BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/KS/PP/2021-22/12034]

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

In respect of

Shiva Commodities Private Ltd.

(PAN: AAICS6621G)

In the matter of Trading in Illiquid Stock Options on BSE

BACKGROUND OF THE CASE

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

2. Pursuant to investigation, it was observed that total 2,91,643 trades comprising substantial 81.38% of all the trades executed in stock options segment of BSE during the IP were non genuine trades. The aforesaid non-genuine trades

resulted into creation of artificial volume to the tune of 826.21 crore units or 54.68% of the total market volume in stock options segment of BSE during the IP. It was observed that Shiva Commodities Private Ltd. (hereinafter referred to as the "**Noticee**") was one of the various entities which indulged in execution of reversal trades in stock options segment of BSE during the IP. Such trades were observed to be non-genuine in nature and created false or misleading appearance of trading in terms of artificial volumes in stock options and therefore alleged to be manipulative, deceptive in nature. In view of the same, SEBI initiated adjudication proceedings against the Noticee for violation of the provisions of Regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003 (hereinafter referred to as "**PFUTP Regulations, 2003**").

APPOINTMENT OF ADJUDICATING OFFICER

3. Ms. Sangeeta Rathod was appointed as the Adjudicating Officer (AO) in the matter, conveyed vide communique dated May 29, 2018, under section 19 read with section 15-I(1) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act, 1992**") and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as "**Adjudication Rules**") to conduct adjudication proceedings in the manner specified under Rule 4 of Adjudication Rules read with section 15-I (1) and (2) of SEBI Act, 1992, and if satisfied that penalty is liable, impose such penalty deemed fit in terms of Rule 5 of Adjudication Rules

and Section 15HA of SEBI Act, 1992. Pursuant to transfer of Ms Sangeeta Rathod, undersigned was appointed as the AO in the matter vide order dated October 21, 2020.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. A Show Cause Notice dated October 22, 2018 (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, 1992 for the violations alleged to have been committed by the Noticee.

5. It was *inter alia* alleged in the SCN that the Noticee executed 127 non genuine trades in 62 Stock Options contracts which resulted in artificial volume of total 26,90,000 units. The Noticee made a loss of approx. Rs. 1,15,84,950/- by executing non genuine trades during the IP. Summary of dealings of the Noticee in 62 Stock Options contracts, in which the Noticee allegedly executed non genuine trades during the I.P, is as follows:

Sr. No.	SCRIPNAME	Average Buy rate	Buy Quantity	Average Sell rate	Sell Quantity	% of Non Genuine trades of Entity in the contract to Entity's Total trades in the Contract	% of Non Genuine trades of Entity in the contract to Total trades in the Contract	% of Artificial Volume generated by Entity in the contract to Entity's Total Volume in the Contract	% of Artificial Volume generated by Entity in the contract to Total Volume in the Contract
1	ALBK15APR120.00PEW1	25.50	24000	16.50	24000	100%	100%	100%	100%

