BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/BM/UR/2022-23/15941]

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

In respect of

Karan Singh Dhillon

(PAN: AZSPD3399N)

In the matter of Trading in Illiquid Stock Options on BSE

BACKGROUND OF THE CASE

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

2. Pursuant to investigation, it was observed that total of 2,91,744 trades comprising 81.40% of all the trades executed in stock options segment of BSE during the IP were non genuine trades. The aforesaid non-genuine trades resulted into creation of artificial volume in stock options segment of BSE during the IP. It was observed that Karan Singh Dhillon (PAN-AZSPD3399N) (hereinafter referred to as the "**Noticee**") was one of the various entities who indulged in execution of reversal trades in stock options segment of BSE during the IP. Such trades were observed to be

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

<u>APPOINTMENT OF ADJUDICATING OFFICER</u>

3. The undersigned was appointed as Adjudicating Officer in the matter, conveyed vide communique dated September 27, 2021, under Section 19 read with Section 15-I(1) of the SEBI Act, and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as "**Adjudication Rules**") to conduct adjudication proceedings in the manner specified under Rule 4 of Adjudication Rules read with Section 15-I(1) and (2) of SEBI Act, 1992, and if satisfied that penalty is liable, impose such penalty as deemed fit in terms of Rule 5 of Adjudication Rules and Section 15HA of SEBI Act, 1992.

<u>SHOW CAUSE NOTICE, REPLY AND HEARING</u>

4. A Show Cause Notice dated October 20, 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 him and why penalty should not be imposed under section 15HA of the SEBI Act, 1992 for the violations alleged to have been committed by the Noticee.

5. It was *inter alia* alleged in the SCN that the Noticee had executed 2 non-genuine trades in 1 Stock Options contract which resulted in artificial volume of total 56,000 units. Summary of dealings of the Noticee in the said Options contracts, in which the Noticee allegedly executed non-genuine trades during the I.P, is as follows:

S. No.	Contract Name	Avg. Buy Rate (Rs)	Total Buy Volume (No. of units)	Avg. Sell Rate (Rs)	Total Sell Volume (No. of units)	% of Non Genuine trades of Noticee in the contract to Noticee's Total trades in the Contract	% of Non Genuine trades of Noticee in the contract to Total trades in the Contract	% of Artificial Volume generated by Noticee in the contract to Noticee's Total Volume in the Contract	% of Artificial Volume generated by Noticee in the contract to Total Volume in the Contract
1	UCOB15MAR50.00CE	10.45	28000	17.95	28000	100	3.39	100	2.16

6. From the above table, following was noted as regard to dealings of the Noticee:
   (a) The Noticee had allegedly executed non genuine trades in 1 contract, wherein all the trades of Noticee in the said contract were non-genuine trades.
   (b) No. of alleged non-genuine trades of the Noticee had significantly contributed to total no. of trades from the market in the above contract, as 3.39% of the trades that happened in the said contract were due to alleged non-genuine trades executed by the Noticee.
   (c) 100% of volume generated by Noticee in the above contract was alleged to be artificial volume, and further, the percentage of alleged artificial volume generated by the Noticee in the above contract to the total volume from the market in said contract was 2.16%. Therefore, it is alleged that the Noticee generated artificial volume in the above contract.

7. The SCN with reference no. EAD-3/BM/UR/ISO-II/29048/2021 was served on the Noticee via Speed Post Acknowledgement Due (SPAD)

dated October 20, 2021. The proof of service is on record. Noticee vide letter dated November 09, 2021 submitted its reply to the Show Cause Notice, in which it denied all allegations levelled against it and sought the Investigation Report and all the relevant records during the course of captioned proceedings..

8. Noticee was conveyed vide email dated December 15, 2021 that *"all the information relied upon in the SCN have already been provided to you in the annexures to the said SCN, also mentioned below:*

a. Integrated trade log of all reversal trades of Noticee in the stock options segment of BSE during the period April 1, 2014 to September 30, 2015.

b. Summary of all reversal trades."

