

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
ADJUDICATION ORDER NO.: Order/KS/JT/2021-22/14744**

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:
Madhumita Gupta
PAN: ADXPG4128R

In the matter of dealings in Illiquid Stock Options at the Bombay Stock Exchange

BACKGROUND

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 Bombay Stock Exchange (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 the 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 81.38% of all the trades executed in the Stock Options Segment at the 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. Madhumita Gupta (hereinafter referred to as “Noticee”) was one such client whose reversal trades involved squaring off open positions with a significant 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 April 30, 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/ISD/P/OW/2021/17656/1 dated August 04, 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 upon the Noticee under Section 15HA of the SEBI Act for the violations alleged to have been committed by the Noticee.
5. It was *inter alia* alleged in the SCN that the Noticee had executed 2 non genuine trades in 1 Stock Options contract which resulted in artificial volume of total 1,25,000 units. The summary of dealings of the Noticee in the Stock Options contract, in which the Noticee allegedly executed non genuine trades during the Investigation Period, is as follows:

S. No.	Contract Name	Avg. Buy Rate (₹)	Total Buy Volume (no. of units)	Avg. Sell Rate (₹)	Total Sell Volume (no. of units)	% of 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	HPCL15MAR620.00CE	3	62500	19	62500	100.00	21.22

6. The abovementioned reversal trades and volumes are explained through the dealings of Noticee in the contract “HPCL15MAR620.00CE” during the investigation period, as follows:-
- a. During the investigation period, 2 trades for 1,25,000 units were executed by the Noticee in the said contract on March 12, 2015.*
 - b. While dealing in the said contract on March 12, 2015, at 11:11:49 hrs the Noticee entered into a buy trade with counterparty Xion Gems & Jewellers Private Limited for 62,500 units at ₹3 per unit. At 11:11:55 hrs, the Noticee entered into a sell trade with the same counterparty, for 62,500 units at ₹19 per unit.*
 - c. The Noticee’s two trades while dealing in the above said contract during the investigation period generated artificial volume of 1,25,000 units, which made up 21.22% of total market volume in the said contract during this period.*
7. Dr. S K Jain, Company Secretary, the Authorized Representative (AR) of the Noticee, replied on behalf of the Noticee vide email dated August 16, 2021, seeking inspection of original documents relied in the SCN.
8. It was informed to the noticee vide letter dated October 11, 2021 that all the documents relied upon for issuing the SCN dated August 04, 2021 were provided along with the SCN and consequently, the question of granting inspection does not arise.
9. AR, vide email dated October 19, 2021, reiterated that the Noticee has the right to inspect all original documents as referred to and enclosed to the Show Cause Notice. In this regard, Noticee relied upon the order of the Hon’ble SAT passed in the matter of Smitaben N Shah vs SEBI and Order of Hon’ble Supreme Court (SC) in the matter of SEBI vs Price Waterhouse.
10. Further, vide email dated October 22, 2021, AR submitted reply to the SCN on behalf of the Noticee which is summarized below:

10.1. Adjudicating Proceedings initiated against the Noticee are liable to be dropped, *inter-alia*, on the following Grounds:

- a. Noticee submitted that the Investigation conducted by SEBI into the trading activity in Illiquid Stock Options at BSE after lapse of 6 years manifestly suffers from abnormal Delay and Laches. The Noticee submitted that there has been unexplained long delay of more than 6 years in the initiation of proceedings against the Noticee from the date of execution of the alleged trade. Noticee also submitted that the SCN did not provide any reason or explanation for the inordinate delay in issuance of SCN and for that reason alone the SCN is liable to be quashed. In this regard, Noticee relied upon the judgements of the Hon'ble SC in Anil Rai vs State of Bihar, the Hon'ble SAT in Anilkumar Nandkumar Harchandani & Others vs SEBI, the Hon'ble SAT in Rakesh Kathotia & Others vs SEBI, the Hon'ble SAT in Ashok Shivilal Rupani & Others vs SEBI, the Hon'ble SAT in the matter of HB Stockholdings Limited Vs SEBI, Khandwala Securities Vs. SEBI and Subhkam Securities Private Limited vs. SEBI.
- b. Noticee submitted that by not providing inspection of the relevant document to the Noticee there has been breach of Principle of Natural Justice as the Noticee has been denied from submitting effective reply to deal with the allegation made in the SCN. Further Noticee submitted that the Noticee has not been provided with the copy of Investigation Report along with annexures thereto, any material/ data of total market volume in Stock Option Segment of BSE, trade and order log for total 2,91,744 trades comprising 81.38% of all trades executed in Stock Market Segment of BSE during the Investigation Period. In this regard, Noticee relied upon the orders of Hon'ble SAT passed in the matter of Smitaben N Shah vs SEBI and Hon'ble Supreme Court in the matter of SEBI vs Price Waterhouse.