Sr. No.	SCRIPNAME	Average Buy rate	Buy Quantity	Average Sell rate	Sell Quantity	% of Non Genuine trades of Entity in the contract to Entity's Total trades in the Contract	% of Non Genuine trades of Entity in the contract to Total trades in the Contract	% of Artificial Volume generated by Entity in the contract to Entity's Total Volume in the Contract	% of Artificial Volume generated by Entity in the contract to Total Volume in the Contract
2	ALBK15APR125.00PEW3	30.50	20000	20.50	20000	100%	100%	100%	100%
3	ALBK15APR80.00CEW1	21.50	20000	13.50	20000	100%	25%	100%	17%
4	ALBK15APR90.00CEW2	13.10	24000	7.10	24000	100%	50%	100%	71%
5	AMBC15APR240.00CEW1	19.00	15000	11.50	15000	100%	25%	100%	13%
6	AMBC15APR240.00CEW2	18.50	20000	13.50	20000	100%	50%	100%	50%
7	AMBC15APR270.00PEW1	20.00	20000	10.50	20000	100%	33%	100%	31%
8	AMBC15APR280.00PEW3	30.50	20000	20.50	20000	100%	100%	100%	100%
9	AMTK15APR120.00CEW2	32.50	20000	20.50	20000	100%	22%	100%	8%
10	AMTK15APR125.00CEW1	13.00	24000	7.50	24000	100%	100%	100%	100%
11	AMTK15APR150.00PEW3	19.50	20000	11.50	20000	100%	33%	100%	28%
12	ARVI15APR240.00CEW2	33.00	20000	22.50	20000	100%	20%	100%	8%
13	ARVI15APR250.00CEW2	20.50	20000	13.50	20000	100%	50%	100%	43%
14	ARVI15APR280.00PEW3	18.00	15000	7.50	15000	100%	50%	100%	35%
15	ARVI15MAR250.00CE	19.50	20000	14.50	20000	100%	25%	100%	13%
16	AXIS15APR500.00CE	65.00	30000	48.00	30000	100%	33%	100%	38%
17	AXIS15APR520.00CE	47.00	60000	41.50	60000	100%	67%	100%	78%
18	AXIS15APR540.00PE	22.00	30000	15.00	30000	100%	20%	100%	14%
19	AXIS15APR580.00CE	15.00	30000	9.00	30000	100%	20%	100%	8%
20	CARN15APR205.00CEW3	18.50	15000	11.50	15000	100%	50%	100%	43%
21	COAL15APR390.00PEW1	25.00	25000	15.50	25000	100%	50%	100%	50%
22	CRGL15APR150.00CEW1	19.50	15000	11.50	15000	100%	17%	100%	6%
23	CRGL15APR150.00CEW2	19.50	15000	10.50	15000	100%	12%	100%	4%
24	CRGL15APR180.00PEW1	19.50	20000	12.50	20000	100%	100%	100%	100%
25	CRGL15APR190.00PEW3	29.50	25000	18.50	25000	100%	50%	100%	56%
26	DABU15APR250.00CEW2	17.30	15000	13.50	15000	100%	50%	100%	50%
27	DABU15APR290.00PEW1	26.00	25000	16.50	25000	100%	50%	100%	56%
28	EXID15APR165.00CEW1	21.00	20000	11.50	20000	100%	14%	100%	4%
29	EXID15APR200.00PEW3	23.00	24000	13.50	24000	100%	50%	100%	55%
30	IBRL15APR55.00CEW1	12.50	24000	7.50	24000	100%	15%	100%	6%
31	IBRL15APR75.00PEW3	12.50	20000	7.50	20000	100%	100%	100%	100%
32	ITCL15APR300.00CEW2	26.00	25000	16.90	25000	100%	100%	100%	100%

Sr. No.	SCRIPNAME	Average Buy rate	Buy Quantity	Average Sell rate	Sell Quantity	% of Non Genuine trades of Entity in the contract to Entity's Total trades in the Contract	% of Non Genuine trades of Entity in the contract to Total trades in the Contract	% of Artificial Volume generated by Entity in the contract to Entity's Total Volume in the Contract	% of Artificial Volume generated by Entity in the contract to Total Volume in the Contract
33	ITCL15APR310.00CEW2	17.90	20000	11.50	20000	100%	25%	100%	15%
34	ITCL15APR340.00PEW2	18.50	32000	7.10	32000	100%	50%	100%	42%
35	ITCL15APR350.00PEW3	30.90	28000	20.90	28000	100%	50%	100%	52%
36	KARB15APR105.00CEW1	20.00	20000	13.50	20000	100%	12%	100%	4%
37	KARB15APR140.00PEW3	20.00	20000	11.50	20000	100%	33%	100%	28%
38	KARB15MAR110.00CE	15.50	10000	10.50	10000	100%	50%	100%	33%
39	MARU15APR3750.00CE	48.00	20000	26.00	20000	100%	0%	100%	4%
40	MARU15APR3750.00PE	170.00	20000	148.50	20000	100%	100%	100%	100%
41	MCRS15APR225.00CEW3	25.70	28000	14.90	28000	100%	33%	100%	38%
42	MCRS15APR230.00CEW1	19.45	25000	13.50	25000	100%	50%	100%	50%
43	MCRS15APR260.00PEW2	20.90	25000	12.10	25000	100%	25%	100%	28%
44	NTPC15APR135.00CEW1	21.00	24000	13.50	24000	100%	50%	100%	46%
45	NTPC15APR140.00CEW2	13.50	10000	8.50	10000	100%	100%	100%	100%
46	NTPC15APR170.00PEW2	19.50	20000	13.50	20000	100%	50%	100%	50%
47	OBNK15APR200.00CEW1	26.50	20000	16.50	20000	100%	50%	100%	44%
48	OBNK15APR205.00CEW2	21.50	25000	11.50	25000	100%	100%	100%	100%
49	OBNK15APR235.00PEW3	13.50	25000	8.50	25000	100%	50%	100%	56%
50	ONGC15APR290.00CEW2	30.50	20000	20.50	20000	100%	50%	100%	40%
51	ONGC15APR300.00CEW1	18.50	15000	10.50	15000	100%	50%	100%	43%
52	ONGC15APR330.00PEW1	19.00	25000	10.50	25000	100%	100%	100%	100%
53	ONGC15APR340.00PEW2	30.50	15000	22.50	15000	100%	100%	100%	100%
54	ONGC15APR340.00PEW3	29.50	20000	18.50	20000	100%	100%	100%	100%
55	SYND15APR120.00PEW3	19.50	20000	12.50	20000	100%	50%	100%	43%
56	SYND15APR85.00CEW2	25.50	18000	17.50	18000	100%	100%	100%	100%
57	SYND15APR90.00CEW1	21.50	20000	12.50	20000	100%	50%	100%	42%
58	VOLT15APR260.00CEW1	21.00	25000	13.50	25000	100%	14%	100%	4%
59	VOLT15APR290.00PEW2	17.00	15000	10.50	15000	100%	100%	100%	100%
60	VOLT15APR300.00PEW3	30.00	20000	19.50	20000	100%	100%	100%	100%
61	ZEEL15APR340.00CEW1	19.50	20000	10.50	20000	100%	50%	100%	42%
62	ZEEL15APR370.00PEW2	19.00	20000	13.00	20000	100%	50%	100%	43%

