BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

ADJUDICATION ORDER NO. Order/VR/SS/2022-23/16016

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

Vinod Kumar Kothari and Sons HUF, [PAN: AABHV5183L]
Sai Plaza, Shop No. 9, First Floor, Ambedkar Square
Behind Patidar Bhawan
Nagpur
Maharashtra
Pin Code – 440008

In the matter of Dealing in Illiquid Stock Options on the BSE Ltd.

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1. BRIEF BACKGROUND OF THE CASE

1. As part of ongoing surveillance, Securities and Exchange Board of India (hereinafter referred to as "SEBI") came across large scale reversal of trades in stock options contracts in the equity derivatives segment of BSE Ltd. (hereinafter referred to as "BSE") which led to creation of artificial volume. Subsequent to a preliminary examination into the matter, SEBI passed an Interim Order on August 20, 2015 against 59 entities, which was confirmed by Orders dated July 30, 2016 and August 22, 2016.

2. Meanwhile, SEBI conducted a detailed investigation into the trading activity in illiquid stock options contracts at BSE (hereinafter referred to as "investigation") for the period between April 01, 2014 and September 30, 2015 (hereinafter referred to as "investigation period").

3. Pursuant to investigation, it was observed that during the investigation period, a total of 2,91,744 trades comprising 81.41 per cent of all the trades executed in stock options contracts in the equity derivatives segment of BSE were trades which involved reversal of buy and sell positions by the clients and counterparties in a contract. Further, out of 21,652 entities that had traded in stock options contracts in the equity derivatives segment of BSE during the investigation period, 14,720 entities were involved in executing such reversal trades/non-genuine trades.

4. Vide Order dated April 05, 2018, the proceedings initiated against 59 entities vide the aforementioned Interim Order were disposed of without any further directions, noting that the Adjudication Proceedings initiated by SEBI would adequately meet the ends of justice and regulatory objectives and that SEBI had decided to take appropriate action against all 14,720 entities in phases.

5. The Hon'ble Securities Appellate Tribunal (hereinafter referred to as "SAT"), vide its Order dated October 14, 2019 in the case of R S Ispat Ltd. vs. SEBI observed, *inter alia*, that *"SEBI may consider holding a Lok Adalat or adopting any other alternative dispute resolution process with regard to the illiquid stock options."*

6. Accordingly, Settlement Scheme 2020 (hereinafter referred to as "Scheme") was framed under the SEBI (Settlement Proceedings) Regulations, 2018 (hereinafter referred to as "Settlement Regulations"), providing a one-time opportunity for settlement of proceedings in the Illiquid Stock Options matter. The Scheme commenced on August 01, 2020 and ended on December 31, 2020. SEBI initiated adjudication proceedings against those whom enforcement actions had been approved and who had not availed of the Scheme. Vinod Kumar Kothari and Sons HUF, having PAN – AABHV5183L (hereinafter referred to as "Noticee"), was one among 14,720 entities against which adjudication proceedings had been so initiated for allegedly violating Regulations 3(a),(b),(c),(d) and 4(1), 4(2)(a) of SEBI (Prohibition of Fraudulent and Unfair Trading Practices related to Securities Markets) Regulations, 2003 (hereinafter referred to as "PFUTP Regulations, 2003"), in the matter of trading in illiquid stock options contracts on BSE.

2. APPOINTMENT OF ADJUDICATING OFFICER

7. SEBI, in exercise of the powers conferred under Section 19 of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "SEBI Act") read with Section 15-I(1) of the SEBI Act and Rule 3 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as "SEBI Rules") read with Section 19 of the SEBI Act, appointed the undersigned as the Adjudicating Officer vide order dated July 02, 2021, to enquire into and adjudge under Section 15HA of the SEBI Act the alleged violations by the Noticee. The proceedings of appointment were communicated to the undersigned vide Communique dated July 06, 2021 to conduct the Adjudication Proceedings in the manner specified under Rule 4 of the SEBI Rules read with sub-sections (1) and (2) of Section 15-I of the SEBI Act.

3. SHOW CAUSE NOTICE, REPLY AND HEARING

8. A Show Cause Notice bearing Number SEBI/HO/DEPA-I/DEPAI-FSEC/P/OW/2021/18893/1 dated August 11, 2021 (hereinafter referred to as "SCN") was issued to the Noticee under Rule 4(1) of the SEBI Rules to show cause as to why an inquiry should not be held against it 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.

