BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
ADJUDICATION ORDER NO.: ORDER/AP/SG/2021-22/15336

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

In respect of:

Radhika Sarraf

PAN: ERQPS7908A

In the matter of dealings in Illiquid Stock Options at BSE

<u>BACKGROUND</u>

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

2. It was observed during the course of investigation that a total of 2,91,744 trades comprising 81.40% of all the trades executed in the Stock Options Segment at BSE during the investigation period were trades which involved reversal of buy and sell positions by the clients and counterparties in a contract on the same day. It was observed that Ms. Radhika Sarraf (hereinafter referred to as "**Noticee**") was one such client whose reversal trades involved squaring off open positions with a significant price difference without any basis for such change in the contract price. The aforesaid reversal trades allegedly resulted into generation of artificial volumes, leading to allegations that the Noticee had violated the provisions of Regulations 3(a),(b),(c),(d) and Regulations 4(1),4(2)(a) of the SEBI (Prohibition

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

APPOINTMENT OF ADJUDICATING OFFICER

3. SEBI initiated adjudication proceedings and appointed the undersigned as Adjudicating Officer under Section 15-I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act**") read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as "**Adjudication Rules**") vide order dated July 02, 2021 to inquire into and adjudge under Section 15HA of the SEBI Act against the Noticee for the alleged violation of the aforesaid provisions of PFUTP Regulations, 2003.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. A Show Cause Notice bearing reference no. SEBI/HO/MRD1/MRD1_DTCS/P/OW/2021/16728 dated July 28, 2021 (hereinafter referred to as "**SCN**") was issued to the Noticee under Rule 4(1) of the Adjudication Rules to show cause as to why an inquiry should not be initiated against the Noticee and why penalty should not be imposed on the Noticee under Section 15HA of the SEBI Act for the violations alleged to have been committed by the Noticee.

5. The SCN issued to the Noticee, *inter alia*, mentioned / alleged the following:

"….

5. The Noticee was one of the entities which indulged in reversal trades which allegedly created false and misleading appearance of trading, generating artificial volumes in the Stock Options Segment of BSE during the investigation period. The Noticee is alleged to have engaged in reversal trades through 2 trades in 1 unique contract, which led to generation of alleged artificial volume of 85,750 units. These trades of the Noticee involved reversal with the same counterparty on the same day, but at different prices.

…

7. A summary of dealings of Noticee in 1 Stock Options contract in which the said Noticee allegedly executed reversal trades during the investigation period, is as follows:-

S. No.	Contract Name	Avg. Buy Rate (in ₹)	Total Buy Volume (no. of units)	Avg. Sell Rate (in ₹)	Total Sell Volume (no. of units)	% of Artificial Volume generated by Noticee in the contract to Noticee's Total Volume in the Contract	% of Artificial Volume generated by Noticee in the contract to Total Volume in the Contract
1.	GRSM15APR3600.00PE	25.00	42,875	60.00	42,875	100.00%	20.48%

8. The abovementioned reversal trades and volumes are illustrated through the dealings of Noticee in the one contract viz, "GRSM15APR3600.00PE" during the investigation period, as follows:-

(a) During the investigation period, 2 trades for 42,875 units were executed by the Noticee in the said contract on March 30, 2015.

(b) While dealing in the said contract on March 30, 2015, at 14:52:18 hrs, the Noticee entered into a buy trade with counterparty Fastner Machinery Dealers Pvt Ltd. for 42,875 units at ₹25.00 per unit. At 14:52:23 hrs, the Noticee entered into a sell trade with the same counterparty, for 42,875 units at ₹60.00 per unit.

(c) The Noticee's two trades while dealing in the above said contract during the investigation period allegedly generated artificial volume of 85,750 units, which made up 20.48% of total market volume in the said contract during this period.

9.In view of the foregoing, it is alleged that Noticee, by indulging in execution of non-genuine reversal of trades in Stock Options with same entities on the same day, created false and misleading appearance of trading in stock options and therefore allegedly violated Regulation 3(a),(b),(c),(d), 4(1), 4(2)(a) of PFUTP Regulations, 2003…."