10.2. The Noticee submitted that the allegation made in the SCN as against the Noticee are bald and devoid of any material detail as the Noticee has not been provided with the following vital documents:

- a. Copy of Investigation Report and all necessary documents indicating the action proposed and action approved by the Board.
 - b. Date on which the findings of the investigation were put up for the information/knowledge of the Whole Time Member.
 - c. Copy of the material placed before the Whole Time Member to decide that there were sufficient grounds to enquire into the alleged violations.
 - d. Details of all the material placed before the WTM on the basis of which he decided to initiate proceedings against the Noticee.
 - e. Date on which Investigation report was approved by WTM and the present proceedings was approved.
 - f. Copy of the file noting of WTM when he/she was appointed as an Adjudicating Officer.
 - g. Copy of reasons recorded by the Board, Chairman, Member or the Executive Director that there are reasonable grounds to investigate the affairs of the Noticee in the said matter.
 - h. Copy of Order of the Board Authorizing Investigation in the matter.
- 10.3. The SCN does not justify the basis of the alleged definition of reversal trades and which authority has been relied on in this context. No documents in this regard have been provided. Further, the basis of arriving at the definition of artificial volume is done without any disclosure. There is no material on record in the present proceedings to uphold the definition of artificial volume.
- 10.4. The noticee was completely unaware of the identity of the actual counterparty and its broker and therefore, there cannot be any question of meeting of minds. Further, no evidence has been put forth in the SCN to suggest that it had any prior consensus or there existed a meeting of minds with the counter party. In this regard, the Noticee placed reliance on the orders of Hon'ble SAT in the matter of M/s Nishith M. Shah HUF vs SEBI. It is impossible to know the identity of the parties in a screen based transaction.

- 10.5. The SCN alleges that the trade with counter party was the nature of reversal of trade which essentially involves synchronization of trade. It is submitted that synchronization is *ipso facto* not illegal even under the SEBI Act and SEBI Regulations.
- 10.6. The buy and sell trade executed by the Noticee in BSE Stock Option Segment was in normal course devoid of any malafide intention and/or knowledge of any such alleged scheme as carved out in the SCN. Therefore, by no stretch of imagination, it can be presumed that Noticee had any relationship/ nexus/ prior meeting of mind with the connected party involved in the said trade in option which is a necessary pre-requisite for any allegation of artificial volume. In order to establish charges of fraudulent trading or violation of PFUTP Regulations, it is a settled Principle of Law that there must exist some collusion between the parties to the trades. In this regard, the Noticee places reliance on the orders of Hon'ble SAT in the matter of Jagruti Securities vs. SEBI (Appeal No. 102 of 2006) and Vintel Securities Pvt. Ltd. vs. SEBI.
- 10.7. BSE has a sophisticated surveillance system and if there had been any reversal of trade, the system would have alarmed BSE to take corrective measures to restrain any non-genuine trades happening in its trading platform. However, the Noticee has not received any warning or caution letter from BSE for any of the trade executed by the Noticee in its option segment during the period of investigation.
- 10.8. The Noticee had meticulous track record of trading in the securities market and except the captioned SCN the Noticee has not received even a warning letter prior to the issue of the captioned SCN.
- 10.9. In the derivative segment, only those stock and indices are permitted which are very liquid and there is a robust risk mitigation mechanism in place. Since the Noticee had traded in the Option of a very well-known Company there was no reason to doubt credibility of the platform provided by the Exchange as approved by SEBI.
- 10.10. It is beyond the comprehension of the Noticee that how an allegation of fraud can be alleged against the Noticee for execution of mere 1 buy and 1 sell trade. It is further submitted that like Synchronized Trades or Self-

Trades, Reversal Trades are also *per se* not illegal, the trade executed by the Noticee in a well-known company on BSE Stock Option Segment *per se* cannot be held illegal. In this regard, Noticee relied upon the order of Hon'ble SAT in the matter of Mr. Narendra Vallabhji Bahuva v/s SEBI.

