BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

ADJUDICATION ORDER NO. Order/VV/AK/2021-22/14384

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:
Shivam Chowdhary HUF
PAN: AAYHS7413K

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

BACKGROUND OF THE CASE

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

2. The investigation revealed that during the Investigation Period, a total of 2,91,643 trades comprising 81.40% 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 **Shivam Chowdhary HUF** (hereinafter referred to as the "**Noticee**") was one such entity whose reversal trades involved squaring off open positions with a significant price difference without any basis for such change in the contract price. Such trades were observed to be non-genuine in nature creating false or misleading appearance of trading in terms of artificial volumes in stock

options and therefore were alleged to be manipulative and deceptive in nature. In view of the same, SEBI initiated adjudication proceedings against the Noticee for violation of the provisions of regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003 (hereinafter referred to as the "**PFUTP Regulations**").

APPOINTMENT OF ADJUDICATING OFFICER

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

SHOW CAUSE NOTICE, REPLY AND HEARING

4. The Show Cause Notice (Hereinafter referred as "***SCN"***) bearing no. SEBI/HO/EAD9/EAD/VKV/AK/28295/2021 dated October 12, 2021 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 not be 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 along with the SCN relevant trade logs and summary of the concerned transactions were provided as annexures to the Noticee.

5. The allegations levelled against the Noticee in the SCN are summarized below as follows:
    i. The Noticee was one of the entities which had 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.

ii. The Noticee traded in 7 stock option contract in which he executed total 14 non genuine trades which resulted in artificial volume of total 5,44,000 units. Summary of dealings of the Noticee in a Stock Option contract, in which the Noticee allegedly executed non genuine trades during the I.P., is as follows:

S. No.	Contract Name	Avg. Buy Rate (Rs)	Total Buy Volume (No. of units)	Avg. Sell Rate (Rs)	Total Sell Volume (No. of units)	No. of alleged non genuine trades of Noticee in the Contract	Alleged Artificial volume generated by Noticee in the Contract (No. of Units)	% of Non Genuine trades of Noticee in the contract to Noticee's Total trades in the Contract	% of Non Genuine trades of Noticee in the contract to Total trades in the Contract	% of Artificial Volume generated by Noticee in the contract to Noticee's Total Volume in the Contract	% of Artificial Volume generated by Noticee in the contract to Total Volume in the Contract
1	ADPW15MAY36.00CEW3	3.5	44000	6	44000	2	88000	100	11.11	100	5
2	ARVI15MAY230.00CEW3	12	16000	24	16000	2	32000	100	25	100	16.67
3	IOBL15JUN44.00CEW1	0.1	40000	0.8	40000	2	80000	100	33.33	100	8
4	JAIA15JUN14.00CEW1	2.6	32000	4.5	32000	2	64000	100	20	100	4.44
5	LNTF15JUN60.00PEW1	0.1	40000	1.2	40000	2	80000	100	25	100	5.26
6	NHPC15JUN14.00CEW1	4	20000	5.8	20000	2	40000	100	14.29	100	2.13
7	TATP15MAY70.00PEW3	0.5	80000	1.3	80000	2	160000	100	14.29	100	6.85

iii. From the above table, following is noted as regard to dealings of the Noticee:

a) Substantial 100% trades executed by the Noticee in above contracts were non genuine trades.
b) No. of non-genuine trades of the Noticee was significantly high i.e. 100% of total trades executed by the Noticee in the above contracts. Moreover, the said non genuine trade executed by the Noticee contributed 11.11% to 33.33% of the total trades that have taken place in the above contracts.
c) Substantial 100% of the volume generated by the Noticee in each of the above contracts, was artificial volume. Further, said artificial volume generated by Noticee also contributed 2.13% to 16.67% of the total volume from the market in above contracts.
d) Alleged non genuine trades executed by the Noticee had significant differential in sell rates and buy rates considering that the trades were reversed on same day.

iv. 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 PFUTP Regulations.

v. The aforesaid alleged violations, if established, make the Noticee liable for monetary penalty under section 15HA of the SEBI Act.

