BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/BM/DS/2022-23/16645]

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

Rajesh Agarwal

(PAN: ACRPA8227A)

In the matter of Trading in Illiquid Stock Options on BSE

BACKGROUND OF THE CASE

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

2. Pursuant to investigation, it was observed that total of 2,91,744 trades comprising 81.40% of all the trades executed in stock options segment of BSE during the IP were allegedly non genuine trades. The aforesaid alleged non-genuine trades resulted into creation of artificial volume in stock options segment of BSE during the IP. It was observed that Rajesh Agarwal (PAN – ACRPA8227A) (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 alleged to be non-genuine in nature and created false or misleading appearance of trading in terms of artificial volumes in stock options and therefore were alleged to be manipulative, deceptive in nature. In view of the same, SEBI initiated adjudication proceedings against the Noticee for alleged violation of the provisions of Regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003 (hereinafter referred to as "PFUTP Regulations, 2003").

APPOINTMENT OF ADJUDICATING OFFICER

3. The undersigned was appointed as Adjudicating Officer in the matter, conveyed vide communique dated September 27, 2021, under Section 19 read with Section 15-I(1) of the SEBI Act, 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 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. A Show Cause Notice dated October 25, 2021 (hereinafter referred to as "SCN") was issued to the Noticee under Rule 4(1) of the Adjudication Rules to show-cause as to why an inquiry should not be initiated against him and why penalty should not be imposed under section 15HA of the SEBI Act, 1992 for the violations alleged to have been committed by the Noticee.

5. It was *inter alia* alleged in the SCN that the Noticee had executed 2 non-genuine trades in 1 Stock Options contract which resulted in artificial volume of total 108,000 units. Summary of dealings of the Noticee in the said Options contracts, in which the Noticee allegedly executed non-genuine trades during the I.P, is as follows:

S. No.	Contract Name	Avg. Buy Rate (Rs)	Total Buy Volume (No. of units)	Avg. Sell Rate (Rs)	Total Sell Volume (No. of units)	% of Non Genuine trades of Noticee in the contract to Noticee's Total trades in the Contract	% of Non Genuine trades of Noticee in the contract to Total trades in the Contract	% of Artificial Volume generated by Noticee in the contract to Noticee's Total Volume in the Contract	% of Artificial Volume generated by Noticee in the contract to Total Volume in the Contract
1	MFSL15MAR265.00PE	0.5	54000	7.00	54000	100	12.50	100	4.12

6. From the above table, following was noted as regard to dealings of the Noticee:
   (a) The Noticee had executed alleged non genuine trades in 1 contract, wherein all the trades of Noticee in the said contract were allegedly non-genuine trades.
   (b) No. of alleged non-genuine trades of the Noticee had significantly contributed to total no. of trades from the market in the above contract, as 12.50% of the trades that happened in the said contract were due to non-genuine trades executed by the Noticee.
   (c) 100% of volume generated by Noticee in the above contract was alleged to be artificial volume, and further, the percentage of alleged artificial volume generated by the Noticee in the above contract to the total volume from the market in said contract was 4.12%. Therefore, the Noticee allegedly generated artificial volume in the above contract.

7. The SCN with reference no. SEBI/HO/EAD/EAD-3/BM/DS/OW/2021/29813/1 was served on the Noticee via Speed Post Acknowledgement Due (SPAD) and via digitally signed email dated October 25, 2021. The proof of service is on record.

8. Noticee, vide letter dated November 12, 2021 submitted his reply to the SCN. In the interest of natural justice, the Noticee was provided an opportunity of hearing vide hearing notice dated November 12, 2021 via SPAD and digitally signed email. The Noticee was advised to appear before the undersigned on November 17, 2021. However, the Noticee did not appear for the scheduled hearing and requested for adjournment of the same for personal reasons.

