BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
ADJUDICATION ORDER NO.: ORDER/PS/NS/2021-22/15465

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:

Ms. Krishna Ojha

PAN: AACPD9425B

In the matter of dealings in Illiquid Stock Options at the Bombay Stock Exchange

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BACKGROUND

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

2. It was observed during the course of investigation that a total of 2, 91, 744 trades comprising 81.40 % of all the trades executed in the Stock Options Segment at the BSE during the investigation period were trades which involved reversal of buy and sell positions by the clients and counterparties in a contract on the same day. It was observed that Ms. Krishna Ojha (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 said reversal trades allegedly resulted into generation of artificial volumes, leading to allegations that the Noticee had violated the provisions of Regulations 3 (a), (b), (c) & (d) and Regulations 4 (1) & 4 (2) (a) of the SEBI (Prohibition of Fraudulent

and Unfair Trading Practices related to Securities Markets) Regulations, 2003 (hereinafter referred to as "PFUTP Regulations, 2003").

APPOINTMENT OF ADJUDICATING OFFICER

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

SHOW CAUSE NOTICE, REPLY AND HEARING

4. A Show Cause Notice bearing reference no. AO/PS/NS/15983/4/2021 dated July 26, 2021 (hereinafter referred to as "SCN") was served upon the Noticee under Rule 4 (1) of the SEBI Rules to show cause as to why an inquiry should not be initiated against the Noticee and why penalty should not be imposed upon the Noticee under Section 15HA of the SEBI Act for alleged violations of regulations 3 (a), (b), (c), (d), 4 (1) and 4(2)(a) of the PFUTP Regulations .

5. The allegations levelled against the Noticee in the SCN are summarized as 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.
    b) The Noticee is alleged to have engaged in 2 such reversal trades in 1 unique contract, which led to generation of artificial volume of 90000 units. These trades of the Noticee involved reversal with the one counterparty Teji Mandi Securities Private Limited in one day on 07.08.2015, at different prices.

Details of all the reversal trades of the Noticee in Stock Option Segment of BSE during investigation period are given in Annexure B to the SCN.

c) The trades entered into 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.

d) A summary of dealings of Noticee in 1 Stock Options contract in which Noticee allegedly executed reversal 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)	% 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.	PFCL15AUG240.00CE	6.2	45000	11.7	45000	100%	34.88%

e) The Noticee had entered into 2 reversal trades on 07.08.2015 through one contract with one counterparty Teji Mandi Securities Private Limited. The 2 reversal trades each entered into 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 were artificial and are non-genuine in nature.

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

"*3. Prohibition of certain dealings in securities*

(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 "

7. A time period of 14 days from the date of receipt was granted to the Noticee to present its reply to the SCN.

8. Vide letter dated 12.08.2021 forwarded through e-mail dated 12.08.2021, the Noticee sought three (3) weeks time to make her submissions in the matter.

9. Subsequently, vide letter dated 31.08.2021 forwarded through e-mail dated 03.09.2021 the Noticee made the following written submissions:-

   a) Noticee denied that she have violated Regulations 3 (a), (b), (c), (d), 4 (1) and 4 (2) (a) of the PFUTP Regulations in the matter of trading in illiquid stock options on the BSE Ltd., as wrongly alleged in the SCN, as has been hereinafter clarified in succeeding paragraphs.

b) Noticee denied that her dealings in the stock options can be termed as "illiquid" as wrongly contended in the SCN. Noticee further submitted that firstly the SCN has failed to define the term "illiquid".

c) Thereafter, the SCN has proceeded to allege that two of her trades in stock options were by indulging in execution of non-genuine reversal of trades with same entities on the same day, created false and misleading appearance of trading in stock options. The Noticee submitted that for this reason itself, the SCN is faulty and flawed since the same is based on presumptions and assumptions and hence, carry no force of law.

d) Noticee submitted that the Investigation Period (hereinafter referred to as "IP") pertains to the period from 01.04.2014 to 30.09.2015. Noticee was surprised to receive the SCN after 6 years there from, especially in the light of the fact that not a single warning/alert/alarm was raised, either by the BSE or by SEBI and therefore, the SCN suffers from serious laches.