6. In response to the SCN, dated October 12, 2021, the Noticee had filed its reply by email received on October 26, 2021. Accordingly, in the interest of principles of natural justice and considering the cause as mentioned in the present matter before me, an opportunity of hearing, vide hearing notice dated November 12, 2021, was granted to the Noticee on November 23, 2021 in terms of Rule 4(3) of the Adjudicating Rules.

7. The hearing was concluded on November 23, 2021. In view of the prevailing circumstances owing to COVID-19, the hearing was scheduled through video

conferencing on WebEx platform. On the scheduled date of hearing, the authorized representative of the Noticee, Advocate Sneh Trivedi, appeared before me through video conference and made submissions on the lines of the reply dated October 26, 2021 of the Noticee in this matter.

8. The key replies/submissions of the Noticee are summarized as follows:
   i. The Noticee submitted that the exercise of issuance of the SCN against us after more than 6 years is totally unreasonable, and therefore, proceedings should be set aside. In this regard reference has been drawn to the Hon'ble Securities and Appellant Tribunal (SAT) Ashok Shivlal Rupani v SEBI (SAT Appeal No. 417 of 2018 decided on August 22, 2019), Rakesh Kathotia(Appeal No 07/2016, dated May 27, 2019), Government of India v Citedal Fine Pharmaceuticals, Madras [AIR (1989) SC 1771].

   ii. The Noticee has not been provided with investigation report, when and on what grounds Board has formed an opinion under Rule 3 of Adjudication Rules, what action taken by the SEBI against BSE for such reversal trading along with all the referred and relied upon documents in the matter.

   iii. Allegation of trading 14 non-genuine trades in 7 unique contracts is denied and disputed. Further, it is also denied that the Noticee reserved the transaction with the same counter party on the same day but at a substantive price difference. No evidence has been placed on record to show that the action of our client was in any way fraudulent.

   iv. The observations regarding the stocks being illiquid is incorrect. Even assuming the stocks were illiquid, then any small quantity or volumes would look significant as there are no active traders in the stock. Further, for the transaction to be termed fraudulent, as per the definition of "fraud", there has to be an "inducement" and SEBI has not even alleged inducement. Further, there is no nexus, directly or indirectly with the counter party brokers or the clients in the present matter and SEBI has not even alleged this. None of the trades are deceptive in nature or have any impact on the investors or their investment decision which is a sine qua non of *“fraud”*.

v. The Noticee traded in the stock market in ordinary course consequent to its *bona fide* trading in option segment and it did not cause any loss to the investor. Further, the Noticee had not either directly or indirectly used or employed purchase or sale of security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or in contravention of the provisions of the Act or rules or regulations.

vi. There was no major movement in price of underlying scrip which itself proves that its trades had no impact on market. Thus, its transactions neither distorted the equilibrium in market nor caused any loss or prejudice to investors at large.

vii. The Noticee had not either directly or indirectly engaged 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 securitites which are listed or proposed to be listed on a recognized stock exchange in contravention of the provision of the Act or the rules and regulations.

viii. The Noticee transactions were carried out on the floor of stock exchange through the registered share brokers only. Undisputedly, in case of screen- based trading, the automated system itself matches orders on a price-time priority basis and hence it is not in the control of the investor. Assuming but not admitting that a violation has been committed that same is committed by registered broker and not by our client.

ix. All the trades were executed on the anonymous platform of the exchange, without any knowledge of counterparty, at a price ranges that were permitted by exchange and SEBI and the obligation arising out of it have been settled through the clearing mechanism of the exchange.

x. It is not possible for anybody to have access over identity of counter party in view of robust electronic trading software. Since counter party identity is not displayed; one can never have any choice with whom it wants to deal or not to deal.

xi. The Noticee did not act in concert or in collusion with anyone and nor were it part of any group or connected with anyone for the purpose of influencing price or for any manipulative activity as alleged or otherwise. There is no connection whatsoever between the Noticee and counter parties to the impugned trades. Further, the Noticee has not been provided with any evidence or proof to show that its trades were fraudulent. For this purpose reliance has been placed on Jagruti Securities (2008 SCC online SAT 184), Sanjay Agrawal vs. SEBI (Appeal No. 213 of 2011, dated May 18, 2012), S.P.J Stockbroker Pvt Ltd (2013 SCC Online SAT 67).

