**BEFORE THE ADJUDICATING OFFICER**
**SECURITIES AND EXCHANGE BOARD OF INDIA**
**ADJUDICATION ORDER NO. Order/PM/GD/2022-23/16143**

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

In respect of:

**Rajeev Rajkumar Agarwal HUF**

**PAN: AAKHR3528L**

In the matter of *Dealings in Illiquid Stock Options at the BSE*

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## BACKGROUND

Securities and Exchange Board of India (hereinafter be referred to as, the "***SEBI***") conducted investigation into the trading activity in illiquid stock options on BSE Limited (hereinafter be referred to as, the "***BSE***") for the period April 01, 2014 to September 30, 2015 (hereinafter be referred to as, the "***Investigation Period***") after observing large scale reversal of trades in the Stock Options segment of the BSE.

1. The investigation revealed that during the Investigation Period, a total of 2,91,643 trades comprising 81.38% of all the trades executed in the BSE Stock Options Segment were trades which involved reversal of buy and sell positions by the clients and counterparties in a contract. It was observed that Rajeev Rajkumar Agarwal HUF, (hereinafter be referred to as, the "***Noticee***") was one such client whose reversal trades involved squaring off open positions with a significant difference without any basis for such change in the contract price. The aforesaid reversal trades allegedly resulted into generation of artificial volumes, leading to allegations that the Noticee had violated the provisions of Regulation 3(a), (b), (c), (d) and Regulation 4(1), 4(2) (a) of the SEBI (Prohibition of Fraudulent and Unfair Trading Practices related to Securities Markets) Regulations, 2003 (hereinafter be referred to as, the "***SEBI PFUTP Regulations***").

## APPOINTMENT OF ADJUDICATING OFFICER

**2.** 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 be referred to as, the "***SEBI Act***") read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter be referred to as, the "***SEBI Adjudication Rules***") *vide* order dated April 26, 2021,to inquire into and adjudge under Section 15HA of the SEBI Act, against the Noticee for the alleged violation of aforesaid provisions of SEBI (PFUTP) Regulations. The appointment of the AO was communicated *vide* order dated April 26, 2021.

## SHOW CAUSE NOTICE, REPLY AND HEARING

**3.** A Show Cause Notice dated August 27, 2021 (hereinafter be referred to as, the "***SCN***") was served upon the Noticee under Rule 4(1) of the SEBI Adjudication Rules to show cause as to why an inquiry should not be held and penalty be not imposed against it under Section 15HA of the SEBI Act for the alleged violation of the provisions of Regulations 3(a),(b),(c),(d) and 4(1), 4(2)(a) of the PFUTP Regulations.

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

a) That 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 Stock Options segment of the BSE during the Investigation Period.

b) The Noticee engaged in 10 instances in 2 unique contracts which led to generation of artificial volume in these unique contracts.

c) The trades entered by the Noticee were reversed on the same day with the same counterparties 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 the Noticee in the two Stock Options contract in which the Noticee executed non-genuine reversal trades during the Investigation Period are as under:

**Table 1: Summary of trading of the Noticee in Illiquid Stock Options on BSE**

| Sl. No. | Contract Name | Avg. Buy Rate (₹) | Total Buy Volume (no. of units) | Avg. Sell Rate (₹) | Total Sell Volume (no. of units) | % of Artificial trades of the Noticee in the contract to Total trades in the contract | % of Artificial Volume generated by Noticee in the contract to Total Volume in the Contract |
|---|---|---|---|---|---|---|---|
| 1. | DABU15MAR250.00CEW1 | 10.56 | 63000 | 18.5 | 63000 | 35.71 | 31.66 |
| 2. | IDFC15MAY145.00CEW1 | 10.61 | 38000 | 22.5 | 38000 | 45.45 | 32.2 |

e) By indulging in execution of aforesaid non-genuine reversal trades, the Noticee has violated Regulations 3(a),(b),(c),(d) and 4(1), 4(2)(a) of the SEBI (PFUTP) Regulations, text of which is reproduced as under:

*"**SEBI (Prohibition of Fraudulent and Unfair Trading Practices Related to Securities Markets) 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 thereunder;*

*(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 or 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;*

*….."*

**5.** The Noticee vide letter dated September 21, 2021 submitted its reply to the charges alleged in the SCN, which is summarized hereunder:

a) Noticee is law abiding entity and has always complied with all applicable laws in letter and spirit.

