BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

ADJUDICATION ORDER NO.: Order/DM/SJ/2021-22/15007

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:

Kala Patodia

PAN: ADXPG0497M

In the matter of dealings in Illiquid Stock Options at BSE

A. FACTS OF THE CASE

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

2. It was observed during the course of investigation that a total of 2,91,744 trades comprising 81.41% of all the trades executed in the Stock Options Segment at the BSE during the investigation period were trades which involved reversal of buy and sell positions by the clients and counterparties in a contract on the same day. It was observed that Ms. Kala Patodia (hereinafter referred to as "**Noticee**") was one such client whose reversal trades involved squaring off open positions with a significant price difference without any basis for such change in the contract price. The aforesaid reversal trades allegedly resulted into generation of artificial volumes, leading to allegations that the Noticee had violated the provisions of regulations 3(a),(b),(c),(d) and regulations 4(1),4(2)(a)

of the SEBI (Prohibition of Fraudulent and Unfair Trading Practices related to Securities Markets) Regulations, 2003 (hereinafter referred to as "**SEBI PFUTP Regulations**").

APPOINTMENT OF ADJUDICATING OFFICER

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

SHOW CAUSE NOTICE, REPLY AND HEARING

4. A Show Cause Notice bearing reference no. SEBI/HO/IMD/DOF7/DM/SJ/2021/17907/1 dated August 04, 2021 (hereinafter referred to as "SCN") was issued to the Noticee under Rule 4(1) of the Adjudication Rules to show cause as to why an inquiry should not be initiated against the Noticee and why penalty should not be imposed on the Noticee under Section 15HA of the SEBI Act for the aforesaid violations of the provisions of regulations 3(a),(b),(c),(d) and regulations 4(1),4(2)(a) of the SEBI PFUTP Regulations alleged to have been committed by the Noticee.

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

   "….

   (a) The Noticee was one of the entities which indulged in reversal trades which allegedly created false and misleading appearance of trading, generating artificial volumes in the Stock Options Segment of BSE during the investigation period. The Noticee is alleged to have engaged in reversal trades through 02 (two) trades in 01 (one) unique contract, which led to generation of alleged artificial volume of 5,000 units.

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

…."

6. A summary of dealings of Noticee in 01 (one) Stock Options contract in which the said Noticee allegedly executed non-genuine reversal trades during the investigation period, are as under: -

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

S. No.	Contract Name	Avg. Sell Rate (Rs.)	Total Sell Volume (no. of units)	Avg. Buy Rate (Rs.)	Total Buy 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.	GRSM15FEB3650.00CE	330	2500	249	2500	100%	25.64%

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

7. The abovementioned reversal trade and volumes are illustrated through the dealings of Noticee in one contract viz., "GRSM15FEB3650.00CE" during the investigation period, as follows: -

(a) During the investigation period, 2 (two) trades for 5000 units were executed by the Noticee in the said contract on 16/02/2015.

(b) While dealing in the said contract on 16/02/2015, at 15:01:47.29 hrs the Noticee entered into a sell trade with counterparty Mohit Minerals Private Limited for 2500 units at Rs.330 per unit. At 15:01:53.40 hrs the Noticee entered into a buy trade with the same counterparty, for 2500 units at Rs.249.

(c) The Noticee's two trades while dealing in the aforesaid contract during the investigation period allegedly generated artificial volume of 5000 units, which made up 25.64% of total market volume in the said contract during this period.

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

9. The aforesaid SCN was served on the Noticee via Speed Post Acknowledgement Due ("SPAD"). Thereafter, the Noticee, vide letter dated August 17, 2021, acknowledged the receipt of the SCN and submitted the following:

a. *I entered into agreement with a broker, who is a registered member of BSE and was having SEBI Registration No. BSE-F&O – INZO10004836 on the recorded date of carrying out my transaction in the BSE ONLINE PLATFORM as per rules and regulations framed in this respect by the authorities including your good selves.*

b. *On completion of transaction and issue of contract note no.146 dated 16/02/2015 the aforesaid registered broker levied following charges and taxes on the transactions:*

Sl No	*Particulars of transactions chargers levied by the broker*	*Amount Rs.*
A	*STT*	*140.00*
B	*Service Tax*	*17.61*
C	*Transaction Charge*	*4.13*
D	*SEBI Turnover Fees*	*1.45*
E	*Stamp duty*	*145.00*
F	*Total Brokerage*	*144.75*

