issue under examination is whether the trades executed by the Noticee in the concerned Illiquid option contract were non-genuine or not, thus leading to generation of artificial volumes. The observations made in the aforesaid judgments apply to the facts and circumstances of the present case. In view of the aforesaid judgments I note that while the trading happened through the trading platform of BSE, however, considering the precision at which the reversal transactions had taken place on the same day, the matching of price (with significant variation) and timing of placement of orders of each trade within a few seconds of each other, I am of the view that just because these transactions were executed through exchange trading platform, they were not genuine trades. Such conclusion would be over-looking the prior meeting of minds involving synchronization of buy and sell order w.r.t. the transactions entered into by the Noticee with its counterparty and such reversal trading is clearly violative of the transparent norms of trading in the securities market. In view of the above observations, I hold that the said transactions executed by the Noticee in the said Stock Option contract were non-genuine trades, in which positions were reversed within short span of time with prior meeting of mind between the parties to the trade. Therefore, I dismiss the contentions of the Noticee in this regard.

32. I observed from the material / documents available on record that it is clear that the traders in question did not intend to transfer beneficial ownership and therefore these trades are non-genuine. I note that in the F&O segment, execution of a trade results in change of rights over the contract, so that the impugned reversal trades, which were executed without intention of actual change in rights over such contracts are non-genuine. I note that the Hon'ble Supreme Court in the matter of SEBI vs. Rakhi Trading Pvt. Ltd (supra) held that, "*No doubt, as in the case of trade in a scrip in the cash segment, there is no physical delivery of the asset. However, even in the derivative segment there is a change of rights in a contract. In the instant case, through reverse trades, there was no genuine change of rights in the contract... From the facts before us,*

it is clear that the traders in question did not intend to transfer beneficial ownership and therefore these trades are non-genuine."

33. Noticee has inter alia contended that the underlying scrip in which trades were made was highly liquid in nature and frequently traded in the market and thus the allegation that he deliberately traded in only those options that were illiquid in nature is baseless. In this regard, I note that liquidity in an underlying scrip can be significantly different as compared to liquidity in the options contracts pertaining to the said scrip. I also note that the SCN issued to the Noticee carried no such allegation that the underlying scrip was illiquid. The issue under examination is whether the trades executed by the Noticee in the concerned Illiquid option contract were non-genuine or not, thus leading to generation of artificial volumes. Therefore, I dismiss the contentions of the Noticee in this regard.

34. In line with the above judgments 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 reversal of 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 through non-genuine trades. 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 and price and also the fact that the transactions were reversed during the same day clearly indicates a prior meeting of mind with a view to execute the reversal trade at a pre-determined price. Such trading also involves an act amounting to manipulation of the price of the security in the sense that the price has been artificially and apparently prefixed. It is also a transaction without any intention of performing it and without any intention of effecting a change of ownership of such securities, ownership being understood in the limited sense of the rights in the contract. By synchronization and reversal trades, as has been carried out by the Noticee in the instant case, the price discovery system has been affected. Except the parties who have pre-fixed the price, nobody is in the position to participate in the trade. Therefore, it has an adverse impact on the fairness, integrity and

transparency of the stock market. In view of the same, I find no merit in such contentions of the Noticee.

35. Noticee has contended that the volume of the transactions in the instant case is not substantial and the transactions are not done with an objective of creating artificial volumes or influence/manipulate prices. The Noticee has also contended that BSE and SEBI permitted trading in Options for ‘far months” with a strike price which are at large variance due to the current market price. In this regard, I rely on the judgement of the Hon’ble Supreme Court in the matter of SEBI vs. Rakhi Trading (supra) in this regard, wherein it was held that, “*Respondent-Rakhi Trading and Kasam Holding on facts are found to have been engaged in non-genuine transactions creating appearance of trading. If the factum of manipulation is established, it will necessarily follow that the investors in the market have been induced to buy or sell and that no further proof in this regard is required. The market, as already observed, is so widespread that it may not be humanly possible for the Board to track the persons who were actually induced to buy or sell securities as a result of manipulation and the Board cannot be imposed with a burden which is impossible to be discharged*.” I note that the case facts in the aforesaid matter were similar, and that in the instant matter, the execution of manipulative reversal trades has been established already. I note that considering the nature of trades in toto along with the attendant circumstances, it is discernible that the aforesaid reversal trades were non-genuine, and were executed without the intention of change in rights to exercise the impugned contract. Therefore, I note that aforesaid contentions are liable to be set aside on the above grounds.