In this regard, reference may be made to the Hon'ble SAT Order in the matter of **Mayrose Capfin Privatte Limited Vs. SEBI** (decided on 30.03.2012) held that :

" … the principles of natural justice require that the inquiry officer should make available such document and material to the delinquent on which reliance is being placed in the inquiry. It is not necessary for the inquiry officer to make available all the material that might have been collected during the course of investigation but has not been relied upon for proving charge against the delinquent. No prejudice can, therefore be said, to have been caused to the appellant on this count …."

Further, Hon'ble SAT, in its order dated February 12, 2020, in the matter of **Shruti Vora vs. SEBI** had held that :

"Reliance was also made a decision of the Supreme Court in Union of India and Others vs E.Bashyan (1988) 2 SCC 196 which has no

bearing to the controversy involved in the present context, in as much as, the said decision relates to a disciplinary proceedings wherein the Supreme Court in Union of India and Others vs E.Basyan (1988) 2 SCC 196 which has no bearing to the controversy involved in the present context, in as much as, the said decision relates to a disciplinary proceedings wherein the Supreme Court observed that the inquiry report was required to be made available to the delinquent. An inquiry report is totally distinct and different from an investigation report. The inquiry report considers all the materials in the inquiry proceedings which form the basis of the final order and therefore the said report is required to be made available to the delinquent. In the instant case, the show cause notice relies upon certain documents which have been made available. Thus the investigation report is not required to be supplied. The Learned Counsel has also placed reliance upon a minority view of this tribunal in Price Waterhouse vs Securities and Exchange Board of India decided by this Tribunal in Appeal No.8 of 2011 on June 1, 2011 wherein it was observed that fairness demands that the entire material collected during the course of investigation should be made available for inspection to the person whose conduct was in question and that said material should also be supplied. In our opinion, the said minority view is directly against the decision of the Supreme Court in Natwar Singh case (supra). A bare reading of the provision of the Act and the Rules as referred to above do not provide supply of documents upon which no reliance has been placed by the AO, nor even the principles of natural justice require supply of such documents which has not been relied upon by the AO. We are of the opinion that we cannot compel the AO to deviate from the prescribed procedure and supply of such documents which is not warranted in law. In our view, on a reading of the Act and the Rules we find that there is no duty cast upon the AO to disclose or provide all the documents in his possession especially when such documents are not being relied upon."

9. Vide Hearing Notice dated November 30, 2021, the Noticee was advised to appear for hearing on December 15, 2021, however the Noticee did not attend the aforesaid hearing. The delivery of the aforesaid hearing notice was completed at the E-mail id- karansinghdhillon24@gmail.com. In the interest of Natural Justice, final opportunity of hearing was granted to the Noticee vide hearing notice dated December 17, 2021 wherein hearing was scheduled on December 28, 2021. The delivery of aforementioned hearing notice was completed through Speed Post Acknowledgement Due. The Noticee did not appear for the aforesaid hearing. Since ample opportunity were given to the Noticee for the hearing, the matter is being proceeded on the basis of the evidence available on record and on the basis of reply of the Noticee dated November 09, 2021.

10. Vide letter dated November 09, 2021 the Noticee submitted his reply to the SCN, in which he denied all the allegations and observations made against him in the SCN. Contentions made by him have been summarized below:
    - He denied committing any breach of PFUTP regulations, 2003.
    - Noticee contended that his trades were executed on the floor of the exchange with due compliance with all the rules and regulations of the exchanges.
    - Noticee contended that at no point of time there was any warning or any observation by the broker or exchange about the scrips/ stocks/ options or any contracts which were executed by him. Further the Noticee submitted that the stock exchanges regularly come out with list of illiquid scrips in cash segment. However, no such list was issues by exchanges or regulator for dealing in stock options contracts.
    - Noticee contended that the observation regarding the stock being illiquid is incorrect and the trades in question were in the normal course of business and there is nothing amiss in the trades executed by him. Noticee further contended that the underlying scrip in which he traded

were highly liquid in nature and thus to allege that he deliberately traded in only those options which were Illiquid in nature is unfair. Noticee also contended that SEBI has held that he transacted in “illiquid options” on the basis that his trades were in far off strike prices and therefore, very few entities were trading in such strike rates. Further the Noticee submitted that said trades could have had no effect on other investors or market at large and that such illiquidity would be the reason for volatility and alleged reversal transactions since variations in options price would be dramatic if the chosen strike price is thinly traded.