It is genuinely believed that these levies were duly paid to the respective government authorities within due date of payment and could not have been levied on non-genuine transactions.

c. *It is a prime condition set by BSE that the trade transaction can only be carried out by registered brokers only.*

d. *As per Stock Exchange rules and policies for ONLINE Transaction module developed by BSE No Broker is supposed to know the details of counterparty broker and / or counter party entering into the trading platform on ONLINE basis. These details do not get reflected in ONLINE terminals or are made available to traders. Hence, I deny having any knowledge whatsoever about the counterparty broker or trader.*

e. *At no point of time there was any warning/observation from the exchange/regulator about the contracts which were executed by me.*

f. *Defining an OPTIONS TRADE as illiquid, itself requires a relook. Options trading are permitted by the exchanges across the globe only in highly liquid cash segment stocks. There are multiple thousands of stocks in Cash Segment whereas there are only a few hundred stocks in F & O Segment which are derived from Cash segment. While it is well known fact that stock exchanges permit trading in only some of the highly liquid cash segment scripts, these facilities are provided only in respect of some of the scripts with well planned and meticulously drafted policies. Each F & O script is having a life span of a maximum of one month. On EXPIRY Date every month, the stock exchanges review the script for allowing further trade in a particular script in F & O segment. In that case also a new series is created of the cash script, which is created with sole intention of squiring off the outstanding transactions at the end of each expiry date with consequential reversals by the exchange as per policies. Since there is limitation of cash scripts, with the sole purpose of providing higher liquidity to some scripts, the stock exchange has devised the F & O Module where additional trading in a particular script is permitted for a limited period. On each expiry the outstanding trade is squared off by the exchange. So the claim that reversals are non-genuine, the same does not hold good. The observation that the contracts are illiquid is totally incorrect as the segment itself is for boosting trading only. I hereby submit that the underlying script in which I traded was highly liquid in nature and* *frequently traded in stock market. Thus the allegation that I deliberately traded in only those options that were illiquid in nature is unfair.*

g. *As per rules governing OPTIONS trading the underlying trade has to be compulsorily squared off within the expiry date. The trades which remain outstanding are automatically squared off by the exchange as per determined prices by the exchange. During the intervening period of life cycle of the F & O script, the options holder have options to liquidate his positions at ruling market prices, which is reflected in ONLINE PLATFORM at the time of the trade, which keeps on fluctuating on real time basis. The market prices are driven by market forces comprising of multiple traders live on the ONLINE Platform during the trading hours. Therefore, the allegation that I deliberately squared off the trade requires revisit.*

h. *The trades in question were in the normal course of business and there is nothing amiss in the trades executed by me.*

i. *None of the trades are deceptive in nature or have any impact on the investors or their investment decision.*

j. *It is submitted that BSE and SEBI have themselves allowed and permitted trading in Options for 'far months' with a strike price which are at a large variance to current market price. Such parameters are laid down is clearly indicative of fact that options will always be 'in the money' and 'out of the money' and since regulators have themselves permitted trading in same, no adverse inference can be drawn against it in this regard.*

k. *Stock Exchanges regularly come out with list of illiquid scripts in cash segment. However, no such list is issued by exchanges or regulator for dealing in stock options contracts. Stock options are only derived from highly liquid cash shares. The same are derived by the exchange only. The same are derived for a small period of time. The same are subject to review on monthly EXPIRY DATES as to whether new series in the particular script shall be created or not. In no case the same option is recreated, the new creation is fresh new series only. Accordingly, stock options definition of ILLIQUIDE needs relook. Thus, to fasten the responsibility or allege a single entity that it traded in illiquid option is unwarranted and unfair.*

l. *It is submitted that any kind of alleged fictitious/manipulative trade in cash segment may create distorted impression in minds of investors that price of* *scrip is rising/falling who may invest/divest from said scrip. However, in case of option segment and for every party who makes profit there is a counterparty, who makes a loss. There is no question of outstanding in option segment since at end of settlement cycle on net loss/profit is adjusted. Therefore, allegation of creation of artificial or reversal trade is of no consequence in option segment of exchange.*

m. *I did not act in concert or in collusion with anyone and nor part of any group of connected with anyone for the purpose of influencing price or for any manipulative activity. It is an admitted position that there is no connection whatsoever between it and counterparties to the impugned trades.*