6. The SCN was served on the Noticee via Registered Post Acknowledgement Due. Thereafter, the Noticee, vide letter dated September 05, 2021, inter-alia, submitted the following:

   a. *Single trade executed Noticee in the stock options segment of the BSE was completely genuine and was executed on the platform provided by stock exchange, which was also subjected to various charges and taxes on the transaction.*

   b. *All the transactions done by Noticee are perfectly recorded in the regular books of accounts and income tax returns have also been filed taking into consideration the profit made by this transaction.*

   c. *SEBI has suddenly labeled the trades done by Noticee in stock options as non-genuine after a period of appox. 7 years on completely untenable grounds and unjustified reasons.*

   d. *The word "non-genuine" is not defined in PFUTP regulations or any of the acts/Regulations of SEBI. This leaves Noticee to rely on dictionary meaning of the word to test whether the alleged trade fall under the categories of artificial volume through non-genuine trades.*

   e. *The trade done by Noticee has all traits of being genuine and therefore cannot be categorized as non-genuine. These trades were executed on the anonymous platform of the Exchange, without any knowledge of counter party, at price ranges that were permitted by the Exchange and SEBI. Reasons of said trades being carried out at a price difference and reversed with the same party are also genuine as the Risk Disclosure Document (RDD) issued by SEBI envisages such a situation and also warns the investors and traders against them as it accepts that these are bound to happen. If SEBI believed that such trades cannot happen, then there was no reason to include such clauses in RDD. Having included clauses dealing with situations of possible trading in illiquid securities / derivative contracts where profits and losses may occur due to low liquidity and wider spreads, the conclusion of categorising these trades as non-genuine is not tenable. Simply the trades resulted in profit,* *it cannot be labelled as non-genuine. If there was a fault in the platform provided by the Stock Exchange then SEBI should have taken action against the Stock Exchange.*

f. *SCN fails to highlight any possible reason for executing the alleged single non-genuine trade. Without even having indicated any purpose/motive for carrying out non-genuine trade, there is no reason to categorise it as non-genuine, artificial, manipulative, deceptive or creating false and misleading appearance of trading, as wrongly alleged in the SCN.*

g. *The trade done by the Noticee in the said scrip was just single buy and sell trade on the Stock Options segment of the BSE ltd. and if the intention was to carry out artificial volume and create a false and misleading appearance of trading or execute manipulative and deceptive trades, then frequency of such trades would have been much higher.*

h. *The Noticee had contributed only 85750 units volume out of total volume of 1500 crore units i.e. 0.00057% of the total volume of units traded during the investigation period. Volume % contributed by the Noticee in the contract out of the total volume in the contract on that day was merely 20.48 %.*

i. *No allegation of any connection/relation/meeting of minds/collusion has been made against Noticee with the counter party. In this regard, Noticee relied on the judgment of the Hon'ble Security Appellate Tribunal in the matter of Narendra Vallabhji Bahuva vs. SEBI (Appeal No. 516 of 2019, Date of decision 14th July, 2021), wherein it was held that "…in the absence of any connection with other entities, the trades executed by the appellant cannot be clubbed with the trades executed by other noticees who acted as a group. We also find that there is no connection of appellant with the promoters of the Company. The Hon'ble Supreme Court of India further held in the same matter that "…only one trade was executed by the appellant which constituted 0.36% of the total volume of trades which in our opinion is too miniscule and would not create any impact either on the manipulative intention or on the circular / reversal and synchronized trades nor will have any impact on the transfer of beneficial ownership or leading to a false and misleading appearance of* *trading. Such miniscule trading cannot be termed as fraudulent in nature. We also find that in the single trade executed by the appellant, he had purchased 33,890 shares out of which only 5,000 shares matched through reversed trading on the next date. In our opinion this is only a coincidental and cannot be termed fraudulent or manipulative in nature. The reversed trades are considered those trades in which an entity reverse its buy or sell positions in a contract with the subsequent sell or buy position with the same counter party during the same day. We are, however, of the opinion that if the trades match even on the second day it will still be called a reversal trade. However, in the instant case, we are satisfied that it was not a case of manipulative trades with no change of beneficial ownership as there is no nexus with the other entities including the counter party".*

j. The Noticee did not transact in the underlying securities and merely carrying out a single trade in option contracts which cannot be alleged to have created any false and misleading appearance of trading or result in a manipulative or deceptive device as falsely alleged.

k. Noticee submitted that the volume in stock options was extremely negligible when compared with the total volume of the underlying and all the derivatives contract in the underlying and such small quantity of trading is completely incapacitated to create any kind of artificial volume.