xii. Connection has to established only against that counterparty against that counterparty who has received SCN. For this purpose Noticee has placed reliance on Kaushik Rajnikant Mehta v SEBI. Noticee also submitted that according to the general information SCN has not been issued to one of the counterparties i.e. Pearltree Properties Pvt Ltd which shows that there is no need to prove connection with this counterparty. Further, Megha Associate Pvt Ltd against whom adjudication has already been completed vide adjudication order no. EAD-6/PM-AB/72/2018-19 and in the order it is nowhere established that the counterparty has any relation whatsoever with our client.

xiii. Noticee submitted that rule of preponderance of probability cannot be exercised in absence of connection with counterparty. Therfore, Noticee is innocent and should not be punished until proven guilty. For this purpose, reliance has been placed on M/s Nishith M Shah v SEBI (SAT Appeal No 97/2019, decided on January 16, 2020).

xiv. Synchronisation of trade is ispo facto not illegal even under SEBI Act and SEBI regulation. For this purpose purpose reliance has been placed on SEBI Circular No. SMDRP/POLICY/CIR-32/99 dated September 14, 1999 and Hon'ble SAT decision in the matter of S.P.J Stockbroker Pvt Ltd (2013 SCC Online SAT 67).

xv. The Noticee submitted that while determining penalty under 15HA of SEBI Act, the provision of sec 15J of SEBI act shall be required to take into account. A bare perusal of SEBI Act indicates that it is not mandatory for the Adjudicating Officer to impose a penalty every time he comes to conclusion that any person failed to comply with specified requirement under the act. Even though section 15A of SEBI Act mention words "shall liable to a penalty" there is no strict or mandatory obligation on the part of defaulter to suffer such penalty. For this purpose Noticee placed reliance on the Hon'ble Supreme Court judgment "*Superintended and Remembrancer Legal Affair to Government of West Bengal v Abani Maity" [MANU/SC/0524/1979]*

xvi. The Noticee submitted that to make any one liable for any commission or omission to visit adverse consequence, there should be adequate justification and, in the absence, thereof any punishment meted to him will be unsustainable and unjust. Therefore, we submit that such allegations supported by no proof are in gross violation of the principles of natural justice and absolutely uncalled for. In this regard, to substantiate the argument, Noticee relied on judgement of hon'ble Supreme Court in the matter of *Nandakishore Prasad Vs. State of Bihar [(1978) 3 SCC 366]*. Further, reference is drawn to the judgment of Hon'ble Supreme Court in the matter of *Union of India v. H. C. Goel [AIR 1964 SC 364]* which held that: "the principle that in punishing the guilty scrupulous care must be taken to see that the innocent is not punished, applies as much as regular criminal trials as to disciplinary inquiries held under the statutory rules.”

xvii. Further in the observation of Hon’ble SAT in the case of KSL & Industries Ltd v. SEBI (sat Appeal no. 9/2003, decided on 30.09.2009) it was held that charge manipulation should be based on convincing evidence and not merely on suspicion.

xviii. It is also pertinent to note that the said SCN does not set out the exact penalty that is proposed to be imposed on our client for the alleged violations mentioned therein. Noticce draws attention to the judgment of the Hon’ble Supreme Court in the case of *Gorkha Security Services vs. Government (NCT of Dethi) and others [2014 (9) SCC 105]* .

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

9. The issues that arise for consideration in the instant matter are:
   i. 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), 4(1) and 4(2)(a) of the PFUTP Regulations?
   ii. 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?
   iii. Issue No. III: If the answer to Issue No. II is in affirmative, what would be the monetary penalty that can be imposed upon the Noticee?

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) , 4(1) and 4(2)(a) of the PFUTP Regulations?