6. From the above table, following was noted as regards to dealings of the Noticee:

   (a) The Noticee has executed non genuine trades in 62 contracts, wherein all trades of the Noticee in the said 62 contracts were non genuine trades.

   (b) Percentage of non-genuine trades of the Noticee in stock options contracts to total trades in the contracts were in the range of 0% to 100%. The non-genuine trades of the Noticee have significantly contributed to total trades in the market in the above contracts.

   (c) Percentage of artificial volume generated by the Noticee in the contract to the total volume in the contract was in the range of 4% to 100%. Therefore, substantial volume generated by the Noticee in each of the above contracts were artificial volume.

   (d) Non-genuine trades executed by the Noticee in above contracts had varied buy rates and sell rates considering that the trades were reversed on same day.

7. The SCN issued to the Noticee was sent via Speed Post Acknowledgement Due and via a digitally signed email. Vide letter dated October 27, 2018, Noticee requested to keep the instant adjudication proceedings in abeyance as it had decided to file application for Settlement under SEBI (Settlement of Administrative and Civil Proceedings) Regulations, 2014. Vide letter dated November 22, 2018, Noticee submitted the application for Settlement to the 'Settlement Division' of SEBI. Vide office note dated December 05, 2018, Settlement Division of SEBI intimated the erstwhile AO that it was in receipt of Settlement application from the Noticee and requested to keep the adjudication proceedings against the Noticee on hold.

8. Vide letter dated December 10, 2020, Noticee was intimated about appointment of the undersigned as Adjudicating Officer in the matter pursuant

to transfer of Ms. Sangeeta Rathod, vide order dated October 28, 2020. Vide communication dated January 07, 2021, Settlement Division of SEBI informed that the Noticee had not availed Settlement Scheme, 2020 till then, and that Adjudication Order could be passed against the Noticee. Vide letter dated January 14, 2021 and email dated January 14, 2021, Noticee was granted opportunity of personal hearing on January 20, 2021. Vide letter dated and email both dated January 22, 2021 Noticee was granted final opportunity of hearing on February 03, 2021. Vide letter dated January 29, 2021, Noticee *interalia* requested for an adjournment of the hearing scheduled on February 03, 2021 and further requested inspection of documents and copies thereof. Acceding to the request of the Noticee, vide email dated February 02, 2021 Noticee was informed that the inspection and copies of only those documents, which have been relied upon in the matter, shall be provided. In view thereof, scan copy of the SCN and its annexures were attached with the said email. This email was addressed to the Noticee and copy of the same was addressed to the Enforcement Department of SEBI (EFD), for reference. Further, Noticee was advised to address further communication, if any, in this regard to EFD and to complete the inspection before the hearing scheduled on February 11, 2021. Noticee vide its letter dated February 05, 2021 acknowledged the opportunity of inspection of documents granted and filed its reply summarised as under:-

