BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/AO/ST/K/2021-22/15046]

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

In respect of

Shiva I Jaiswal HUF (PAN: AASHS8647H) having address at 157A, Laxmi Vandan Abhyankar Road, Dhantoli, Nagpur, Maharashtra – 440012

In the matter of dealings in Illiquid Stock Options at BSE

BACKGROUND

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**") leading to the alleged creation of artificial volume in the stock options segment. 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 "**Investigation Period**").

2. Pursuant to investigation, it was observed that during the investigation period, a total of 2,91,643 trades comprising 81.38% of all the trades executed in BSE Stock Options Segment were trades which involved reversal of buy and sell positions by the clients and counterparties in a contract. The reversal trades

involved squaring off transactions, but with significant difference in the sell value and buy value of the transactions. In view of the large scale reversal of trades executed in illiquid stock options segment at BSE, it is alleged that these trades were non-genuine in nature and also led to generation of artificial volumes.

3. Shiva I Jaiswal HUF (PAN: AASHS8647H) (hereinafter referred to as the "**Noticee**") was one of the various entities who indulged in execution of alleged non-genuine trades in the stock options segment of BSE during the investigation period. It was observed that Noticee had entered into reversal trades with its counterparty which involved squaring off transactions with significant difference in the sell value and buy value of the transactions. The aforesaid reversal trades allegedly resulted into generation of artificial volumes, leading to allegations that the Noticee had violated Regulation 3(a),(b),(c),(d) and Regulation 4(1), 4(2)(a) of 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

4. SEBI initiated adjudication proceedings and appointed the undersigned as Adjudicating Officer (hereinafter referred to as "**AO**") under section 15-I(1) of the SEBI Act, 1992 read with rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter be referred to as the "**Adjudication Rules**") vide order dated July 2, 2021 to inquire into and adjudge under Section 15HA of the SEBI Act, 1992, the alleged violations of the aforesaid provisions of the PFUTP Regulations, 2003, by the Noticee. The appointment of the AO was communicated vide order dated July 6, 2021.

SHOW CAUSE NOTICE, REPLY AND HEARING

5. A Show Cause Notice No. SEBIAO/ST/2021/21561/1 dated August 31, 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 held and penalty be not imposed against the Noticee under section 15HA of the SEBI Act, 1992 for the alleged violations of Regulations 3(a), (b), (c), (d) and 4(1), (2)(a) of the PFUTP Regulations, 2003.

6. The allegations levelled against the Noticee in the SCN are summarized as below:

   a. The Noticee was one of the entities which indulged in non-genuine trades which allegedly created false and misleading appearance of trading, generating artificial volumes in the Stock Options Segment of BSE during the investigation period.
   b. The Noticee is alleged to have engaged in 2 such trades in 1 unique contract on July 15, 2015, which led to generation of artificial volume of 50000 units. These trades of the Noticee involved reversal with the same counterparty on the same day, but at different prices.
   c. The trades entered by the Noticee were reversed on the same day with the 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.
   d. A summary of dealings of Noticee in 1 Stock Options contract in which the Noticee allegedly executed non-genuine trades during the investigation period, provided in the SCN is reproduced below:

S. No.	Contract Name	Avg. Buy Rate (Rs.)	Total Buy Volume (no. of units)	Avg. Sell Rate (Rs.)	Total Sell Volume (no. of units)	Total volume 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	ONGC15JUL350.00PEW3	37	25000	58.05	25000	416000	100%	12.02%

7. Noticee by indulging in execution of aforesaid non-genuine reversal trades, was alleged to have violated Regulation 3(a),(b),(c),(d), 4(1), 4(2)(a) of PFUTP Regulations, 2003, which are reproduced as under:

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"

8. A time period of 14 days from the date of receipt of the SCN was granted to the Noticee to submit its reply to the SCN. Vide letter dated September 6, 2021, Noticee requested four weeks to file reply. While advising the Noticee to file the submission by October 8, 2021, granted an opportunity of hearing scheduled for

October 12, 2021. As the Noticee did not respond, granted another opportunity of hearing scheduled for November 2, 2021, in the interest of natural justice.