l. The SCN issued to the Noticee claimed that the trade was reversed at significant price difference. However, it has only compared the value of premium of the contracts. However in case of options contract the notional value i.e. the value of Strike Price plus the premium is to be considered. When the price difference is compared with the notional value, its change is extremely insignificant.

m. SEBI has issued Risk Disclosure Document which includes risks of trading on the stock options segment of the Exchange. Clauses 1.2 and 1.3 deal with Risk of low liquidity and Risk of wider spreads. From these clauses as mentioned in the RDD issued by SEBI it can be construed that SEBI was *aware of the possible (significant as per SCN but not actually significant) price difference and losses / profits due to lower liquidity and wider spreads.*

n. SEBI and Exchanges have put in place a mechanism of price band in Capital Market Segment to control extreme volatility, which may result in trades taking place at unrealistic prices. No such price band mechanism was in place for options segment. This in itself means that all prices at which Noticee's trade was executed were genuine. Pricing of options is a complex arithmetical calculation based on several variables most of which are subjective and presumptive thus making a huge range of price to be completely valid and genuine. It cannot be expected for common investors and traders to know the correct range of option prices.

o. It is also not the allegation in the SCN that other investors were induced or have been misled due to the trade carried out by Noticee's trades. Further it is not even alleged that third parties suffered any loss due to the transaction carried out by Noticee's trades. Assuming whilst denying that the trade was executed deliberately, no other party has been affected by these trade as it was reversed with same party and no impact what so ever has been caused to anyone because of Noticee's trade in stock options.

p. No loss has been caused to any investor or group of investor as a result of Noticee trading nor has the same been alleged against Noticee in the SCN. No person has claimed to be defrauded or have been induced to trade because of Noticee's trade.

q. There is no charge of price manipulation in the said SCN and no other party has been affected by Noticee's trade as it was reversed with same party.

r. Noticee placed reliance on the following judgments of Hon'ble Securities Appellate Tribunal:

I. Jagruti Securities (2008 SCC online SAT 184), wherein it was inter-alia held that "….we are of the view that in an artificial trade there has to be collusion between the buyer and the seller and in the absence of any collusion, the trade cannot be termed as 'artificial…."

II. S.P.J. Stockbroker Pvt. Ltd. (2013 SCC Online Sat 67) wherein it was inter-alia held that "….Unless some connection between appellant and counterparties with whom appellant traded is established, it is difficult to hold that trades in question were carried out with a view to manipulate market by creating false volumes resulting in upsetting market equilibrium…."

III. HB Stockholdings Limited vs SEBI [Appeal No. 114 of 2012, Date of decision 27th August, 2013) wherein it was inter-alia held that "….It may be noted that synchronization of trades is not per se illegal. It is actionable only if it is illegitimate and is the outcome of a mischievous meeting of minds among certain parties…."

IV. R.K. Global vs. SEBI (Appeal No. 158 of 2008, Date of decision 16th September, 2010), wherein it was held that "... Appellant has been charged for executing fraudulent trades which is, indeed, a serious charge and cannot be established on mere suspicion and should have firmer ground to stand upon. A higher degree of probability must exist before such a charge could be found to have been established…"

s. In the SCN, it is mentioned that by executing the single trade, Noticee have violated Regulations 3(a), (b), (c), (d), 4(1), 4(2)(a) of PFUTP Regulations. The same is denied as there is nothing on record to substantiate that Noticee knowingly misrepresented the truth or concealed material fact, suggested a fact that Noticee believed is untrue, concealed any fact required to be disclosed. Further Noticee never made any promise or representation, and has not omitted any obligation under other law. Even further Noticee's behaviour was no way deceptive, nor have Noticee made any false statement.

t. None of Noticee's acts can be said to have been in the form of a manipulative or deceptive device or in contravention to the provisions of the SEBI Act, rules or regulations of SEBI.