9. Vide mail dated November 12, 2021, the Noticee submitted his reply to the SCN. Contentions made by him have been summarized below:
   - *SEBI's intervention and considering trading in Stock option almost after 6 years and sitting into judgment and treating it as generation of artificial volume by fastening responsibility on the investors, are based on farfetched tenuous conjectures and are arbitrary. Having not taken any objection then, it is improper to consider Noticee's trading as non-genuine after a number of years - it is retrograde.*
   - *Noticee submitted that he entered into such trades as a speculative bet. The price in which he traded was within the permissible limit allowed by the exchange. He traded in the ordinary course and at no point of time he was aware of counterparties to his trade or the counterparty brokers.*
   - *All his trades in question were executed on the online trading system of the stock exchange with due compliance of all rules and regulations of the exchange and there is nothing amiss in the trades executed by him.*

- *He does not have any link / nexus / relationship/ dealing/collusion/ arrangement or agreement with parties who are counterparty to his trade or with their brokers nor any such relationship is established in the SCN. The trades in question, were in anonymous order matching system of the exchange wherein it is impossible to know the identity of the counterparties. Just based on the fact that a buy or sell position are reversed with the same counterparty it cannot be alleged that such trades are fraudulent or manipulative unless and until there is some cogent connection or 'mischievous meeting of minds' between the counter parties. In this regard, Noticee relied upon the judgements of Hon'ble SAT in cases of Jagruti Securities (2008), Sanjay Agarwal (2012), S P J Stock Brokers Private Limited (2013) and H B Stockholdings Limited (2013).*
- *The Option series, in which he had traded, met the eligibility criteria of SEBI and were permitted for trading by the BSE. Even SEBI was aware of trading on BSE and monitored them. The BSE allowed the trades and complete pay-in / pay-out of funds levying SEBI fess, Service Tax, STT, Stamp duty etc. It is also pertinent to mention that stock exchanges regularly come out with list of illiquid scrips in cash segment. However, no such list is issued by exchanges or regulators for dealing in stock options contracts. Also, BSE subsequently introduced 'Reversal Trade Prevention Check' feature in its system.*
- *The allegations in the SCN are merely based on surmises, conjectures and hearsay and are totally misplaced and contrary to factual position on record. The investigation period has been reckoned as 01/04/14 to 30/09/15, whereas trades on BSE Options segments have been carrying on for past several years. The choice of investigation period itself shows that the same has been chosen arbitrarily and without any basis or reasonableness.*

- *The observation regarding the stock option traded by the Noticee being illiquid is absolutely and factually not correct. The underlying scrips in Noticee's alleged trade, it is clearly evident that these scrips are highly liquid in nature i.e. frequently traded in market. He had traded in derivatives contract of Scrips, which are regularly traded in the Cash & Derivatives segment on Stock Exchanges. He submitted that underlying stock of the said contract consists of companies which make up index of the Bombay Stock Exchange.*
- *None of his trades were deceptive in nature or had any impact on investors or their investment decisions. There was no major movement in price of underlying scrip which itself proves that my trades had no impact on market.*
- *Apart from recording common generic allegations against me, not a single instance or observation on my specific role in alleged reversal is delineated in the SCN. In this regard, the Noticee relied upon Hon'ble Supreme Court's judgement in the case of Commissioner of Central Excise, Bangalore vs M/s. Brindavati Beverages (P) Ltd and Ors (Civil Appeal 3417 of 2002) decided on June 15, 2007.*
- *Noticee submitted that any kind of alleged fictitious /manipulative trade in cash segment may create distorted impression in minds of investors that price of scrip if rising/falling, who may invest/divest from said scrip. However, in case of option segment there is no such effect since each contract expires at end of contract period and for every party who makes profit there is counter party who makes a loss. There is no question of transfer of beneficial ownership in option segment since at end of settlement cycle only net loss/profit is adjusted. Therefore, allegation of creation of 'artificial' or 'reversal' trade is of no consequence in option segment of exchange.*
- *Noticee submitted that profit and loss is concomitant to trading in derivative segment. The mere fact that I had gains while dealing in*

option segment cannot be a ground to rope me into present proceedings.

10. Vide letter dated November 12, 2021, Noticee had also requested for provision of various documents including copy of investigation report and various internal documents. In this regard, Noticee relied upon various judgements of Hon'ble Supreme Court's including the case of Price Waterhouse Coopers vs SEBI in Civil Appeal no. 6003-6004 of 2012, and Andaman Timber Industries vs. Commissioner of Central Excise, in Civil Appeal No 4228 of 2006. In regard to Noticee's request for inspection of documents, the following was communicated to the Noticee vide the same hearing notice dated November 12, 2021.

    "In your reply to the SCN vide letter dated November 12, 2021, you have requested for provision of certain documents / records etc.