9. Noticee submitted the reply to the SCN vide letter dated October 26, 2021. The authorized representative of the Noticee, Mr. Vinod Hassani, Chartered Accountant, reiterated the submissions made vide aforesaid letter, during the course of hearing held on November 2, 2021.

10. The key submissions made by the Noticee are reproduced as under: -

   i. Noticee did not indulge in any reversal trades as alleged. In the absence of any legal evidence establishing fraudulent transaction, nothing wrong can be alleged against Noticee. There is no default of Noticee as envisaged under regulation 3 & 4 of PFUTP Regulations, 2003.

   ii. Noticee is located at Nagpur which is evident from the address and PAN observed in the notice. The Noticee entered in to transaction for purchase of Stock Option from registered Stock Broker M/s. Odyssey Commodities Pvt. Ltd. The enclosed contract note executed on July 15, 2015 indicates amount of brokerage charged, securities transaction tax and transaction charges in respect of transaction of stock option made by Noticee. It is evident from the contract note that broker had purchased 25000 units of Stock Option in the contract which can be identified with trade number on the date of entering of contract. The Stock Option has been sold and is identified with independent trade numbers for consideration at market price prevailing at the time of sale. The difference in purchase and sale price has been computed at Rs.526190/-. The surplus amount derived in purchase/ sale transaction has been received by Noticee through proper banking channel after the period of ten days. The receipt of Rs.525150/- being net income received from the registered stock broker has been quoted in the regular return of income filed under the provisions of Income Tax Act, 1961. The taxes due on the income received on transaction of Stock Option has been paid by Noticee. The explanation of transaction entered into in respect of Stock Option along with credible evidence given clearly establishes the bonafide and genuineness of transaction entered by Noticee in the stock market. The credible evidence cannot be faulted on mere adverse inferences drawn in the absence of any adverse evidence on record to show that transaction is fraudulent. Thus, nothing adverse can be held against Noticee.

iii. Complete documentary evidence of KYC was given to the registered stock exchange broker. It is commonly known that transaction made for the purchase and sale on Derivative stock exchange, buyers or sellers has no interconnection with each other. In fact at the time of buying of Stock Option, the Noticee had only connection with the registered stock broker and had no knowledge of the person who was seller of Stock Option. The above submission hold equally good at the time of sale of Stock Option. Registered Stock Exchange Broker is an independent person and is not related to Noticee. The alleged name of buyer and seller found in the notice is also not related party and is not known to Noticee. The Noticee is not having any interest in the company of which Stock Option has been traded on the stock exchange. On above undisputed factual position, there could be no reason to involve in an activity to generate artificial volume. In view of above and facts on record, it is arbitrary for any person to allege that Noticee has indulged in any fraudulent transaction or had made unfair trade practice in the transaction of Stock Option. On above factual position there is no default of regulations 3 & 4 of PFUTP Regulations, 2003 of SEBI Act, for which penalty u/s 15HA of SEBI Act is exigible.

iv. The Noticee drew attention to the judgment of Securities Appellate Tribunal (SAT), Mumbai in Appeal No.198/2020, vide common judgment dated January 21, 2021 in respect to various other appeals having similar facts. In the appellate order, penalty imposed for violation of Regulations 3 & 4 and PFUTP Regulations, 2003 was for consideration. In the aforesaid judgment it has been concluded that synchronize trading can only happen between the persons having common intention. Since the connection between the appellant and other entities has not been established, the charge relating to synchronize trading automatically fails. The ratio laid down in the aforesaid judgment squarely applies to the facts in the case of Noticee as registered stock exchange broker and buyer are not the related persons and thus there cannot be common intention between the parties to derive synchronize trading. In view of above, there remains no scope for making allegation that there is misleading appearance of trading or generate artificial volume in the Stock Option segment. The Noticee invited attention to para 9 of judgment wherein the smaller time difference between buy order and sale order has been dealt with. Hon'ble SAT noted that Adjudicating Officer in the case of certain entities had exonerated from default even though there was nominal time difference between buy and sale of Stock Option. Ratio laid down by the judgment squarely applies to the facts in the case of Noticee and there is no scope for Noticee being visited with penalty for default of Regulations 3 & 4 of PFUTP Regulations, 2003.