9. It was, *inter alia,* alleged in the SCN that the Noticee was one of the entities which indulged in reversal trades which allegedly created false and misleading appearance of trading, generating artificial volumes in stock options contracts in the equity derivatives segment of BSE during the investigation period. The Noticee is alleged to have engaged in reversal trades (two trades, one on the buy side and one on the sell side) in the contract 'JAIA15MAY24.00PEW2' (hereinafter referred to as "contract"), which led to generation of artificial volume of 6,08,000 units (buy side + sell side).

10. An analysis of the reversal trades/non-genuine trades by the Noticee was provided in the SCN. During the investigation period, the Noticee executed a total of two trades in the contract for a total of 6,08,000 units on May 13, 2015, of which buy and sale were 3,04,000 units each. While dealing in the said contract on May 13,

2015, at 15:08:15.76 hrs, the Noticee entered into a buy trade with counterparty Yochana Vyapaar Pvt. Ltd. for 3,04,000 units at ₹ 3.60 per unit, which was reversed by a sell trade at 15:08:20.66 hrs with the same counterparty for 3,04,000 units at ₹ 4.90 per unit. It is alleged that two trades for 6,08,000 units executed by the Noticee in the said contract on May 13, 2015 were non-genuine.

11. The Noticee's two trades while dealing in the contract with the same counterparty were reversal trades involving squaring off transactions, but with significant difference in the buy value and sell value of the transactions during the investigation period and allegedly generated an artificial volume of 6,08,000 units, which made up 26.21 per cent of total market volume in the said contract during the investigation period.

Particulars	Description
Name of the Contract	JAIA15MAY24.00PEW2
Average Buy Rate (₹)	3.60
Total Buy Volume (Number of units)	3,04,000
Average Sell Rate (₹)	4.90
Total Sell Volume (Number of units)	3,04,000
Number of Trades by the Noticee in the Contract	2
Number of Non-Genuine Trades by the Noticee in the Contract	2
% of Non-Genuine Trades of the Noticee in the Contract to Noticee's Total Trades in the Contract	100.00
% of Non-Genuine Trades of the Noticee in the Contract to Total Trades in the Contract	16.67
% of Artificial Volume Generated by the Noticee in the Contract to Noticee's Total Volume in the Contract	100.00
% of Artificial Volume Generated by the Noticee in the Contract to Total Volume in the Contract	26.21

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

12. The SCN was served on the Noticee via Speed Post with Acknowledgement Due (hereinafter referred to as SPAD) and via email dated August 11, 2021, both of which were duly delivered to the Noticee. The Noticee, vide letters dated August 24, 2021 and October 07, 2021, furnished its replies to the SCN and also sought an opportunity of personal hearing.

13. After considering the material available on record, the undersigned was of the opinion that an inquiry should be held in the matter in accordance with the SEBI Rules. Accordingly, an opportunity of personal hearing was granted to the Noticee on October 22, 2021 and the same was communicated to the Noticee vide Notice of Hearing dated October 14, 2021 via SPAD and email, both of which were duly delivered to the Noticee. The Noticee furnished further submissions vide email dated October 21, 2021.

14. Vikas Ganeshmal Bengani, Advocate, the Authorized Representative (hereinafter referred to as "AR") of the Noticee, attended the hearing on the scheduled date and reiterated the submissions made vide letters dated August 24, 2021 and October 07, 2021 and vide email dated October 21, 2021. The contentions made by the Noticee/AR in the submissions are summarised as follows:

i. The Noticee contended that the SCN was issued after more than six years since the date of execution of trades by the Noticee.

ii. The Noticee sought a copy of the Investigation Report, original trade and order log and price-volume data on the basis of which the SCN was issued. Also, the Noticee sought definition of "reversal trade", total market volume in stock options contracts at the BSE during the investigation period and trade and order log for 2,91,744 reversal/non-genuine trades during the investigation period. The Noticee contended that not providing the complete materials/documents to it is in violation of the principles of natural justice.

iii. The Noticee sought the prima facie grounds recorded by the Ld. WTM, SEBI for holding the inquiry against it.

iv. The Noticee had traded on only one day during the investigation period, executing one buy trade and another sell trade in one contract by following all the procedures.

v. The scrip underlying the contract was that of a well-known company.

vi. The trades had been undertaken on the anonymous screen-based trading platform of the BSE and, as such, the identity of the counterparty had been completely unknown to the Noticee.

vii. The SCN did not contain any allegation of the Noticee having any connection/association/relationship with the counterparty. The Noticee had not had any such connection/association/relationship with the counterparty.

viii. The strike prices within a defined range were as permitted by the BSE.

