BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/PB/AS/2021-22/15045]

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

In respect of

Beena Agarwal

(PAN: ABOPA6855G)

In the matter of Trading in Illiquid Stock Options on BSE

BACKGROUND OF THE CASE

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

2. Pursuant to investigation, it was observed that total 2,91,643 trades comprising substantial 81.38% of all the trades executed in stock options segment of BSE during the IP were non genuine trades. It was observed that Beena Agarwal (PAN-ABOPA6855G) (hereinafter referred to as the "**Noticee**") was one of the various entities who indulged in execution of reversal trades in stock options segment of BSE during the IP. Such trades were observed to be non-genuine in nature and created false or misleading appearance of trading in terms of artificial volumes in stock options and

therefore were alleged to be manipulative 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 SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as "**PFUTP Regulations, 2003**").

APPOINTMENT OF ADJUDICATING OFFICER

3. The undersigned was appointed as Adjudicating Officer in the matter, conveyed vide communique dated September 30, 2021, under section 19 read with section 15-I(1) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act, 1992**") and rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as "**Adjudication Rules**") to conduct adjudication proceedings in the manner specified under rule 4 of Adjudication Rules read with section 15-I(1) and (2) of SEBI Act, 1992, and if satisfied that penalty is liable, impose such penalty deemed fit in terms of rule 5 of Adjudication Rules and section 15HA of SEBI Act, 1992.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. A Show Cause Notice ref no SEBI/HO/A&E/EAD-2/PB/AS/31561/2021 dated November 03, 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 her and why penalty should not be imposed under section 15HA of the SEBI Act, 1992 for the violations alleged to have been committed by Noticee.

5. It was *inter alia* alleged in the SCN that the Noticee had executed 14 non genuine trades in 7 Stock Options contracts which resulted in artificial volume of total 1,82,000 units. Summary of dealings of the Noticee in 7 Stock Options contracts, in which the Noticee allegedly executed non genuine trades during the I.P, is as follows:

S. No.	Contract Name	Avg. Buy Rate (₹)	Total Buy Volume (No. of units)	Avg. Sell Rate (₹)	Total Sell Volume (No. of units)	% of Non Genuine trades of Noticee in the contract to Noticee's Total trades in the Contract	% of Non Genuine trades of Noticee in the contract to Total trades in the Contract	% of Artificial Volume generated by Noticee in the contract to Noticee's Total Volume in the Contract	% of Artificial Volume generated by Noticee in the contract to Total Volume in the Contract
1	ALBK15MAR90.00CEW2	15.5	10000	21	10000	100	14.29	100	3.7
2	BHEL15MAR260.00CEW2	8	15000	12.5	15000	100	100	100	100
3	DISH15MAR100.00PEW2	11	16000	18	16000	100	13.33	100	3.77
4	DISH15MAR65.00CEW2	12	16000	18	16000	100	5.88	100	1.59
5	DISH15MAR95.00PEW2	12	4000	7	4000	100	100	100	100
6	DLFL15MAR140.00CEW2	13.5	20000	19.5	20000	100	100	100	100
7	DLFL15MAR170.00PEW2	10.5	10000	17	10000	100	50	100	38.46

6. From the above table, following was noted as regard to dealings of the Noticee:
   (a) The Noticee had executed non genuine trades in 7 contracts, wherein all trades of Noticee in the said 7 contracts were non genuine trades.
   (b) No. of non-genuine trades of the Noticee had significantly contributed to total no. of trades from the market in the above contracts, as 5.88% to 100% of the trades that happened in the said seven contracts were due to non-genuine trades executed by the Noticee.
   (c) The entire 100% of volume generated by Noticee in all of the above contracts was artificial volume, and further, the percentage of artificial volume generated by the Noticee in the above contracts to the total volume from the market in said contracts was in the range of 1.59% to 100%. Therefore, substantial volume generated by the Noticee in each of the above contracts were artificial volume.
   (d) Non genuine trades executed by the Noticee in above contracts had significant difference in buy rates and sell rates considering that the trades were reversed on same day.