v. The online trading is done through algorithmic trading software approved by Derivative exchanges. It is inconceivable of transaction operated on such software to have reversal of trade transaction. Such software permits purchase and sale and nothing more. The similarity of purchase and sale of quantity of Stock Option was not in the nature of reversal but were two independent transactions of purchase and sale. It would be unfair to say merely on matching of quantity of purchase and sale of Stock Option to infer that sale is reversal of trade. It is worthwhile to note that the transaction of buy and sale of Stock Option are at a market price prevailing in market and can have no common intention. It is equally accepted that market prices moves upwards and downwards for various factors such as market sentiment, liquidity condition, and economic information of industry stock option, political stability, world economics and policies of industry. Thus it is evident the transaction made by Noticee in no manner of consideration can even be alleged as fraudulent or not genuine. Thus, there remains no scope to invoke provisions of Section 15HA of SEBI, Act.

vi. Noticee had entered only one single trade and a single trade in no way can be considered to influence the market and cannot be contributing to Last Traded Price (LTP) leading to trading in fraudulent manner. It is equally worthwhile to note the value of trade executed compared to value of stock option in market and it is inconceivable for anyone to allege non-genuineness of transaction. Noticee believed that the scrip will rise and yield profits. It is clear that these individual trades were genuine and bonafide. There was no malafide intent in trade executed and trade arises during the normal course of business and was within the prescribed Rules and Regulations. In the instant case, trade executed was genuine trade transaction as it was executed through Price & Order Matching mechanism of the Exchange at the prevailing market prices in conformity with the applicable rules and regulations followed. The trade executed was in terms of prescribed statutes, Rules and Regulations and Guidelines. It was executed as per trade practice prevalent in normal market activities. There was neither intention nor capability on part of Noticee to manipulate the price of the scrip or create any false or artificial or in genuine market. Noticee is law abiding and had not incurred any loss or caused harm to any investor or society at large. There could be no allegation of intention on part of Noticee to defraud or mislead any persons or investors and trading transactions in the Options considering evidence on record. Trade executed was genuine as it was ended on the online floor of the Stock Exchange. When Trading takes place on the screen, there is possibility of a match between Option trades and/or shares purchased by an individual and options/shares sold by another. This need not necessarily be construed as group trading in the form of reversal of trades in order to influence the market in respect of the volume or the price. Noticee not created any artificial demand in the scrip nor gave false or misleading appearance of trading in the securities market with respect to the scrip. Noticee had not executed any transaction with a view to manipulate the market or to result in circular trading. Trade executed by Noticee was not dubious in nature or with a view to avoid regulatory detection or to result in upsetting the market equilibrium etc.

vii. The Noticee invited attention to provision of section 15J of SEBI Act to submit that it is not mandatory to levy penalty under the provisions of section 15HA of SEBI Act even though there may be default in terms of provisions of section 15HA of SEBI Act. Without prejudice to the fact that there is no default of Regulations 3 & 4 at the door of Noticee, the quantity and volume of trade transacted by Noticee and given in notice is minuscule value of total transactions in such Stock Option. Noticee not made any repetitive transaction in the same stock option and no loss was suffered by any investor or group of investor as a result of transaction of Stock Option entered by Noticee. The above factors clearly justify that there is no case for Noticee being visited with huge minimum penalty as provided u/s 15HA of SEBI Act. It would meet the end of justice even if a warning is issued to Noticee for any alleged default if, considered at the hands of Noticee.

viii. The details of contract provided in the notice indicate that the seller and buyer of the Stock Option from Noticee is same company. As explained hereinabove and manner in which trading of Stock Option took place on the online stock market it is not in knowledge of Noticee, the name of seller or buyer at the time of purchase and sale. The aforesaid company is not a related concern of the Noticee and in fact is not related party. The Noticee made a transaction of purchase and sale in Stock Option under different trade number as is evident from the contract note of stock broker at ruling prices in the open market at exchange. It is not uncommon for speculator to make transaction on multiple times in respect to same stock option. The price on which sale and purchase is at the relevant market rate at the time of entering into trade. The economic advantage/ loss has been suffered by respective parties. On above factual position transaction of purchase/ sale between same parties cannot be viewed adversely to conclude that the transaction is to generate artificial volume. In the absence of common intention between Noticee and the company, the transaction of purchase and sale made by the Noticee cannot be viewed adversely as observed in the notice.

ix. Considering the detailed submission made above, Noticee submitted that there is no default as alleged in notice at the hands of notice and prayed that proceedings be dropped.