b) Noticee's transactions were subjected to various charges and taxes including Exchange Turnover Tax, Service Tax, STT. Further the transactions were duly recorded in the books of accounts, records and income tax returns.

c) It is untenable to label the transactions as artificial and non-genuine after a period of 5 to 6 years from the date of transactions.

d) The trades executed by the Noticee in the stock options segment of BSE are genuine and were executed on the platform provided by the stock exchange.

e) Noticee has contended that trades was carried out was of small quantity and the trade reversal was merely out of co-incidence and not manipulative.

f) Noticee's trades were very infrequent and took place only on few days during the IP. If the intention of Noticee was to generate artificial volume and create misleading appearance of trading, the frequency of trades would have been higher.

g) The trades were executed on the anonymous platform of exchange, without any knowledge of the counterparty.

h) Noticee submits that it neither knows the counterparty nor had any relationship, financial or otherwise, with the said counterparty.

i) SEBI has issued Risk Disclosure Document that records the risk of trading on the stock options segment of exchange which quote that there can be possibility that in an illiquid contract, the chances of price difference, wider spreads and losses/profit exist.

j) Noticee has placed reliance on various judgments of Bombay High Court and Hon'ble Securities Appellate Tribunal. Noticee cited judgements of the Hon'ble SAT in the matters of Jagruti securities vs SEBI, S.P.J. Stock Brokers Pvt Ltd vs SEBI, R.K. Global vs SEBI, Global Earth Properties Ltd vs SEBI, Yogi Sungwon (India) Ltd vs SEBI, NHAI vs SEBI, Bhavesh Pabari vs SEBI and the judgement of Hon'ble Bombay High Court in the matter of Cabot International Capital Corporation.

k) Noticee was not part of the 59 entities against whom the interim order dated August 20, 2018 was passed, and neither was the part of first 567 entities against whom Adjudication Proceedings were initiated initially.

l) Noticee has prayed to take a lenient view and prescribed less than minimum penalty to be imposed citing Hon'ble Supreme court Judgements.

**6.** After considering the facts and circumstances of the case, the undersigned granted an opportunity of personal hearing to the Noticee on October 20, 2021 *vide* Notice of Hearing dated September 14, 2021. In view of the prevailing circumstances owing to Covid-19 pandemic, the hearing was scheduled through video conferencing on Webex platform. The Noticee did not availed the hearing opportunity on the scheduled date. The Noticee did not also inform the undersigned regarding his inability to attend the scheduled hearing. In the interest of natural justice, another hearing opportunity was granted to the Noticee on January 12, 2022 *vide* Notice of Hearing dated January 04, 2022, again the Noticee did not availed the hearing opportunity on said date. The Noticee was informed, no further opportunity of personal hearing in the matter shall be granted and the matter will be proceeded further as per available records. In view of the same the matter is decided upon on the basis of the reply of the Noticee and the evidence available on the records in terms of sub-rule (7) of rule (4) of the Adjudication Rules.

**7.** In this regard, it is pertinent to note that Hon'ble SAT in the matter of Dave Harihar Kirtibhai vs SEBI (Appeal No. 181 of 214 dated December 19, 2014), wherein the Hon'ble SAT observed as under:

*"...further, it is being increasingly observed by the Tribunal that many persons/entities do not appear before SEBI (Respondent) to submit reply to SCN or, even worse, do not accept notices/letters of Respondent and when orders are passed ex-parte by Respondent, appear before Tribunal in appeal and claim non-receipt of notice and do not appear and/or submit reply to SCN but claim violation of principles of natural justice due to not being provided opportunity to reply to SCN or not provided personal hearing. This leads to unnecessary and avoidable loss of time and resources on part of all concerned and should be eschewed, to say the least. Hence, this case is being decided on basis of material before this Tribunal..."*

**8.** Considering the above, I am of the view that principles of natural justice have been duly complied with, as SCN and hearing Notice were duly served upon the Noticee and sufficient opportunity was also granted to the Noticee to appear for personal hearing.

## CONSIDERATION OF ISSUES AND FINDINGS

**9.** The issues that arise for consideration in the instant matter are:

**Issue No. I** Whether the trading in illiquid Stock Options done by the Noticee during the Investigation Period were in violation of Regulations 3(a), (b), (c), (d) and 4(1) & 4(2)(a) of the PFUTP Regulations?

**Issue No. II** If yes, whether the violation, on the part of the Noticee would attract monetary penalty under Section 15HA of the SEBI Act?