Preliminary Objection

SEBI has not provided any evidence or proof to show that our trades were fraudulent. None of the ingredients of the said PFTUP Regulations are attracted in the present case essentially because :(i) The trades were executed on the floor of the exchange with due compliance with all the rules and regulations of the exchanges; (ii) At no point of time was there any warning or any observation about the scrips / stocks which were executed by us; (iii) The observations regarding the stocks being illiquid is incorrect; (iv) Even assuming the stocks were illiquid, then any small quantity or volumes would look significant as there are no active traders in the stock; (v) For the transaction to be termed fraudulent, as per the definition of "fraud", there has to be an "inducement" and SEBI has not even alleged inducement; vi) There is no nexus, directly or indirectly with the counter party brokers or the clients in the present matter and SEBI has not even alleged this; (vii) The trades in question were in the normal course

of business and there is nothing amiss in the trades executed by us; (viii) None of the trades are deceptive in nature or have any impact on the investors or their investment decision which is a sine qua non of "fraud";

Upon reading of the Show Cause Notice, it appears that there are various documents and data that are referred to and relied upon by SEBI in the captioned proceedings. In fact, serious allegation is made against us that we have committed "fraud" in securities market without even providing the investigation report or any cogent evidence in this regard. In view thereof, we requested SEBI to provide us the investigation report along with the entire set of documents referred to and) relied upon in the captioned matter. Our said request was acceded to by the Ld. Adjudicating Officer and the concerned department of SEBI was directed to grant us an opportunity of inspection of documents. However, only the Annexures enclosed to the Show Cause Notice were provided to us and we were informed that only Annexures to the SCN will be provided to us. No other document or investigation report was either provided or shown to us. Be that as it may, we hereby submit our explanations and clarifications with the limited data/information retrieved by us and made available to us in the subsequent paragraphs. Submissions on dealing in "illiquid" option segment of BSE. (i) With respect to observation that we have dealt in stock options contracts which are illiquid in nature, we submit that if we observe the underlying scrips in which we traded it can be established that these scrips are highly liquid in nature i.e. frequently traded in market. We traded in contracts of underlying scrips such as Ambuja Cements Ltd, Axis Bank Ltd, Coal India Ltd, Dabur India, Exide Industries Ltd, ITC Ltd, Maruti Suzuki, NTPC Ltd, Oil and Natural Gas Corporation Ltd, Voltas Ltd and Zee Entertainment etc. In fact, we submit with humility that underlying stock of most of aforesaid contracts consists of companies which make up index of the Bombay Stock Exchange. Thus, to allege that we deliberately traded in only those options which were illiquid in nature is unfair.(ii) Apparently, SEBI has held that we transacted in 'illiquid options' on the basis that our trades were in far-off strike prices and therefore very few entities were trading in such strike rates. However, in that case, it may also be concluded that said trades could have had no effect on other investors or market at large and that such illiquidity would be reason for volatility and alleged 'reversal' transactions since variations in option price would be dramatic if the chosen strike price is thinly traded.(iii) We submit that BSE and SEBI have themselves allowed and permitted trading in options for 'far months' with a strike price which are at large variance to current market price. The fact that such parameters are laid down is clearly indicative of fact that options will always be 'in the money' and 'out of money' and since regulators have themselves permitted trading in same, no adverse inference be drawn against us in this regard. (iv) It is pertinent to mention that stock exchanges regularly come out with list of illiquid scrips in cash segment. However, no such list is issued by exchanges or regulator for dealing in stock options contracts. Thus, to fasten the responsibility or allege a single entity that it traded in illiquid option is unwarranted and unfair. (v) We submit with humility that derivative market is 'zero- sum game' and thus in each and every case one party will inevitably make profit and counterparty will make loss. In capital market neither BSE nor SEBI can guarantee profit or loss to any individual/ entity. In derivative trading, traders often make profit or loss over a period of time since the market does not always behave as per their

prediction/expectation. Thus, profit and loss is concomitant to trading in derivative segment. The mere fact that we traded in option segment cannot be a ground to rope us into present proceedings. 8. Our trades did not depress the price/ volume of underlying shares in cash segment we submit that we traded in the stock market in ordinary course consequent to our bonafide trading in option segment. The analysis of alleged non-genuine trades vis-a- vis market volume is as under:

Sr. No.	SCRIPNAME	% of alleged Artificial Volume by us vis-à-vis total Volume in the Contract
1	ALBK15APR120.00PEW1	100%
2	ALBK15APR125.00PEW3	100%
3	ALBK15APR80.00CEW1	17%
4	ALBK15APR90.00CEW2	71%
5	AMBC15APR240.00CEW1	13%
6	AMBC15APR240.00CEW2	50%
7	AMBC15APR270.00PEW1	31%
8	AMBC15APR280.00PEW3	100%
9	AMTK15APR120.00CEW2	8%
10	AMTK15APR125.00CEW1	100%
11	AMTK15APR150.00PEW3	28%
12	ARVI15APR240.00CEW2	8%
13	ARVI15APR250.00CEW2	43%
14	ARVI15APR280.00PEW3	35%
15	ARVI15MAR250.00CE	13%
16	AXIS15APR500.00CE	38%
17	AXIS15APR520.00CE	78%
18	AXIS15APR540.00PE	14%
19	AXIS15APR580.00CE	8%
20	CARN15APR205.00CEW3	43%
21	COAL15APR390.00PEW1	50%
22	CRGL15APR150.00CEW1	6%
23	CRGL15APR150.00CEW2	4%
24	CRGL15APR180.00PEW1	100%
25	CRGL15APR190.00PEW3	56%
26	DABU15APR250.00CEW2	50%
27	DABU15APR290.00PEW1	56%
28	EXID15APR165.00CEW1	4%
29	EXID15APR200.00PEW3	55%
30	IBRL15APR55.00CEW1	6%
31	IBRL15APR75.00PEW3	100%
32	ITCL15APR300.00CEW2	100%

Sr. No.	SCRIPNAME	% of alleged Artificial Volume by us vis-à-vis total Volume in the Contract
33	ITCL15APR310.00CEW2	15%
34	ITCL15APR340.00PEW2	42%
35	ITCL15APR350.00PEW3	52%
36	KARB15APR105.00CEW1	4%
37	KARB15APR140.00PEW3	28%
38	KARB15MAR110.00CE	33%
39	MARU15APR3750.00CE	4%
40	MARU15APR3750.00PE	100%
41	MCRS15APR225.00CEW3	38%
42	MCRS15APR230.00CEW1	50%
43	MCRS15APR260.00PEW2	28%
44	NTPC15APR135.00CEW1	46%
45	NTPC15APR140.00CEW2	100%
46	NTPC15APR170.00PEW2	50%
47	OBNK15APR200.00CEW1	44%
48	OBNK15APR205.00CEW2	100%
49	OBNK15APR235.00PEW3	56%
50	ONGC15APR290.00CEW2	40%
51	ONGC15APR300.00CEW1	43%
52	ONGC15APR330.00PEW1	100%
53	ONGC15APR340.00PEW2	100%
54	ONGC15APR340.00PEW3	100%
55	SYND15APR120.00PEW3	43%
56	SYND15APR85.00CEW2	100%
57	SYND15APR90.00CEW1	42%
58	VOLT15APR260.00CEW1	4%
59	VOLT15APR290.00PEW2	100%
60	VOLT15APR300.00PEW3	100%
61	ZEEL15APR340.00CEW1	42%
62	ZEEL15APR370.00PEW2	43%

(ii) From the above Table I, it can be observed that in most cases our trades were low percentage of market. Thus, it is erroneous to allege that our trades created artificial volume on BSE. Going by the logic of SEBI, if these were illiquid stock options, then any trade and transaction would look significant. In fact, the impugned trades constituted a miniscule percentage of overall trades.

(iii) We submit that there was no major movement in price of underlying scrip which itself proves that our trades had no impact on market. Thus, our

transactions neither distorted the equilibrium in market nor caused any loss or prejudice to investors at large.

(iv) With demurer, we submit that any kind of alleged fictitious/ manipulative trade in cash segment may create distorted impression in minds of investors that price of scrip is rising/falling who may invest/ divest from said scrip. However, in case of option segment there is no such effect since each contract expires at end of contract period and for every party who makes profit there is counterparty who makes a loss. There is no question of transfer of beneficial ownership in option segment since at end of settlement cycle only net loss/profit is adjusted. Therefore, in our humble opinion, allegation of creation of 'artificial' or
'reversal' trade is of no consequence in option segment of exchange.
9. No relationship with counterparty or its broking entities) We did not act in concert or in collusion with anyone and nor were we part of any group or connected with anyone for the purpose of influencing price or for any manipulative activity as alleged or otherwise. It is an admitted position that there is no connection whatsoever between us and counter parties to the impugned trades.