    In this connection, you are hereby informed that all the information relied upon in the SCN have already been provided to you in the annexures to the said SCN

- *Further, your attention is drawn to the Hon'ble SAT Order in the matter of Mayrose Capfin Private Limited Vs. SEBI (decided on 30.03.2012) held that: "....the principles of natural justice require that the inquiry officer should make available such document and material to the delinquent on which reliance is being placed in the inquiry. It is not necessary for the inquiry officer to make available all the material that might have been collected during the course of investigation but has not been relied upon for proving charge against the delinquent. No prejudice can, therefore, be said to have been caused to the appellant on this count...."*

- *You may also note that Hon'ble SAT, in its order dated February 12, 2020, in the matter of Shruti Vora vs. SEBI had held that: "Reliance was* *also made of a decision of the Supreme Court in Union of India and Others vs E. Bashyan (1988) 2 SCC 196 which has no bearing to the controversy involved in the present context, in as much as, the said decision relates to a disciplinary proceedings wherein the Supreme Court observed that the inquiry report was required to be made available to the delinquent. An inquiry report is totally distinct and different from an investigation report. The inquiry report considers all the materials in the inquiry proceedings which form the basis of the final order and therefore the said report is required to be made available to the delinquent. In the instant case, the show cause notice relies upon certain documents which have been made available. Thus the investigation report is not required to be supplied".*

"The learned counsel has also placed reliance upon a minority view of this Tribunal in Price Waterhouse vs Securities and Exchange Board of India decided by this Tribunal in Appeal No. 8 of 2011 on June 1, 2011 wherein it was observed that fairness demands that the entire material collected during the course of investigation should be made available for inspection to the person whose conduct was in question and that said material should also be supplied. In our opinion, the said minority view is directly against the decision of the Supreme Court in Natwar Singh case (supra)".

"A bare reading of the provisions of the Act and the Rules as referred to above do not provide supply of documents upon which no reliance has been placed by the AO, nor even the principles of natural justice require supply of such documents which has not been relied upon by the AO. We are of the opinion that we cannot compel the AO to deviate from the prescribed procedure and supply of such documents which is not warranted in law. In our view, on a reading of the Act and the Rules we find that there is no duty cast upon the AO to disclose or provide all the

documents in his possession especially when such documents are not being relied upon."

In view of the above, your request for provision of copy of investigation report and other details does not hold any merit and hence cannot be acceded to."

11. Noticee was issued another hearing notice dated December 01, 2021 via SPAD and digitally signed e-mail and he was advised to appear before the undersigned on December 09, 2021.

12. The personal hearing was conducted on scheduled date and time through video conferencing. Noticee was represented by an authorized representative (hereinafter referred to as "**AR**"). During the course of hearing, AR reiterated the submissions already made vide letter dated November 12, 2021. The AR requested for time till December 19, 2021 to make additional submissions, which was granted by the undersigned. The AR was also informed that it was the final hearing and no further hearing shall be granted in the present matter.

13. It was observed that Noticee did not make additional submissions till January 05, 2022. Hence, Noticee was sent a reminder mail on January 05, 2022, wherein he was advised to make submissions by end of the day. It was observed that no further reply was received from the Noticee even after additional time being granted to the Noticee through reminder mail communication. Hence, it was presumed that Noticee does not have any additional submissions to be made in the captioned matter.

CONSIDERATION OF ISSUES AND FINDINGS

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

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

    PFUTP Regulations, 2003

    3. Prohibition of certain dealings in securities

    No person shall directly or indirectly—

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

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

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

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

4. Prohibition of manipulative, fraudulent and unfair trade practices

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

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

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

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

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

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

18. I note from the trade log of the Noticee that he had traded in one contract in the stock options segment of BSE during the IP. It is observed that the

Noticee had allegedly executed 2 non-genuine trades in 1 contract. I further note that the above mentioned trades of the Noticee had resulted in the creation of artificial volume of 108000 units in the said contract. Summary of non-genuine trades of the Noticee is as follows:

S. No.	Contract Name	Avg. Buy Rate (Rs)	Total Buy Volume (No. of units)	Avg. Sell Rate (Rs)	Total Sell Volume (No. of units)	% of Non Genuine trades of Noticee in the contract to Noticee's Total trades in the Contract	% of Non Genuine trades of Noticee in the contract to Total trades in the Contract	% of Artificial Volume generated by Noticee in the contract to Noticee's Total Volume in the Contract	% of Artificial Volume generated by Noticee in the contract to Total Volume in the Contract
1	MFSL15MAR265.00PE	0.5	54000	7.00	54000	100	12.50	100	4.12

19. It is noted that the Noticee had allegedly executed non-genuine trades in said contract, wherein the percentage of alleged non-genuine trades of the Noticee in stock options contract to total trades in the contract was 12.50% in the aforesaid contract. Further, alleged artificial volume generated by Noticee in the contract amounted to 100% of total volume generated by him in the contract. It is also noted that alleged artificial volume generated by the Noticee contributed 4.12% of the total volume from the market in the said contract.