CONSIDERATION OF ISSUES AND FINDINGS

11. I have carefully perused the charges levelled against the Noticee, the documents/ material available on record and the reply submitted by the Noticee. The issues that arise for consideration in the present case are:
    I. Whether the Noticee has violated provisions of Regulations 3(a), (b), (c), (d), 4(1) and 4(2) (a) of the PFUTP Regulations, 2003?
    II. If yes, whether Noticee is liable for imposition of monetary penalty under Section 15HA of the SEBI Act, 1992?
    III. If so, what would be the monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in section 15J of the SEBI Act, 1992 read with Rule 5(2) of the Adjudication Rules?

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

12. The allegation against the Noticee is that it had executed reversal trades in illiquid stock option contracts at BSE and generated artificial volumes which created false and misleading appearance of trading. Reversal trades are those trades in which an entity reverses it’s buy or sell positions in a contract with subsequent sell or buy positions with the same counterparty during the same day. Reversal trades are alleged to be non-genuine trades as they lack basic trading rationale and lead to false or misleading appearance of trading and hence are deceptive and manipulative.

13. Noticee in its reply contended that it did not indulge in any reversal trades as alleged and in the absence of any legal evidence establishing fraudulent transaction, nothing wrong can be alleged against Noticee. The online trading is done through algorithmic trading software approved by Derivative exchanges. Such software permits purchase and sale and nothing more. The similarity of purchase and sale of quantity of Stock Option is not in the nature of reversal but are two independent transactions of purchase and sale. Noticee had no knowledge of the seller of Stock Option and there was no common intention between the parties to derive synchronized trading. The Noticee also drew attention in this regard to the common judgment of Securities Appellate Tribunal (SAT) dated January 21, 2021 in Appeal No.198/2020, and stated that the judgement concluded, synchronize trading can only happen between the persons having common intention. Hon'ble SAT was also stated to have noted that Adjudicating Officer in the case of certain entities had exonerated from default even though there was nominal time difference between buy and sale of Stock Option.

14. In this regard, I observe from the SCN that the Noticee had allegedly engaged in 2 trades in 1 unique contract which involved reversal with the same counterparty on the same day but at different prices and the same led to generation of artificial volume of 50,000 units. SCN further states that 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 also said to indicate that the trades were artificial and non-genuine in nature.

15. To illustrate, on July 15, 2015 Noticee at 13:09:29:83 hrs executed 1 Buy trade for 25,000 units at the rate of Rs.37 per unit with counterparty viz, Deejay Stocks Pvt. Ltd., in Stock option "ONGC15JUL350.00PEW3". At 13:20:51:15 hrs on the same day, the Noticee executed a Sell trade for 25,000 units at the rate of Rs.58.05 per unit, with the same counterparty. The aforesaid reversal trade was executed within 12 minutes, generating artificial volumes to the extent of 50,000 units in the said contract. I note that reversal trades are those trades in which an

entity reverses it's buy or sell positions in a contract with subsequent sell or buy positions with the same counterparty during the same day. I also note that there is a wide variation in the prices of 2 legs of the reversal trades i.e Noticee purchased units at Rs.37 at 13:09:29:83 hrs and then sold at Rs.58.05 at 13:20:51:15 hrs and I do not find from the available records including the reply of noticee, any justification for the said wide variation in prices. This made up 12.02% of the total market volume for this contract, thereby allegedly generating artifical volume of 50, 000 units.