e) Also, no satisfactory reasons or even a whisper is recorded in the SCN to explain or justify the delay in issuing the SCN. Thus, Noticee is not in a position to recollect and explain the logic behind her trading decisions in each stock option, collate the data fully and offer her clarification effectively.

f) In order dated 07.09.2012 passed in the matter of Khandwala Securities Ltd by the Hon'ble SAT it was observed that:

   "*This tribunal has held in several cases including Subhkam Securities Private Limited vs Securities and Exchange Board of India decided on July 25, 2012 Appeal No.73 of of 2012, Aditi Dalal vs. Securities and Exchange Board of India decided on November 28, 2011 Appeal no.143 of 2011 that proceedings under the Securities and Exchange Board of India Act require finalization within a reasonable period of time. Delay defeats justice and the very* *purpose for which proceedings are initiated."*

g) Notice further placed reliance on the order of the Hon'ble Supreme Court of India in Mansaram v. S.P.Pathak and Others (Civil Appeal No. 1262 (N) of 1978), wherein Justice D.A.Desai has made the following pertinent observations:

"Where the power is conferred to effectuate a purpose, it has to be exercised in a reasonable manner and the reasonable exercise of power inheres-its exercise within a reasonable time."

h) The exercise of issuance of the SCN after more than 6 years is totally unreasonable and on this ground also, ought to be withdrawn.

i) The trades were executed in terms of ask and bid prices of the stock options. Needless to say that the online transparent trading mechanism of BSE was primarily instrumental in offering the trading platform and the ask and bid limits in the stock options were also determined by BSE. Noticee had no role to play in terms of formulating or determining the limits. The limits were in place as had been implemented by the BSE presumably based on guidelines and circulars issued by SEBI.

j) There is no allegation against the Noticee in the matter of creation of any false price in the stock options since all the trades were within the circuit filters of the day of the trade. Further, all Noticee's trades stood settled and cleared in terms pay in and payout per BSE guidelines.

k) Noticee was neither aware, nor involved nor have participated nor have means to verify and comment on trades of other entities who were apparently counter parties to her trades. Noticee submitted that squaring off her trades with a difference in values were based on her understanding of the market and hence, could not have led to generation of artificial volumes, as wrongly alleged.

l) Noticee further submitted that any trade or for that matter any squaring up of trade is bound to generate volume and alleging such volumes as artificial is fallacious and deceptive. However, Noticee denied that she has engaged in 2 trades in 1 unique contract, which led to generation of alleged artificial volume of 90,000 units that are alleged to be non-genuine in nature and which resulted in generating artificial volumes since the same were apparently with the same counter party on the same day but at different prices, as wrongly alleged.

m) Noticee denied that these trades are non-genuine in nature and have resulted in generating artificial volumes just because the trades were reversed on the same day with same counterparties at a substantial price difference without any basis for significant change in the contract price. Noticee reiterated and denied that she was aware of the counter parties to her trades.

n) Noticee submitted that nowhere in the SCN it is contended/recorded/observed that there was any type of connection/connivance or meeting of minds either between said counterparties and/or their brokers and/or our broker and/or me. Thus, the SCN lacks credible evidence and ought to be dropped forthwith. In fact, the SCN is totally silent on the connection of parties, counter parties, brokers and counterparty brokers, if any.

o) In the matter of Jagruti Securities vs SEBI. (2008 SCC Online SAT 184:2008 SAT 184), the Hon'ble SAT has gone ahead to record in para 4 that

> *"…… we are of the view that in an artificial trade there has to be collusion between the buyer and the seller and in the absence of any*

collusion, the trade cannot be termed as 'artificial."