20. The details of squaring up done by the Noticee in the contract "MFSL15MAR265.00PE" are as given below :

Trade Date	Client Name	CP Client Name	Trade Time	Trade Rate (Rs.)	Traded Quantity	Buy/Sell by the Noticee
24/03/2015	RAJESH AGARWAL	WOODLAND RETAILS PRIVATE LIMITED	11:32:19	0.50	54000	Buy

24/03/2015	WOODLAND RETAILS PRIVATE LIMITED	RAJESH AGARWAL	12:56:54	7.00	54000	Sell

21. Noticee has contended that besides recording common, generic allegations, SEBI has not made observations on Noticee's specific role in alleged reversal in the SCN. In this regard, the Noticee relied upon Hon'ble Supreme Court's judgement in the case of Commissioner of Central Excise, Bangalore vs M/s. Brindavati Beverages (P) Ltd and Ors (Civil Appeal 3417 of 2002) decided on June 15, 2007. As can be seen from the table, the Noticee on March 24, 2015 at 11:32:19 hrs (Order time of Noticee: 11:30:48 and Counterparty Order time: 11:32:19) entered into 1 buy trade with counterparty viz. Woodland Retails Private Limited for 54000 units at the rate of Rs. 0.50 per unit in the contract "MFSL15MAR265.00PE". Thereafter, on the same day, Noticee at 12:56:54 hrs (Order time of Noticee: 12:55:17 and Counterparty Order time: 12:56:54) entered into 1 sell trade with same counterparty for 54000 units at the rate of Rs. 7.00 per unit in the same contract. It is noted that while dealing in the said contract during the IP, the Noticee executed reversal trades with same counterparty viz. Woodland Retails Private Limited on the same day, with significant price difference. Thus, the Noticee, through his dealing in the contract viz. "MFSL15MAR265.00PE" during the I.P., executed non genuine trades which was 12.50% of the total trades from the market in the said contract during the I.P., and thereby, Noticee generated artificial volume of 108000 units which was 4.12% of the volume traded in the said contract from the market during the I.P.

22. 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 his

counterparties with significant price difference on the same day. The fact that the transactions in a particular contract were reversed with the same counterparties 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 contract, there was negligible trading in the said contract and hence, there was no price discovery in the strictest terms. The wide variation in prices of the said contract, 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 his counterparty in the stock options segment of BSE and the same were non-genuine trades.

23. Noticee has also submitted that his trades in stock options segment were executed on scrips which were not illiquid, if one were to observe the trade volume in the underlying scrip in which the Noticee had traded. I note that the liquidity of options is very different from frequency of trading in the underlying scrip. Former is traded in derivatives segment, in which there are different strike prices, of which some may be illiquid, whereas the latter is traded in cash segment. Hence, the contention of Noticee that the stock options contract was not illiquid because the underlying scrip was liquid is not tenable.

24. Noticee has *interalia* contended that the instant SCN has been issued after 6 years of the execution of impugned trades and that as it was not objected at the time of execution of trades, it is improper to consider Noticee's trades as non-genuine now. Firstly, I note that pursuant to a preliminary examination conducted in the Illiquid Stock Options matter, Interim order was passed by SEBI on August 20, 2015 which was confirmed vide Orders dated July 30, 2016 and August 22, 2016. Meanwhile, SEBI initiated a detailed investigation relating to stock options segment of BSE which was

completed in the year 2018. The investigation revealed that 14,720 entities were involved in executing non-genuine trades in BSE's stock option segment during the investigation period. The proceedings initiated vide the aforementioned Interim Order were disposed of vide Final Order dated April 05, 2018 also considering that appropriate action was initiated against the said 14, 720 entities in a phased manner.