(ii) On analysis of the transactions provided to us with the Show Cause Notice, we understand that the following were the counterparties to our trades.
Table- 2

Sr. no.	*Name of the Counter Party to the alleged non-genuine trade*	*PAN number of the Counter Party to the alleged non-genuine trade*
1	*Indian Otics Pvt. Ltd.*	*AAACI3163P*
2	*Yadwinder Bansal HUF*	*AAAHY6105Q*
3	*Davindar Pahu}a*	*AAAPP3645G*
4	*Janmeja Sons HUF*	*AAFHJ8087B*
5	*Gurjeet Singh Saluja HUF*	*AAGHG6137C*
6	*Ashlar Commodities Private Limited*	*AAHCA9620N*
7	*Ashlar Securities Private Limited*	*AAHCA9621P*
8	*Goldenmaple Commodities Private Limited*	*AAJCS8332D*
9	*Sheth Commodities Pvt. Ltd.*	*AAJCS9472Q*
10	*Ajai Kumar Gangal HUF*	*AAMHA0960M*
11	*Anju Agarwal*	*ABHPA1346H*
12	*Poonam Garg*	*AHDPG6828N*
13	*Divya Mittal*	*CQCPM1936M*

(iii)We state and assert that we have no 'connection' or 'relation' with any of counterparties to our trade as mentioned in Table 2 hereinabove. Our trading in stock option segment was independent of any other entities dealing in the same and based on our limited understanding of capital market
(iv)All our transactions have been carried out on the floor of stock exchange in an on-line real time basis on trading system. We submit that merely because on-line preventive measure and check & balance did not exist at relevant point of time to avoid inadvertent reversal trades no adverse inference be drawn against us in this regard.
No role attributed to us in Show Cause Notice
We submit that there is no reason for any allegation that we have violated the provisions of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices

relating to Securities Markets) Regulations, 2003 or the SEBI Act. We humbly submit that besides recording common generic allegations against us, not a single instance or observation on our specific role in alleged reversal is delineated in the Show Cause Notice. Such an approach, in our humble submission is bad in law. In this regard, we would like to draw your kind attention to case of Commissioner of Central Excise, Bangalore vs M/ s Brindavan Beverages (P} Ltd. and Ors [Civil Appeal 3417 of 2002] decided on 15.06.2007; wherein Honble Supreme Court observed as under: "...9. We find that in the show cause notice there was nothing specific as to the role of the respondents, if any. The arrangements as alleged have not been shown to be within the knowledge or at the behest or with the connivance of the respondents. Independent arrangements were entered into by the respondents with the franchise holder. On a perusal of the show cause notice the stand of the respondents clearly gets established. 10.There is no allegation of the respondents being parties to any arrangement. In any event, no material in that regard was placed on record. The show cause notice is the foundation on which the department has to buildup its case. If the allegations in the show cause notice are not specific and are on the contrary vague, lack details and/ or unintelligible that is sufficient to hold that the notice was not given proper opportunity to meet the allegations indicated in the show cause notice. ln the instant case, what the appellant has tried to highlight is the alleged connection between the various concerns. That is not sufficient to proceed against the respondents unless it is shown that they were parties to the arrangements, if any... "

Summary

(i) We acted as bonafide trader and have transacted in stock option segment in normal course of our business activity and our trading in the same was very much within our ov.rn financial and risk bearing capacity.

(ii) We submit that in any business activity in stock market, one can either make profit or loss. We humbly submit that at the relevant time we had no idea of any profit or loss in said transactions and we traded in option segment taking into account our 'risk and reward' parameters.

(iii) We are not connected to counterparties of our transactions in option segment and neither do we have any relation with promoters/directors/key management person of underlying scrips in cash segment.

(iv) We believe there has been no grievance by any investor, broker, stock exchange or any other agency concerned with respect to our dealing in the option segment of BSE Ltd.

(v) We have an impeccable record of dealing in stock market and no action has ever been taken against us in past in respect of dealing in securities market.SEBI has discontinued proceedings against the brokers and intermediaries against whom similar allegations of dealing in illiquid stock options while executing trades on behalf of clients have been levelled.

We humbly submit that the same recourse ought to be adopted on an individual entity like us.Speaking for ourselves, we state that we had followed and complied with all the procedures and requirements of capital market while dealing through SEBI registered intermediary. All the pre-trade, trade and post trade activities were carried out on the trading, clearing and settlement system of stock exchange which itself has sophisticated on-line surveillance software and systems in place. Based on our aforesaid submissions, it is apparent that we were not involved in any 'modus operandi' or manipulations while dealing

in option segment of BSE. There is enough material on record to suggest that no further enquiry is required in the matter. It is, therefore, humbly requested that the Show Cause Notice dated 22.10.2018 be dropped without imposing any monetary penalty on us.