n. *It is submitted, that provisions of Regulations 3 and 4 of PFUTP Regulations 2003 is not attracted in my case, as there is no reasons to believe that the trade was 'to induce another person or his agent to deal in these securities. As I have already explained, there is no material or record, or in the price movement of the impugned options contracts and the underlying securities, that my trades were intended to induce or that the trades had actually induced, any one to trade taking a leaf out of my trades. There must be solid material such as a person alleging that he has been induced by me by my trades or circumstances show the effect of alleged inducement. Similarly, unfair trade practice is also not available on record. None of the parameters are present in my case. It is thus submitted that Regulations 3 and 4 of PFUTP Regulations 2003 have no application in my case. Whatever I have done and the activities regarding this matter which were acted upon were within the ambit of the rules and regulations of the SEBI. So knowingly or unknowingly I did not acted upon which might be treated as committed any offence,*

o. *It is further placed on record that OPTIONS TRADES are subject to expiry every month and the specific option of the script in which I dealt expired on 26th February 2015. Hence the notice is issued about already expired / died / non- existent option and which existed only for ONE MONTH and which was created by the exchange with the intention of providing dealing in the particular options during its life cycle with the precondition set that the outstanding position on the date of expiry shall be squared off compulsorily by* *the exchange. It is submitted that options can never be illiquid, because they are created artificially only to improve liquidity or are liquidity boosters only.*

p. *Further the inordinate delay in issuing notice has caused prejudice to the notice itself as in the meanwhile valuable rights have accrued upon the notice. Thus, the Notice deserves to be withdrawn as issued beyond a reasonable time period.*

q. *Accordingly, it is submitted that the opinion formed on the basis of contents of the notice are biased. In view of the above submissions, it is requested that the enquiry proceedings and the Penalty proceedings u/s 15 HA be dropped on the grounds set out hereinabove.*

r. *The statement made hereinabove, which I think, is the justified reply in response of your letter. In spite of that if any steps are taken against me, in that case I shall suffer irreparable loss and in that event there shall be no option available in my hand but I shall be compelled to take steps by making specific allegations before the appropriate forum for Adjudicating the issue raised by you.*

10. In the interest of natural justice and in terms of the Adjudication Rules, the Noticee was provided with an opportunity of personal hearing in the matter on September 07, 2021 through the online Webex platform. Mr. Mani Shankar Chattopadhyay, Advocate appeared as the Authorised Representative ("AR") on behalf of the Noticee on the stipulated date of hearing. During the course of the hearing, the AR reiterated the submissions made by the Noticee in her reply dated August 17, 2021. Further, the AR submitted that they would rely on the detailed submissions made earlier and would also submit additional details.

11. Subsequent to the hearing, the AR vide his letter/email dated September 21, 2021 submitted the following :

"A. Options are not an illiquid stock

1. *There are only a handful of options stocks which are created / derived out of actual available Cash Segment shares. As against Cash segment shares numbering about 5,000, there are only about 200 stock options*

which are derived from the whole lot of cash segment shares available for physical trading.

2. *Thus it may be noted that there are only handful 4.00% appox. of the stocks which are available for options trading as against huge number of cash segment shares.*
3. *There are set criteria fixed by the exchange by following all the norms of SEBI for creation of Options stocks.*
4. *No broker or investor has any role in creation of these options stocks.*
5. *The derived options shares in F&O Segment has a short span of life of one month at the end of which the derived shares expires a natural death.*
6. *On the date of expiry, the pending transactions are automatically squired off by the exchange itself, with the resultant recovery of difference in the prices from the person as holding pending transactions.*
7. *Hence options stocks cannot be illiquid stocks and accordingly, the option mentioned in the SCN is not illiquid.*

B: The number of trades as reported in the SCN does not match with the data of the stock exchange.

1. *As per BSE bhavcopy 16-02-15, which is available in public domain (copy enclosed), the total volume on the particular day in the particular options derivative was 88 trades valued at Rs. 429.99 Lakhs.*
2. *On detailed analysis of the BSE bhavcopy 16-02-15 (extracts enclosed), it may be noted that the quoted SCN two trades had a gross volume of Rs.14.48 Lakhs only which is 3.37% only of the total trade volume. Further the number of contracts traded are only 2.27% of the total trades in the given option.*
3. *Price of the day 16.02.15 of GRSM52C3650 was Open Rs.138/- Close Rs. 289.50 High Rs. 330/- Low Rs. 138/- Traded prices as per contract was Rs.330/- and Rs.249/- which is between price range of the day.*
4. *All the trades during the day in this particular option was within the above price range of the day, as the above is price range of the option of the day.*
5. *Price variations in multiple trades during the day in the particular option indicate that the option, picked up in the SCN, is being forcefully treated*

as illiquid and the option was very much liquid during all other trades during the day.