ix. The trades has been executed by the Noticee in the equity derivatives segment of the BSE in the normal course of business without any fraudulent intentions.

x. The acts of, or the trades, by the Noticee cannot be termed as fraud as defined in the PFUTP Regulations. The Noticee denied having violated Regulations 3(a), 3(b), 3(c), 3(d), 4(1) and 4(2)(a) of PFUTP Regulations.

xi. The Noticee accounted for a miniscule share in the number of trades and volumes in the total stock options contracts on the same underlying traded on the BSE on any particular day.

xii. Both SEBI and BSE have sophisticated surveillance mechanisms. Neither did the BSE's surveillance system generate any alert of the reversal trades nor did the BSE caution/warn the Noticee on its trades in the contract.

xiii. The Noticee has a meticulous track record of trading in the securities market.

xiv. While deciding on the quantum of penalty, due regard to the provisions of Section 15J of the SEBI Act shall be given.

xv. The Noticee cited the judgments, inter alia, in the following cases: a) Supreme Court Civil Appeal No. 11311 of 2013 in Adjudicating Officer, SEBI vs. Bhavesh Pabari, b) Order of SEBI AO in respect of Govind Ji Gupta and Ors. in the matter of M/s. Richa Industries Ltd., c) SAT Appeal No. 9 of 2003 in KSL & Industries Ltd. vs. Chairman, SEBI and Gopal Khadaria, d) SAT Appeal No. 219 of 2009 in M/s. Vintel Securities Pvt. Ltd. vs. Adjudicating Officer, SEBI, e) SAT Appeal No. 516 of 2019 in Mr. Narendra Vallabhji Bahuva vs. SEBI, f) SAT Appeal No. 198 of 2020 in Almondz Entertainment Pvt. Ltd. vs. SEBI and g) SAT Appeal No. 390 of 2015 in Dhvani Darshan Kothari vs. SEBI.

4. CONSIDERATION OF ISSUES AND FINDINGS

15. I have carefully perused the charges levelled against the Noticee, its reply and the documents / material available on record. The issues that arise for consideration are as follows:

I. Whether the Noticee has violated the provisions of Regulations 3 (a), 3(b), 3(c), 3 (d), 4 (1) and 4 (2) (a) of the PFUTP Regulations?

II. Does the violation, if any, attract monetary penalty under section 15HA of the SEBI Act?

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

16. Before proceeding with the case on merits, I would like to deal with the preliminary objections raised by the Noticee with respect to period of limitation and principles of natural justice.

17. As regards the SCN being barred by limitation, I note that the investigation into the trading in stock options contracts in the equity derivatives segment of BSE during the investigation period covered 23,885 unique contracts and a total of 3,58,372 trades by a total of 21,652 entities. Upon completion of the investigation in 2018 which revealed that 14,720 entities were involved in executing reversal trades/non-genuine trades, SEBI had initiated enforcement actions against all 14,720 entities in a phased manner in April 2018 itself. The chronology, as provided under the head Brief Background of the Case, illustrates the progress in the case through various stages and before various fora, rather than the delay.

18. Further, rather than prescribing any time limit for taking cognizance of a violation of the provisions of the SEBI Act and the Rules and the Regulations made thereunder, Section 11C of the SEBI Act empowers SEBI to order at any time an investigation where it has reasonable ground to believe that the transactions in securities are being dealt with in a manner detrimental to the investors or the securities market or any securities market intermediary/participant has committed any violations of the SEBI Act or the Rules and the Regulations made thereunder or the directions issued by SEBI. Section 11C, inserted with effect from October 29, 2002, reads as follows:

"Investigation.

11C. (1) Where the Board has reasonable ground to believe that— (a) the transactions in securities are being dealt with in a manner detrimental to the investors or the securities market; or (b) any intermediary or any person associated with the securities market has violated any of the provisions of this Act or the rules or the regulations made or directions issued by the Board thereunder, it may, at any time by order in writing, direct any person (hereafter in this section referred to as the Investigating

Authority) specified in the order to investigate the affairs of such intermediary or persons associated with the securities market and to report thereon to the Board."

19. Next, I would like to refer to the decision of the Hon'ble SAT in the matter of Rajendra Aggarwal vs. SEBI, decided on September 17, 2021, wherein the Hon'ble SAT while rejecting the contention of the Noticee therein regarding delay of four years in issuance of SCN, has, inter alia, held that:
"13. On issue of delay, we find that the show cause notice was issued in the year 2013 and the trades were executed in 2009. The investigation was against a large number of entities which apparently took time and ultimately notices were issued to 35 entities. Consequently, we do not find any inordinate delay in the issuance of the show cause notice nor do we find any merit in the contention that there was an inordinate delay in the delivery of the impugned order after the last date of hearing by the AO."