10. Before moving forward, it is pertinent to refer to the relevant provision of the PFUTP Regulations which are alleged to have been violated. The said provisions are reproduced hereunder

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 *******[manipulative], fraudulent or an unfair trade practice in securities* *******[markets].*

********[Explanation.– For the removal of doubts, it is clarified that any act of diversion, misutilisation or siphoning off of assets or earnings of a company whose securities are listed or any concealment of such act or any device, scheme or artifice to manipulate the books of accounts or financial statement of such a company that would directly or indirectly manipulate the price of securities of that company shall be and shall always be deemed to have been considered as manipulative, fraudulent and an unfair trade practice in the securities market.]*

(2) Dealing in securities shall be deemed to be a ********[manipulative] fraudulent or an unfair trade practice if it involves* *********[any of the following]:*

a) **[knowingly] indulging in an act which creates false or misleading appearance of trading in the securities market;*

***** *Inserted vide Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) (Amendment) Regulations, 2018 w.e.f. February 01, 2019*

****** *Inserted vide Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) (Second Amendment) Regulations, 2020 w.e.f. October 19, 2020.*

******* *Substituted vide Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) (Amendment) Regulations, 2018 w.e.f. February 01, 2019. Before the substitution the words read as "fraud and may include all or any of the following, namely"*

11. The Noticee contended that there is inordinate delay in the initiation of proceeding. I note that there is no 'unexplained delay' that would vitiate the entire proceedings per se. Notwithstanding the same, I also note that there is no provision in the SEBI Act, 1992, which may have the effect of prohibiting SEBI from taking action beyond a particular period of time in a given case. Therefore, I am unable to accept the submissions made regarding delays in the instant proceedings. Moreover, in this regard reference can be made to SAT order in *Ravi Mohan & Ors. vs. SEBI* (Appeal No. 97 of 2014 decided on December 16, 2015)

> *22. Based on decision of this Tribunal in case of HB Stockholdings Ltd. vs. SEBI (Appeal no. 114 of 2012 decided on 27.08.2013) it is contended on behalf of the appellants that in view of the delay of more than 8 years in issuing the show cause notice, the impugned order is liable to be quashed and set aside. There is no merit in this contention, because, this Tribunal while*

setting aside the decision of SEBI on merits has clearly held in para 20 of the order, that delay itself may not be fatal in each and every case. Moreover, the Apex Court in case of Collector of Central Excise, New Delhi vs. Bhagsons Paint Industry (India) reported in 2003 (158) ELT 129 (S.C) has held that if there no statutory bar for adjudicating the matter beyond a particular date, the Tribunal cannot set aside the adjudication order merely on the ground that the adjudication order is passed after a lapse of several years from the date of issuing notice……

12. I further note that given the circumstances of the case, no prejudice is caused to the Noticee merely on account of delay in proceedings. In the absence of any prescribed period of limitation period, it would not be appropriate to dismiss violation of law merely because of delay in proceedings.

13. The Noticee has contended that SEBI has not provided it with investigation report and other copy of relevant documents as requested by the Noticee. Here, I note that Hon'ble Supreme Court in **Natwar Singh vs. Director of Enforcement (2010) 13 SCC 255** held that even the principles of natural justice do not require supply of documents upon which no reliance has been placed by the authority to set the law in motion and further held that the concept of fairness is not a one way street and that the principles of natural justice are not intended to operate as a roadblock to obstruct statutory inquiries. The Supreme Court held that the principles of natural justice do not supplant the law of land but supplements it and, therefore, duty of adequate disclosure was only an additional procedural safeguard in order to ensure attainment of fairness which has its own limitations. In this regard, the Supreme Court held:

"31. The concept of fairness may require the adjudicating authority to furnish copies of those documents upon which reliance has been placed by him to issue show-cause notice requiring the noticee to explain as to why an inquiry under Section 16 of the Act should not be initiated. To this extent, the principles of natural justice and concept of fairness are required to be read

into Rule 4(1) of the Rules. Fair procedure and the principles of natural justice are in-built into the Rules. A notice is always entitled to satisfy the adjudicating authority that those very documents upon which reliance has been placed do not make out even a prima facie case requiring any further inquiry. In such view of the matter, we hold that all such documents relied on by the authority are required to be furnished to the notice enabling him to show a proper cause as to why an inquiry should not be held against him though the Rules do not provide for the same. Such a fair reading of the provision would not amount to supplanting the procedure laid down and would in no manner frustrate the apparent purpose of the statute."