6. *The reported figures in the SCN are mere selective picks from the whole lot of trades in the particular Option on the particular date.*
7. *This cannot fit in the criteria of illiquid trade by any imagination.*

C: Trades actually executed by Stock Exchange without divulging counter party details by the exchange to the traders and the brokers.

1. *As per the screen based software controlled trading platform of the stock exchange, the brokers or the investors do not know through the screen based platform about the name of counterparty broker or the counter party investors/ trader.*
2. *At the given point of time multiple brokers were on the screen and my acting broker and the counter party acting broker were not the only persons present on the live running screen based platform of the exchange with their respective bids and which was being assessed by innumerable brokers at the given point of time.*
3. *The trades were executed by the BSE based on the bids submitted by transacting parties as per trading module of the stock exchange, as a standard practice.*
4. *It is mere coincidence that both the transaction took place between the same brokers without knowing each other on the screen at the time of trade and the same was finally executed on the platform of the exchange by the stock exchange and not the brokers.*
5. *At the time of submission of bids for trading given by my broker, there could have and / or might have other bids also pending for the same option pending to be executed by stock exchange.*
6. *The pending bids on the platform could have been carried forward till expiry on 26th February 2015, had it remained pending.*
7. *Therefore counterparty matching is merely a coincidence and such matching was done by the stock exchange and not the brokers / investors.*

D: Brokers are primarily authorised by Stock exchange and / or SEBI and at the first instance represent the registering authorities.

The brokers are appointed only after compliances as required by SEBI/ Stock Exchange. The investor can only trade through such brokers only and in case they manipulate anything or violate any stipulated guidelines, the investors do not have any means to find the fault. Hence the genuineness of the transaction cannot be verified by the investor, in case it contains any violation of Law. Hence the investors should not be panelised for any wrong doings, if any, done by such authorised representatives of the stock exchange and SEBI. The investors only understand the final results of the trade by way of either making the payment to the stock exchange through such brokers or receiving the payments from the stock exchange through such brokers.

The position of stock broker is similar to an LIC authorised agent who lures investors to sell LIC policies, which are issued by LIC only. In case LIC sell illiquid policies, responsibility has to rest with LIC only and not the buyer of such illiquid policies. Similarly the stock brokers are carrying out the transactions which are executed by Stock exchange only for which any wrong doing cannot be the responsibility of investors. If stock exchange is permitting trades in illiquid options, the investors cannot be held responsible.

D: Had there been any variation from the accepted norm of SEBI or the Stock exchange, the trade should not have been confirmed by the exchange and the bids would have expired on the expiry date. The investors pending transactions, if any, would have been settled by the exchange as per norms.

E: The transaction fees and government levies indicate that the transaction was true and was not void.

F: Stock options are created / manufactured by BSE as per rules/ guidelines framed by SEBI and the investor is a consumer who has bought and sold the said stock option as a tradable commodity. Thus the investor is covered under the consumer protection Act with consequential liabilities resting on stock exchange, being a party to the trade.

G: Delayed SCN (Notice) does not meet Time criteria specified under section 5 of The Limitation Act.

H: All transactions traded on a recognised Stock exchange are traded after complying with The Securities Contracts (regulation) Act, 1956.

1. *Stock exchange formed under the government guidelines and rules to trade in securities and the same shall not enter into any trade which is not permissible.*
2. *Sec 18 A of The Securities Contracts (regulation) Act, 1956 states that the contract in derivatives shall be legal and valid if such contract is executed in a recognised stock exchange.*
3. *I entered into trade in the recognised stock exchange and notwithstanding anything contained in any other law for the time being inforce, contracts in derivatives shall be legal and valid if such contracts are -*
   (a) Traded in a recognised stock exchange;
   (b) Settled on the clearing house of the recognised stock exchange, in accordance with the rules and bye-laws of such stock exchange.
4. *Sec 19 of The Securities Contracts (regulation) Act, 1956 states the stock exchange other than recognised stock exchange are prohibited.*
5. *There is no record or evidence on record that SEBI had sought any clarification from the recognised stock exchange i.e. Bombay Stock Exchange regarding the issue of this SCN dated August 04, 2021 to ascertain whether this trade was violating any rules and regulations of the recognised stock exchange.*
6. *While the SCN refers to two trades executed by the noticee, the reasons for ignoring and not considering all the eighty eight trades which were executed in the given option on the given date of 16 February 2015 are not clear and explained.*
7. *Therefore, the manner of ascertaining the illiquid stock in the given SCN, is not justified.*
8. *Again, it is on record that the noticee only submitted the bids through the recognised and registered stock broker on the platform of the recognised stock exchange duly complying with the trading rules and regulations and*

the trades were actually executed only by the recognised stock exchange at the given time, without disclosing the identity of the counter party and /or counter broker who also placed their bids.