u. The Noticee had executed only a single (buy and sell) in the stock options segment and there was only a single counter party to said trade. The said *counter party is not related/connected to Noticee .Taking into account preponderance of probability and the fact that Noticee had traded only once in the stock options segment, it cannot be alleged that there was a meeting of minds with the counter party or that Noticee have indulged into an act of generating artificial volume.*

v. *Without prejudice to the aforesaid, if at all it is held that Noticee have violated the aforesaid PFUTP Regulations, then in that case it is submitted that no penalty should be imposed taking into consideration the mitigating circumstances and factors under Section 15 J of the SEBI Act.*

w. *SEBI had initially passed an interim order dated 20th August, 2015 in the matter of stock options segment of BSE Ltd. and restrained 59 persons/entities from buying, selling, or dealing in in the securities market till further directions. It may be noted that Noticee was not part of the 59 entities against whom the Interim Order was passed and neither part of the first 567 entities against whom the Adjudication Proceedings were initiated. SEBI itself considered Noticee's trade to be so minuscule, that it initiated Adjudication Proceedings against Noticee in the last stage and therefore it is prayed that a lenient view be taken in the present matter*

x. *In various matters, SEBI has imposed penalty lesser than the minimum prescribed penalty. Therefore, Noticee submitted that a lesser penalty should be imposed taking into consideration the mitigating factors and circumstances.*

y. *The Noticee prayed that the present proceedings be quashed since no primary violation of any PFUTP Regulations is made out against me and the* genuineness of the trade.

7. In the interest of natural justice and in terms of the Adjudication Rules, the Noticee was provided with an opportunity of personal hearing in the matter on September 22, 2021 through the online Webex platform. Shri Saurabh Bachhawat, appeared as the Authorized Representative (hereinafter referred to as "AR") on behalf of the Noticee on the stipulated date of hearing. During the course of the hearing, the AR reiterated the submissions made by the Noticee in her earlier submissions. The

AR mentioned that the Noticee has done only two trades in Stock Options at BSE for a total of 85,750 units. The Noticee has earned a profit of Rs.15 lakh from the said transactions and paid income tax and other statutory taxes for the said transactions. The AR submitted that considering the case of Bhavesh Pabari, AO has the discretion to impose lesser penalty than the minimum penalty prescribed under Section 15 HA of the SEBI Act by keeping in view the circumstances of the matter. In case the Ld. Adjudicating Officer is coming to a finding that the Noticee has violated the provisions of SEBI Act and the Regulations framed thereunder, then in that case a lesser penalty should be imposed on the Noticee i.e. lower than the minimum penalty prescribed under Section 15HA of SEBI Act.

CONSIDERATION OF ISSUES AND FINDINGS

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

    (a) Whether the Noticee has violated the 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?

    (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?

9. Before advancing into the merits of the case, I would like to deal with the issue pertaining to the delay, as alleged by the Noticee, that SEBI has suddenly labeled the trades done by Noticee in stock options as non-genuine after a period of appox. 7 years.

10. I note that there is no provision under SEBI Act which prescribes a time limit for taking cognizance of a breach of the provision of SEBI Act and Rules and Regulations made thereunder. Further, as per Section 11C of SEBI Act, SEBI can

initiate investigation at any point of time, for any period of alleged violation or any period of alleged transactions.

11. In this regard, I feel it is pertinent to note that, in the matter of SEBI Vs Bhavesh Pabari (2019) SCC Online SC 294, the Hon'ble Supreme Court of India has, *inter alia*, observed as follows:

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

12. Further, I note that the Hon'ble SAT in the matter of Pooja Vinay Jain vs. SEBI (Appeal No. 152 of 2019, Date of Decision – 17.03.2020) held that, "*The record would show that all the documents concerning the defense of the appellant were filed by her before the AO. Therefore, for want of any prejudice the proceedings cannot be quashed simply on the ground of delay in launching the same*"

13. I note that the investigations relating to the PFUTP Regulations, 2003 are complex (considering the volume of transactions, connections and examination of trading of shares, etc.) and time consuming. In the instant matter, I note that a total of 14,720 entities were involved in the generation of artificial volume by executing non-genuine / reversal trades in the illiquid Stock Options segment at BSE during the investigation period. Initiation of proceedings against the said 14,720 entities is a humungous task and therefore, considering the available resources, the proceedings were initiated against the entities in a staggered manner. I also note that SEBI had framed a settlement scheme in accordance with the provisions of the SEBI (Settlement Proceedings) Regulations, 2018 which provided a onetime opportunity to the concerned entities to settle the proceedings in the matter of dealings in illiquid Stock Options at BSE. I observe that the said scheme was kept open for a period of, initially, 3 months (commencing from August 01, 2020) and then extended till December 31, 2020 to enable the entities to avail the benefit of the scheme in view of the disruptions caused due to the Covid-19 pandemic. A total of 1,018 entities had availed the benefit of the Scheme and remitted the

specified settlement amounts and a Settlement Order was passed by SEBI on January 15, 2021. Subsequently, proceedings against remaining entities (including the Noticee) were proceeded with and, accordingly, the SCN was issued against the Noticee.