- Noticee submitted that derivative market is ‘zero-sum game’ and thus in each and every case one party will inevitably make profit and counterparty will make loss.
- He submitted that even assuming the stocks were illiquid, then any small quantity or volumes would look significant as there are no active traders in the stock. Further he submitted that the total number of alleged non-genuine trades were 2 which is a meagre part of overall 2,92,744 trades in market (constituting a miniscule 0.0006% of market volume of alleged non-genuine trades)
- Noticee contended 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.
- Noticee contended that none of his trades are deceptive in nature or have any impact on the investors or their investment decision which is sine qua non of “fraud”.
- Noticee contended that there is no nexus, directly or indirectly with the counter party brokers or the clients. Further he contended that he did not have any relationship with counterparty or its broking entities and he did not act in concert or in collusion with anyone.
- Noticee submitted that the Show Cause Notice does not specify and consider facts matrix of his dealings in the stock options segment of BSE. It does not state the reasons, rational, cause of action, locus and

invoking of jurisdiction after over three years from the dates of settled transactions. The Show cause Notice is therefore arbitrary.

- Noticee contended that SEBI has discontinued proceedings against the brokers and intermediaries against whom similar allegations of dealing in illiquid stock options while executing trades on behalf of clients have been levelled.

<u>CONSIDERATION OF ISSUES AND FINDINGS</u>

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

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

    PFUTP Regulations, 2003

    3. Prohibition of certain dealings in securities

    No person shall directly or indirectly—

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

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

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

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

4. Prohibition of manipulative, fraudulent and unfair trade practices

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

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

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

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

13. I note that allegation against the Noticee is that, while dealing in the stock option contracts at BSE during the IP, he had executed reversal trades which were allegedly non-genuine and the same had resulted in generation of artificial volume in stock option contracts at BSE. Reversal trades are considered to be those trades in which an entity reverses its buy or sell positions in a contract with subsequent sell or buy positions with the same counterparty during the same day. The said reversal trades are alleged to be non-genuine trades as they are not executed in the normal course of trading, lack basic trading rationale, lead to false or misleading appearance of trading in terms of generation of artificial volumes and hence are deceptive and manipulative.

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

15. It has been alleged that the Noticee traded in one contract in the stock options segment of BSE during the IP. It executed 2 non-genuine trades in 1 contract and such trades of the Noticee resulted in the creation of artificial volume of 56000 units in the said contract. Summary of the alleged non-genuine trades of the Noticee is as follows:

S. No.	Contract Name	Avg. Buy Rate (Rs)	Total Buy Volume (No. of units)	Avg. Sell Rate (Rs)	Total Sell Volume (No. of units)	% of Non Genuine trades of Noticee in the contract to Noticee's Total trades in the Contract	% of Non Genuine trades of Noticee in the contract to Total trades in the Contract	% of Artificial Volume generated by Noticee in the contract to Noticee's Total Volume in the Contract	% of Artificial Volume generated by Noticee in the contract to Total Volume in the Contract
1	UCOB15MAR50.00CE	10.45	28000	17.95	28000	100	3.39	100	2.16

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

16. I note that, pursuant to a preliminary examination conducted in the Illiquid Stock Options matter, Interim order was passed by SEBI on August 20, 2015 which was confirmed vide Orders dated July 30, 2016 and August 22, 2016. Meanwhile, SEBI initiated a detailed investigation relating to stock options segment of BSE which was completed in the year 2018. The investigation revealed that 14,720 entities were involved in executing non-genuine trades in BSE's stock option segment during the investigation period. The proceedings initiated vide the aforementioned Interim Order were disposed of vide Final Order dated April 05, 2018 also considering that appropriate action was initiated against the said 14, 720 entities in a phased manner.

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".

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.

As can be seen from the narration of facts in the foregoing paragraphs, pursuant to appointment of AO on September 27, 2021, SCN was issued on October 20, 2021. In compliance with principles of natural justice, after receipt of reply, an opportunity of personal hearing was scheduled on December 15, 2021, however since the hearing could not be conducted due to non-appearance of the Noticee, another opportunity of hearing was granted to the Noticee scheduled on December 28, 2021. The Noticee again did not appear for the aforesaid hearing. Since ample opportunity were given to the Noticee, the matter is being proceeded on the basis of evidence available on record.