20. Lastly, I place my reliance on the Judgement of the Hon'ble Supreme Court of India in Adjudicating Officer, SEBI vs. Bhavesh Pabari.
"36. …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."

21. In view of the above, the preliminary objections made by the Noticee regarding the delay in the issuance of the SCN hold no merit.

22. Further, the Noticee argued that SEBI has not shared the Investigation Report and the documents on the basis of which the allegations are made in the SCN. I note that all the documents relied upon to draw the allegations of reversal trades/non-genuine trades by the Noticee in the stock options contract in the equity derivatives segment of BSE had been provided to the Noticee as Annexures to the SCN, viz., i) Details of the trades of the Noticee in stock options contract in the equity derivatives segment of the BSE during the investigation period, ii) Details of non-genuine reversal trades of the Noticee in stock options contract in the equity derivatives segment of the

BSE during the investigation period and iii) Analysis of the non-genuine dealings of the Noticee in the stock options contract during the investigation period. Thus, the Noticee was provided with all data and documents, including the details of its trades, which were relied upon while issuing the SCN.

23. I place reliance on the Judgement of Hon'ble SAT in the case of Mayrose Capfin Pvt. Ltd. vs. Securities and Exchange Board of India (Appeal No. 20 of 2012) dated March 30, 2021.

"5. 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".

24. Since all relevant documents relied upon in the SCN and sufficient for the purpose of filing a reply to the SCN have been provided to the Noticee, I am of the opinion that the principles of natural justice have been duly complied with. Now I would deal with the issues that arise for consideration in the present case.

I. Whether the Noticee has violated the provisions of Regulations 3 (a), 3(b), 3(c), 3 (d), 4 (1) and 4 (2) (a) of the PFUTP Regulations?

25. The relevant provisions of the PFUTP Regulations allegedly violated by the Noticee, and as mentioned in the SCN, are reproduced below:

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;"

26. It has been alleged that the Noticee had indulged in execution of reversal of trades in stock options contract with the same entity on the same day at a substantial price difference within a span of just five seconds. Such trades are non-genuine in nature and have created false or misleading appearance of trading in terms of artificial volume in stock options contract and, therefore, alleged to be manipulative and deceptive in nature. On perusal of the material available on record and giving regard to the facts and circumstances of the case and submissions by the Noticee, I record my findings hereunder:

i. Reversal trades have been considered as 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 non-genuine trades as they are not executed in normal course of trading, lack basic trading rationale, lead to false or misleading appearance of trading in terms of generation of artificial volume and, hence, are deceptive and manipulative. The artificial volume is considered to be the volume (i.e., number of units) reversed in both legs of the said reversal trades while keeping out the volume, if any, which is not reversed.

ii. On May 13, 2015, the Noticee had entered into a total of two trades in the contract, of which one was a purchase transaction of 3,04,000 units of the contract and the other was a sale transaction of 3,04,000 units of the contract. Thus, the Noticee had squared off its entire position during the day itself.

iii. While dealing in the contract on May 13, 2015, the Noticee engaged in reversal trades, which led to generation of alleged artificial volume of 6,08,000 units (buy side + sell side). These trades of the Noticee involved reversal with the same counterparty on the same day, but at significantly different prices.

iv. At 15:08:15.747101 hrs, Yochana Vyapaar Pvt. Ltd. placed a sell order (Order Type: L) for 3,04,000 units @ ₹ 3.60 per unit. At 15:08:15.762883 hrs, the Noticee placed a buy order (Order Type: L) for 3,04,000 units @ ₹ 3.60 per unit. The buy order of the Noticee got executed at 15:08:15.762883 hrs @ ₹ 3.60 per unit against the sell order placed by Yochana Vyapaar Pvt. Ltd.

v. At 15:08:20.637991 hrs, Yochana Vyapaar Pvt. Ltd. placed a buy order (Order Type: L) for 3,04,000 units @ ₹ 4.90 per unit. Within five seconds of the Noticee concluding its buy transaction, at 15:08:20.668948 hrs, the Noticee placed a sell order (Order Type: L) for 3,04,000 units @ ₹ 4.90 per unit and the entire order quantity of the Noticee got matched and resulted in a trade at 15:08:20.668948 hrs @ ₹ 4.90 per unit against the buy order from the same counterparty, Yochana Vyapaar Pvt. Ltd.

vi. On May 13, 2015, in the equity cash segment of BSE, the scrip of Jaiprakash Associates Ltd. opened at ₹ 18.85 touched a day's high of ₹ 19.15 and a day's low of ₹ 18.40 and closed at ₹ 19.05.

vii. The Noticee's two trades generated an artificial volume of 6,08,000 units (buy side + sell side), which made up 26.21 per cent of total market volume in the said contract.

viii. Overall, the artificial volume accounted for 100 per cent of the Noticee's total volume in the contract.