In S.P.J. Stock Brokers Pvt. Ltd vs SEBI /2013 SCC OnLine SAT 67 2013/ SAT 17) the Hon 'ble Sat has gone ahead to record in para 13 that

**13. Unless some connection between appellant and counterparties with whom appellant traded is established, it is difficult to hold that trades in question were carried out with a view to manipulate market by creating false volumes resulting in upsetting market equilibrium."*

In HB Stockholdings Limited vs SEBI [2013 SCC OnLine SAT 56: [2013] SAT 44], the Hon'ble Sat has gone ahead to record in para 17 that

"17. It may be noted that synchronization of trades is not per se illegal. It is actionable only if it is illegitimate and is the outcome of a mischievous meeting of minds among certain parties. For this purpose, the counter party, namely, Gloria Investment Limited has already been exonerated by the Respondent. Moreover, no cogent and convincing reasons are forthcoming from a reading of the SCN or the impugned order to sustain such a charge of synchronization or creation of artificial volumes against the Appellants."

p) Noticee was neither aware of counterparties nor their trades. Noticee had traded on blind mechanism of BSE Ltd and the identity of counterparty could not have been known to her. Assuming that Noticee's trade has matched with the same party, such matching of trades resulting in reversal of trades was merely a co-incidence. Since the SCN itself is issued on the premise that the stock options were illiquid, the probability of matching of orders with same parties resulting in reversal is indeed very high and no adverse inference may be drawn there from against the Noticee.

q) Assuming while denying that the alleged reversal of trades was an outcome of matched trades, it will be logical to assume and conclude that only brokers are in position to match alleged trades with counter party brokers and it was impossible for the Noticee as an individual entity to enter into alleged matching of trades. It is submitted that the arrangement of reversal of trades as has been alleged could not be possible without meeting of minds and that the SCN neither alleges meeting of minds amongst counter parties and counter party brokers nor offers any explanation in arriving at a conclusion that the Noticee was aware or could have been aware of the counter party to her trades.

r) Noticee therefore, deny the same since her trades were reversed on the same day with same counterparties at a substantial price difference without any basis for significant change in the contract price indicates that these trades are non-genuine in nature which eventually resulted in generating artificial volumes.

s) In terms of Clauses 1.2 and 1.3 of Risk Disclosure Document (RDD), which deals with risk of low liquidity and risk of wider spread, it can be safely concluded that SEBI is well aware of the possibility of trades being executed at substantial price difference and possible loss due to lower liquidity and wider spreads in illiquid stock options. The SCN also records that the contracts in which the Noticee have dealt were illiquid.

t) It is not disputed that liquidity in the contracts recorded in the SCN was low and hence, spreads were bound to be wide so we were constrained to square off her trades at a price difference, which is also well appreciated and accepted by the RDD issued by SEBI. Despite the said fact, the SCN has wrongly proceeded to allege that Noticee’s trades were non-genuine. Such a conclusion is absolutely untenable. Noticee’s trades have been settled in terms of the BSE and the resultant profit has been offered for tax in my return of income for AY 2015/2016.

10. In the interest of natural justice and in terms of the Adjudication Rules, vide hearing notice dated 16.09.2021 the Noticee was provided with an opportunity of personal hearing in the matter on 04.10.2021. Authorized Representative ('AR') appeared on behalf of the Noticee on the stipulated date of hearing. During the course of hearing, the AR reiterated the submissions made by the Noticee in her reply dated 31.08.2021 and sought one (1) weeks' time to make post hearing submissions.

11. Subsequently vide letter dated 05.10.2021, the noticee reiterated its reply dated 31.08.2021 and additionally made the following post-hearing submissions:-

    a) In the order dated 09.07.2021 of the Hon'ble Securities Appellate Tribunal in the case of Rajeev Bhanot in Appeal No. 396/2018 rightly concluded that despite specific orders being issued on the question of delay, there is no adherence to it and the assumption made by AO or WTM that there is no time limit to issue notice and the order cannot be set aside on ground of delay is patently erroneous. Noticee quoted the following from the said order:

       > *"SEBI is sitting quietly and has not taken any action for 12 years. Such delay defeats the purpose of initiation of proceedings for appropriate action. We are constrained to observe that inspite of specific orders being issued from time to time on the question of delay the WTM chooses to ignore those decisions as if they do not exist or is not binding upon them."*

    b) In the order dated 22.08.2019 of the Hon'ble Securities Appellate Tribunal in the case of Ashok Rupani, in Appeal No. 417/2018, wherein the tribunal correctly held that due to inordinate delay on the part of SEBI for initiating proceedings in relation to alleged violations, appellants cannot be penalised.

    c) Noticee further stated that the order and the findings of the Hon'ble

Securities Appellate Tribunal were upheld by the Hob'ble Apex Court in the Appeal preferred by SEBI in the matter of Ashok Rupani and Appeal No. 8444-8445/2019 stood dismissed for the grounds noted below:

> *"We find no ground to interfere with the impugned order passed by the Tribunal. The appeals are, accordingly, dismissed."*

d) In the order dated 27.05.2019 of the Hon'ble Securities Appellate Tribunal in the matter Rakesh Kathotia of in Appeal No. 07/2016, which had rightly concluded that on the ground of laches and inordinate delay in initiating proceedings, the violations against appellants cannot be sustained.

e) Noticee further stated citations of 17 court orders.

f) Noticee submitted that the exercise of issuance of SCN against her after more than 6 years is totally unreasonable, and suffers from serious laches, therefore ought to be set aside.

g) Noticee further submitted that the SCN is totally silent on the connection of parties, counter parties, broker and counterparty broker to her trades.

h) Noticee respectfully submitted that the SCN assumes that there was meeting of mind on mere surmises and conjectures. There is no credible evidence to deduce meeting of minds between the counter party to the impugned trades and her.

i) In the order dated 16.01.2020 in Appeal No.97/2019 in the matter of Nishith Shah HUF, The Hon'ble Tribunal had categorically come to a valid and sustainable conclusion that in the absence of any finding of collusion between the buyer and seller, the allegation that the Appellant has contributed to the LTP cannot be sustained.

j) In the order dated 08.06.2021 in Appeal No.102/2020 related to the scrip of Pine Animation; the Hon'ble Tribunal observed that without any evidence of connection or manipulation of price, the reasoning cannot be sustained.

k) Furthermore, in order dated 29.01.2020, in the appeal of Labhu Gohil, Appeal No. 26/2019, the Hon'ble Tribunal has rightly viewed that without any evidence of fund transfer, motive for manipulation of price, no penalty can be imposed on the appellants.

l) The Hon'ble Securities Appellate Tribunal vide its order dated 29.07.2011 in Appeal No. 47/2011 in the matter of appeal of Narendra Ganatra; held that without any evidence on record showing nexus of the appellant with other group entities for collusion, the allegation cannot stand on surmises and conjectures.

m) Noticee further stated that the SCN has thus grossly erred in concluding the collusion of minds with the counterparty without any credible evidence. Noticee submitted that the decision to sell within short span of time at different price; without any corresponding charge of collusion ought not to be held against her. Thus, the SCN ought to be set aside for the sole reason that neither any credible evidence is relied upon nor placed on records.

n) Noticee further relied upon the findings of the Hon'ble Supreme Court pertaining to the matter of SEBI vs Rakhi Trading Pvt Ltd which are applicable in the present SCN and quoted verbatim therefrom as:' ….. considering the reversal transactions, quantity, price and time and scale, parties being persistent in number of such trade transactions with huge price variations, it will be too naïve to hold that….". That the SCN has failed to appreciate that she had merely executed a single contract and not series of contracts and neither was she persistent in number of such trades.

o) Noticee submitted that she was never aware of counterparty. Noticee traded on blind mechanism of BSE Ltd and the identity of counterparty could not have been known to her. The SCN has grossly erred in concluding that her "trading behavior" confirms that the trades executed by her were not normal. Noticee submitted that "Behavior" means "*the way in which one acts or conducts oneself, especially towards other*." Thereby, it's not a single act, it's the part of nature or rather as the Hon'ble Apex Court has observed in SEBI vs Rakhi Trading Pvt Ltd, the behavior denotes the frequency in which such "coincidental trades" are executed. Hence, it is submitted that it is erroneous to construe her trading behavior on basis of a single contract.