17. I note from the trade & order log that the Noticee had executed trades in said contract, wherein the percentage of the trades of the Noticee in stock options contract to total trades in the contract was 3.39% in the aforesaid contract. Further, the volume generated by Noticee in the contract amounted to 100% of total volume generated by it in the contract. It is also

noted that the volume generated by the Noticee contributed 2.16% of the total volume from the market in the said contract.

18. The details of squaring up done by the Noticee in the contract 'UCOB15MAR50.00CE' are as given below :

Trade Date	Client Name	CP Client Name	Trade Time	Trade Rate (Rs.)	Traded Quantity	Buy/Sell by the Noticee
17/03/2015	KARAN SINGH DHILLON	JAIDEEP HALWASIYA	10:47:40	10.45	28000	Buy
17/03/2015	JAIDEEP HALWASIYA	KARAN SINGH DHILLON	11:19:33	17.95	28000	Sell

19. I note from the trade log details which is given above, that the trades executed by the Noticee in a contract were squared up with its counter-party. As can be seen from the table, the Noticee on March 17, 2015 at 10:47:40 hrs (Order time of Noticee 10:46:44 and Counterparty Order time : 10:47:40) entered into 1 buy trade with counterparty viz: Jaideep Halwasiya for 28000 units at the rate of Rs.10.45 per unit in the contract 'UCOB15MAR50.00CE'. Thereafter, on the same day, Noticee at 11:19:33 hrs (Order time of Noticee : 11:19:33 and Counterparty Order time : 11:19:33) entered into 1 sell trade with same counterparty for 28000 units at the rate of Rs.17.95 per unit in the same contract. It is noted that while dealing in the said contract during the I.P., the Noticee executed reversal trades with same counterparty viz. Jaideep Halwasiya on the same day, with significant price difference. Thus, the Noticee, through its dealing in the contract during the I.P., executed non genuine trades which was 3.39% of the total trades from the market in the said contract during the I.P., and thereby, Noticee generated artificial volume of 56000 units which was 2.16% of the volume traded in the said contract from the market during the I.P.

20. Noticee contended that his trades were executed on the floor of the exchange with due compliance with all the rules and regulations of the exchanges. Noticee also contended that at no point of time there was any warning or any observation by the broker or exchange about the scrips/ stocks/ options or any contracts which were executed by him. Further the Noticee submitted that the stock exchanges regularly come out with list of illiquid scrips in cash segment. However, no such list was issues by exchanges or regulator for dealing in stock options contracts. Firstly, I note that instant adjudication proceedings levy the impugned allegations against Noticee, and that absence of any preventive mechanism cannot be a ground to absolve Noticee from its obligation to ensure genuineness of trades executed on exchange platform. Secondly, since these trades were done in illiquid option contracts, there was no trading in the said contract and hence, there was no price discovery in the strictest terms. There was no significant change in the price of the underlying scrip to justify the wide variation in prices of the said contracts. The wide variation in prices of the said contracts, within such a short span of time, is a clear indication that there was pre- determination in the prices by the counterparties while executing the trades. Thus, it is observed that Noticee had indulged in reversal trades with its counterparties in the stock options segment of BSE and the same were non-genuine trades.

21. Noticee contended that the observation regarding the stock being illiquid is incorrect and the trades in question were in the normal course of business and there is nothing amiss in the trades executed by him. Noticee further contended that the underlying scrip in which he traded were highly liquid in nature and thus to allege that he deliberately traded in only those options which were Illiquid in nature is unfair. Noticee also contended that SEBI has held that he transacted in "illiquid options" on the basis that his trades were in far off strike prices and therefore, very few entities were trading in such strike rates. Further the Noticee submitted that said trades could have had no effect on other investors or market at

large and that such illiquidity would be the reason for volatility and alleged reversal transactions since variations in options price would be dramatic if the chosen strike price is thinly traded. I note firstly that, liquidity of options is very different from liquidity of the underlying scrip. Former is traded in derivatives segment, in which there are different strike prices, of which some may be illiquid, whereas the latter is traded in cash segment. Hence, the contention of Noticee that the stock options contract was not illiquid because the underlying scrip was liquid is not tenable. Besides, the allegation is not of trading in illiquid stock options, but of executing non-genuine trades. Secondly, since these trades were done in illiquid option contract, there was negligible trading in the said contract and hence, there was no price discovery in the strictest terms. Thus, it is observed that Noticee had indulged in reversal trades with his counterparty in the stock options segment of BSE and the same were non-genuine trades.