10.11. In the SCN, no details of volume in the alleged unique contract of "HPCL15MAR620.00CE" has been provided, therefore, the Noticee is not in a position to make any submissions on the same.

10.12. The alleged 1 buy and 1 sell trades executed by the Noticee has all traits of being genuine and therefore cannot be categorized as non-genuine. The buy and sell trade was executed on the anonymous platform of the Exchange, without any knowledge of counter party, at price ranges that were permitted by the Exchange / SEBI and the obligations arising out of it have been settled through the clearing mechanism of the Exchange.

10.13. As none of the acts or trades executed by the Noticee fall under the definition of fraud as provided in regulation 2(1) (c) of PFUTP Regulation, the genuineness of the trades executed by the Noticee cannot be questioned and therefore, the Noticee cannot be alleged to have violated any PFUTP Regulations. In this regard, Noticee relied upon the orders of Hon'ble SAT in the matter of KSL & Industries Ltd. vs. SEBI, Vintel Securities Pvt. Ltd. vs. SEBI and Dhvani Darshan Kothari & Anr. In light of these Orders, the Noticee requested to drop the proceeding against the Noticee without passing any adverse order.

10.14. The Noticee further denied that the Noticee has violated the Regulation 3(a), (b), (c), (d) and 4 (1), 4 (2) (a) of the PFUTP Regulations as the Noticee:

- a. has neither directly or indirectly bought or sold or otherwise dealt in securities in any fraudulent manner;
- b. not used or employed any manipulative or deceptive device or contrivance in contravention of the provisions of the SEBI Act or the rules or the regulations made there under;
- c. not employed any device, scheme or artifice to defraud anyone in the market;

- d. not engaged in any act, practice, course of business which operated or would have operated as a fraud or deceit upon any person with any dealing in the market in contravention of the provision of the SEBI Act or the rules and the regulations made there under; and
- e. not dealt in securities in a fraudulent manner or as indulged in unfair trade practice in the securities market.

10.15. In view of the facts stated, arguments advanced and authorities cited, the present proceedings be quashed since no primary violation of any PFUTP Regulations is made out against the Noticee and the genuineness of the trades has also been explained hereinabove.

10.16. It is the discretion of the Adjudicating Officer to decide the quantum of penalty which is need to be imposed in a case where charges are proved. There is no restriction or bar in the SEBI Act which prohibits an Adjudicating Officer to impose lesser penalty than Rs.5,00,000/- under Section 15HA of the SEBI Act. In this regard, Noticee relied upon the order of Hon'ble SC in the matter of Adjudicating Officer, SEBI v/s Bhavesh Pabari. Further, Noticee submitted a few AO orders of SEBI as examples wherein penalty of Rs. 5,00,000/- has been imposed for execution of voluminous trades in comparison to the trades of the Noticee herein and requested to exercise the discretion provided to AO judiciously and ought to consider the factors enumerated in Section 15J of the SEBI Act, 1992

10.17. In sum, the Noticee requested to either drop the inquiry proceedings or impose much lesser penalty on the noticee than Rs. 5,00,000.

11. 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 November 25, 2021. Dr. S K Jain, the AR, appeared on behalf of the Noticee on the stipulated date of hearing through the online Webex platform. During the course of hearing, the AR reiterated the submissions made by the Noticee in its reply dated October 22, 2021 and requested a further time of 15 days to make further written submissions.

12. Further, AR, on behalf of Noticee, vide email dated December 10, 2021, made submissions that contained some additional arguments which are summarized below:

- 12.1. Noticee had executed trades in the BSE Stock Option Segment. The SCN fails to appreciate that 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.
- 12.2. The SCN fails to appreciate that though SEBI and Exchanges had 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 their trades were executed were genuine.
- 12.3. The SCN alleges that the Noticee has generated artificial volume by executing non-genuine trades and creating false and misleading appearance of trading, which was manipulative and deceptive. The alleged trades are wrongly categorised as non-genuine, for the reasons recorded hereunder:
 - a. The word "non-genuine" is not defined in PFUTP Regulations or any of the Acts / Regulations of SEBI. This leaves us to rely on dictionary meaning of the word to test whether the alleged trades fall under the categories of artificial volume through non-genuine trades.
 - b. The term "non-genuine" is opposite of "genuine" which is defined as "really coming from its reputed source etc; not sham; properly so called; pure bred."
 - c. The alleged trades have all traits of being genuine and therefore cannot be categorised as non-genuine.
 - d. Since the trades do not fall under the definition of non-genuine transactions, they cannot be categorised to be creating artificial volume and effectively cannot be said to be creating false and misleading appearance of trading or cannot be categorised as manipulative or deceptive trades.