p) Noticee therefore denied that since her mere one contract was reversed on the same day with same counterparty at a substantial price difference without any basis for significant change in the contract price, it would indicate that this contract is non genuine in nature which eventually resulted in generating artificial volumes, as wrongly concluded.

q) The SCN has failed to appreciate that she has merely executed one contract in the entire investigation period which spreads over to almost 18 months.

r) The SCN also failed to appreciate that of the 2, 91, 744 trades carried on during the investigation period, Noticee has merely executed a single contract for two trades of 90, 000 units which is 0.00068 % of the total trades of the investigation period, which could never tantamount to execution of non-genuine reversal of trades.

s) In order dated 14.07.2021 in the matter of Narendra Vallabji Bahuva wherein it was held by the Hon'ble Securities Appellate Tribunal that

> "*We are of the opinion that one single trade cannot lead to a conclusion that the Appellant was involved in fraudulent execution of*

trades with a manipulative intent."

The SCN has failed to appreciate the findings of the Tribunal in the case of Narendra Bahuva by disregarding the fact that the Noticee has also dealt with only a single contract.

t) The Hon'ble Securities Appellate Tribunal has in the matter of Narendra Bahuva aptly quoted its own finding in the case of Dhvani Darshan Kothari vs SEBI in order dated 21.01.2021, wherein it was held that:

"*purchasing offline and selling online to the same counterparty may raise a strong suspicion that transfer may not be genuine but further held that reasons have to be recorded to show as to how the trades were manipulative or fraudulent and that one transfer cannot make it circular/reversal or synchronized nor execution of one trade would be treated at par with the trades executed by other entities which was large in number'*

u) The order of the Hon'ble Securities Appellate Tribunal in the matter of Ketan Parekh vs SEBI had held that *"The nature of transactions executed, the frequency with which such transactions are undertaken, the value of the transaction, the conditions then prevailing in the market are some of the factors which go to show the intention of the parties*."

Noticee submitted that in the SCN observes that there is a single contract and no frequency of such contracts is either alleged or concluded. Noticee submitted that relying on the "conditions prevailing on the market" in the order of Ketan Parekh are also given a go by in the SCN which failed to appreciate that the transaction was well within the price circuit filters of the exchange, the frequency of the transaction, in this case one single contract and could otherwise have knowledge the contract was illiquid.

v) Noticee submitted that she has not committed any act in defiance of any regulations or any provisions of law and that she is not liable to be proceeded against with an inquiry and penalty.

12. The Noticee vide letter letter dated 25.02.2022 further submitted the following:

a) In the order dated 20.01.2022 of Ld.Adjudicating Officer ("the Ld.AO"), SEBI in the matter Neha Sethi, wherein the Ld.AO was pleased to exonerate the Noticee since there was insufficient material to conclude the allegations against the Noticee and further, it was found not a fit case for imposition of penalty.

b) In view of the said order, it may be appreciated that the allegations and evidences brought out in SCN against the Noticee are similar as that in the aforesaid order. Noticee submits that the allegations are solely based on a single transaction, whereby the purchase and sale were on the same day.

c) Noticee was not in a position to see with whom the deal got punched as the details are not shared on the screen by the exchange. And since the trading system is anonymous, Noticee could never be aware of the counterparty and thus, there could never be any collusion or meeting of minds.

d) There is neither any allegation that buyer and seller were related or connected to each other in the SCN nor has any other evidence, direct or otherwise, have been brought on record to suggest any collusion between her and the counterparty.

e) There is a time gap of around 5 minutes between the orders placed by the Noticee and that of counterparty, and therefore, the alleged trades could never tantamount to synchronized trades.

13. In the light of the allegations contained in the SCN, the submissions of the Notice in respect of the allegations made in the SCN and relevant material available on record, I hereby proceed to decide the case on merits.