Hence, it is submitted that the SCN date August 04, 2021 for adjudication in respect of Kala Patodia be not allowed."

CONSIDERATION OF ISSUES AND FINDINGS

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

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

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

(c) Issue No. III: If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in section 15J of the SEBI Act?

13. Before advancing into the merits of the case, I would like to deal with the issue pertaining to the delay, as alleged by the Noticee, in the issuance of the SCN.

14. 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.

15. 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*".

16. 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.

17. As can be seen from the narration of facts in the foregoing paragraphs, pursuant to appointment of AO vide Order dated July 02, 2021, SCN was issued on August 04, 2021. Thus, the Adjudication Proceeding was initiated after a series of legal and judicial developments. In compliance with principles of natural justice, after receipt of reply, an opportunity of personal hearing was scheduled on September 07, 2021 and upon conclusion of hearing, additional written submissions were received from the noticee on September 21, 2021.

18. Noticee has inter-alia contended that there was an inordinate delay in issuing SCN to the Noticee and therefore SCN to be withdrawn as issued beyond a reasonable period. I note that there is no provision under SEBI Act which prescribes a time limit for taking cognizance of a breach of the provision of SEBI Act and Rules and Regulations made thereunder. Further, as per Section 11C of SEBI Act, SEBI can initiate investigation at any point of time, for any period of alleged violation or any period of alleged transactions. I also note that the investigations relating to the SEBI PFUTP Regulations are complex (considering the volume of transactions, connections and examination of trading of shares, etc.) and time consuming. In this regard, I feel it is pertinent to note that, in the

matter of SEBI Vs. Bhavesh Pabari (2019) SCC Online SC 294, the Hon'ble Supreme Court of India has, inter alia, observed as follows:

"*There are judgments which hold that when the period of limitation is not prescribed, such power must be exercised within a reasonable time. What would be reasonable time, would depend upon the facts and circumstances of the case, nature of the default/statute, prejudice caused, whether the third party rights had been created etc.*"

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

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

22. With respect to the alleged violations in the instant matter, I note that it is pertinent to refer to the relevant provisions of the SEBI PFUTP Regulations, which are reproduced as follows:

SEBI PFUTP Regulations

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;

23. I note that the allegation against the Noticee is that, while dealing in the stock option contracts at BSE during the Investigation Period, the Noticee had

executed reversal trades which were allegedly non-genuine trades and the same had resulted in generation of artificial volume in stock options contracts at BSE. Reversal trades are considered as those trades in which an entity reverses it's 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 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. Artificial volume is considered to be the volume (no. of units) reversed in both legs of said reversal trades while keeping out the volume, if any, which is not reversed.

24. I note from the trade log of the Noticee that the Noticee had traded in 1 unique contract in stock options segment of BSE during the Investigation Period. It is observed that the Noticee had executed 2 non-genuine trades in 1 contract. I further note that the above mentioned trades of the Noticee had resulted in the creation of artificial volume of a total of 5,000 units in the said 1 contract. The summary of the non-genuine trades of the Noticee are as follows:

S. No.	Contract Name	Avg. Sell Rate (Rs.)	Total Sell Volume (no. of units)	Avg. Buy Rate (Rs.)	Total Buy Volume (no. of units)	% of non-genuine trades/ reversal trades of noticee in the contract to noticee's total trades in the contract	% of non-genuine trades/ reversal of noticee in the contract to total trades in the contract	% of Artificial Volume generated by Noticee in the contract to Noticee's Total Volume in the Contract	% of Artificial Volume generated by Noticee in the contract to Total Volume in the Contract
1.	GRSM15FEB3650.00CE	330	2500	249	2500	100%	20%	100%	25.64%

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

25. It is noted that the Noticee had executed non-genuine trades in 1 contract, wherein the percentage of non-genuine trades of the Noticee to the total trades in

the contract was 20%. Further, the artificial volume generated by the Noticee in the contract amounted to a substantial 100% of total volume generated by her in the contract. It is also noted that artificial volume generated by the Noticee contributed 26.54% to the total volume from the market in the said contract. The non-genuine trades executed by the Noticee in the above contract had significant difference between buy and sell rates considering that the trades were reversed on the same day.