- 12.4. The SCN itself records that the contracts in which the Noticee dealt were illiquid and therefore, the spreads were bound to be wide resulting in so called significant price difference in view of SEBI, which is also appreciated by the RDD (Risk Disclosure Documents) issued by SEBI. However, the SCN wrongly goes on to allege that these trades are non-genuine.
- 12.5. The captioned Show Cause Notice does not justify the basis of the alleged definition of reversal trades and which authority has been relied on in this context. No documents in this regard have been provided. Further, the basis of arriving at the definition of artificial volume is done without any disclosure. There is no material on record in the present proceedings to uphold the definition of artificial volume. In absence of any such materials, the statements made in the captioned Show Cause Notice are without any basis and therefore denied and disputed.
- 12.6. The said trades alleged to be non-genuine were executed by a SEBI registered stock broker and the very fact that the SEBI Registered Broker had executed the said trades on behalf of the Noticee dispels the allegation that the trades were non-genuine.
- 12.7. The allegation that the said 2 trades (1 Buy trade and 1 Sell trade) had created a misleading appearance of trading in the market is manifestly without any substance as there is no allegation that any investor had made any loss due to execution of the said 2 trades (1 Buy trade and 1 Sell trade). SEBI has not provided any instance of any effect on the volume or on price of the options and has also not provided complete order log and trade log in order to determine the same. In this regard, the Noticee relied upon the judgment of Hon'ble SAT in the matter of Ketan Parekh vs SEBI.
- 12.8. Derivative market is 'zero sum game' and thus in each and every case one party will inevitably make profit and counterparty will make loss. Thus, profit and loss is concomitant to trading in derivative segment. The mere fact that the Noticee traded in option segment cannot be a ground to rope the Noticee into present proceedings.

CONSIDERATION OF ISSUES AND FINDINGS

13. I have carefully perused the charges levelled against the Noticee, her reply and the documents / material available on record. The issues that arise for consideration in the present case are:

- a. Whether the Noticee has violated provisions of regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of PFUTP Regulations, 2003?
- b. Does the violation, if any, attract monetary penalty under section 15HA of the SEBI Act, 1992?
- c. If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in section 15J of the SEBI Act, 1992?

Whether the Noticee has violated provisions of regulations 3(a), (b), (c), (d), 4(1) and 4(2) (a) of PFUTP Regulations, 2003?

14. Before proceeding further, I would like to refer to the relevant provisions of the PFUTP Regulations, 2003 which are reproduced below:

PFUTP Regulations, 2003

3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

- (a) buy, sell or otherwise dealing 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;

15. Noticee requested for inspection of original documents relied in the SCN. I note that vide letter dated October 11, 2021, it was conveyed to the Noticee that all documents relied upon in the issuance of SCN had already been provided as Annexures to the SCN dated August 04, 2021. Noticee submitted that by not providing inspection of the relevant document to the Noticee there has been breach of the principle of natural justice. Further Noticee submitted that she has not been provided with the copy of Investigation Report, any material/ data of total market volume in Stock Option Segment of BSE, trade and order log for total 2,91,744 trades etc. In this regard, Noticee relied upon the orders of Hon'ble SAT passed in the matter of Smitaben N Shah vs SEBI and Hon'ble Supreme Court in the matter of SEBI vs Price Waterhouse. I note that details of the documents provided to the Noticee as annexures to the SCN, which were conveyed to the Noticee vide aforesaid email, are as follows:

SI No	Particular	Annexures to SCN
1.	Details of the reversal trades of Noticee in Stock Options segment of BSE during the investigation period.	B
2.	Summary of analysis of dealings of Noticee in 1 Stock Options contract in which Noticee allegedly executed reversal trades during the investigation period.	C

16. In this regard, I rely on the judgement of the Hon'ble SAT in the matter of Mayrose Capfin Private Limited Vs. SEBI (decided on 30.03.2012) wherein it was held that:

".....the principles of natural justice require that the inquiry officer should make available such document and material to the delinquent on which reliance is being placed in the inquiry. It is not necessary for the inquiry officer to make available all the material that might have been collected during the course of investigation but has not been relied upon for proving charge against the delinquent. No prejudice can, therefore, be said to have been caused to the appellant on this count...."