Denials of alleged violations of law –

In view of aforesaid, we deny alleged violation of provisions of Regulation 3 (a),(b),(c),(d), Regulations 4(1), 4 (2)(a) of SEBI (PFUTP) Regulations and submit as under:

(i) We have not bought, sold or otherwise dealt in stock options at Bombay Stock Exchange Limited in fraudulent manner (Ref Regulation 3 (a) of PFUTP Regulations);)

(ii) We have not used or employed any manipulative or deceptive device or acted in contravention of the provisions of SEBI Act, Rules & Regulations made thereunder (Ref Regulation 3 (b) of PFUTP Regulations);

(iii) We have not employed any device, scheme or artifice to defraud anyone in respect of dealings in stock options at Bombay Stock Exchange Limited (Ref Regulation 3 (c) of PFUTP Regulations);

(iv) We have not engaged in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in respect of dealings in stock options at Bombay Stock Exchange Limited(Ref Regulation 3 (d) of PFUTP Regulations);

(v) We repeat and reiterate that we have not indulged in fraudulent and unfair trade practice in respect of our dealings in stock options at Bombay Stock Exchange Limited(Ref Regulation 4 (1) of PFUTP Regulations);

vi) We have not indulged in an act which created false or misleading appearance of trading in stock options at Bombay Stock Exchange Limited (Ref Regulation 4 (2) (a) of PFUTP Regulations)

Prayer

Taking totality view of the facts and circumstance of the case and particulars of our submissions and denials as aforesaid, we submit that present SCN is harsh and we have been wrongly roped into present penal proceedings, hence humbly request that; The proceedings initiated vide Show Cause Notice dated22.10.2018 against us be dropped without imposing any penalty on us.

(ii) The allegation/ charges qua us be withdrawn and we may be discharged at the earliest.

We crave leave to make further submissions and submit documents, as and when required, during course of present proceedings.

9. Noticee vide letter dated February 08, 2021 confirmed its attendance for the scheduled hearing and further informed about its authorized representative. Authorized representative (AR) of the Noticee attended the hearing through Video Conference mode using Webex platform on February 11, 2021. The AR reiterated the submissions made vide Noticee's letter dated February 05, 2021. The personal hearing in this matter is complete and the AR didn't request for

any further opportunity of personal hearing. Further, the AR stated that pursuant to its settlement application an email is received from SEBI intimating the date of Internal Committee meeting as scheduled on February 16, 2021. AR further stated that the Noticee would be withdrawing its settlement application and will be communicating the same to the Office of Adjudicating Officer by February 17, 2021. Hearing minutes are on record. Vide email dated February 17, 2021 Noticee intimated the Settlement Division about the withdrawal of Settlement Application filed by Shiva Commodities Pvt Ltd in the matter of alleged dealings in Illiquid Stock Options segment at BSE.

CONSIDERATION OF ISSUES AND FINDINGS

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

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

PFUTP Regulations, 2003

3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

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

(b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive

device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;

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

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

4. Prohibition of manipulative, fraudulent and unfair trade practices

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

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

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

12. I note that the allegation against the Noticee is that, while dealing in the stock option contracts at BSE during the IP, the Noticee had executed reversal trades which were allegedly non-genuine trades and the same have resulted in the 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 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 & manipulative.

13. Noticee has *interalia* contended that the investigation report and other evidences referred to in framing the allegations in the SCN had not been

provided to the Noticee. I note in this regard that all documents and evidences relied upon in the matter had been provided to the Noticee. Further, I note that the Hon'ble SAT, in its order dated February 12, 2020, in the matter of Shruti Vora vs. SEBI had held:

"*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 hat 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."

14. *Further, the Hon'ble SAT in the matter of Anant R Sathe Vs SEBI (Appeal No. 150 of 2020) vide Order dated July 17, 2020 has reaffirmed the principle elucidated in the judgment of Shruti Vora's case, which was reproduced herein above and ruled 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*".

15. In view of the above, since all the documents which are relevant and relied upon in the instant proceedings have been provided to the Noticees, I am of the opinion that principles of natural justice have been duly complied with in the instant proceedings and no prejudice in filing reply has been caused to the Noticees

16. Noticee has further contended that the underlying scrips for the impugned stock option contracts were highly liquid, so that the allegation of trading in only illiquid contracts is 'unfair'. I note that even though the underlying scrips may be liquid, the derivative instruments in the form of stock option contracts, which may be executed for varying duration, were illiquid as regards instant proceedings. I also note that the allegation against the Noticee is of executing non-genuine trades in options contracts, and does not pertain to trading in the underlying scrips. Therefore, the argument is not acceptable.