26. Upon perusing the trade log, I note that the trades executed by the Noticee in the contract were squared up within a short span of time with the same counterparty. To illustrate, on February 16, 2015, at 15:01:47.299043 hrs., the Noticee placed a sell order for 2500 units at a price of ₹330 per unit and the said order was matched with the buy order (which was also for 2500 units at a price of ₹330 per unit) of counterparty client Mohit Minerals Private Limited. I note that the said buy order was placed at 15:01:47.100879, i.e. before the entry of the sell limit order by the Noticee. The said trade was executed at 15:01:47.299043. I also note that there was no modification of either price or quantity by either the Noticee or the counterparty and the buy limit order of the counterparty got executed into trade immediately upon the entry of the sell limit order by the Noticee. Subsequently, at 15:01:53.299906, the Noticee placed a buy limit order for 2500 units at a price of ₹249 per unit and the said order was matched with the same counterparty (i.e. Mohit Minerals Private Limited), who placed a sell order for the same quantity (i.e. 2500 units) and price (i.e. ₹249). I note that the said sell limit order was placed by the counterparty at 15:01:53.400911, i.e. after the entry of the buy order by the Noticee. The said trade was executed at 15:01:53.400911. I also note that there was no modification of either price or quantity by either the Noticee or the counterparty and the buy limit order of the Noticee got executed into trade immediately upon the entry of the sell limit order by the counterparty.

27. The non-genuineness of these transactions executed by the Noticee is evident from the fact that there was no commercial basis as to why, within a short span of time (viz. approx. 6 seconds), the Noticee reversed the position with the same counterparty client with a significant price difference. Such a short span of time taken for reversing the trades in an illiquid stock option contract suggests the

non-genuineness of these trades executed by the Noticee. The fact that the orders of the Noticee and her counterparty matched with such precision (considering that there was a perfect match of price and quantity as well as a short time difference between placing of the orders by the Noticee and counterparty) indicates a prior meeting of minds with a view to execute the reversal trades at a predetermined price. Since these trades were done in illiquid option contracts, there was very little trading in the said contract and hence, there was no price discovery in the strictest terms. The wide variation in prices of the said contracts, within a short span of time, is a clear indication that there was pre-determination in the prices by the counterparties while executing the trades. Therefore, it is observed that the Noticee had indulged in reversal trades with her counterparty in the stock options segment of BSE and the same were non-genuine trades.

28. The Noticee has inter alia contended that Options are not an *illiquid stock that* the SCN refers to two trades executed by the notice, the reasons for ignoring and not considering all other trades which were executed in the given option on the given date are not clear and not explained. The Noticee has contended that the number of trades as reported in the SCN does not match with the data of the stock exchange. Therefore, the manner of ascertaining the illiquid stock in the given SCN, is not justified. From BSE trade log I note that only 10 trades were executed in the said contract, i.e. GRSM15FEB3650.00CE during the investigation period on 2 dates i.e. February 16, 2015 (6 trades) and February 18, 2015 (4 trades). The Noticee traded on February 16, 2015 when only 6 trades were executed in the said contract. I note that the counterparty of the Noticee had executed each of the said 6 trades as party or counterparty in the impugned contract during the investigation period. Out of the said 6 trades the Noticee executed two trades that amounted to 25.64% of the total volumes traded in the said contract during the investigation period. The aforesaid facts further establish that the trades are non-genuine. However, I note that the allegation in the instant matter is not regarding the total trades executed during the investigation period or whether the Noticee has traded in an illiquid contract or not. The allegation is whether the trades executed by the Noticee in the concerned illiquid contract

were non-genuine or not, thus leading to generation of artificial volumes. Therefore, I dismiss the contention of Noticee in this regard.

29. The Noticee has inter alia also contended that all transactions have been carried out on the platform provided by BSE through registered member of BSE and have been settled through the clearing corporation. The Noticee was also subjected to various charges and taxes on the transactions inter alia including Exchange Turnover Charges, Service Tax, STT, SEBI Turnover Fee, Stamp Duty etc. All these transactions have been perfectly recorded in the regular books of accounts, records and Income Tax Returns. The Noticee has also contended about the awareness of SEBI regarding the possibility of trades being executed at substantial price difference. The noticee has also contended that there is no material or record, or in the price movement of the impugned options contracts and the underlying securities that her trades were intended to induce or that the trades had actually induced, any one to trade taking a leaf out of her trades. In view of the submissions mentioned above, it is requested that proceedings u/s 15 HA be dropped.