17. Further, the Hon'ble SAT, in its order dated February 12, 2020, in the matter of Shruti Vora vs. SEBI held that:

"Reliance was also made of a decision of the Supreme Court in Union of India and Others vs E. Bashyan (1988) 2 SCC 196 which has no bearing to the controversy involved in the present context, in as much as, the said decision relates to a disciplinary proceedings wherein the Supreme Court observed that the inquiry report was required to be made available to the delinquent. An inquiry report is totally distinct and different from an investigation report. The inquiry report considers all the materials in the inquiry proceedings which form the basis of the final order and therefore the said report is required to be made available to the delinquent. In the instant case, the show cause notice relies upon certain documents which have been made available. Thus the investigation report is not required to be supplied".

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

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

18. I also note that the Hon'ble SAT in the matter of Anant R Sathe Vs SEBI (Appeal No. 150 of 2020) vide Order dated July 17, 2020 reaffirmed the principle elucidated in the judgment of Shruti Vora's case, which has been reproduced above and held that:

“the Authority is required to supply the documents that they rely upon while serving the show cause notice which in the instant case has been done and which is sufficient for the purpose of filing an efficacious reply in his defence”.

Therefore, I note that the documents relied upon in the matter were duly provided to the Noticee, along with SCN dated August 04, 2021, so that principles of natural justice have been complied with and thereby the contentions of Noticee in this regard are without merit.

19. The Noticee submitted that there has been unexplained long delay of more than 6 years in the initiation of proceedings against the Noticee from the date of execution of the alleged trade and for that reason alone the SCN is liable to be quashed. In this regard, Noticee relied upon the judgements of the Hon'ble SC in Anil Rai vs State of Bihar, the Hon'ble SAT in Anilkumar Nandkumar Harchandani & Others vs SEBI, the Hon'ble SAT in Rakesh Kathotia & Others vs SEBI, the Hon'ble SAT in Ashok Shivlal Rupani & Others vs SEBI, the Hon'ble SAT in the matter of HB Stockholdings Limited vs SEBI, Khandwala Securities vs. SEBI and Subhkam Securities Private Limited vs. SEBI.

20. I note that pursuant to a preliminary examination conducted in the Illiquid Stock Options matter, Interim order was passed by SEBI on August 20, 2015 which was confirmed vide Orders dated July 30, 2016 and August 22, 2016. Meanwhile, SEBI initiated a detailed investigation relating to stock options segment of BSE which was completed in the year 2018. The investigation revealed that 14,720 entities were involved in executing non-genuine trades in BSE's stock option segment during the investigation period. The proceedings initiated vide the aforementioned Interim Order were disposed of vide Final Order dated April 05, 2018 also considering that appropriate action was initiated against the said 14, 720 entities in a phased manner.

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

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

21. 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. I also note that the investigations relating to the PFUTP Regulations, 2003 are complex (considering the volume of transactions, connections, examination of trading of shares and funds, etc.) and time consuming.

Further, I find that the fact of delay in completion of investigation and / or initiation or completion of enforcement proceedings, in itself, cannot be a ground for dropping the proceedings. Only in cases where a Noticee is adversely affected, can such a submission be considered. I also note that the

Hon'ble SAT in the matter of Bipin R Vora vs SEBI decided on March 22, 2006 held that,

“As regards the plea of delay and laches and submission that the show cause notice is barred by limitation, I do not find any merit in these contentions as the time and efforts involved in an investigation though may vary from case to case, generally investigations per-se is a time consuming process which invariably involve collection, scrutiny and careful examination of voluminous records/ order-trade details of all the concerned including the exchanges/recording of statements etc. and therefore no time limit can be fixed in this regard to enable a regulator to take appropriate disciplinary action for the safeguard and improvement of the system/market”.

In this context, I also find it relevant to refer to the order passed by Hon'ble SAT in the case of Metex Marketing Pvt. Ltd. vs. SEBI (order dated June 4, 2019) wherein Hon'ble SAT held that:

“This Tribunal has consistently held that in the absence of any specific provision in the SEBI Act or in the Takeover Regulations, the fact that there was a delay on the part of SEBI in initiating proceedings for violation of any provision of the Act cannot be a ground to quash the penalty imposed for such violation”.