7. The SCN was served on the Noticee via Speed Post Acknowledgement Due (SPAD) and via email dated November 03, 2021. Vide email dated December 01, 2021, enclosing hearing notice dated December 01, 2021, Noticee was granted opportunity of personal hearing on December 16, 2021. Vide email and letter dated December 11, 2021, Noticee *interalia* submitted that she had not received the SCN, and further, requested to adjourn personal hearing scheduled in the matter. Vide email dated December 12, 2021, Noticee *interalia* confirmed appearance for personal hearing as scheduled via video conferencing. Vide email dated December 13, 2021, Noticee was provided a copy of the SCN along with annexures and web address for the personal hearing as scheduled. Vide email dated December 14, 2021, Noticee reiterated request for adjournment of personal hearing. Vide email dated December 20, 2021, Noticee was conveyed that her request for adjournment of personal hearing was acceded to and she was granted final opportunity of personal hearing on January 18, 2022.

8. Vide email dated January 17, 2022, Noticee submitted reply to the SCN on merits. The aforesaid reply has been summarized below:
   - Noticee's trades were genuine as executed on the platform of BSE.
   - Noticee's transactions were subjected to various charges and taxes including Exchange Turnover Tax, Service Tax, STT etc.
   - All the transactions had been recorded in the regular books of accounts, records and Income Tax Returns.
   - SCN was issued after an inordinate delay of 6 to 7 years.
   - The trades were genuine as they were executed on the anonymous platform of exchange, without any knowledge of the counterparty, at price ranges which were permitted by BSE and SEBI. Also, obligations arising out of it were settled through clearing mechanism of BSE.
   - Noticee's trades were very infrequent and took place only on few days during the IP. If the intention of Noticee was to generate artificial volume and create misleading appearance of trading, the frequency of trades would have been higher.

- Noticee executed only 7 buy trades which were squared off on the same day. Noticee understood that F&O segment is a risky segment, and had not traded in the said segment thereafter.
- SCN does not highlight any possible reason/ purpose for executing the allegedly manipulative trades.
- Noticee's trades were carried on the platform of stock exchange, so if the trades were not genuine, SEBI should have taken action against the exchange.
- The volume in stock options was very small as compared to the volume of underlying scrip, and such a small quantity of trading was not sufficient to create artificial volume.
- For manipulating any security, the entire series of its derivative contracts has to be manipulated, which has not been alleged in the instant SCN.
- Instead of comparing rates of buy and sell trades on the basis of premium of the contracts, notional value of the contracts should have been considered. If that is done, the change in rates is insignificant.
- Risk Disclosure Document issued by SEBI states the possibility that in an illiquid contract, the chances of price difference, wider spreads and losses/profits exist.
- SEBI and Exchanges had not put in place any price band mechanism in options segment, which means that at all prices at which the trades were executed, they were genuine. This is because pricing of options is a complex arithmetic calculation, making a huge range of price to be valid.
- No loss or any other impact has been caused to any other person. Also, no illegal gain has been made by the Noticee.
- There was no collusion between the counterparties, and there is no reason for unknown people to deliberately allow profits or losses to another without any relationship. Also, there is no charge of price manipulation. Further, a higher degree of proof is needed to establish allegation of fraudulent trades. Noticee placed reliance on the decisions of the Hon'ble SAT in the matters of Jagruti Securities vs SEBI, SPJ

Stock Brokers Pvt Ltd vs SEBI, HB Stockholdings Ltd vs SEBI and RK Global vs SEBI in this regard.

- There is no charge of price manipulation made out in the SCN, and without manipulating the price, no person can gain anything from such trades.
- There are several judgements of SEBI and SAT wherein benefit of doubt has been given to Noticees. In the instant matter, such benefit of doubt must be given to the Noticee as well, in light of facts like occurrence of one instance of trade, no relationship with counterparty etc..
- SCN fails to establish that Noticee employed any device, scheme or artifice to defraud anyone. Also, no person has claimed to be defrauded.
- There is nothing on record to substantiate that the Noticee knowingly misrepresented the truth or concealed material fact, suggested a fact that the Noticee believed is untrue, concealed any fact required to be disclosed. Further, the Noticee never made any promise or representation, and has not omitted any obligation under other law. Even further the Noticee’s behavior was no way deceptive, nor has the Noticee made any false statement. Lastly, the Noticee has not issued any securities and the question of giving misinformation in relation thereto does not arise.
- No person has claimed to be defrauded or have been induced to trade because of Noticee’s trades.
- Noticee cited judgement of the Hon’ble SAT in the matter of Dhvani Darshan Kothari & Anr. Vs SEBI and contended *interalia* that the reasons to show that trades were manipulative must be recorded and that one transfer cannot make it circular/ reversal or synchronized nor execution of one trade would be treated at par with the trades executed by other entities which was large in number.
- If at all it is held that Noticee violated the impugned provisions of PFUTP Regulations, 2003, then either no or minimum penalty must be imposed. Noticee cited judgement of the Hon’ble SAT in the matters of Yogi Sungwon (India) Ltd vs SEBI, NHAI vs SEBI, Bhavesh Pabari vs SEBI