30. I note that the trading happened through the trading platform of BSE. However, considering the precision at which the reversal transactions had taken place within short time-span as noted above, the matching of price (with substantial variation), time and quantity, I am of the view that just because these transactions were executed through exchange trading platform they are not genuine trades. Such conclusion would be over-looking the prior meeting of minds involving synchronization of buy and sell order w.r.t. the transactions entered into by the Noticee with its counterparty and such reversal trading is clearly violative of the transparent norms of trading in the securities market. In view of the above observations, I hold that the said transactions executed by the Noticee in the said Stock Option contract were non-genuine trades, in which positions were reversed within short span of time with prior meeting of mind between the parties to the trade.

31. I note that it is not a mere coincidence that Noticee could match her trades (with the corresponding price and quantity entered by both the Noticee and

counterparty being equal) with the same counterparty with whom she 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*..."

32. The Hon'ble Supreme Court of India further held in the same matter that "…*It is a fundamental principle of law that proof of an allegation levelled against a person may be in the form of direct substantive evidence or, as in many cases, such proof may have to be inferred by a logical process of reasoning from the totality of the attending facts and circumstances surrounding the allegations/charges made and levelled. While direct evidence is a more certain basis to come to a conclusion, yet, in the absence thereof the Courts cannot be helpless. 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.*"

33. 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 find it pertinent to refer to the Hon'ble SAT Order dated July 14, 2006 in the matter of Ketan Parekh Vs SEBI (Appeal No. 2 of 2004), wherein the Hon'ble SAT has held that "…*The nature of transactions executed, the frequency with which such transactions are undertaken, the value of the transactions, the conditions then prevailing in the market are some of the factors which go to show the intention of the parties. This list of factors, in the very nature*

of things, cannot be exhaustive. Any one factor may or may not be decisive and it is from the cumulative effect of these that an inference will have to be drawn."

34. In the matter of SEBI Vs Rakhi Trading Pvt Ltd (Civil Appeal no, 1969 of 2011, 3174-3177 of 2011 and 3180 of 2011, decided on February 08, 2018), the Hon'ble Supreme Court of India held that "…*Considering the reversal transactions, quantity, price and time and sale, parties being persistent in number of such trade transactions with huge price variations, it will be too naive to hold that the transactions are through screen-based trading and hence anonymous. Such conclusion would be over-looking the prior meeting of minds involving synchronization of buy and sell order and not negotiated deals as per the board's circular. The impugned transactions are manipulative/deceptive device to create a desired loss and/or profit. Such synchronized trading is violative of transparent norms of trading in securities* "

35. Additionally, the Hon'ble SAT in its judgment dated September 14, 2020 in the matter of Global Earth Properties and Developers Pvt Ltd Vs. SEBI (Appeal No. 212 of 2020) relied upon the aforesaid judgment of the Hon'ble Supreme Court and held that "…*It is not a mere coincidence that the Appellants could match the trades with the counter party with whom he had undertaken the first leg of respective trade. In our opinion, the trades were non-genuine trades and even though direct evidence is not available in the instant case but in the peculiar facts and circumstances of the present case there is an irresistible inference that can be drawn that there was meeting of minds between the Appellants and the counter parties, and collusion with a view to trade at a predetermined price."*

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

physical delivery of the asset. However, even in the derivative segment there is a change of rights in a contract. In the instant case, through reverse trades, there was no genuine change of rights in the contract... From the facts before us, it is clear that the traders in question did not intend to transfer beneficial ownership and therefore these trades are non-genuine."