16. The fact that the orders of the Noticee and the counterparty matched with such precision (considering that there was a perfect match of price, quantity and very close proximity of time) suggests 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 contract, there was very little trading in the said contract and hence, there was no price discovery in the strictest terms. I note that 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. The trade reversals in the said case points out to the fact that the parties to the transactions, including the Noticee, did not intend to transfer the beneficial ownership through these orchestrated transactions, the intention of which was not regular trading and other investors have been excluded from participating in these trades/ contracts.

17. In this context, I refer to the judgment of the Hon'ble Supreme Court of India in **SEBI vs Kishore R Ajmera** (AIR 2016 SC 1079), wherein it was held that:
"…in the absence of direct proof of meeting of minds elsewhere in synchronized transactions, the test should be one of preponderance of probabilities as far as adjudication of civil liability arising out of the violation of the Act or provision of the Regulations is concerned. The conclusion has to be gathered from various circumstances like that volume of the trade effected; the period of persistence in trading in the particular scrip; the particulars of the buy and sell orders, namely, the volume thereof; the proximity of time between the two and such other relevant factors. The illustrations are not exhaustive..."

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

18. I also refer to 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.

19. 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)** 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."

20. Therefore, I conclude that the trading pattern of the Noticee in terms of proximity of buy/sell, perfect match of price/ quantity and subsequent reversal of trades evidences the prior meeting of minds with a view to execute the reversal trades at a predetermined price.

21. Noticee also contended that trades executed are genuine as they were executed through Price & Order Matching mechanism of the exchange at the prevailing market prices in conformity with the applicable rules and regulations followed. The contract note executed on July 15, 2015 indicates amount of brokerage charged, security transaction tax and transaction charges in respect of transaction of stock option made by Noticee. The surplus amount derived in purchase/ sale transaction has been received by Noticee through proper banking channel after the period of ten days. The receipt of Rs.525150/- being net income received from the registered stock broker has been quoted in the regular return of income filed under the provisions of Income Tax Act 1961. The taxes due on the income received on transaction of Stock Option has been paid. The explanation of transaction entered into in respect of Stock Option along with credible evidence given clearly establishes the bonafide and genuineness of transaction entered by Noticee in the stock market.

22. In this regard, I note that carrying out trades on the trading platform of the exchange and paying requisite taxes/ fees/ charges, do not establish genuineness of trades or preclude execution of artificial and non-genuine trades. Considering the precision at which the reversal transactions took place, the exact matching of price (with significant variations), time and quantity, I am of the view that it will be too naïve to hold that just because these transactions were executed through exchange trading platform and requisite charges were paid, such trades were genuine. Such conclusion would be over-looking the prior meeting of minds involving synchronization of buy and sell order with respect to the transactions

entered into by the Noticee with its counterparty. Such reversal trading is clearly violative of the transparent norms of trading in the securities market.

23. Therefore, 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 the same day with prior meeting of mind between the parties to the trade.

24. Noticee had submitted that it had entered only one single trade and a single trade in no way can be considered to influence the market and cannot be contributing to Last Traded Price (LTP) leading to trading in fraudulent manner. Noticee did not create any artificial demand in the scrip nor gave false or misleading appearance of trading in the securities market with respect to the scrip. There was neither intention nor capability on part of Noticee to manipulate the price of the scrip or create any false or artificial or in genuine market. Noticee did not create any transaction with a view to manipulate the market or to result in circular trading. Noticee did not make any repetitive transaction in the same stock option and no loss was suffered by any investor or group of investor as a result of transaction of Stock Option entered by Noticee.

25. I note, in this regard that the transactions executed by the noticee made up 12.02% of the total market volume for this contract, thereby, generated artifical volume of 50, 000 units. I also note from the foregoing findings that the trading pattern of the Noticee in terms of volume of reversal trades, proximity of buy/sell, clearly demonstrates the manipulative practice by the Noticee by using the stock exchange platform to carry out such non genuine trades. The trade reversals in this case points out to the fact that the parties to the transactions, including the Noticee, did not intend to transfer the beneficial ownership. Through these orchestrated transactions, other investors have been excluded from participating in these trades/ contracts. These non-genuine and deceptive trades as found in this case are covered under the definition of 'fraud' as defined under Regulation 2(1)(c) of the PFUTP Regulations, 2003. In this regard, I place reliance upon the

judgement of Hon’ble Supreme Court in the matter of **SEBI vs Rakhi Trading Private Ltd.**, 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.”