and the judgement of Hon'ble Bombay High Court in the matter of Cabot International Capital Corporation in this regard.

- Further, Noticee cited two orders passed by SEBI Adjudicating Officers viz. in the matters of Octant Interactive Technologies Ltd, Sangam Advisors Ltd and Abhideep Global Finance Pvt Ltd.
- Noticee was not part of the 59 entities against whom the interim order dated August 20, 2018 was passed, and neither was a part of the first 567 entities against whom Adjudication Proceedings were initiated initially. SEBI itself considered Noticee's trades to be so miniscule, that it initiated adjudication proceedings against the Noticee in the last stage. Therefore, lenient view must be taken in the instant matter.

9. Vide email dated January 17, 2022, Noticee was *interalia* provided web address for the personal hearing scheduled on January 18, 2022. Vide email dated January 17, 2022, Noticee confirmed Shri Ravi Vijay Ramaiya (Chartered Accountant) as Authorized Representative as regards the matter. The personal hearing in the matter was held on January 18, 2022 via video conferencing over Webex platform. During the course of hearing, Authorized Representative reiterated the submissions made vide email dated January 17, 2022. Hearing Minutes are on record.

CONSIDERATION OF ISSUES AND FINDINGS

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

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

PFUTP Regulations, 2003

3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

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

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

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

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

4. Prohibition of manipulative, fraudulent and unfair trade practices

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

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

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

12. I note that allegation against the Noticee is that, while dealing in the stock option contracts at BSE during the IP, she had executed reversal trades which were allegedly non-genuine trades and the same had resulted in generation of artificial volume in stock option contracts at BSE. Reversal trades are considered to be those trades in which an entity reverses its buy or sell positions in a contract with subsequent sell or buy positions with the

same counterparty during the same day. The said reversal trades are alleged to be non-genuine trades as they are not executed in the normal course of trading, lack basic trading rationale, lead to false or misleading appearance of trading in terms of generation of artificial volumes and hence are deceptive and manipulative.

13. Noticee has *interalia* contended that the instant SCN was issued after an inordinate delay of 6 to 7 years from the date of transactions, and the SCN must be set aside on this ground alone. I note that pursuant to a preliminary examination conducted in the matter of Illiquid Stock Options, 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 IP. 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.

14. Further, during the course of hearing in the case of *R. S. Ispat Ltd Vs SEBI*, the Hon'ble SAT, vide its Order dated October 14, 2019, *inter alia* observed that "*SEBI may consider holding a Lok Adalat or adopting any other alternative dispute resolution process with regard to the Illiquid Stock Options".* A Settlement Scheme was framed under the SEBI (Settlement Proceedings) Regulations, 2018, which provided one-time opportunity for settlement of proceedings in the Illiquid Stock Options matter. The said scheme was kept open from August 01, 2020 till December 31, 2020. Thereafter, Adjudication proceedings were initiated against those entities who had not availed of the opportunity of settlement.

15. As can be seen from the narration of facts in the foregoing paragraphs, pursuant to appointment of the undersigned as AO communicated vide

communique dated September 30, 2021, SCN was issued on November 03, 2021. In compliance with principles of natural justice, reply from the Noticee was received vide email dated January 17, 2021 and personal hearing in the matter was held on January 18, 2022. Therefore, I note that the instant adjudication proceedings were initiated pursuant to a series of legal and judicial developments, and that the principles of natural justice were duly complied with during the course of proceedings, so that the aforesaid contentions are devoid of merits.