In view of the above, the contentions raised by the Noticee regarding delay in initiation of proceedings is without any merit. Therefore, I note that the preliminary contentions raised by Noticee are liable to be rejected, and I now proceed to consider the matter on merits.

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

trading rationale, lead to false or misleading appearance of trading in terms of generation of artificial volumes and hence, are deceptive and manipulative.

23. In this regard, it is observed from the trade log of the Noticee that it had traded in 1 unique contract in the Stock Options segment of BSE during the above mentioned investigation period. These trades of the Noticee involved reversal with the same counterparty on the same day, but at significantly different price. Summary of the reversal trades of Noticee in Stock Options segment of BSE during the investigation period are as follows:

Trade Date	Scrip Name	Buy Client Name	Sell Client Name	Buy Order Time	Sell Order Time	Trade Time	Buy Order Rate (₹)	Sell Order Rate (₹)	Trade Rate (₹)	Traded Qty
12/03/2015	HPCL15MAR620.00CE	Madhumita Gupta	Xion Gems & Jewellers Private Limited	11:11:49.115117	11:11:49.162549	11:11:49.162549	3.00	3.00	3.00	62500
12/03/2015	HPCL15MAR620.00CE	Xion Gems & Jewellers Private Limited	Madhumita Gupta	11:11:55.075258	11:11:55.015357	11:11:55.075258	19.00	19.00	19.00	62500

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

24. I note from the trade log that the trades executed by the Noticee in the contract "HPCL15MAR620.00CE" were squared up within a short span of time of 6 seconds. To illustrate, the Noticee on March 12, 2015 at 11:11:49 hrs entered into 1 buy trade with counterparty viz. Xion Gems & Jewellers Private Limited for 62,500 units at ₹ 3 per unit in the said contract. Thereafter, on the same day, Noticee entered into 1 sell trade with same counterparty at 11:11:55 hrs for 62,500 units at the rate of ₹ 19 per unit. It is noted that while dealing in the said contract during the I.P., the Noticee executed reversal trades with same counterparty viz. Xion Gems & Jewellers Private Limited on the same day within a time gap of 6 seconds and with price difference in buy and sell rate. Further, it is noted that the buy and sell orders in both trades were placed at almost same time, with time difference being in microseconds, by the Noticee and its counterparty. The Noticee's trades generated artificial volume of 1,25,000 units

(buy side + sell side) which made up 21.22% of total market volume in the said contract during this period.

25. Noticee contended that the alleged trades have all traits of being genuine and therefore cannot be categorised as non-genuine. Noticee contended that since the trades do not fall under the definition of non-genuine transactions, they cannot be categorised to be creating artificial volume and effectively cannot be said to be creating false and misleading appearance of trading or cannot be categorised as manipulative or deceptive trades. However, the non-genuineness of these transactions executed by the Noticee is evident from the fact that there was no commercial basis as to why, within a short span of time of 6 seconds, the Noticee reversed the position with her counterparty. Such a short span of time taken for reversing the trades in an illiquid stock option contract suggests the non-genuineness of these trades executed by the Noticee. The fact that the transactions in a particular contract were reversed with the same counterparty indicates a prior meeting of minds with a view to execute the reversal trades at a pre-determined price. Since these trades were done in illiquid option contracts, there was no trading in the said contract and hence, there was no price discovery in the strictest terms. The wide variation in prices of the said contract, within a short span of time, is a clear indication that there was pre-determination in the prices by the counterparties while executing the trades. Thus, it is observed that Noticee had indulged in reversal trades with her counterparty in the stock options segment of BSE and the same were non-genuine trades.

26. Noticee has also contended that SEBI and the Exchanges had not put in place any price band mechanism in options segment, which meant that all prices at which the trades were executed were genuine, and that it was because pricing of options is a complex arithmetic calculation, making a huge range of price to be valid. Noticee has also cited Risk Disclosure Document issued by SEBI, which stated that in an illiquid contract, chances of wider spreads and losses/profit are present. I note that even though the exchange mechanism for option contracts allows wider range in prices, Noticee's buy and sell trades were

executed within a time gap of 6 seconds on the same day with a substantial price difference without any change in the price of underlying scrips, with the same counterparty. It is agreed that a wider price range in buy and sell rates may not indicate manipulation *ipso facto*. However, the instant allegations have considered the above-stated facts as regards reversal trades by the noticee in totality to allege violation of provisions of PFUTP Regulations, 2003.