CONSIDERATION OF ISSUES AND FINDINGS

14. I have carefully perused the charges levelled against the Noticee in the SCN, her reply and the documents/material available on record. The issues that arise for consideration in the instant matter are:
    a) **Issue No.I**: Whether the Noticee has violated provisions of regulations 3 (a), (b), (c), (d), 4(1) and 4(2)(a) of the PFUTP Regulations;
    b) **Issue No.II**: Does the violation, if any, attract monetary penalty under section 15HA of the SEBI Act? ; and
    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?

15. Before proceeding with the case on merits, I would like to deal with contentions raised by the Noticee in the replies dated 31.08.2021 and 05.10.2021.

16. With regard to the preliminary contention of the Noticee on the matter being 6 years old, I note that the initial action in the matter of illiquid stock options was taken as early as 20.08.2015 when SEBI passed interim order against 59 entities. This was followed by final order on 05.04.2018 after completion of investigation, which revealed that 14,720 entities were involved in executing non-genuine trades. Pursuant to observation by the Hon'ble SAT in its Order dated 14.10.2019, an opportunity of settlement was given to all entities by way of Settlement Scheme, 2020 ("Scheme") vide Public Notice dated 27.07.2020. Owing to the actions taken as detailed and the large number of entities involved, the time period taken for issuing SCN is reasonable. I further note that the proceedings under SEBI Act are not barred by limitation. Further, all relevant and relied upon material for the purpose of crystallization of allegations in respect of the Noticee were served on

the Noticee and it is not her case that her ability to defend herself has suffered due to lack of any specific information material to the charges.

17. 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.

18. 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."

19. 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".

20. 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".

21. Further, I would also like to refer to the decision of the Hon'ble Securities Appellate Tribunal in the matter of Rajendra Aggarwal Vs. SEBI wherein the Hon'ble Tribunal while rejecting the contention of the Noticee therein regarding delay of four years in issuance of SCN, has, inter alia, held that:

    "The investigation was against a large number of entities which apparently took time and ultimately notices were issued to 35 entities. Consequently, we do not find any inordinate delay in the issuance of the show cause notice nor do we find any merit in the contention that there was an inordinate delay."

22. I note that the investigations relating to the PFUTP Regulations, 2003 are complex (considering the volume of transactions, connections and examination of trading of shares, etc.) and time consuming. In the instant matter, I note that a total of 14,720 entities were involved in the generation of artificial volume by executing non-genuine / reversal trades in the illiquid Stock Options segment at BSE during the investigation period. Initiation of proceedings against the said 14,720 entities is a humungous task and therefore, considering the available resources, the proceedings were initiated against the entities in a staggered manner. I also note that SEBI had framed a settlement scheme in accordance with the provisions of the SEBI (Settlement Proceedings) Regulations, 2018 which provided a onetime opportunity to the concerned entities to settle the proceedings in the matter of dealings in illiquid Stock Options at BSE. I observe that the said scheme was kept open for a period of, initially, 3 months (commencing from August 01, 2020) and then extended till December 31, 2020 to enable the entities to avail the benefit of the scheme in view of the disruptions caused due to the Covid-19 pandemic. A total of 1,018 entities had availed the benefit of the Scheme and remitted the specified settlement amounts and a Settlement Order was passed by SEBI on January 15, 2021. Subsequently, proceedings against remaining entities (including

the Noticee) were proceeded with and, accordingly, the SCN was issued against the Noticee.

23. Further, the Noticee has vehemently argued that the Noticee is not aware of the identity of the counterparty and that no causal connection has been established between the Noticee and the counterparty. I have analyzed the contention raised by the Noticee and I am of the opinion that counterparty being the same in both legs of the reversal transaction cannot be a mere coincidence. The same can only be done through a pre-planned meeting of minds to deal in such manner. In this light, I consider it important to refer to decision of the Hon'ble Supreme Court in the matter of SEBI Vs. Kishore R Ajmera wherein the Hon'ble Supreme Court, inter alia, held:

> *"22. 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…..Direct proof of such meeting of minds elsewhere would rarely be forthcoming. The test, in our considered view, is 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 framed thereunder 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."