22. Noticee submitted that derivative market is ‘zero-sum game’ and thus in each and every case one party will inevitably make profit and counterparty will make loss. I note that, in case of option segment each contract expires at end of contract period and for every party who makes profit there is counter party who makes a loss. There is no question of transfer of beneficial ownership in option segment since at end of settlement cycle only net loss/profit is adjusted. In this regard I note that the contentions of the Noticee are not relevant as regards the charges made in the SCN which relate to generation of artificial volume in Illiquid Stock Options contracts and do not relate to any profit or loss. In this regard, it is pertinent to refer to the decision of the Hon’ble Supreme Court of India in the matter of *Securities and Exchange Board of India v. Rakhi Trading Private Limited* (Civil Appeal Nos. 1969, 3174-3177 and 3180 of 2011 dated February 08, 2018) wherein, the Hon’ble Supreme Court while cumulatively analysing reversal transactions held that,

“*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. Rather than allowing the market forces to operate in their natural course, the traders repeatedly carried out the impugned transactions which deprived other market players from full participation. The repeated reversals and predetermined arrangement to book profits and losses respectively, made it clear that the parties were not trading in the normal sense and ordinary course. Resultantly, there has clearly been a restriction on the free and fair operation of the market forces in the instant case….quantity, time and significant variation of prices, without major variation in the underlying price of the securities clearly indicate that Respondent's trades are not genuine and had only misleading appearance of trading in the securities market… one does not have to labour much on the meaning of unfair trade practices in securities. Contextually and in simple words, it means a practice which does not conform to the fair and transparent principles of trades in the stock market."

23. Noticee submitted that even assuming the stocks were illiquid, then any small quantity or volumes would look significant as there are no active traders in the stock. Further he submitted that the total number of alleged non-genuine trades were 2 which is a meagre part of overall 2,92,744 trades in market (constituting a miniscule 0.0006% of market volume of alleged non-genuine trades). I note that the impugned stock option contract was illiquid, as stated in the SCN, and also that Noticee's trades in said contract contributed 2.16% artificial volume to the total market volume generated during the IP. Therefore, Noticee's trades were manipulative and intended to create misleading appearance of trading, so the contentions of Noticee in this regard are are not tenable.

24. Noticee contended 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. In this regards, it is pertinent to note that Regulation 4(2)(a) of PFUTP Regulations states that dealing in securities will be deemed to be a fraudulent and unfair trade practice if it involves

"indulging in an act which creates false or misleading appearance of trading in the securities market". It is also pertinent to note that artificial volume generated from the said trades shows non-genuine appearance of trading in aforesaid contract to the unsuspecting investors. These non genuine and deceptive trades are covered under the definition of 'fraud' and dealing of Noticee noted hereinabove were 'fraudulent' as defined under regulation 2(1)(c) of SEBI PFUTP Regulations, 2003. Thus, the terms "artificial" and "non-genuine" have no strict definition. The definition of the said terms has to be construed, understood and interpreted in reference to the context in which it is used. Therefore, the contentions of Noticee in this regards is without merits.

25. Noticee contended that none of his trades are deceptive in nature or have any impact on the investors or their investment decision which is sine qua non of "fraud". I note that the SCN issued to the Noticee did not allege that on account of the trading of the Noticee in the options, there was adverse impact caused to the third party. Instead the SCN alleged the execution of non genuine/ reversal trades in the illiquid stock options at BSE, which has been detailed above. Therefore, I do not find any merit in the contentions of the Noticee in this regard. I note that the impugned reversal trades, which were carried out with prior meeting of minds as inferred from the case facts, affected the price discovery and execution of trades as per market mechanism on the stock options segment of BSE. In this regard, I further note the following from the judgment of the Hon'ble SC in the matter of SEBI vs Rakhi Trading Pvt Ltd (supra):