**Issue No. III** If yes, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5 (2) of the SEBI Adjudication Rules?

**10.** As stated in preceding paragraphs, the position/trades entered into by the Noticee were squared up within a short span. The striking feature of the trades of the Noticee was that all the positions/trades were squared with the same counterparty with whom Noticee had originally traded/created position. The squaring up of the position/trade was at the substantial variation of price from the original position/trade. Thus, it was alleged that the Noticee had indulged in reversal trades. The said allegation was supported with evidence from the trade log containing records of all trades and reversal trades carried out by the Noticee in the Stock Options segment of the BSE during the Investigation Period and was also provided to the Noticee along with the SCN. On perusal of the details of trades carried out by the Noticee, it is observed that the Noticee took positions and then squared it up in 10 instances in 02 unique option contracts during the Investigation Period.

**11.** To illustrate, On February 27th, 2015, the Noticee sold 63000 units of the contract "DABU15MAR250.00CEW1" from Pristine Capital Consultants Private Limited at a price of ₹18.5.Thereafter, the Noticee reversed its position by buying 63000 units from the same counterparty on the same day at an average price of ₹10.56. Thus, the position of the Noticee was squared up at an average difference of ₹7.94. The entire volume of 126000 units in the said option contract was arising out of the trades done by the Noticee. It is observed from the trading of the Noticee that in all the trades of the Noticee the buy order and sell order have been entered within a short span of time. As stated earlier, there is a substantial variation in price in both the legs.

**12.** Before moving forward, I note that Noticee have raised the preliminary issue with regard to delay in issue of show cause notice, while the alleged trades were executed 5-6 years from the date of issuance of show cause notice. In this regard, I note that pursuant to a preliminary examination conducted in the Illiquid Stock Options matter, Interim order was passed by SEBI on August 20, 2015 which was confirmed vide Orders dated July 30, 2016 and August 22, 2016. Meanwhile, SEBI initiated a detailed investigation relating to stock options segment of BSE which was completed in the year 2018. The investigation revealed that 14,720 entities were involved in executing non-genuine trades in BSE's stock option segment during the investigation period. The proceedings initiated vide the aforementioned Interim Order were disposed of vide Final Order dated April 05, 2018 also considering that appropriate action was initiated against the said 14, 720 entities in a phased manner. 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". complying with the directions of Hon'ble SAT, SEBI came out with a Settlement Scheme (hereinafter referred to as "Scheme") in terms of Regulation 26 of SEBI (Settlement Proceedings) Regulations 2018 in the concerned matter, wherein one-time opportunities were provided to the entities including the Noticee against whom adjudication proceedings were approved for trading in illiquid stock options. *vide* public notice dated July 27, 2020 SEBI informed about launching of the aforesaid Scheme and the modalities for availing the benefit of the Scheme. The public notice was also made available on the website of the BSE. In addition to the same, all the entities including the Noticee were intimated through email and letters. In terms of the scheme, any entity desirous of availing the benefit of the scheme could avail the same by filling up the respective requisite details and paying the applicable settlement amount through the online platform made available on SEBI's website. However, the Noticee has not availed the aforesaid scheme of SEBI. As can be seen from the aforesaid facts, pursuant to appointment of Adjudicating officer on April 26, 2021, SCN was issued on August 27, 2021. In view of the same I am unable to accept this submission of noticee in relation to delay.

**13.** I also note that there are no timelines prescribed in the SEBI Act, 1992 for the purpose of identifying trades as non-genuine and for initiating the adjudication proceedings thereof. In this context I find it relevant to refer to the order passed by Hon'ble SAT in the case of Metex Marketing Pvt. Ltd. vs. SEBI (order dated June 4, 2019) wherein Hon'ble SAT held that: "This Tribunal has consistently held that in the absence of any specific provision in the SEBI Act or in the Takeover Regulations, the fact that there was a delay on the part of SEBI in initiating proceedings for violation of any provision of the Act cannot be a ground to quash the penalty imposed for such violation."