During the course of hearing in the case of *R. S. Ispat Ltd Vs SEBI*, the Hon'ble Securities Appellate Tribunal (SAT), vide its Order dated October 14, 2019, *inter alia* observed that "*SEBI may consider holding a Lok Adalat or adopting any other alternative dispute resolution process with regard to the Illiquid Stock Options".*

A Settlement Scheme was framed under the SEBI (Settlement Proceedings) Regulations, 2018, which provided one-time opportunity for settlement of proceedings in the Illiquid Stock Options matter. The said scheme was kept open from August 01, 2020 till December 31, 2020. Adjudication proceedings were initiated against those entities who had not availed of the opportunity of settlement.

As can be seen from the narration of facts in the foregoing paragraphs, pursuant to appointment of AO on September 23, 2021, SCN was issued on October 25, 2021. In compliance with principles of natural justice, after receipt of reply, an opportunity of personal hearing was scheduled on November 17, 2021 and thereafter on December 09, 2021.

25. Secondly, I note that there are no timelines prescribed in the SEBI Act, 1992 for the purpose of identifying trades as non-genuine. In this regard, I feel it is pertinent to note that, in the matter of SEBI Vs Bhavesh Pabari (2019) SCC Online SC 294, the Hon'ble Supreme Court of India has, inter alia, held that:

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

26. Thirdly, SEBI is the apex regulator in the securities market with overarching authority over all market intermediaries and persons trading in the securities market. In this regard, I note that the Hon'ble SAT in the matter of Pooja Vinay Jain vs SEBI (Appeal No. 152 of 2019 decided on March 17, 2020) held that,

    "*The record would show that all the documents concerning the defense of the appellant were filed by her before the AO. Therefore, for want of any prejudice the proceedings cannot be quashed simply on the ground of delay in launching the same*"

    I note that there was no delay the way it has been argued by the Noticee and he has also not specified what prejudice has been caused to him, so the contentions of Noticee in this regard are without merits.

27. Noticee also contended that the trades of the Noticee were too miniscule to generate any such misleading appearance because the impugned trades did not induce other investors to trade in the said stock options contracts. I note that the Noticee executed reversal trades which defy market rationality when looked along with attending circumstances in toto. Therefore, Noticee's trades, irrespective of the quantum of such trades, were manipulative and intended to create misleading appearance of trading, so the contentions of Noticee in this regard are liable to be rejected. I note that the impugned stock option contracts were illiquid, as stated in the SCN, and also that Noticee's trades in the contract viz. "MFSL15MAR265.00PE"

contributed 4.12% to the total market volume generated during the IP. Noticee's trades, irrespective of the quantum of such trades, contributed substantially to the volume generated in the contract.

28. Noticee submitted that the trades were executed in an ordinary course of business. Noticee has contended that the trades executed were subject to regulatory supervision of BSE, and were not questioned by the BSE at that time, so the impugned trades which were cleared were genuine. I note that stock exchanges merely provide a platform for carrying out the trades and the clearing corporation affiliated with exchange handles the confirmation, settlement and delivery of transactions, however, the obligation to ensure genuineness of trades as regards instant considerations lies squarely on the Noticee and the Noticee is bound to comply PFUTP Regulations, 2003. Thus, the contentions of the Noticee are not tenable.

29. Noticee has also contended that there was neither any mechanism to deter nor a note of caution by BSE about matching trades with same counterparty on the same day during the IP. I note that instant adjudication proceedings levy the impugned allegations against Noticee, and that absence of any preventive mechanism cannot be a ground to absolve Noticee from his obligation to ensure genuineness of trades executed on exchange platform.

30. Noticee has further contended that he had no knowledge of counterparty to the trades and that he did not engage in any collusion with the counterparty as alleged. Noticee also submitted that his trades were made on anonymous trading platform of BSE and he could not be aware about the counterparty. In regard to the aforesaid contentions, I note that it is not mere coincidence that the Noticee could match his trades with the same counterparty with whom he had undertaken first leg of the respective trades. The fact that the transactions in a particular contract were

reversed with the same counterparty for the same quantity of units, indicates a prior meeting of minds with a view to execute the reversal trades at a pre-determined price. This is the outcome of meeting of minds elsewhere and it was a deliberate attempt to deal in such a manner. I note in matters dealing with violation of PFUTP Regulations, 2003, the reason as regards execution of non-genuine trades might not be immediately 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-*"...According to us, knowledge of who the 2nd party / client or the broker is, is not relevant at all. While the screen based trading system keeps the identity of the parties anonymous it will be too naïve to rest the final conclusions on the said basis which overlooks a meeting of minds elsewhere. Direct proof of such meeting of minds elsewhere would rarely be forthcoming...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..."*

31. 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."