14. The aforesaid principles was considered by SAT in **Shruti Vora in appeal lodging no.28 of 2020 decided on 12th February, 2020** wherein SAT after analyzing the (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 Rules of 1995 held as under:

"16. However, we find that Rule 4 of the Rules does not provide any specific provision requiring the AO to supply copies of any documents along with the show cause notice nor requires the AO to furnish any list of documents upon which reliance has been placed by it. However, the principles of natural justice and doctrine of fair play requires the AO to supply the documents upon which reliance has been placed at the stage of show cause notice. In Natwar Singh vs Director of Enforcement and Another (2010) 13 SCC 255 the Supreme Court held that the fundamental principle remains that nothing should be used against the person which has not been brought to his notice. If relevant material is not disclosed to a party, there is prima-facie unfairness irrespective of whether the material in question arose before, during or after the hearing. The Supreme Court further held that the law is fairly well settled, namely that if prejudicial allegations are to be made against a person, he must be given particulars of that before hearing so that he could prepare his defence."

15. Aforesaid court further held:

> *"18. In the light of the aforesaid, we are of the opinion that concept of fairness and principles of natural justice are in-built in Rule 4 of the Rules of 1995 and that the AO is required to supply the documents relied upon while serving the show cause notice. This is essential for the person to file an efficacious reply in his defence.*

16. In the light of the aforesaid decisions, I am of the view that all the relied upon copies of the documents in the matter were provided to the Noticee along with the SCN.

17. From the reply of the Noticee, I note that the Noticee has not disputed the execution and subsequent reversal of trades as alleged in the SCN. Though, Noticee contended that all the trades were genuine in nature and in the ordinary course of business. I note that with regard to the merit of allegation it is worth mentioning that reversal trades are considered non-genuine if they involve an entity reversing its buy or sell positions in a contract with subsequent sell or buy positions with the same counterparty during the same day. In this regard, artificial volume is considered as the volume (no. of units) reversed in non-genuine trades, comprising both original volume and reversed volume while keeping out the volume which is not reversed. Admittedly, the Noticee had indulged in 14 such reversal trades in 7 unique contract during the Investigation Period involving reversal of trades with same entities with whom it had done buy/sell transaction, in short span of time, respectively, in a synchronized manner. It is noted from the trade log relied upon in the matter that the Noticee and counterparties both had placed their respective sell-buy and buy–sell orders in same time i.e. within approximately 3 -17-minutes time gap.

18. Further, non genuine trades and artificial volume are illustrated through the dealings of the Noticee in the contract *viz*, "ADPW15MAY36.00CEW3" during the I.P., mentioned as follows:

a) 2 trades for 88,000 units were executed in the said contract wherein the Noticee was party to both the trades.

b) While dealing in the said contract on 18/05/2015, the Noticee entered into a buy trade with counter party *viz,* Pearltree Properties Private Limited for 44,000 units at rate of Rs 3.5 per unit which executed at 14:46:09 hrs. Thereafter, on the same day, Noticee entered into a sell trade with same counterparty for 44,000 units at the rate of Rs 6 per unit at 14:59:54 hrs. Details of the same given as below:-

Date	**Client Name (buying)**	**Client Name (selling)**	**Trade quantity**	**Trade Time**	**Trade Rate(Rs)**
18/05/2015	Shivam Chowdhary Huf	Pearltree Properties Private Limited	44000	14:46:09	3.5
18/05/2015	Pearltree Properties Private Limited	Shivam Chowdhary Huf	44000	14:59:54	6

c) From the above, it is noted that while dealing in the said contract during the I.P., Noticee executed total 2 reversal trade (1 buy trade + 1 sell trade) with same counterparty *viz,* Pearltree Properties Private Limited within fifteen minutes of the same day.

d) Thus, Noticee, through dealing in the contract *viz,* "ADPW15MAY36.00CEW3" during the I.P., executed 2 non genuine trades which is 11.11% of the total trades from the market in the said contract during the I.P., and thereby, the Noticee generated artificial volume of 88,000 units which is 5% of the volume traded in the said contract from the market during the I.P.

19. As regard to all the dealings of the Noticee in the Stock Options segment of BSE during the I.P., it is noted that the Noticee has allegedly executed 14 non genuine trades in 7 Stock Options contracts which resulted in artificial volume of total 5,44,000 units.