37. In the aforesaid judgement in the matter of SEBI vs. Rakhi Trading Pvt Ltd (supra), the Hon'ble Supreme Court also held that: *"The stock market is not a platform for any fraudulent or unfair trade practice. The field is open to all the investors. By synchronization and rapid reverse trade, as has been carried out by the traders in the instant case, the price discovery system itself is affected. Except the parties who have pre-fixed the price nobody is in the position to participate in the trade. It also has an adverse impact on the fairness, integrity and transparency of the stock market.*

38. Further, in the aforesaid judgement in the matter of SEBI vs. Rakhi Trading Pvt Ltd (supra), the Hon'ble Supreme Court also held that:, *"Respondent – Rakhi Trading and Kasam Holding on facts are found to have been engaged in non-genuine transactions creating appearance of trading. If the factum of manipulation is established, it will necessarily follow that the investors in the market have been induced to buy or sell and that no further proof in this regard is required. The market, as already observed, is so widespread that it may not be humanly possible for the Board to track the persons who were actually induced to buy or sell securities as a result of manipulation and the Board cannot be imposed with a burden which is impossible to be discharged."*

39. The observations made in the aforesaid judgments apply to the facts and circumstances of the present case. 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, quantity and price and also the fact that the transactions were reversed within few seconds clearly indicates a prior meeting of mind with a view to execute the reversal trade at a pre-determined price. Such trading also involves an act amounting to manipulation of the price of the security in the sense that the price

has been artificially and apparently prefixed. It is also a transaction without any intention of performing it and without any intention of effecting a change of ownership of such securities, ownership being understood in the limited sense of the rights in the contract. By reversal trades, as has been carried out by the Noticee in the instant case, the price discovery system has been affected. Except the parties who have pre-fixed the price, nobody is in the position to participate in the trade. Therefore, it has an adverse impact on the fairness, integrity and transparency of the stock market. In view of the same, I find no merit in such contentions of the Noticee.

40. The trading behavior of the Noticee which confirms that the trades executed by the Noticee were not normal, the wide variation in prices of the trades in the same contract 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 aforesaid, I find that the allegation of violation of regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of SEBI PFUTP Regulations by the Noticee stands established.

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

41. Pursuant to detailed analysis as brought out above, it is established that reversal trades are not normal transactions and it clearly demonstrates beyond reasonable doubt that the Noticee had intentionally executed these trades and manipulated the volume by fraudulently trading in the contract GRSM15FEB 3650.00CE.

42. While dealing with the present issue, I would like to be guided by the Judgement of The Hon'ble Supreme Court of India in the matter of SEBI Vs Shri Ram Mutual Fund [2006] 68 SCL 216(SC) which held that "…*In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established*

and hence the intention of the parties committing such violation becomes wholly irrelevant.."

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

Penalty for fraudulent and unfair trade practices

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

Issue No. III: If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in section 15J of the SEBI Act?

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

Factors to be taken into account while adjudging quantum of penalty

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

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

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

(c) the repetitive nature of the default.

Explanation.—For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections

15A to 15E,clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.

45. From the above observations, it is clear that the Noticee was instrumental in the creation of artificial volume in the illiquid stock option during the investigation period by executing reversal / non-genuine transactions in the illiquid stock options at BSE. It is not possible from the material available on record to quantify the amount of loss caused to genuine investors as a result of reversal trades/non-genuine trades executed by the Noticee with her counterparties. However, Noticee has entered into 2 non-genuine trades in 1 stock option contract during the investigation period.

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

ORDER

47. After taking into consideration all the facts and circumstances of the case, the material / documents made available on record including the submissions of the Noticee, the factors mentioned in section 15J of the SEBI Act and in exercise of the power conferred upon me under section 15-I of the SEBI Act read with rule 5 of the Adjudication Rules, I hereby impose a penalty of ₹5,00,000/- (Rupees Five Lakh only) on the Noticee, viz. Ms. Kala Patodia (PAN: ADXPG0497M), under section 15HA of the SEBI Act, 1992 for violation of provisions of regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of the SEBI (Prohibition of Fraudulent and Unfair Trading Practices related to Securities Markets) Regulations, 2003. I am of the view that the said penalty is commensurate with the lapse / omission committed by the Noticee.
48. The aforesaid Noticee shall remit / pay the said amount of penalty within 45 days of the receipt of this order either by way of Demand Draft (DD) in favour of "SEBI -

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

1.	Case Name	
2.	Name of the 'Payer / Noticee' along with PAN of Noticee	
3.	Date of Payment	
4.	Amount Paid	
5.	Transaction No.	
6.	Bank Name and Account No.	
7.	Purpose of payment	

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

ENFORCEMENT>Orders>Orders of AO> PAY NOW

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

51. In terms of the provisions of Rule 6 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995, a copy of this order is being sent to the Noticee namely Ms. Kala Patodia and to the Securities and Exchange Board of India, Mumbai.

DATE: February 17, 2022
PLACE: MUMBAI

DIPANJAN MITRA
ADJUDICATING OFFICER