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

15. With respect to the alleged violations in the instant matter, it is pertinent to refer to the relevant provisions of the PFUTP Regulations, 2003, which are reproduced as follows:

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 [manipulative] 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;

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

17. I note from the trade log of the Noticee that the Noticee had traded in 1 unique contract in stock options segment of BSE during the Investigation Period. It is observed that the Noticee had executed 2 non-genuine trades in 1 contract. I further note that the above mentioned trades of the Noticee had resulted in the creation of artificial volume of a total of 85,750 units in the said 1 contract. The summary of the non-genuine trades of the Noticee are as follows:

Contract Name	Avg Buy Rate (in ₹)	Buy Qty (No. of units)	Avg Sell Rate (in ₹)	Sell Qty (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
GRSM15APR3600.00PE	25.00	42,875	60.00	42,875	100.00%	3.92%	100.00%	20.48%

18. It is noted that the Noticee had executed non-genuine trades in 1 contract, wherein the percentage of artificial volume generated by the Noticee in the contract accounted for 20.48% of the total volume in the said contract. This is contrary to the submission of the Noticee that her contribution in the contract out of the total volume in the contract was 20.48% for the day. Further, the artificial volume generated by the Noticee in the contract amounted to a substantial 100% of total volume generated by her in the contract. The non-genuine trades executed by the Noticee in the above contract had significant difference between buy and sell rates considering that the trades were reversed on the same day.

19. Upon perusing the trade log, I note that the time difference of the placement of the orders by the Noticee and the counter-party was very small. To illustrate, on March 30, 2015 at 14:52:18.297967, the Noticee placed a buy limit order for a quantity of 42,875 units at a price of ₹25 per unit and the said order was matched with the sell limit order (which was also for 42,875 units at a price of ₹25 per unit) of counterparty client Fastner Machinery dealers Pvt. Limited. I note that the said sell limit order was placed at 14:52:18.236938, i.e. almost at the same time of entry of buy order by the Noticee. I note that there was no modification of either price or quantity by either the Noticee or the counterparty and the buy limit order of the Noticee got executed into trade immediately at 14:52:18.297967 upon the entry of the buy limit order by the Noticee. Subsequently, after 5 seconds of execution of the buy transaction by the Noticee, at 14:52:23.698389, the Noticee placed a sell limit order for 42,875 units at a price of ₹60 per unit and the said order was matched with the same counterparty (i.e. Fastner Machinery dealers Pvt. Limited), who placed a buy order for the same quantity (i.e. 42,875 units) and price (i.e. ₹60.00) at 14:52:23.737302, i.e. almost at the same time. I also note that there was no modification of either price or quantity by either the Noticee or the counterparty and the sell limit order of the Noticee got executed into trade immediately upon the entry of the buy limit order by the counterparty.

20. The non-genuineness of these transactions executed by the Noticee is evident from the fact that the Noticee and the counterparty entered buy and sell order almost at the same time for both the trades. The fact that the orders of the Noticee

and her counterparty matched with such precision (considering there was a perfect match of price for both the trades and quantity for one trade at almost same time for the orders placed by the Noticee and counterparty) indicates a prior meeting of minds with a view to execute the reversal trades at a predetermined price. Since these trades were done in illiquid option contracts, there was very little trading in the said contract and hence, there was no price discovery in the strictest terms. The wide variation in prices of the said contracts, within a time difference of 5 seconds is a clear indication that there was pre-determination in the prices by the counterparties while executing the trades. Therefore, it is observed that the Noticee had indulged in reversal trades with her counterparty in the stock options segment of BSE and the same were non-genuine trades.