"……….According to SAT, only if there is market impact on account of sham transactions, could there be violation of the PFUTP Regulations. We find it extremely difficult to agree with the proposition. As already noted above, SAT has missed the crucial factors affecting the market integrity, which may be direct or indirect. The stock market is not a platform for any fraudulent or unfair trade practice. The field is

open to all the investors. By synchronization and rapid reverse trade, as has been carried out by the traders in the instant case, the price discovery system itself is affected. Except the parties who have pre-fixed the price nobody is in the position to participate in the trade. It also has an adverse impact on the fairness, integrity and transparency of the stock market."

26. Noticee contended that there is no nexus, directly or indirectly with the counter party brokers or the clients. Further he contended that he did not have any relationship with counterparty or its broking entities and he did not act in concert or in collusion with anyone. I note that considering the precision at which the reversal transactions have taken place i.e. reversal of the quantity, order price and order time and sale with price variations as observed in the instant matter, the same couldn't have been possible without prior meeting of mind. In this regard, I find it relevant to refer to the decision of Hon'ble Supreme Court in the matter of SEBI vs. Rakhi Trading Private Ltd., in Civil appeals no., 1969 of 2011 decided on February 8, 2018 wherein it has been held as under:

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

The Hon'ble Supreme Court has also held in the aforesaid Judgment that the price discovery system itself was affected by synchronization and rapid reverse trade, which also had the impact of excluding other investors from participating in the market. The Supreme Court, therefore found that the traders having engaged in a fraudulent and unfair trade practice while dealing in securities, are hence liable to be proceeded against for violation of Regulations 3(a), 4(1) and 4(2)(a) of the PFUTP Regulations, 2003.

The Hon'ble SAT in its judgment dated September 14, 2020 in the matter of **Global Earth Properties and Developers Pvt Ltd Vs** SEBI (Appeal No. 212 of 2020) also relied upon the aforesaid judgment of the Hon'ble Supreme Court and held that :

"......It is not a mere coincidence that the Appellants could match the trades with the counter party with whom he had undertaken the first leg of respective trade. In our opinion, the trades were non-genuine trades and even though direct evidence is not available in the instant case but in the peculiar facts and circumstances of the present case there is an irresistible inference that can be drawn that there was meeting of minds between the Appellants and the counter parties, and collusion with a view to trade at a predetermined price."

The Hon'ble SAT reaffirmed its stand taken in Global Earth Properties and Developers Pvt Ltd Vs SEBI (Appeal No. 212 of 2020), in its judgment dated November 24, 2021 in the matter of **Radha Malani vs. SEBI** (appeal no. 698 of 2021), has held the following:

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

Keeping in mind the dicta of the Hon'ble Supreme Court as reproduced above; I see no reason to take a different view in the present case. In view of the foregoing, I hold that the Noticee had indulged in execution of reversal trades in Stock Options with same entitiy on the same day, which are non-genuine in nature and have created false and misleading appearance of trading in terms of artificial volumes.

Further, I note that it is not a mere coincidence that Noticee could match his trades (with the corresponding price and quantity entered by both the Noticee and counterparty being equal) with the same counterparty with whom Noticee had undertaken first leg of the respective trades. It indicates meeting of minds. In this context, I would like to rely on the judgment of the Hon'ble Supreme Court of India 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 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."

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

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

Further, I would like to rely on the judgement of Hon'ble Supreme Court passed in the case of **SEBI vs. Rakhi Trading Private Ltd**. (supra), wherein the Apex Court held that :

“the entities were engaged in a fraudulent and unfair trade practice while dealing in Options and hence were liable for violation of SEBI (PFUTP) Regulations”.

The Hon’ble Apex Court has also held that in the absence of direct proof of meeting of minds, the test should be one of preponderance of probability and also stated that the conclusion has to be gathered from various circumstances like volume of trade, period of persistence of trading, particulars of buy and sell orders, proximity of time between the two and such other relevant factors.