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

32. I note the following from the judgement of the Hon'ble SAT in the matter of Ketan Parekh vs SEBI (supra):

In other words, if the factum of manipulation is established it will necessarily follow that the investors in the market had been induced to buy or sell and that no further proof in this regard is required. The market, as already observed, is so wide spread 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 law can never impose on the Board a burden which is impossible to be discharged. This, in our view, clearly flows from the plain language of Regulation 4 (a) of the Regulations.*

33. I also place my reliance on the judgment of Hon'ble Supreme Court in the matter 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 SC 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….."*

34. 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 Hon'ble Supreme Court judgement in the matter of SEBI v Rakhi Trading Private Limited (Civil Appeal Nos. 1969, 3174-3177 and 3180 of 2011 decided on February 8, 2018), 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.*"

35. Noticee has contended that the decision of investors was not affected because of reversal trades executed by him. He also contended that merely because he gained out of the impugned transactions cannot be a ground for the present proceedings. I note that the SCN issued to the Noticee did not allege that on account of the trading of the Noticee in the options, there was adverse impact caused to the third party or that Noticee has made gains out of the impugned trades. Instead the SCN alleged the execution of non-genuine/ reversal trades in the illiquid stock options at BSE, which has already been detailed above. Therefore, I do not find any merit in the contentions of the Noticee in this regard. I note that the impugned reversal trades, which were carried out with prior meeting of minds as inferred from the case facts, affected the price discovery and execution of trades as per market mechanism on the stock options segment of BSE. In this regard, I further note the following from the judgement of the Hon'ble SC in the matter of SEBI vs Rakhi Trading Pvt Ltd (supra):

"……….According to SAT, only if there is market impact on account of sham transactions, could there be violation of the PFUTP Regulations. We find it extremely difficult to agree with the proposition. As already noted above, SAT has missed the crucial factors affecting the market integrity, which may bedirect or indirect. The stock market is not a platform for any fraudulent or unfair trade practice. The field is open to all the investors. By synchronization and rapid reverse trade, as has been carried out by the traders in the instant case, the price discovery system itself is affected. Except the parties who have pre-fixed the price nobody is in the position to participate in the trade. It also has an adverse impact on the fairness, integrity and transparency of the stock market."

Therefore, I note that contentions of Noticee in this regard are without merits.

36. Noticee has also contended that volume contributed by reversal trades to the total contract volume was insignificant, and could not be termed manipulative and deceptive. I note that the impugned stock option contract was illiquid, as stated in the SCN, and also that Noticee's trades in said contract contributed 4.12% to the total market volume generated during the IP. This points to the contribution of Noticee, irrespective of quantum of reversal trades or volume generated, in the creation of misleading appearance of trading through his impugned trades.

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

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

38. Considering the findings that the Noticee as mentioned above has executed non-genuine trades resulting in the creation of artificial volume, thereby violating the provisions of Regulation 3(a), (b), (c) & (d) & Regulation 4(1) and 4(2)(a) of the PFUTP Regulations, 2003 and in terms of the judgement of Hon'ble Supreme Court of India in the matter of SEBI Vs. Shri RAM Mutual Fund[2006] 68 SCL 216(sc) decided on May 23, 2006 held that '' "*In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant...*" I am convinced that it is a fit case for imposition of monetary penalty under the provisions of Section 15 HA of SEBI Act which reads as under:

Penalty for fraudulent and unfair trade practices.

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

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

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

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

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

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

(c) the repetitive nature of the default.

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

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

ORDER

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**
Rajesh Agarwal PAN:ACRPA8227A	Regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of PFUTP Regulations, 2003	₹ 5,00,000/- (Rupees Five Lakhs only)

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

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-2), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C – 4 A, “G” Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.”. The Noticee shall also provide the following details while forwarding DD / payment information:

- Name and PAN of the Noticee
- Name of the case / matter
- Purpose of Payment – Payment of penalty under AO proceedings
- Bank Name and Account Number
- Transaction Number

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. Rajesh Agarwal and also to the Securities and Exchange Board of India.

Date: May 30, 2022	**BARNALI MUKHERJEE**
Place: Mumbai	**ADJUDICATING OFFICER**