16. I note from trade log of the Noticee that she had traded in 7 unique contracts in the stock options segment of BSE during the IP. It is observed that the Noticee had allegedly executed 14 non-genuine trades in the said 7 contracts. I further note that the above mentioned trades of the Noticee had resulted in the creation of artificial volume of 1,82,000 units in the said 7 contracts. Summary of non-genuine trades of the Noticee is as follows:

S. No.	Contract Name	Avg. Buy Rate (₹)	Total Buy Volume (No. of units)	Avg. Sell Rate (₹)	Total Sell Volume (No. of units)	% of Non Genuine trades of Noticee in the contract to Noticee's Total trades in the Contract	% of Non Genuine trades of Noticee in the contract to Total trades in the Contract	% of Artificial Volume generated by Noticee in the contract to Noticee's Total Volume in the Contract	% of Artificial Volume generated by Noticee in the contract to Total Volume in the Contract
1	ALBK15MAR90.00CEW2	15.5	10000	21	10000	100	14.29	100	3.7
2	BHEL15MAR260.00CEW2	8	15000	12.5	15000	100	100	100	100
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5	DISH15MAR95.00PEW2	12	4000	7	4000	100	100	100	100
6	DLFL15MAR140.00CEW2	13.5	20000	19.5	20000	100	100	100	100
7	DLFL15MAR170.00PEW2	10.5	10000	17	10000	100	50	100	38.46

17. It is noted that the Noticee had executed non-genuine trades in 7 contracts, wherein the percentage of non-genuine trades of the Noticee in stock options contracts to total trades in the contracts was in the range of 5.88%

to 100% in the aforesaid contracts. Further, artificial volume generated by Noticee in the contracts amounted to the entire 100% of total volume generated by her in the aforesaid contracts. It is also noted that artificial volume generated by the Noticee contributed significantly viz. 1.59% to 100% of the total volume from the market in the said contracts. Non-genuine trades executed by the Noticee in the above contracts had significant difference in buy rates and sell rates considering that the trades were reversed on the same day.

18. I note from the trade log that the trades executed by the Noticee in a contract were squared up within a short span of time with her counterparties. To illustrate, the Noticee on March 05, 2015 at 15:10:06.26 hrs entered into 1 buy trade with counterparty viz. Indus Portfolio Pvt Ltd for 15,000 units at the rate of ₹8 per unit in the contract BHEL15MAR260.00CEW2. Thereafter, on the same day, Noticee at 15:10:30.57 hrs entered into 1 sell trade with same counterparty for 15,000 units at the rate of ₹12.5 per unit in the same contract. It is noted that while dealing in the said contract during the I.P., the Noticee executed reversal trades with same counterparty viz. Indus Portfolio Pvt Ltd on the same day and with significant price difference in buy and sell rate. Thus, the Noticee, through her dealing in the contract viz. “BHEL15MAR260.00CEW2” during the I.P., executed non genuine trades which was 100% of the total trades from the market in the said contract during the I.P., and thereby, Noticee generated artificial volume of 30,000 units which was 100% of the volume traded in the said contract from the market during the I.P.

19. 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, the Noticee reversed the position with her counterparties with significant price difference. I note from the trade log of the Noticee that the time taken by the Noticee for reversing the non-genuine trades ranged from 10 seconds to 24 seconds, on the same day. 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 transactions in a particular contract were reversed with the same counterparty indicates a prior meeting of minds 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. There was wide variation in prices of the said contracts, within a short span of time, without substantial variation in the price of the underlying scrips to justify the aforesaid variation. It 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 her counterparties in the stock options segment of BSE and the same were non-genuine trades.

20. Noticee has also contended that there is nothing on record to substantiate that the Noticee knowingly misrepresented the truth or concealed material fact, suggested a fact that the Noticee believed is untrue or concealed any fact required to be disclosed. Further, the Noticee never made any promise or representation, and has not omitted any obligation under any other law. Further, the Noticee's behavior was no way deceptive, nor has the Noticee made any false statement, and that the obligations arising out of reversal trades were settled by Noticee through clearing mechanism of SEBI. Lastly, the Noticee has not issued any securities and the question of giving misinformation in relation thereto does not arise. I note that the allegations against the Noticee pertain to the reversal trades executed by her, on the same day with same counterparty with substantial price difference between buy and sell rates, so that the aforesaid contentions made by Noticee are not relevant as regards instant allegations.