**14.** Further it is relevant to refer to the order passed by Hon'ble SAT in the case of Hemant Sheth & Ors vs. SEBI (Appeal No. 521 of 2021, DoD: 07.01.2022) held that:

*"….. Insofar as the delay is concerned, we find that after the observation made by the WTM in its order of May 10, 2013 SEBI took action and appointed the AO dated July 4, 2013. No doubt the show cause notice was issued in January 2016 but the delay in the issuance of the show cause notice in the instant case will not vitiate the proceedings initiated against the appellants in the peculiar facts and circumstances of the case. Consequently, we are not inclined to quash the proceedings only on the ground of inordinate delay as asserted by the learned counsel for the appellant."*

**15.** Coming to merits of the case, from the reply of the Noticee, I note that the Noticee has not disputed execution and subsequent reversal of trades as alleged in the SCN. However, the Noticee, in its reply, has contended that the transactions were carried out by it at an anonymous platform provided by the BSE. Noticee has placed reliance on various judgments of Hon'ble SAT in the matters of Jagruti securities vs SEBI, S.P.J. Stock Brokers Pvt Ltd vs SEBI, R.K. Global vs SEBI, Global Earth Properties Ltd vs SEBI. I have perused the said judgments stated in the reply. I have considered the aforementioned contentions of the Noticee. In this regard, it may be noted that the Noticee was given details of its trades in the BSE options segment and the details of the trades, which are alleged to be reversed and manipulative. In this regard I find it relevant to refer to the decision of the Hon'ble Supreme Court in the matter of ***Securities and Exchange Board of India*** v. ***Kishore R. Ajmera*** [(2016) 6 SCC 368: AIR 2016 SC 1079] wherein, the Supreme Court has held, "*…According to us, knowledge of who the 2nd party / client or the broker is, is not relevant at all. While the screen based trading system keeps the identity of the parties anonymous it will be too naïve to rest the conclusions on the said basis which overlooks a meeting of minds elsewhere. Direct proof of such* *meeting of minds elsewhere would rarely be forthcoming.* The *test, in our considered view, is one of preponderance of probabilities so far as adjudication of civil liability arising out of violation of the Act or the provisions of the Regulations framed thereunder is concerned….*"

**16.** The Hon'ble Supreme Court, has further 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 gathered from various circumstances like that volume of trade effected; the period of persistence in trading in a particular scrip; the particulars of buy and sell orders, namely the volume thereof; the proximity of time between the two and such relevant factors…*". Placing reliance of the observation of the Hon'ble Supreme Court in the aforementioned matter, I cannot accept the submission of the Noticee that transactions were genuine on account of them being carried out on an anonymous platform of the exchange wherein, the Noticee had no knowledge of the counterparty. The manner of placement of the orders in both legs signify that the orders were entered in a premeditated manner and were not genuine in any manner.

**17.** At this juncture, I also find it relevant to refer to the decision of the Supreme Court 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 analyzing the reversal transactions 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"* The Court further stated that *"..….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 hand only misleading appearance of trading in the securities market…..*”.

**18.** Applying the ratio of the Supreme Court in the matter of ***Kishore R. Ajmera*** (*supra*) and ***Rakhi Trading*** (*supra*), I am of the view that execution of trades in an illiquid market with such precision in order placement indicates a prior meeting of mind with a view to execute the reversal trades at a pre-determined price. The Noticee has failed in explaining the rationale for the trading as mentioned in Table 1 wherein it has taken a position at a particular price and squared it up at significant price difference without any substantial variation in the price of underlying. Since, the option contracts were done in illiquid contracts (as the strike price was far away from the market price of underlying), there was no trading in the said contract and hence no price discovery. The only reason for the wide variation in prices of the same contract, within minutes and some, even seconds, was pre-determination in the prices by both counterparties 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 to carry out trades at pre-determined prices. It is not possible to comprehend the reason for which the Noticee would enter into an option contract with a strike price very far away from the current market price of the underlying except for the fact that it wanted to execute non-genuine trades.

**19.** I note that direct evidence is not forthcoming in the present matter as regards to meeting of minds or collusion of the Noticee with other entities. However, I note that the trading behaviour of the Noticee makes it clear that 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 Hon’ble SAT order dated July 14, 2006, in the case of Ketan Parekh vs. SEBI (Appeal no. 2/2004), wherein the Hon’ble SAT has held that - *"The nature of transactions executed, the frequency with which such transactions are undertaken, the value of the transactions, the conditions then prevailing in the market are some of the factors which go to show the intention of the parties. This list of factors, in the very nature of things, cannot be exhaustive. Any one factor may or may not be* *decisive and it is from the cumulative effect of these that an inference will have to be drawn."*