26. Therefore, I am inclined to note that the aforesaid trades of Noticee were non-genuine and had created false or misleading appearance of trading in terms of artificial volume in stock options and, therefore, the same are manipulative and deceptive in nature.

27. In view of the above, I find that the Noticee, by engaging in non-genuine transactions which created a misleading impression of trading in respective contracts, dealt in the stock options contracts in a fraudulent manner and therefore, is in violation of Regulation 3(a), 4(1) and 4(2)(a) of the PFUTP Regulations, 2003.

ISSUE II: If yes, whether the failure, on the part of the Noticee would attract monetary penalty under Section 15HA of the SEBI Act, 1992?

and

ISSUE III: If yes, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act, 1992 read with Rule 5(2) of the Adjudication Rules?

28. Since the violation of Regulation 3(a), 4(1) and 4(2)(a) of PFUTP Regulations, 2003 has been established against the Noticee, as brought out in the foregoing

paragraphs, the Noticee is liable for monetary penalty under Section 15HA of SEBI Act, 1992 which is reproduced as follows:

SEBI Act, 1992: 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."*

29. While determining the quantum of penalty under Section 15HA of SEBI Act, the following factors stipulated in Section 15J of the SEBI Act have to be given due regard:

    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.

30. As established above, the Noticee was instrumental in the creation of artificial volume in the illiquid stock option contract by executing reversal / non-genuine transactions in the illiquid stock options segment at BSE. The trades entered by the Noticee were non-genuine in nature and created a misleading appearance of trading. Considering that the violation by the Noticee is creation of artificial trading volumes through trading between two counterparties and the trades are such that one of the counterparty books a profit while the other counterparty books a loss, it would be appropriate to consider the impact of these transactions between the two counterparties in totality. When the impact of artificial volumes created by the two counterparties is seen as a whole, it is not possible from the material available on record to quantify the amount of disproportionate gain or unfair advantage made/ taken by the Noticee or losses caused to investors as a result of the violation. At the same time, reliance is

placed upon the order of the Hon'ble Supreme Court of India in the matter of Chairman, **SEBI Vs Shriram Mutual Fund**{ [2006]5 SCC 361 } –wherein 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..............."*

31. Therefore, taking into account the facts and circumstances of this matter, and the proportion of trading by the Noticee as compared to the total volume of reversal trades in the market during the Investigation Period, I am of the view that a penalty of Rs.5,00,000 (Rupees Five Lakh only) under Section 15HA of the SEBI Act, 1992 will be commensurate with the violations committed by the Noticee.

ORDER

32. After taking into consideration all the facts and circumstances of the case, in exercise of powers conferred upon me under Section 15-I of SEBI Act, 1992 read with Rule 5 of the Adjudication Rules, I hereby impose a penalty of Rs.5,00,000/- (Rupees Five Lakh only) on Noticee i.e. Shiva I Jaiswal HUF under Section 15HA of the SEBI Act, 1992 for violation of Regulation 3 (a), 4(1) and 4(2)(a) of PFUTP Regulations, 2003.

33. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of "SEBI -Penalties Remittable to Government of India", payable at Mumbai, OR through online payment facility available on the SEBI website www.sebi.gov.in on the following path, by clicking on the payment link-

ENFORCEMENT ⟶ Orders ⟶ Orders of AO ⟶ PAY NOW

34. The Noticee shall forward the said Demand Draft or the details / confirmation of penalty so paid to the Enforcement Department –Division of Regulatory Action – I of SEBI.

35. The Noticee shall provide the following details while forwarding DD/ payment information:

a) Name and PAN of the entity (Noticee)

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

36. Copy of this Adjudication Order is being sent to the Noticee and also to SEBI in terms of Rule 6 of the Adjudication Rules.

DATE: FEBRUARY 21, 2022
PLACE: MUMBAI

SRINIVASAN T
ADJUDICATING OFFICER