24. Thus, in this regard, I note that although there might not be any direct evidence connecting the parties with each other but the trading behavior of the Noticee makes it amply clear that the reversal trades in the present case could not have been executed without prior meeting of minds at some level. Therefore, the present argument of the Noticee holds no merit.

25. Lastly, the Noticee has argued that as per the Risk Disclosure Document (the "RDD") issued by SEBI, the possibility of wide spread price difference in illiquid options contract prevails. Further, the Noticee has contended that in absence of any price band mechanism in the options segment, the prices and the manner in which the trades were executed cannot be said to be non-genuine. In this context, I note that RDD is not a binding or mandatory provision of an Act, Regulation, Circular, etc. but merely a document in the nature of general advisory. RDD warns the investors dealing in derivatives markets about the risks involved in the derivatives market as the derivative products are complex, risky and high leverage products. RDD cannot be used as a permit for deliberate structuring of manipulative trades which lack economic rationale and run contrary to the dynamics of price discovery in option trading. The transactions of the Noticee show that the Noticee reversed the options contracts bought / sold on the same day, within a short span of time, at a substantially different price without there being any analogous change in the price of the underlying stock.

26. Further, analysis of such trades also indicates that price differentials have been deliberately structured for manipulative purposes as one party to the contract had deliberately foregone profitable position at the time of executing trade. The aforesaid pattern cannot be said to be falling with the economic rationale of a

reasonable investor to buy at lesser price and sell at higher price. Any rational / reasonable investor would never engage in financial transactions to book loss on purpose. Had the counterparties for trades of the Noticee been different, intraday squaring of positions would not have been possible as no genuine counter party investor would ever forego profits. The fact that the counterparties are same, corroborates that the trades were not genuine and executed for manipulative purposes. Thus, I am of the opinion that this contention of the Noticee holds no merit and is therefore rejected.

27. In view of the aforesaid and considering the facts of the present matter, I do not find any merit in the aforesaid contentions of the Noticee.

28. I note that 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 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.

29. The allegation that the Noticee carried out reversal trades is directly supported by evidence from the trade log records in Annexure B of the SCN. On 07.08.2015 the Noticee was seen to have indulged in 2 reversal trades in one unique contract. To illustrate, in Stock option “PFCL15AUG240.00CE”, on the said date, the Noticee at at 13:29:31.04 hrs the Noticee entered into a buy trade with counterparty Teji Mandi Securities Private Limted for 45000 units at Rs. 6.20 per unit. At 13:34:56.79 hrs the Noticee entered into a sell trade with the same counterparty, for 45000 units at Rs. 11.70 per unit. Thus, the 45000 units bought by the Noticee were sold

back by her within a few minutes, to the same counterparty.

30. While I take note of the fact that the submission of the Noticee that she carried out synchronised trades in only one contract on one day, the fact that 2 such trades were carried out and then reversed within a few seconds with the same counterparty and at wide variation in the prices of the 1 leg of the reversal trades, without any justification for the variation in prices, render the submissions by the Noticee that the trades could be a mere coincidence, unacceptable. Further, the fact that the exchange could not detect any problem with the trades at the relevant time or that trades in illiquid options will necessarily see variation in prices, cannot serve to absolve the Noticee for the almost immediate placement of orders at prices unrelated with the price movement of the underlying scrip, and is not sufficient to discharge the Noticee from the liability of having entered into synchronised reversal trades. The price of a particular option contract is the premium price, and for a given strike price, the premium cannot vary widely within minutes without significant movement in the underlying price or in other factors which determine option price. Entering of orders synchronized in terms of rate, quantity and time at unusual prices which had little to do with market movement of the underlying scrip strongly indicate that the orders were entered into consequent to a prior meeting of minds with the counterparty, as ordinary and unrelated counterparties would not have entered orders at such rates. Further, there was no reasonable justification given for the price variation in the option price.