36. The trading behavior of the Noticee which confirms that the trades executed by the Noticee were not normal, the wide variation in prices of the trades in the same contract within a short duration of time without any basis for such wide variation, all indicate that the trades executed by the Noticee were not genuine trades and being non-genuine, created an appearance of artificial trading volumes in respective contracts. In view of the aforesaid, 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. II: If yes, whether the violation, on the part of the Noticee would attract monetary penalty under section 15HA of the SEBI Act?

37. Pursuant to detailed analysis as brought out above, it is established that reversal trades are not normal transactions and it clearly demonstrates beyond reasonable doubt that the Noticee had intentionally executed these non-genuine trades and manipulated the volume by fraudulently trading in the contract JSPL15MAR160.00CE.

38. While dealing with the present issue, I would like to be guided by the Judgement of The Hon'ble Supreme Court of India in the matter of SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC) which 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..*"

39. In view of the aforesaid judgment of the Hon'ble Supreme Court, I am convinced that, in the instant matter, the Noticee is liable for monetary penalty under the provisions of section 15HA of the SEBI Act, which reads as follows:

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 No. III: 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?

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

Factors to be taken into account while adjudging quantum of penalty

15J. *While adjudging quantum of penalty under 15-I, the adjudicating officer shall have due regard to the following factors, namely: -*

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

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

(c) the repetitive nature of the default.

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

41. From the above observations, it is clear that the Noticee was active in the creation of artificial volume in the illiquid stock option during the investigation period by executing reversal / non-genuine transactions in the illiquid stock options at BSE. It is not possible from the material available on record to quantify the amount of loss caused to genuine investors as a result of reversal trades/non-genuine trades executed by the Noticee with his counterparties. However, Noticee has entered into 3 non-genuine trades in 1 stock option contract during the investigation period.

42. Therefore, I note that the Noticee indulged in execution of reversal trades in stock options on BSE in the Investigation Period which were non-genuine and created false and misleading appearance of trading in terms of artificial volumes in stock options, leading to violation of regulation 3(a), (b), (c), (d), 4(1) and 4(2)(a) of SEBI PFUTP Regulations.

ORDER

43. After taking into consideration all the facts and circumstances of the case, the material / documents made available on record including the submissions of the Noticee, the factors mentioned in section 15J of the SEBI Act and in exercise of the power conferred upon me under section 15-I of the SEBI Act read with rule 5 of the Adjudication Rules, I hereby impose a penalty of ₹5,00,000/- (Rupees Five Lakh only) on the Noticee, viz. Kamal Kishor Maloo HUF (PAN: AAIHK2701C), under section 15HA of the SEBI Act for the violation of regulation 3(a), (b), (c), (d), 4(1) and 4(2)(a) of PFTUP Regulations, 2003. I am of the view that the said penalty is commensurate with the lapse / omission committed by the Noticee.

44. The aforesaid Noticee shall remit / pay the said amount of penalty within 45 days of the receipt of this order either by way of Demand Draft (DD) in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai. The Noticee shall forward the aforesaid DD / confirmation of penalty so paid to "The Division Chief, Enforcement Department-I, Division of Regulatory Action-4, Securities and Exchange Board of India, SEBI Bhavan, Plot No.C4-A,' G' Block, Bandra Kurla Complex(BKC), Bandra (East), Mumbai-400051 with the below mentioned details. The Noticee shall also send an email to tad@sebi.gov.in with the below mentioned details:

1.	Case Name	
2.	Name of the 'Payer / Noticee' along with PAN of Noticee	
3.	Date of Payment	
4.	Amount Paid	

5.	Transaction No.	
6.	Bank Name and Account No.	
7.	Purpose of payment	

45. Payment can also be made online by following the path mentioned below at SEBI website www.sebi.gov.in by clicking on the payment link:

ENFORCEMENT>Orders>Orders of AO> PAY NOW

46. In the event of failure to pay the aforesaid amount of penalty within 45 days of receipt of this Order, recovery proceedings may be initiated under section 28A of the SEBI Act for realization of the said penalty amount along with interest thereon, *inter alia,* by attachment and sale of movable and immovable properties.

47. In terms of Rule 6 of the Adjudication Rules, a copy of this order is sent to the Noticee and also to the Securities and Exchange Board of India, Mumbai.

DATE: April 13, 2022 **DIPANJAN MITRA**

PLACE: MUMBAI **ADJUDICATING OFFICER**