20. The Noticee submitted that the trades were carried out by the brokers without the instruction of the Noticee. In this regard, I note that while no evidence is placed in front of me in support of her contention that the trades were carried out by the broker without her consent, even if the same is considered, the aforesaid submission no way justifies or regularises the reversal of trades of the nature which have been executed by the Noticee in the instant case. As noted above, the Noticee, while trading in the illiquid stock options has instantaneously reversed her buy trade wherein the price, volume and time has matched with her counterparty in both the legs separated by mere gap of 3-27 minutes. The scheme, plan, device and artifice employed by the Noticee in this case of executing reversal trades in illiquid stock options contracts tantamount to fraud on the securities market in as much as it involves nongenuine/ manipulative transactions in securities and misuse of the securities market.

21. The Noticee has contended that the observations regarding the stocks being illiquid is incorrect. Assuming the stocks were illiquid, then any trade and transaction would look significant. In this regard, I note that the impugned reversal trades were carried out by the Noticee in an illiquid Stock Options Contracts where there was no participation of public. Reversal trades were undertaken by the Noticee with its counterparty with a predetermined arrangement to book profit or losses respectively, and, therefore, the parties to the trades were not trading in the normal sense and ordinary course of business. Such transactions in illiquid Stock Options cannot be taken as genuine one. Such trading was apparently without any economic rationale. Thus, the Noticee claim of a bona fide or genuine trader without having any specific role in creating artificial volume through alleged trades is not acceptable.

22. The Noticee has contended that it had traded in stock options on anonymous and electronic trading platform of stock exchange, which is provided by stock exchange, and its orders were matched in normal course. It did not act in concert or in collusion with anyone and nor were part of any group or connected with anyone for the purpose of influencing price or for any

manipulative activity as alleged or otherwise. In this regard, I am of the view that the transactions in a particular contract were reversed with the same counterparties indicates a prior meeting of mind with a view to execute the reversal trades at a pre-determined price. Since these trades were done in illiquid option contracts, there was no trading in the said contract and hence, there was no price discovery in the strictest terms. 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. Thus, it is observed that Noticee had indulged in reversal trades with it counter parties in the stock options segment of BSE and the same were non-genuine trades. Therefore, the Noticee's contentions are bereft of merits and hence rejected.

23. Further, with regard to the reversal trades carried out by the Noticee, I note that the Hon'ble Supreme Court in ***SEBI vs. Rakhi Trading Private Limited*** (Civil Appeal Nos. 1969 of 2011 with 3174-3177 of 2011 and 3180 of 2011), decided on February 8, 2018 had observed that "*the price discovery system itself was affected by synchronization and rapid reverse trade, which also had the impact of excluding other investors from participating in the market. The Supreme Court, therefore found that the traders having engaged in a fraudulent and unfair trade practice while dealing in securities, are hence liable to be proceeded against for violation of Regulations 3(a), 4(1) and 4(2)(a) of PFUTP Regulations*".

24. With regard to reversal transactions, Hon'ble Supreme Court in the matter of *SEBI v Rakhi Trading Private Limited (Supra)*, further 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…..” In the same matter, Hon’ble Supreme Court further held 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 had only misleading appearance of trading in the securities market*”. In view of said Hon’ble Supreme Court judgment, I see no reason to take a different view in the present case. In view of the foregoing, I hold that the Noticee had indulged in execution of reversal trades in illiquid Stock Options with same counterparty on the same day, which are non-genuine in nature and have created false or misleading appearance of trading in terms of artificial volumes.

25. The Noticee has contended that besides recording common generic allegations against it, not a single instance or observation on its specific role in alleged reversal is delineated in the SCN. In this regard, I note that SCN clearly brought out the charges framed against the Noticee on the basis of reversal non genuine trades executed by the Noticee in illiquid stock options at BSE, details of which were provided to the Noticee along with the SCN. Further, its 14 trades in contract 7 unique contract as explained in the SCN, it has been explained in the SCN to provide an insight on modus operandi devised by it to create artificial volume in the market through its non-genuine trades. I am, therefore, of the view that SCN clearly states allegation against the Noticee. Further, I note that, it is not mere coincidence that the Noticee could match its trades with the same counterparty with whom it had undertaken first leg of the respective trades. I note that though direct evidence is not available in the present matter as regards to meeting of minds or collusion of the Noticee with other entities. The genuineness of trading has to be determined based upon circumstantial evidence involving multiple factors such as trading pattern, liquidity and volatility in the scrip /contract, etc. In this context, the Hon’ble SAT vide its order dated July 14, 2006, in the case of Ketan Parekh vs. SEBI (Appeal no. 2/2004) observed 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.