**20.** I further note that the Supreme Court in the matter of ***Rakhi Trading*** (*supra*), has held that, "*Regulation 2(1)(c) defines fraud. Under Regulation 2(1)(c)(2) a suggestion as to a fact which is not true while he does not believe it to be true is fraud. Under Regulation 2(1)(c)(7), a deceptive behaviour of one depriving another of informed consent or full participation is fraud. And Under Regulation 2(1)(c)(8), a false statement without any reasonable ground for believing it to be true is also fraud. In a reverse dealing in securities, with predetermined arrangement to book loss or gain between pre-arranged parties, all these vices are attracted."* I am of the considered view that the scheme, plan, device and artifice employed by the Noticee in this case of executing reversal trades in illiquid stock options contracts at irrational, unrealistic and unreasonable prices, tantamount to fraud on the securities market in as much as it involves non-genuine/ manipulative transactions in securities and misuse of the securities market. The non-genuine and deceptive transactions of the Noticee are, prima-facie, covered under the definition of 'fraud' and the dealings of the Noticee as discussed herein above were "fraudulent", as defined under regulation 2(1)(c) of the SEBI (PFUTP) Regulations, 2003 and prohibited under the provisions of Regulations 3(a), (b), (c) and (d) and 4(1) and 4(2)(a) SEBI (PFUTP) Regulations, thereof.

**21.** The Noticee has *inter alia* contended BSE had collected/charged even the brokerage, STT and other charges from the Brokers, investors and clients and not questioned the scheme of the BSE inviting the public/investors to trade in illiquid stocks. I note that by paying taxes and brokerage to the market intermediaries i.e stock exchange, brokers etc. do not validate non genuine trades carried out with a view to generate artificial volume. Further I note that the charges made in the SCN do not depend on the proceedings initiated against other entities or market intermediaries. Since the arguments placed by the Noticee is flawed in itself and thus, his contention is not tenable.

**22.** Noticee has *inter alia* contended that the quantum of his trades was very miniscule to warrant any adverse inference. I note that as regards instant considerations, the absence of market rationality and other attending circumstances, taken together, clearly establish that the impugned trades of the Noticee were non-genuine, irrespective of the quantum of the said trades. I note that the impugned stock option contracts were illiquid, as stated in the SCN. Therefore, the Noticee’s trades, irrespective of the quantum of such trades, contributed entirely to the volume generated in the aforesaid contract. This leads to the contribution of Noticee in the creation of misleading appearance of trading through his impugned trades.

**23.** The Noticee contended that the transactions executed on the platform of exchange approved by SEBI and Noticee have no knowledge of said counterparty. In this regard I note that Noticee has not disputed executing impugned trades, which generated artificial volume as demonstrated by the trade log, that sufficiently proves the charges made in the SCN as regards the violation of PFUTP Regulations, 2003. I note that impugned trades were carried out from the Noticee’s PAN link trading account, therefore the obligation to ensure genuineness of trades primarily lies on the Noticee. Thus, the Noticee’s contentions do not establish any denial of the charges made in the SCN.

**24.** The Noticee has contended that its trades are genuine as the Risk Disclosure Document (RDD) issued by SEBI also envisages the possibility of significant price difference and losses / profits due to lower liquidity and wider spreads. In this regard, I note that RDD is a document issued in the nature of general advisory to investors dealing in derivatives markets considering that derivatives products are complex, risky and high leverage products. Such a document in any way does not encourages dealing in illiquid stock options with a view to create artificial volume. Thus, contention of Noticee in this regard is without merits.

**25.** Noticee contended he was not part of the 59 entities against whom the interim order dated August 20, 2018 was passed, and neither was the part of first 567 entities against whom Adjudication Proceedings were initiated initially. In this regard it is noted that the adjudication proceedings were initiated on the basis of investigation report which is produced after elaborate and extensive investigation process. The said adjudication proceedings is being done in different phases. Just because the violation is not uncovered in the earlier order and adjudication proceedings not initiated earlier under the appropriate provisions of SEBI Act cannot be a ground to vitiate initiation of these proceedings. Therefore, I reject this submission of Noticee.

**26.** Considering the synchronized manner of placing buy and sell orders within seconds of each other, reversing of the trades within a short time with widely varying prices of the two legs of trade in the same contract without any basis for such wide variation, I find that the reversal trades executed by the Noticee were *non-genuine* in nature and created a misleading appearance of trading in respective contracts. I am of the view that by engaging in such trades, the Noticee has violated provisions of Regulation 4(2)(a) of the PFUTP Regulations, which states that dealing in securities will be deemed to be a fraudulent or unfair trade practice if it involves "*indulging in an act which creates false or misleading appearance of trading in the securities market*".

**27.** I once again find it relevant to place reliance on the decision of the Supreme Court in ***Rakhi Trading*** (*supra*) wherein, the Supreme Court while decision upon a case involving execution of reversal trades in index options, observed, "*the traders thus 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*."