Particulars	Buy	Sell
Trade Date	13/05/2015	13/05/2015
Scrip Name	JAIA15MAY24.00PEW2	JAIA15MAY24.00PEW2
Strike Price (₹)	24	24
Expiry	2015-05-14	2015-05-14
Buy Client Name	Vinod Kumar Kothari & Sons HUF	Yochana Vyapaar Pvt. Ltd.
Sell Client Name	Yochana Vyapaar Pvt. Ltd.	Vinod Kumar Kothari & Sons HUF
Buy Order Time	15:08:15.762883	15:08:20.637991
Order Type	L	L
Sell Order Time	15:08:15.747101	15:08:20.668948
Order Type	L	L
Trade Time	15:08:15.762883	15:08:20.668948
Buy Order Rate (₹)	3.6	4.9
Sell Order Rate (₹)	3.6	4.9
Trade Rate (₹)	3.6	4.9
Buy Order Qty	3,04,000	3,04,000
Sell Order Qty	3,04,000	3,04,000
Traded Qty	3,04,000	3,04,000

Note: *"Traded Quantity" or "unit" refers to lot size in contract multiplied by number of contracts traded.*

27. The securities market performs a major role in the growth of modern economies. In India also, the securities market has become the avenue for wealth creation, wealth management and wealth distribution. Like elsewhere, in India also, the equity derivatives market is a very important segment of the securities market and brings together hedgers, speculators and arbitrageurs. Unlike the equity cash segment where settlement happens on T+2 basis, in the equity derivatives segment the investor can take a position for a longer time horizon at a significantly low investment. However, equity derivatives market is more sophisticated. A harmonious interaction of all categories of traders (i.e., hedgers, speculators and arbitrageurs), and not just a handful of players belonging to any one of the three categories, helps in the discovery of equilibrium price.

28. The initial purchase of illiquid stock options by the Noticee and the subsequent reversal trade (sale) with the same counterparty for the same quantity, within a short span of time (less than five seconds) with a significant difference in buy value and sell

value of the stock options contract, in itself, made it evident that the Noticee was not trading based on any fundamental view of the economy/stock market/company. The non-genuine trades by the Noticee accounted for 6,08,000 units, which accounted for 26.21 per cent of the total volume in the contract. I note that the Noticee had made deliberate misuse of the trading platform for creating artificial volume in the otherwise illiquid stock options contracts in the equity derivatives segment of BSE.

29. By undertaking the reversal trades, there was no change of rights in the contract. Such trades could be classified as artificial/non-genuine, as there was no intention to acquire the rights embedded in the contract.

30. I found that the Noticee squared off the position during the day in a timespan of less than five seconds at a price significantly different from the price at which the first trade happened. Also, both the Noticee and the counterparty quoted exactly the same price and the same quantity for both legs of the reversal trade (₹ 3.60 per unit and ₹ 4.90 per unit, respectively, for purchase/sale of 3,04,000 units). For both the legs of the reversal trade, both the parties placed orders for the same quantity at the same price at times that differed by only the split of a second. Moreover, the significant difference in the prices at which both the trades had been undertaken in such a short timespan looks quite odd, considering that there had been neither any significant changes in the fundamentals of the underlying stock nor any significant changes in the price of the underlying stock. Such price volatility is not in the interests of the genuine investors. By creating such artificial volume at volatile prices, the market integrity is adversely affected.

31. Considering the trades, quantities and prices at which the trades had happened, the short timespan between the buy transaction and the sell transaction and the client-counterparty remaining the same in the trades, I cannot presume that such trades can otherwise happen in an illiquid segment of the securities market in its normal course and, thereby, overlook the prior meeting of minds between the parties to the trade somewhere. It is well accepted 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 the civil liability arising out of the violations of the securities laws is concerned.

32. I have noted that the Noticee has not contested the details of the trades executed by it in the stock options contracts in the equity derivatives segment of BSE. I also found that the Noticee has not offered any rationale for having reversed its position in the contract within a short span of time during the day. Therefore, I have to conclude that the trades executed by the Noticee in the contract were non-genuine and would tantamount to a manipulative or deceptive device.