26. Further, in SEBI v Kishore R Ajmera (AIR 2016 SC 1079), Hon'ble Supreme Court held that - *"…in the absence of direct proof of meeting of minds elsewhere in synchronized transactions, the test should be one of preponderance of probabilities as far as adjudication of civil liability arising out of the violation of the Act or provision of the Regulations is concerned. The conclusion has to be gathered from various circumstances like that volume of the trade effected; the period of persistence in trading in the particular scrip; the particulars of the buy and sell orders, namely, the volume thereof; the proximity of time between the two and such other relevant factors. The illustrations are not exhaustive...*". The Hon'ble Supreme Court further observed that – "*It is a fundamental principle of law that proof of an allegation levelled against a person may be in the form of direct substantive evidence or, as in many cases, such proof may have to be inferred by a logical process of reasoning from the totality of the attending facts and circumstances surrounding the allegations/charges made and levelled. While direct evidence is a more certain basis to come to a conclusion, yet, in the absence thereof the Courts cannot be helpless. It is the judicial duty to take note of the immediate and proximate facts and circumstances surrounding the events on which the charges/allegations are founded and to reach what would appear to the Court to be a reasonable conclusion therefrom. The test would always be that what inferential process that a reasonable/prudent man would adopt to arrive at a conclusion*."

27. The trading pattern as found in this case in illiquid Stock Options cannot occur just by accident or coincidence. The trading behavior of the Noticee in this case makes it clear that aforesaid trades of the Noticee could not have been possible without prior meeting of minds. The synchronized trading by the Noticee with same counterparty at same time for same quantity at same price and reversal of transaction with wide variation in price of the reversed trades in the same contract in a short time without any basis, 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 the contracts in question. Considering the aforesaid facts and circumstances, I am of a view that the Noticee's reliance upon orders of Hon'ble SAT in the matter of Jagruti Securities (2008 SCC online SAT 184) and S.P.J Stockbroker Pvt Ltd (2013 SCC Online SAT 67), Sanjay Agrawal vs. SEBI (Appeal No. 213 of 2011, dated May 18, 2012) regarding prior meeting of mind and regarding having a cogent evidence or connection between the parties, is of no help to it. In view of the fact that these options contracts were illiquid in nature, having very small volume in trading, the Noticee created artificial volumes in Stock Options which was manipulative and deceptive in nature. Once the Noticee has been found to have indulged in such reversal transactions in illiquid Stock Options it is liable for its acts and omissions and it is immaterial whether the counterparties to its trades have been charged or not. Thus, I reject such contentions of the Noticee.

28. I note that the Hon'ble Supreme Court in Rakhi Trading (supra) case held that such undesirable transactions would certainly include unfair practices in trade and thus, orchestrated trades are a misuse of the market mechanism. It is also noted that the trades by the Noticee generated volumes without any change of beneficial ownership. With regard to such reversal transactions, Hon'ble Supreme Court also held in the Rakhi Trading case that - "From the facts before us, it is clear that the traders in question did not intend to transfer beneficial ownership and therefore these trades are non- genuine". The Hon'ble Supreme Court further observed that - "The non-genuineness of these transactions is evident from the fact that there was no commercial basis to suddenly, within a matter of minutes, reverse a transaction when the value of the underlying had not undergone any significant change". Thus, the Noticee's contention regarding non-receiving of any warning/ caution from BSE and not considering entire options available for a particular scrip at all strike price, is devoid of any merit and rejected hereby.

29. I note from the foregoing findings that the trading pattern of the Noticee in terms of volume of reversal trades, proximity of buy/sell and subsequent reversal evidences the indulgence, clearly demonstrates the manipulative

practice by the Noticee by using the stock exchange platform to carry out non-genuine trades with the aim to execute such trades for various manipulative purposes.