**28.** I find that the submission made by the Noticee that it did not have any intention to create artificial volume in the market irrelevant for adjudging the violation in this matter. In this regard, it is pertinent to refer to the decision of the Apex Court in the matter of ***SEBI vs Shri Ram Mutual Fund*** (Appeal Civil 9523-9524 of 2003) dated May 23, 2006, wherein it 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 therefore, the intention of the parties committing such violation becomes immaterial..".* Therefore, I find that the Noticee by engaging in such non-genuine transactions created a misleading impression of trading while dealing in stock options contract in a fraudulent manner and hence the aforesaid act of the Noticee is in clear violation of regulations 3(a), (b), (c), (d), 4(1) and 4(2) (a) of the PFUTP Regulations.

**29.** Noticee has prayed that a lenient view be taken in the present matter. In this regard, Noticee has placed reliance on Hon'ble Supreme Court in the matter of Adjudicating Officer, Securities and Exchange Board of India v. Bhavesh Pabari, AO Order dated 26th February, 2021. Yogi Sungwon (India) Ltd vs SEBI Appeal No. 36 of 2000, order dated May 04 2001, NHAI vs SEBI Appeal No. 232 of 2020, order dated August 27, 2020 and Judgement of Hon'ble Bombay High Court in the matter of Cabot International Capital Corporation. I note that Hon'ble SAT in the matter of Radha Malani vs SEBI (Appeal No. 698 of 2021) vide Order dated November 24, 2021 has upheld the Adjudication Order dated September 06, 2021 wherein the case facts involved one reversal trade in one contract. Thus, I find no merit in the above contention of the Noticee. Further, I note from the facts of the instant case that the Noticee has indulged in multiple reversal trades in a single contract.

**30.** In view of the aforesaid findings, I find that the Noticee, by engaging in such non-genuine transactions, created a misleading impression of trading in respective contracts while dealing in Stock Options contracts in a fraudulent manner I am of the considered view that the aforesaid act of the Noticee is in clear violation of Regulation 3(a), (b), (c), (d), 4(1) and 4(2) (a) of the SEBI (PFUTP) Regulations.

**Issue No. II** **If yes, whether the violation, on the part of the Noticee would attract monetary penalty under Section 15HA of the SEBI Act?**

**&**

**Issue No. III** **If yes, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5 (2) of the Adjudication Rules?**

**31.** Since violation of Regulation 3(a), (b), (c), (d), 4(1) and 4(2) (a) of the SEBI (PFUTP) Regulations by the Noticee is established, I am of the view that the same warrants imposition of monetary penalty upon the Noticee under Section 15HA of the SEBI Act, text of which is produced 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.*"

**32.** While determining the quantum of penalty under Section 15HA of the 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.

**33.** As established in the preceding paragraphs, the trades carried out by the Noticee were non-genuine in nature and created a misleading appearance of trading. As brought out earlier, such trades were carried out by the Noticee in illiquid stock options contracts where there was negligible participation by the public. Investigation has shown amount of profit / loss of the counterparties to the trades as a result of such 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 the 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.

## ORDER

**34.** After taking into consideration all the facts and circumstances of the case, in exercise of powers conferred upon me under Section 15I (2) of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose a penalty of ₹5,00,000/- (Rupees Five Lakhs only) upon the Noticee i.e., Rajeev Rajkumar Agarwal HUF, under Section 15HA of the SEBI Act for violation of Regulation 3(a), (b), (c), (d), 4(1) and 4(2)(a) of the SEBI (PFUTP) Regulations.

**35.** The said penalty imposed on the Noticee, as mentioned above, is commensurate with the violation committed by the Noticee and acts as a deterrent factor for the Noticee and others in protecting the interest of investors.

**36.** The Noticee shall remit / pay the said amount of penalty within 45 days from the date 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**

**37.** The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the Division Chief, Enforcement Department-I, SEBI, in the format as given in table below:

| | |
|---|---|
| Case Name | |
| Name of Payee | |
| Date of payment | |
| Amount Paid | |
| Transaction No | |
| Bank Details in which payment is made | |
| Payment is made for | Penalty |

**38.** Copies of this Adjudication Order are being sent to the Noticee and to SEBI in terms of Rule 6 of the SEBI Adjudication Rules.

**Date: April 26, 2022**
**Place: Mumbai**

**PRASANTA MAHAPATRA**
**ADJUDICATING OFFICER**