33. I now refer to the relevant portions of the Judgment of the Hon'ble Supreme Court of India in SEBI vs. Rakhi Trading Pvt. Ltd.

Pronounced by His Lordship Justice Kurian Joseph

"1. Fairness, integrity and transparency are the hallmarks of the stock market in India.

35. Protection of interest of investors should necessarily include prevention of misuse of the market. Orchestrated trades are a misuse of the market mechanism. It is playing the market and it affects the market integrity.

36. The trade reversals in this case indicate that the parties did not intend to transfer beneficial ownership and through these orchestrated transactions, the intention of which was not regular trading, other investors have been excluded from participating in these trades. The fact that when the trade was not synchronizing, the traders placed it at unattractive prices is also a strong indication that the traders intended to play with the market.

37. In the instant case, through reverse trades, there was no genuine change of rights in the contract….From the facts before us, it is clear that the traders in question did not intend to transfer beneficial ownership and therefore these trades are non genuine.

38. Rather than allowing the market forces to operate in their natural course, the traders repeatedly carried out the impugned transactions which deprived other market players from full participation. The repeated reversals and predetermined arrangement to book profits and losses respectively, made it clear that the parties were not trading *in the normal sense and ordinary course. Resultantly, there has clearly been a restriction on the free and fair operation of market forces in the instant case.*

39. Regulation 2(1)(c) defines fraud. Under Regulation 2(1) (c)(2) a suggestion as to a fact which is not true while he does not believe it to be true is fraud. Under Regulation 2(1) (c)(7), a deceptive behaviour of one depriving another of informed consent or full participation is fraud. And under Regulation 2(1)(c)(8), a false statement without any reasonable ground for believing it to be true is also fraud. In a synchronised and reverse dealing in securities, with predetermined arrangement to book loss or gain between pre-arranged parties, all these vices are attracted.

40. Such trading also involves an act amounting to manipulation of the price of the security in the sense that the price has been artificially and apparently prefixed. The price does not at all reflect the value of the underlying asset. It is also a transaction in securities entered into without any intention of performing it and without any intention of effecting a change of ownership of such securities, ownership being understood in the limited sense of the rights in the contract.

41. 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."

Pronounced by Her Ladyship Justice R. Banumathi

"25. In the quasi-judicial proceeding before SEBI, the standard of proof is preponderance of probability.

26. There was no possibility of such perfect matching of quantity, timing, prices etc. between the same parties unless there was prior meeting of minds or a specific understanding/arrangement between the parties.

32. Abnormal difference between the prices at which the trades were executed without corresponding effect on the price of the underlying security, shows that the option in which the party traded was not in demand in the market. It is unusual that the trades were transacted with such huge profits when there was no change in the *underlying prices. These trade transactions obviously only aimed at carrying out manipulative objective.*

33. Once the reversal transactions are shown to be non-genuine or shown to be fictitious creating a false or misleading appearance in the market for ulterior purpose and that the stock market was misused by such manipulative device, this is in clear violation of the provisions of PFUTP Regulations, 2003.

35. An act to fall within Regulation 4(2)(a), it is not necessary that the transactions entered into by the party was with intention to manipulate the market and that the market was in fact manipulated. Market manipulation is a deliberate attempt to interfere with the free and fair operation of the market and create artificial, false or misleading appearances with respect to the price, market, product, security and currency.

36. 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.

38. The smooth operation of the securities market and its healthy growth and development depends upon large extent on the quality and integrity of the market. Unfair trade practices affect the integrity and efficiency of the securities market and the confidence of the investors. Prevention of market abuse and preservation of market integrity are the hallmark of securities law."

34. I also refer to the relevant portions of the Judgment of the Hon'ble Supreme Court of India in SEBI vs. Kishore R Ajmera.

"22. 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.

26. It has been vehemently argued before us that on a screen based trading the identity of the 2nd party be it the client or the broker is not known to the first party/client or broker. 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 said basis which overlooks a meeting of minds elsewhere. Direct proof of such meeting of minds elsewhere would rarely be forthcoming. The test, in our considered view, is one of preponderance of probabilities so far as adjudication of civil liability arising out of violation of the Act or the provisions of the Regulations framed thereunder is concerned. Prosecution under Section 24 of the Act for violation of the provisions of any of the Regulations, of course, has to be on the basis of proof beyond reasonable doubt. 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."