30. I note that the Hon'ble Supreme Court in the matter of SEBI vs. Rakhi Trading Private Ltd. (supra), also held that - "*The platform of the stock exchange has been used for a non-genuine trade. Trading is always with the aim to make profits. But if one party consistently makes loss and that too in pre-planned and rapid reverse trades, it is not genuine; it is an unfair trade practice". "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*."

31. The Noticee has contended that its act did not come under the definition of "fraud". In this regard, I note that the Hon'ble Supreme Court in the matter of SEBI vs. Rakhi Trading Private Ltd. (supra), had recognized that, 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. Further, the market 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. Considering the same, I reject such contention of the Noticee.

32. In totality of the circumstances as observed above it is not acceptable that the Noticee has not employed any manipulative and deceptive device in contravention of the SEBI Act or the rules and the regulations made there under. Further, the non-genuine and deceptive trades as found in this case are covered under the definition of 'fraud' and dealing of Noticee were 'fraudulent' as defined under Regulation 2(1)(c) of the PFUTP Regulations. The investigation has shown amount of profit / loss of the counterparties to

the trades as a result of such non-genuine trades. 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 counterparties in totality. When the impact of artificial volumes created by the two counterparties is seen as a whole, the making of loss or profit or causing investor grievance etc., is immaterial as the charge in this case is of creating false or misleading appearance of trading in the aforementioned contract. In view of the same, I find no merit in such contentions of the Noticee.

33. In view of the aforesaid facts and circumstances, it cannot be ignored that synchronization of trades in pre-determined manner as found in this case had an adverse impact on the fairness, integrity and transparency in the securities market. In view of the above, I find that the allegation of violation of regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of PFUTP Regulations by the Noticee stands established.

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?

AND

Issue No. III: If the answer to Issue No. II is in affirmative, what would be the monetary penalty that can be imposed upon the Noticee?

34. I find it appropriate to deal with Issue No. II and III together in the following paragraphs. Since violation of regulations 3(a), (b), (c), (d), 4(1) and 4(2) (a) of the 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:

> ***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].*

***** Substituted for the words "twenty-five crore rupees or three times the amount of profits made out of such failure, whichever is higher" by the Securities Laws (Amendment) Act, 2014, w.e.f. 08-09-2014.*

35. Further, while determining the quantum of monetary penalty under section 15HA of the SEBI Act, I have considered the factors stipulated in Section 15-J 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 or section 11 or section 11B, the Board or the adjudicating officer shall have due regard to the following factors, namely :—*

a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
b) the amount of loss caused to an investor or group of investors as a result of the default;
c) the repetitive nature of the default.

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

36. Though the records available before me does mention about amount of gain/loss of the entities involved in the non-genuine trades including the Noticee. However, it is worth considering that entities involved in these non-genuine trades have either booked gains or loss and the gains or loss

appears to be of notional in nature. Generally, there is nil or negligible participation of the public in the trading in illiquid stock option contracts. Hence, the impact of these non-genuine trade has been considered. When the impact of artificial volume created by the two counterparties is seen as a whole, it is not possible from the material on record to quantify the amount of disproportionate gain or unfair advantage resulting from the artificial trades between the counter parties or the consequent loss caused to investors as a result of the default. The Noticee has entered into 14 non-genuine transactions in 7 stock option contracts which demonstrates the nature of the default on its part. 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*

37. In the view of the above, I note that, in the present matter, the facts of the case clearly establish the violation committed by the Noticee and I consider it necessary to impose monetary penalty which would act as deterrent to the Noticee in future.

ORDER

38. After taking into consideration the nature and gravity of the violations established in the preceding paragraphs and in exercise of the powers conferred upon me under section 15-I of the SEBI Act read with rule 5 of the SEBI Adjudication Rules, I hereby impose a penalty of Rs 5,00,000 (Rupees Five Lakh Only) on the Noticee *i.e.,* Shivam Chowdhary HUF under section 15HA of the SEBI Act. I am of the view that the penalty is commensurate with the violation committed by the Noticee.

39. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of demand draft in favor 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

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

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

42. In terms of rule 6 of the SEBI Adjudication Rules, copies of this order are sent to the Noticee and also to SEBI.

Date: November 26, 2021 **VIJAYANT KUMAR VERMA**

Place: Mumbai **ADJUDICATING OFFICER**