27. Noticee has contended that no details of volume in the alleged unique contract of “HPCL15MAR620.00CE” has been provided in the SCN. However, I note that the volumes in the contract are provided in Annexure C of the SCN.

28. Noticee has contended that she has not received any warning or caution letter from BSE for any of the trade executed by the Noticee in its option segment during the period of investigation. I note that Noticee was obligated to ensure genuineness of the trades executed by her on the exchange platform. The aforesaid obligation was mandatory notwithstanding any warning issued by BSE or Stock Broker in this regard. Further, Noticee has contended that there is no allegation that any investor had made any loss due to execution of the said 2 trades. I note that in the instant matter, the allegations pertaining to the violation of impugned provisions of PFUTP Regulations, 2003 are not contingent upon any complaints made or losses incurred by investors.

29. Noticee has also contended she was completely unaware of the identity of the actual counterparty and its broker and therefore, there cannot be any question of meeting of minds. Further, no evidence has been put forth in the SCN to suggest that it had any prior consensus or there existed a meeting of minds with the counter party. In this regard, the Noticee placed reliance on the orders of Hon'ble SAT in the matter of M/s Nishith M. Shah HUF vs SEBI. Further, she contended that it is impossible to know the identity of the parties in a screen based transaction. In order to establish charges of fraudulent trading or violation of PFUTP Regulations, it is a settled Principle of Law that there must exist some collusion between the parties to the trades. In this regard, the Noticee places reliance on the orders of Hon'ble SAT in the matter of Jagruti Securities vs. SEBI (Appeal No. 102 of 2006) and Vintel Securities Pvt. Ltd. vs. SEBI.

I note that it is not mere coincidence that Noticee could match her trades with the same counterparty with whom she had undertaken first leg of the trades. It indicates meeting of minds.

30. In this context, I would 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...”

The Hon'ble Supreme Court of India further held in the said case 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.”*

31. 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 behaviour of the Noticee, as detailed earlier, 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 deem it appropriate to refer to the order dated July 14, 2006 passed by Hon'ble SAT, in the case of Ketan Parekh vs SEBI (Appeal no. 2/2004), wherein, 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."

32. Further, I place my reliance on the judgment of Hon'ble Supreme Court in the matter in respect of SEBI v Rakhi Trading Private Limited (Civil Appeal Nos. 1969, 3174-3177 and 3180 of 2011 decided on February 8, 2018), in which the Hon'ble Supreme Court held that –

"Considering the reversal transactions, quantity, price and time and sale, parties being persistent in number of such trade transactions with huge price variations, it will be too naive to hold that the transactions are through screen-based trading and hence anonymous. Such conclusion would be over-looking the prior meeting of minds involving synchronization of buy and sell order and not negotiated deals as per the board's circular. The impugned transactions are manipulative/deceptive device to create a desired loss and/or profit. Such synchronized trading is violative of transparent norms of trading in securities.....".

33. Further, the Hon'ble SAT in its judgement dated September 14, 2020 in the matter of Global Earth Properties and Developers Pvt Ltd relied upon the aforesaid judgement of Hon'ble Supreme Court and held that,-

"It is not a mere coincidence that the Appellants could match the trades with the counter party with whom he had undertaken the first leg of respective trade. In our opinion, the trades were non-genuine trades and even though direct evidence is not available in the instant case but in the peculiar facts and

circumstances of the present case there is an irresistible inference that can be drawn that there was meeting of minds between the Appellants and the counter parties, and collusion with a view to trade at a predetermined price.”

34. I find it pertinent to note that the Adjudication order no. Order/AP/SS/2021-22/13331 dated September 6, 2021 passed in respect of Radha Malani in the matter of dealings in Illiquid Stock Options at BSE was challenged before the Hon'ble SAT. Hon'ble SAT, in its judgement dated November 24, 2021 in the matter of Radha Malani vs. SEBI (Appeal No. 698 of 2021), dismissed the appeal and opined that - *“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).”*

35. The observations made in the aforesaid judgments apply to the facts and circumstances of the present case. Therefore, I am convinced that the execution of trades by the Noticee in the illiquid options segment with such precision in terms of order placement, time, price, quantity etc. and also the fact that the transactions were reversed within few seconds with the same counterparty clearly indicates a prior meeting of mind with a view to execute the reversal trades at a pre-determined price.