35. I now refer to the relevant portions of the Judgment of the Hon'ble SAT in Global Earth Properties and Developers Pvt. Ltd. vs. SEBI.

"12. Such execution of trades, in our opinion, are non-genuine trades and creates artificial volumes giving misleading appearance. The reversal of trades executed by the Appellant cannot be called a normal trading transaction in as much as these trades were reversed within a short span ranging from a few seconds to a few minutes with the same counter parties. By no stretch of imagination it can be held to be a mere coincidence that the Appellants trades matched consistently with the same counter parties unless there was a meeting of minds with a view to trade at a predetermined time. Such kind of transaction, in our opinion, is a manipulative device and is also synchronised trading.

20. From the aforesaid cumulative analysis of the reversed transactions with the counter party, quantity, time and significant variation of the price clearly indicates that *the trades were non-genuine and had only misleading appearance of trading in the securities market without intending to transfer the beneficial ownership. One finds it to be naive to presume that the perception of the two counter parties to a trade changed within few seconds/minutes and positions were interchanged and the contracts were changed where one party made profit and the other party ended up making losses every time without prior meeting of mind. It is not a mere coincidence that the Appellants could match the trades with the counter party with whom he had undertaken the first leg of respective trade. In our opinion, the trades were non-genuine trades and even though direct evidence is not available in the instant case but in the peculiar facts and circumstances of the present case there is an irresistible inference that can be drawn that there was meeting of minds between the Appellants and the counter parties, and collusion with a view to trade at a predetermined price."*

36. I now turn to the relevant portions of the Judgment of the Hon'ble SAT in Shivam Investments vs. SEBI.

"6. …The scope of the term 'fraud' as defined above is wide enough to take in its sweep any act which disturbs the equilibrium of the market. It is not necessary that the fraudulent act should result in price manipulation. There are other several wrong doings envisaged in the definition of fraud as mentioned above. So the contention of the appellant's learned representative that creation of artificial volumes in the market cannot be regarded as a wrong doing is devoid of any substance…. The only defence of the appellant's learned representative is that the trades represent only those on the National Stock Exchange of India Limited and they are a small percentage of the total volume traded in the market and there was no adverse impact on the market. We are of the view that in the facts and circumstances of this case, the volume of trades, as contended by the appellant, is not relevant since the wrong doing stands established."

37. In view of the analysis as provided in the discussion above and the conclusions drawn from the Judgments of the Hon'ble Supreme Court of India and the Judgments of the Hon'ble SAT, I find that the allegation of violations by the Noticee of the provisions of Regulations 3(a), 3(b), 3(c), 3(d), 4(1) and 4(2)(a) of PFUTP Regulations stands established.

38. I have noted that BSE had taken several steps, viz., introduction of Reversal Trade Prevention Check ("RTPC") and Price Reasonability Check ("PRC") functionality for the stock options segment, discontinuation of weekly stock options contracts, reduction in number of strikes in the stock options segment, etc.

39. In view of the above, I conclude that the Noticee had violated the provisions of Regulations 3(a), 3(b), 3(c), 3(d), 4(1) and 4(2)(a) of PFUTP Regulations.

II. Does the violation, if any, attract monetary penalty under Section 15HA of the SEBI Act?

40. In the foregoing paragraphs, based on an analysis of the data and perusal of the documents, I concluded that the Noticee had violated the provisions of Regulations 3 (a), 3(b), 3(c), 3 (d), 4 (1) and 4 (2) (a) of PFUTP Regulations.

41. One of the hallmarks of the trading platforms of the Indian stock exchanges is the price discovery mechanism based on the large number of orders placed by the anonymous buyers and sellers. Such trading behaviour by the Noticee had hampered the price discovery mechanism and created artificial volume, making the trading platform no longer fair and equitable for all the investors who had been participating/otherwise would have participated.

42. I also rely on the Judgment of the Hon'ble Supreme Court of India in the matter of SEBI vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC) wherein it was 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 Regulation is established and hence the intention of the parties committing such violation becomes wholly irrelevant. A breach of civil obligation which attracts penalty in the nature of fine under the provisions of the Act and the Regulations would immediately attract the levy of penalty irrespective of the fact whether contravention must made by the defaulter with guilty intention or not. We also further held that unless the language of the statute indicates the need to establish the presence of mens rea, it is wholly unnecessary to ascertain whether such a violation was intentional or not."

43. Accordingly, 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.

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

44. The relevant provisions of law are reproduced below:

*"**SEBI Act - Penalty for fraudulent and unfair trade practices.***

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

SEBI Act - 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."