21. Noticee has also contended that SEBI and the Exchanges had not put in place any price band mechanism in options segment, which meant that all prices at which the trades were executed were genuine, and that it was because pricing of options is a complex arithmetic calculation, making a

huge range of price to be valid. Noticee has also cited Risk Disclosure Document issued by SEBI, which stated that in an illiquid contract, chances of wider spreads and losses/ profit are present. I note that even though the exchange mechanism for option contracts allows wider range in prices, Noticee's buy and sell trades were executed with a substantial price difference without any change in the price of underlying scrips, on the same day with the same counterparty. Wider price range in buy and sell rates may not indicate manipulation *ipso facto*, however, instant allegations consider the facts as regards reversal trades in totality to allege violation of provisions of PFUTP Regulations, 2003.

22. Noticee has contended that for manipulating any security, the entire series of contracts has to be manipulated, which has not been alleged in the instant SCN. Further, Noticee has also contended that the execution of the reversal trades was due to sheer luck and coincidence, and could not be said to be manipulative. In this regard, Noticee relied upon the judgement of the Hon'ble SAT in the matter of Dhvani Darshan Kothari & Anr. Vs SEBI. I note that in the referred matter, the concerned entity had executed one trade without any finding of synchronized, circular or reversal trades, which were read with a connected matter to quash the impugned order therefor. Therefore, the said case facts of referred matter are different from that in the instant matter. I further note that the charge against Noticee pertains to the reversal trades executed in different contracts with different counterparties, such that the trades were executed on the same day with the entities reversing their buy and sell positions with the same counterparties. All the trades executed by Noticee in aforesaid seven contracts were in the form of reversal trades, in which the buy and sell rates had substantial difference without any trading strategy or changes in price of underlying scrip to justify the same as per the records. I note that the instant allegations rely on the trading pattern exhibited in aforesaid contracts only, which had the impact of generation of misleading appearance of trading in these contracts. The entire series of contracts, as referred to in the contentions made by the Noticee has not been relied upon

in framing the charges, so that such contentions are liable to be set aside on these grounds.

23. Noticee has *interalia* contended that the trades were genuine as they were executed on the anonymous platform of exchange, without any knowledge of the counterparty, at price ranges which were permitted by BSE and SEBI. Noticee has also contended that there was no collusion between the counterparties, and that there is no reason for unknown people to deliberately allow profits or losses to another without any relationship. In this regard, Noticee has relied upon the judgements of the Hon'ble SAT in the matters of Jagurti Securities vs SEBI and S.P.J. Stock Brokers Pvt Ltd vs SEBI. I note that it is not mere coincidence that Noticee could match her trades with the same counterparty with whom she had undertaken first leg of the respective trades. This is the outcome of meeting of minds elsewhere and it was a deliberate attempt to deal in such a fashion. Further, Noticee has contended that the SCN does not establish reason behind execution of such non-genuine trades, and that there is no reason for unknown people to deliberately allow profits or losses to another without any relationship. I note in matters dealing with violation of PFUTP Regulations, 2003, the reason as regards execution of non-genuine trades might not be forthcoming. However, the correct test instead, is one of preponderance of probabilities. Here I would like to rely on the judgment of Hon'ble Supreme Court in SEBI v Kishore R Ajmera (AIR 2016 SC 1079) decided on February 23, 2016, wherein it was held that - "…*in the absence of direct proof of meeting of minds elsewhere in synchronized transactions, the test should be one of preponderance of probabilities as far as adjudication of civil liability arising out of the violation of the Act or provision of the Regulations is concerned. The conclusion has to be gathered from various circumstances like 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..."*

24. The Hon’ble Supreme Court further held in the same matter that – *“It is a fundamental principle of law that proof of an allegation levelled against a person may be in the form of direct substantive evidence or, as in many cases, such proof may have to be inferred by a logical process of reasoning from the totality of the attending facts and circumstances surrounding the allegations/charges made and levelled. While direct evidence is a more certain basis to come to a conclusion, yet, in the absence thereof the Courts cannot be helpless. It is the judicial duty to take note of the immediate and proximate facts and circumstances surrounding the events on which the charges/allegations are founded and to reach what would appear to the Court to be a reasonable conclusion therefrom. The test would always be that what inferential process that a reasonable/prudent man would adopt to arrive at a conclusion.”*