31. With respect to the Noticee's submission that there was no inducement of investors so there was no "fraud" with respect to the impugned trades, it is noted that pre-determined synchronized and reversal trades manipulate the stock exchange mechanism and affect good faith dealings in the securities market, as ordinary investors are likely to be induced into dealing in securities based on market activity consisting of artificial and pre-planned trades. Therefore, I find the Noticee's contention in this regard to be unacceptable.

32. The volume contributed by the Noticee through the 2 synchronised and reversal trades in the abovementioned contract made up 34.88 % of the total market volume for this contract during the investigation period. I note that while synchronized trades may occur by accident in a liquid stock, execution of such synchronized trades in an illiquid market with anonymous trading can only happen if there is prior meeting of minds with a view to execute trades.

33. The manner of placing buy and sell orders in the trades carried out by Noticee were in a synchronized manner, executed within seconds of each other, resulting into reversal of the trades within a short time on the same day, with wide variation in prices of the trades in the same contract in a short time without any basis for such wide variation, all indicate that the trades executed by the Noticee were not genuine trades and being non-genuine, created an appearance of artificial trading volumes in respective contracts.

34. 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 –

> *"…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 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..."*

35. 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."

36. Further, 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 the Hon'ble SC 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….."

37. Therefore, the trading behaviour of the Noticee confirms that such trades were not normal and wide variation in prices of the trades in the same contract in a short time without any basis for such wide variation, all indicate that the trades executed by the Noticee were not genuine trades and being non-genuine, created an appearance of artificial trading volumes in 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. The Hon'ble Supreme Court of India in the matter of SEBI Vs. Shri Ram 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…"*

38. In view of the same, I am convinced that it is a fit case for imposition of monetary penalty on the Noticee under the provisions of section 15HA of the SEBI Act, 1992 which read as under:

SEBI Act: 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.*

39. 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.

40. As established above, the trades by the Noticee were non-genuine in nature and created a misleading appearance of trading. Investigation has not shown the amount of profit/loss of the counterparties to the trades as a result of the non-genuine trades. However, considering that the violation by the Noticee is creation of artificial trading volumes by trading between two counterparties and wider market is not involved in the trades, the trades are such that one of the

counterparty books a profit while the other counterparty books a loss. Hence, 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 material available on record to quantify the amount of disproportionate gain or unfair advantage resulting from the artificial trades between the counterparties or the consequent loss caused to investors as a result of the default.

41. The Noticee has contributed to artificial volumes in 1 contracts on 1 day during the Investigation Period. I note that while the violation was not repetitive in nature, the AO can exercise discretion for determining penalty depending on facts and circumstances of the case, subject to the minimum penalty prescribed by statute.

42. 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 Lakhs only) under Section 15HA of the SEBI Act will be commensurate with the violations committed by the Noticee.

ORDER

43. Having considered all the facts and circumstances of the case, the material available on record, the factors mentioned in section 15J of the SEBI Act, 1992 and in exercise of power conferred upon me under section 15-I of the SEBI Act, 1992 read with rule 5 of the Adjudication Rules, 1995, I hereby impose following penalty under section 15HA of the SEBI Act, 1992 on the Noticee:

Name of the Noticee	**Violation Provisions**	**Penalty**
Ms. Krishna Ojha PAN: AACPD9425B	Regulations 3 (a), (b), (c), (d), 4 (1) and 4(2)(a) of PFUTP Regulations, 2003	Rs. 5,00,000 /- (Rupees Five Lakh Only)

I am of the view that the said penalty is commensurate with the lapse/omission on the part of the Noticee.

44. 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

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

46. 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

47. In the event of failure to pay the said amount of penalt 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 SEBI Act, 1992 for realization of the said amount of penalty along with the interest thereon, inter alia, by attachment and sale of movable and immovable properties.

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

PLACE: MUMBAI PRAMILA SRIDHAR Digitally signed by PRAMILA SRIDHAR Date: 2022.03.22 11:31:39 +05'30' **PRAMILA SRIDHAR**

DATE: March 22, 2022 **ADJUDICATING OFFICER**