45. Earlier, I concluded that the Noticee had entered into non-genuine trades in stock options contract during the investigation period, which created a false and misleading appearance of trading volumes in the respective contract at prices significantly different for both legs of the transactions and having no correlation with the price trend in the underlying scrip. It is not possible to quantify the amount of losses caused to the investors due to such violations by the Noticee from the material / documents made available on record. In this context, I place my reliance on the Judgement of the Hon'ble Supreme Court of India in Adjudicating Officer, SEBI vs. Bhavesh Pabari.

"11. …We, therefore, hold and take the view that conditions stipulated in clauses (a), (b) and (c) of Section 15-J are not exhaustive and in the given facts of a case, there can be circumstances beyond those enumerated by clauses (a), (b) and (c) of Section

15-J which can be taken note of by the Adjudicating Officer while deciding the quantum of penalty.

12. At this stage, we must also deal with and reject the argument raised by some of the private appellants that the conditions stipulated in clauses (a) to (c) of Section 15-J are mandatory conditions which must be read into Section 15-A to Section 15-HA in the sense that unless the conditions specified in clauses (a) to (c) are satisfied, penalty cannot be imposed by the Adjudicating Officer under the substantive provisions of Sections 15-A to 15-HA of the SEBI Act. The argument is too far-fetched to be accepted. Section15-J of the SEBI Act enumerates by way of illustration(s) the factors which the Adjudicating Officer should take into consideration for determining the quantum of penalty imposable. The imposition of penalty depends upon satisfaction of the substantive provisions as contained in Sections 15-A to Section 15-HA of the SEBI Act."

46. Thus, it is evident that the provisions of clauses (a), (b) and (c) of Section 15J are illustrative in nature and have to be taken into account whenever such circumstances exist. The Adjudicating Officer, upon satisfied that the Noticee indulged in fraudulent and unfair trade practices relating to securities and in exercise of powers under Section 15-I(2) of the SEBI Act, may impose a penalty prescribed under Section 15HA of the SEBI Act, which shall not be less than ₹ 5,00,000 but which may extend to ₹ 25,00,00,000 or three times the amount of profits made out of such practices, whichever is higher. Hence, I conclude that it is appropriate to impose the minimum penalty, as prescribed under Section 15HA, on the Noticee.

5. ORDER

47. After taking into consideration the nature and gravity of the violations established in the preceding paragraphs, I, in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the SEBI Rules, hereby, impose the following penalty under Section 15HA of the SEBI Act, 1992 on the Noticee:

Name of the Noticee	Proven Violations	Penalty
Vinod Kumar Kothari and Sons HUF [PAN: AABHV5183L]	Regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of PFUTP Regulations, 2003	₹ 5,00,000/- (Rupees Five Lakh Only)

48. I am of the view that the said penalty is commensurate with the violations by the Noticee.

49. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this Order either by way of Demand Draft (hereinafter referred to as “DD”) or by availing the e-payment facility offered by SEBI.

50. In case of DD, the DD shall be drawn in favour of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai, and the Noticee shall send the said DD, along with a covering letter mentioning the details of the AO Order, to “The Division Chief, Division of Regulatory Action-3 (DRA-3), Enforcement Department-1 (EFD-1), Securities and Exchange Board of India, SEBI Bhavan II, Plot No. C–7, “G” Block, Bandra Kurla Complex, Bandra (East), Mumbai, Maharashtra, Pin Code - 400 051”.

51. The payment of penalty can also be made online by following the below path on SEBI website https://www.sebi.gov.in ENFORCEMENT → Orders → Orders of AO → Click on PAY NOW or at https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html.

52. The Noticee shall, after making online payment of the penalty, provide the following details to SEBI by an email addressed to tad@sebi.gov.in:

Sl. No.	Particulars	Description
1	Name of the Case	
2	Name and PAN of the Noticee	
3	Date of Payment	
4	Amount Paid	
5	Transaction Number	
6	Details of Bank Account from which Payment has been made	
7	Purpose of Payment	Payment of Penalty under AO Order

53. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under Section 28A of the

SEBI Act for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties of the Noticee.

54. In accordance with Rule 6 of the SEBI Rules, a copy of this Order is being sent to the Noticee and also to SEBI.

VENKATESWARAN RAMAKRISHNAN Digitally signed by VENKATESWARAN RAMAKRISHNAN Date: 2022.04.13 14:08:09 +05'30'

DATE: APRIL 13, 2022 **VENKATESWARAN RAMAKRISHNAN**

PLACE: MUMBAI **ADJUDICATING OFFICER**