25. I note that direct evidence is not forthcoming in the present matter as regards to meeting of minds or collusion of the Noticee with other entities. However, I note that the trading behaviour of the Noticee makes it clear that aforesaid non-genuine trades could not have been possible without meeting of minds at some level. In this context, I deem it appropriate to refer to the Hon’ble SAT order dated July 14, 2006, in the case of Ketan Parekh vs. SEBI (Appeal no. 2/2004), wherein the Hon’ble SAT has held that - *"The nature of transactions executed, the frequency with which such transactions are undertaken, the value of the transactions, the conditions then prevailing in the market are some of the factors which go to show the intention of the parties. This list of factors, in the very nature of things, cannot be exhaustive. Any one factor may or may not be decisive and it is from the cumulative effect of these that an inference will have to be drawn."*

26. Noticee has also contended that SCN fails to establish that Noticee employed any device, scheme or artifice to defraud anyone. In this regard, I place my reliance on the judgment of Hon’ble Supreme Court in the matter in respect of SEBI v Rakhi Trading Private Limited (Civil Appeal Nos. 1969, 3174-3177 and 3180 of 2011 decided on February 8, 2018), in which the Hon’ble Supreme Court 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…..”

27. Further, the Hon’ble SAT in its judgement dated September 14, 2020 in the matter of Global Earth Properties and Developers Pvt Ltd relied upon the aforesaid judgement of 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.*”

28. Noticee has *interalia* contended that no loss was caused to any investor as regards the matter, no gains were made by the Noticee and that no person has claimed to be defrauded. I note that in the instant matter, the allegations pertaining to the violation of impugned provisions of PFUTP Regulations, 2003 are not contingent upon any complaints made or losses incurred by investors. Noticee has also contended that all taxes and charges as regards the trades had been paid, and that all the transactions have been recorded in the regular books of accounts, records and Income Tax Returns. I note that instant allegations do not pertain to payment of taxes by the Noticee. Therefore, I note that contentions of Noticee in this regard are without merits.

29. Noticee has contended *interalia* that the reasons to show that trades were manipulative have not been recorded in the SCN and that one transfer cannot make it circular/ reversal or synchronized nor execution of one trade can be treated at par with the trades executed by other entities which were larger in number. Noticee has relied upon the judgement of the Hon'ble SAT in the matter of HB Stockholdings Ltd vs SEBI, wherein it was *interalia* held that synchronization of trades is not *per se* illegal. Noticee has also contended that her trades were very infrequent and took place only on few days during the IP, and that if the intention of Noticee was to generate artificial volume and create misleading appearance of trading, the frequency of trades would have been higher. I note that the allegations pertaining to the trading pattern exhibited while executing the reversal trades have been cogently stated in the SCN along with evidences in the form of Annexures. Also that, Noticee had executed 14 reversal trades in 7 stock option contracts, such that execution of the said reversal trades defied market rationality when looked along with attending circumstances *in toto.* I also note that Noticee allegedly carried out reversal trades, which were non-genuine, and the same has been alleged in the SCN. Therefore, Noticee's trades, irrespective of quantum of such trades, were manipulative and intended to create misleading appearance of trading, so that contentions of Noticee in this regard are liable to be rejected.

30. Noticee also contended that no person has claimed to be defrauded or has been induced to trade because of Noticee's trades. In this regard, I rely on the judgement of the Hon'ble Supreme Court in the matter of SEBI vs Rakhi Trading (supra) in this regard, wherein it was 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." I note that in the instant matter, the execution of manipulative reversal trades has been established already. Therefore, the contentions of Noticee in this regard are without merits.