21. The Noticee has contended its trades were executed on the anonymous trading system of the exchange, without any knowledge of the counterparty, at price ranges that were permitted by Exchange and SEBI and further there is no charge of any meeting of mind/collusion/relation/connection with the counterparty in the SCN. In this regard, I place reliance on the judgment of Hon'ble Supreme Court in the matter in respect of SEBI v Rakhi Trading Private Limited (Civil Appeal Nos. 1969, 3174-3177 and 3180 of 2011 decided on February 8, 2018), in which the Hon'ble Supreme Court has held the following:

"*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.....*"

22. Therefore, I find that it cannot a mere coincidence that Noticee could match its trades (with the corresponding price, in both the trades, and quantity, in one trade, entered by both the Noticee and counterparty being equal) with the same counterparty with whom she had undertaken first leg of the respective trades. It

indicates meeting of minds. In this context, I would also like to rely on the judgment of the Hon'ble Supreme Court of India in SEBI Vs Kishore R Ajmera (AIR 2016 SC 1079), wherein it was held that "*…in the absence of direct proof of meeting of minds elsewhere in synchronized transactions, the test should be one of preponderance of probabilities as far as adjudication of civil liability arising out of the violation of the Act or provision of the Regulations is concerned. The conclusion has to be gathered from various circumstances like that volume of the trade effected; the period of persistence in trading in the particular scrip; the particulars of the buy and sell orders, namely, the volume thereof; the proximity of time between the two and such other relevant factors. The illustrations are not exhaustive...*"

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

24. In the instant matter, I note that though direct evidence regarding meeting of minds or collusion of the Noticee with the counterparty is not forthcoming, the trading behavior of the Noticee makes it clear that the aforesaid non-genuine trades could not have been possible without meeting of minds at some level. In this context, I find it pertinent to refer to the Hon'ble SAT Order dated July 14, 2006 in the matter of Ketan Parekh Vs SEBI (Appeal No. 2 of 2004), wherein the Hon'ble SAT has held that "*…The nature of transactions executed, the frequency with which such transactions are undertaken, the value of the transactions, the conditions then prevailing in the market are some of the factors which go to show the intention*

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

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

26. The Noticee has contended that the only one buy trade and the one sell trade executed by the Noticee and contributed only 85,750 units volume out of total volume of 1500 cr units i.e. 0.00057% of the total volume of units traded during the investigation period and therefore it cannot be alleged that by executing a single trade, Noticee created an artificial volume while trading in the Stock option segment. In this regard, I am of the opinion that the trading in every option contract, with a particular strike price, associated to a particular scrip has to be considered on an independent basis. I note that percentage of artificial volume generated by the Noticee in the contract accounted for 20.48% of the total volume in the said contract. In view of the same, I find no merit in the contentions of the Noticee in this regard.

27. With regard to the contention of the Noticee that no loss has been caused to any investor, group of investors or third party because of Noticee's trades. I would like to rely on the judgment of Hon'ble Supreme Court in the matter in respect of SEBI v Rakhi Trading Private Limited (Civil Appeal Nos. 1969, 3174-3177 and 3180 of 2011 decided on February 8, 2018), in which the Hon'ble Supreme Court has held the following:

"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 do not find any merit in the aforesaid contention of the Noticee.

28. Noticee also contended that no person has claimed to be defrauded or have been induced to trade because of Noticee's trades. In this regard, I rely on the judgement of the Hon'ble Supreme Court in the matter of SEBI vs Rakhi Trading (supra) in this regard, wherein it was held that, *"Respondent-Rakhi Trading and Kasam Holding on facts are found to have been engaged in non-genuine transactions creating appearance of trading. If the factum of manipulation is established, it will necessarily follow that the investors in the market have been induced to buy or sell and that no further proof in this regard is required. The market, as already observed, is so widespread that it may not be humanly possible for the Board to track the persons who were actually induced to buy or sell securities as a result of manipulation and the Board cannot be imposed with a burden which is impossible to be discharged."* Therefore, the contentions of Noticee in this regard are without merits.

29. The Noticee contended that SEBI and Exchanges have put in place a mechanism of price band in Capital Market Segment to control extreme volatility, however, no such price band mechanism was in place for options segment which shows trades done by Noticee are genuine. In this regard, it may be noted that obligation to ensure genuineness of trades as regards instant considerations lies squarely on the Noticee. Thus that the absence of any preventive mechanism cannot be ground to absolve Noticee from her obligation to ensure genuineness of trades executed on exchange platform. Further, I also note that, the considerations in the present matter are limited to allegations levelled only against the Noticee. Therefore, I do not find any merit in the contentions of the Noticee in this regard.