36. Therefore, the trading behaviour of the Noticee confirms that such trades were not normal and wide variation in prices of the trades in the same contract in a short time without any basis for such wide variation, all indicate that the trades executed by the Noticee were not genuine trades and being non-genuine, created an appearance of artificial trading volumes in the contract. I am inclined to note that the aforesaid trades of Noticee were non-genuine and have created false or misleading appearance of trading in terms of artificial volume in stock options and therefore the same are manipulative and deceptive in nature. In view of 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.

Does the violation, if any, attract monetary penalty under section 15HA of the SEBI Act, 1992?

37. Pursuant to detailed analysis as brought out above, it is established that reversal trades are not normal transactions and it clearly demonstrates beyond reasonable doubt that the Noticee had intentionally executed these trades and manipulated the volume by artificial trading pattern in the contract 'HPCL15MAR620.00CE'. The trading of the Noticee in the instant matter was abnormal and was clearly designed to create artificial volumes in the illiquid stock options, fail to justify any of the normal strategies of hedging/ speculation/ arbitrage. In my view, the abuse of such financial instruments cannot be tolerated and needs to be dealt with strictly. Accordingly, 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.

38. 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...”.

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

Penalty for fraudulent and unfair trade practices.

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

If so, what would be the quantum of monetary penalty that can be imposed on the Noticee?

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

Factors to be taken into account by the adjudicating officer.

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

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

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

41. The SCN does not quantify any disproportionate gains or unfair advantage, if any, made by the Noticee and the losses, if any, suffered by the investors due to such violations on part of the said Noticee. However, it is worth considering that entities involved in these non-genuine trades have either booked gain or loss and the gain or loss appears to be of notional in nature. Generally, there is little or negligible participation of the public in the trading in illiquid stock option contracts. Hence, the impact of these non-genuine trade has not been considered. When the impact of artificial volume created by the two counterparties is seen as a whole, it is not possible from the material on record to quantify the amount of disproportionate gain or unfair advantage resulting from the artificial trades between the counter parties or the consequent loss

caused to investors as a result of the default. However, I note that the Noticee had entered into non-genuine trades (comprising two trades), which created an appearance of artificial trading volumes in respective contract at pre-meditated prices.

42. Considering, the facts of the matter as discussed earlier, I am of the view that imposition of minimum penalty as prescribed under Section 15HA of the SEBI Act would be commensurate for the present matter.

ORDER

43. Having considered all the facts and circumstances of the case, the material available on record, the factors mentioned in section 15J of the SEBI Act, 1992 and in exercise of power conferred upon me under section 15-I of the SEBI Act, 1992 read with rule 5 of the Adjudication Rules, 1995, I hereby impose the following penalty under section 15HA of the SEBI Act, 1992 on the Noticee for violation of the provisions of Regulations 3(a), 3(b), 3(c), 3(d), 4(1), and 4(2)(a) of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003 relating to securities market:

Name of the Noticee	Violation provisions	Penalty
Madhumita Gupta [PAN: ADXPG4128R]	Regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of PFUTP Regulations, 2003	Rs.5,00,000/- (Rupees Five Lakh only)

- 18 I am of the view that the said penalty is commensurate with the lapse/ omission on the part of the Noticee.
- 19 The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of:

- (i) Demand Draft in favour of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai, and the said DD should be forwarded to the Division Chief, Enforcement Department – 1 (EFD 1), Division of Regulatory Action – 4 (DRA 4), SEBI Bhavan, Plot No. C4-A, ‘G’ Block, Bandra Kurla Complex (BKC), Bandra (East), Mumbai – 400051. The Noticee shall provide the following details while forwarding DD/ payment information:

Sl. No.	Particulars	Details
1	Name of the Case / Matter	
2	Name and PAN of the Payee	
3	Date of Payment	
4	Amount Paid	
5	Transaction Number	
6	Bank Name and Account Number	
7	Purpose of Payment	Payment of penalty under AO proceedings

OR

- (ii) Through online payment facility available on the website of SEBI i.e. www.sebi.gov.in on the following path, by clicking on the payment link:

ENFORCEMENT → Orders → Orders of AO →PAY NOW

- 20 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, 1992 for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties.

- 21 In terms of the provisions of Rule 6 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995, a copy of this order is being sent to the Noticee namely, Madhumita Gupta [PAN: ADXPG4128R] and also to the Securities and Exchange Board of India, Mumbai.

Date: January 19, 2021

Place: Mumbai

**KRANTI SARDESAI
ADJUDICATING OFFICER**