31. Noticee has also contended that the volume in stock options was very small as compared to the volume of underlying securities and therefore, such a small volume is not sufficient to create any kind of artificial volume. I note that the concerned stock option contracts were illiquid, as stated in the SCN, and also that Noticee's trades in the referred contracts contributed significantly to the total market volume generated during the IP in the said contracts. For instance, Noticee's trades contributed 100% to total volume in the contract during the IP, for the contracts viz. BHEL15MAR260.00CEW2, DISH15MAR95.00PEW2 and DLFL15MAR 140.00CEW2. Also, artificial volume generated by Noticee in each of the seven concerned contracts amounted to 100% of the volume generated by Noticee in such contracts. Therefore, Noticee's trades, even though lesser in number, contributed substantially to the volume generate in the said contracts. This points to the contribution of Noticee in the creation of misleading appearance of trading through her trades.

32. Noticee has further contended that she executed her trades on the platform of stock exchange, so it is for SEBI to take action against the stock exchange in case of non-genuine trades. I note that stock exchange merely provides a platform for carrying out the trades, while the obligation to ensure genuineness of trades as regards instant considerations lies primarily on the Noticee.

33. Noticee has also relied upon the judgement of the Hon'ble SAT in the matter of R.K. Global vs SEBI and contended that a higher degree of probability must exist to prove allegations of fraudulent trades, and that a serious charge cannot be established on the basis of mere suspicion. I note that the Hon'ble SAT has already upheld AO orders in the matter of illiquid

stock options in respect of various entities via its judgements viz. Nilu Chopra vs SEBI, Nimisha Saraf vs SEBI, Nikita Tolani vs SEBI, Nikunj Poddar vs SEBI etc. Therefore, vide said judgements, the Hon'ble SAT has already upheld the violations involving similar case facts against various entities, so that the contentions of Noticee as regards requirement of higher degree of probability for framing the charges are without merits.

34. Noticee has *interalia* contended that the buy and sell rates should have been compared on the basis of notional values, instead of the premium. I note that as regards instant considerations, the market value i.e. premium, which is the rate at which contracts were bought and sold on exchange platform are relevant. Notional value represents the total underlying amount of the derivative, which is much larger than the market value of contracts, and is not relevant as regards instant considerations. So, I reject the contentions of Noticee in this regard. Noticee has contended that there is no charge of price manipulation, and that no person could gain anything without manipulating the price. I note that the instant SCN deals with allegations of misleading appearance of trading and generation of artificial volume, which in itself resulted in violation of provisions of PFUTP Regulations, 2003.

35. Therefore, the trading behaviour of the Noticee confirms that such trades were not normal and wide variation in prices of the trades in the same contract in a short time without any basis for such wide variation, all indicate that the trades executed by the Noticee were not genuine trades and being non-genuine, created an appearance of artificial trading volumes in respective contracts. In view of the above, I find that the allegation of violation of regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of PFUTP Regulations, 2003 by the Noticee stands established. The Hon'ble Supreme Court of India in the matter of SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC) decided on May 23, 2006 held that - *"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established*

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

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

    [1][***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 [2]*[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].*

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

    Factors to be taken into account by the adjudicating officer.

    15J. While adjudging quantum of penalty under section 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.

38. I observe, that the material available on record does not quantify any disproportionate gains or unfair advantage, if any, made by the Noticee and the losses, if any, suffered by the investors due to such violations on part of the said Noticee. However, Noticee has entered into 14 non-genuine

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[1] Inserted by the SEBI (Amendment) Act, 2002, w.e.f.29-10-2002.

[2] 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

trades in 7 stock option contracts which demonstrates the repetitive nature of default on her part.

39. Therefore, I note that Noticee indulged in execution of reversal trades in stock options contracts in the IP which were non-genuine and created false and misleading appearance of trading in terms of artificial volumes in stock options, leading to violation of regulations 3(a),(b),(c),(d) and 4(1),(2)(a) of the PFUTP Regulations, 2003.

<u>ORDER</u>

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

Name of the Noticee	**Violation provisions**	**Penalty**
Beena Agarwal PAN:ABOPA6855G	regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of PFUTP Regulations, 2003	₹ 5,00,000/- (Rupees Five Lakh only)

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

41. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, OR through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link:
ENFORCEMENT → Orders → Orders of AO → PAY NOW

42. 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

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

44. In terms of the provisions of rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticee viz. Beena Agarwal and also to the Securities and Exchange Board of India.

Date: February 21, 2022 **PARAG BASU**

Place: Mumbai **ADJUDICATING OFFICER**