30. Noticee has submitted that trades done by Noticee have been recorded in the regular book of accounts and income tax returns have also been filed taking into consideration the profit made by this transaction. I find that the aforesaid submission is irrelevant to the instant proceeding as the instant proceeding is concerned with artificial volume generation in violation of the PFUTP Regulations. The trades executed by the Noticee were manipulative and intended to create misleading appearance of trading irrespective of whether such trades were profitable or if taxes were paid pursuant to such profits. Thus, I find that the aforesaid submission of the Noticee is without of any merit.

31. Further, with regard to the submission of the Noticee regarding no penalty or imposition of penalty lower than the minimum prescribed under Section 15HA of SEBI act against the Noticee in the instant matter since the Noticee executed only 2 trades in 1 unique contract, I wish to rely on the judgment dated November 24, 2021 of the Hon'ble SAT, in the matter of Radha Malani vs. SEBI (appeal no. 698 of 2021), wherein the Hon'ble SAT has observed the following:

"*Having heard the learned counsel for the appellant, in our view the controversy involved in the present appeal is squarely covered by a decision of this Tribunal in Global Earth Properties and Developers Pvt. Ltd. vs. SEBI (Appeal No. 212 of 2020 decided on September 14, 2020).*

In view of the aforesaid, the appeal is dismissed with no order as to costs."

Therefore, I do not find any merit in the aforesaid contentions of the Noticee.

32. The trading behavior of the Noticee which confirms that the trades executed by the Noticee were not normal, the wide variation in prices of the trades in the same contract in almost nil time difference without any basis for such wide variation, all indicate that the trades executed by the Noticee were not genuine trades and being non-genuine, created an appearance of artificial trading volumes in respective contracts. In view of the aforesaid, I find that the allegation of violation of regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of PFUTP Regulations, 2003 by the Noticee stands established. The Hon'ble Supreme Court of India in the matter of

SEBI Vs Shri Ram Mutual Fund [2006] 68 SCL 216(SC) 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..*"

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

    Penalty for fraudulent and unfair trade practices

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

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

    Factors to be taken into account while adjudging quantum of penalty

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

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

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

    (c) the repetitive nature of the default.

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

35. I observe that the instant matter is concerned with the creation of artificial volume through the execution of reversal / non-genuine trades and hence, I am of the view that it is not necessary to deal with the unfair gains or losses avoided by the Noticee.

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

<u>ORDER</u>

1. After taking into consideration all the facts and circumstances of the case, the material / documents made available on record including the submissions of the Noticee, the factors mentioned in section 15J of the SEBI Act and in exercise of the power conferred upon me under section 15-I of the SEBI Act read with rule 5 of the Adjudication Rules, I hereby impose a penalty of ₹5,00,000/- (Rupees Five Lakh only) on the Noticee, viz. Ms. Radhika Sarraf, under section 15HA of the SEBI Act for the violation of regulation 3(a), (b), (c), (d), 4(1) and 4(2)(a) of PFTUP Regulations, 2003. I am of the view that the said penalty is commensurate with the lapse / omission committed by the Noticee.

2. The Noticee shall remit / pay the said amount of penalty within 45 (forty five) days of the receipt of this order either by way of Demand Draft ("**DD**") in favour of "SEBI -Penalties Remittable to Government of India", payable at Mumbai or through online payment facility available on the website of SEBI, i.e. <u>www.sebi.gov.in</u>, i.e.

   ENFORCEMENT → Orders → Orders of AO → PAY NOW.

3. The Noticee shall forward the aforesaid DD / payment confirmation details to the Division Chief, Enforcement Department -I (EFD-I), Division of Regulatory Action -IV [EFD1-DRA-IV] SEBI Bhavan-II, Plot No.C7-A,' G' Block, Bandra Kurla Complex (BKC), Bandra (East), Mumbai – 400 051 and also send an email to tad@sebi.gov.in with the following detail:

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

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

5. In terms of Rule 6 of the Adjudication Rules, a copy of this order is sent to the Noticee and SEBI.

DATE: March 11, 2022 **ANSUMAN DEV PRADHAN**

PLACE: MUMBAI **ADJUDICATING OFFICER**