In line with the aforesaid judgements of Hon’ble SAT and Hon’ble Supreme Court, I note from the foregoing findings that the trading pattern of the Noticee in terms of volume of reversal trades, proximity of buy/sell and subsequent reversal evidences the indulgence of the Noticee beyond a reasonable doubt of the manipulative intent in creation of artificial volume. Further, the dealings by Noticee only in such options contracts which was illiquid clearly demonstrates the manipulative intent to use stock exchange platform to carry out non-genuine trades with the aim to execute such trades for manipulative purposes.

Therefore, applying the ratio of the above judgments, I am convinced that the execution of trades by the Noticee in the illiquid options segment with such precision in terms of order placement, time, price, quantity etc. and also the fact that the transactions were reversed with the same counterparty clearly indicates a prior meeting of minds with a view to execute the reversal trades at a pre-determined price. The only reason for the wide variation in prices of the same contract, withn a day was a clear indication that there was pre-determination in the prices by both the counterparty when executing the trades. Thus, the nature of trading, as brought out above, clearly indicates an element of prior meeting of minds and therefore, a collusion of the Noticee with its counterparty to carry out the trades at pre-determined prices.

27. Noticee contended that SEBI has discontinued proceedings against the brokers and intermediaries against whom similar allegations of dealing in illiquid stock options while executing trades on behalf of clients have been levelled. . It may be noted that the remit of the current proceedings are in terms of the Communique dated September 27, 2021 appointing the adjudicating officer, already made available to the Noticee. Given the above the proceedings cannot travel beyond the authority granted therein. Thus, taking action against Intermediaries or stock broker is not within the authority of the current proceedings. Noticee's contentions also imply that merely because other entities in the securities market may or may not have been involved in violating PFUTP Regulations, 2003, initiating a particular proceeding against the Noticee should necessarily be treated as unfair. I note that even if there are numerous violators in the securities market, it does not follow that SEBI must proceed against all entities in a single proceeding. Similarly, Adjudication proceedings are not vitiated merely because each violator is proceeded against in separate and distinct proceedings.

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

Issue No 2: Does the violation, if any, attract monetary penalty under Section 15HA of the SEBI Act, 1992?

29. Considering the findings that the Noticee, as mentioned above, has executed non-genuine trades resulting in the creation of artificial volume, thereby violating the provisions of Regulation 3(a), (b), (c) & (d) & Regulation 4(1) and 4(2)(a) of the PFUTP Regulations, 2003 and in terms of the judgement of Hon'ble Supreme Court of India in the matter of **SEBI Vs. 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...*"

I am convinced that it is a fit case for imposition of monetary penalty under the provisions of Section 15 HA of SEBI Act which reads as under:

Penalty for fraudulent and unfair trade practices.

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

Issue 3: If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in Section 15J of the SEBI Act, 1992?

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

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

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

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

(c) the repetitive nature of the default.

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

I observe, that the material available on record does not quantify any disproportionate gains or unfair advantage, if any, made by the Noticee and the losses, if any, suffered by the investors due to such violations on part of the said Noticee. However, the Noticee has entered into two non-genuine trades which demonstrates the violation of PFUTP Regulations, 2003.

31. Therefore, I note that Noticee indulged in execution of reversal trades in stock options contracts in the IP 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) and 4(1),(2)(a) of the PFUTP Regulations, 2003.

ORDER

32. 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
Karan Singh Dhillon PAN: AZSPD3399N	Regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of PFUTP Regulations, 2003	₹ 5,00,000/- (Rupees Five Lakhs only)

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

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 website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link:
ENFORCEMENT → Orders → Orders of AO → PAY NOW

34. The aforesaid Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to "The Division Chief (Enforcement Department 1 DRA-2), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C – 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.". The Noticee shall also provide the following details while forwarding DD / payment information:
    - Name and PAN of the Noticee
    - Name of the case / matter
    - Purpose of Payment – Payment of penalty under AO proceedings
    - Bank Name and Account Number
    - Transaction Number

35. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, SEBI may initiate consequential actions including but not limited to recovery proceedings under section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties.

36. In terms of the provisions of rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticee viz. Karan Singh Dhillon and also to the Securities and Exchange Board of India.

Date: April 11, 2022 **BARNALI MUKHERJEE**

Place: Mumbai **ADJUDICATING OFFICER**