17. I note from the trade log of the Noticee that the Noticee had executed 127 non-genuine trades in 62 contracts. I further note that the above mentioned trades of the Noticee had resulted in the creation of artificial volume of a total of 26,90,000 units in the said 62 contracts and the said trades have also resulted

in a close out difference of approximately Rs. 1,15,84,950 against the Noticee.

Summary of non-genuine trades of Noticee is as follows:

Sr. No.	SCRIPNAME	Average Buy rate	Buy Quantity	Average Sell rate	Sell Quantity	% of Non Genuine trades of Entity in the contract to Entity's Total trades in the Contract	% of Non Genuine trades of Entity in the contract to Total trades in the Contract	% of Artificial Volume generated by Entity in the contract to Entity's Total Volume in the Contract	% of Artificial Volume generated by Entity in the contract to Total Volume in the Contract
1	ALBK15APR120.00PEW1	25.50	24000	16.50	24000	100%	100%	100%	100%
2	ALBK15APR125.00PEW3	30.50	20000	20.50	20000	100%	100%	100%	100%
3	ALBK15APR80.00CEW1	21.50	20000	13.50	20000	100%	25%	100%	17%
4	ALBK15APR90.00CEW2	13.10	24000	7.10	24000	100%	50%	100%	71%
5	AMBC15APR240.00CEW1	19.00	15000	11.50	15000	100%	25%	100%	13%
6	AMBC15APR240.00CEW2	18.50	20000	13.50	20000	100%	50%	100%	50%
7	AMBC15APR270.00PEW1	20.00	20000	10.50	20000	100%	33%	100%	31%
8	AMBC15APR280.00PEW3	30.50	20000	20.50	20000	100%	100%	100%	100%
9	AMTK15APR120.00CEW2	32.50	20000	20.50	20000	100%	22%	100%	8%
10	AMTK15APR125.00CEW1	13.00	24000	7.50	24000	100%	100%	100%	100%
11	AMTK15APR150.00PEW3	19.50	20000	11.50	20000	100%	33%	100%	28%
12	ARVI15APR240.00CEW2	33.00	20000	22.50	20000	100%	20%	100%	8%
13	ARVI15APR250.00CEW2	20.50	20000	13.50	20000	100%	50%	100%	43%
14	ARVI15APR280.00PEW3	18.00	15000	7.50	15000	100%	50%	100%	35%
15	ARVI15MAR250.00CE	19.50	20000	14.50	20000	100%	25%	100%	13%
16	AXIS15APR500.00CE	65.00	30000	48.00	30000	100%	33%	100%	38%
17	AXIS15APR520.00CE	47.00	60000	41.50	60000	100%	67%	100%	78%
18	AXIS15APR540.00PE	22.00	30000	15.00	30000	100%	20%	100%	14%
19	AXIS15APR580.00CE	15.00	30000	9.00	30000	100%	20%	100%	8%
20	CARN15APR205.00CEW3	18.50	15000	11.50	15000	100%	50%	100%	43%
21	COAL15APR390.00PEW1	25.00	25000	15.50	25000	100%	50%	100%	50%
22	CRGL15APR150.00CEW1	19.50	15000	11.50	15000	100%	17%	100%	6%
23	CRGL15APR150.00CEW2	19.50	15000	10.50	15000	100%	12%	100%	4%
24	CRGL15APR180.00PEW1	19.50	20000	12.50	20000	100%	100%	100%	100%
25	CRGL15APR190.00PEW3	29.50	25000	18.50	25000	100%	50%	100%	56%
26	DABU15APR250.00CEW2	17.30	15000	13.50	15000	100%	50%	100%	50%
27	DABU15APR290.00PEW1	26.00	25000	16.50	25000	100%	50%	100%	56%
28	EXID15APR165.00CEW1	21.00	20000	11.50	20000	100%	14%	100%	4%
29	EXID15APR200.00PEW3	23.00	24000	13.50	24000	100%	50%	100%	55%

Sr. No.	SCRIPNAME	Average Buy rate	Buy Quantity	Average Sell rate	Sell Quantity	% of Non Genuine trades of Entity in the contract to Entity's Total trades in the Contract	% of Non Genuine trades of Entity in the contract to Total trades in the Contract	% of Artificial Volume generated by Entity in the contract to Entity's Total Volume in the Contract	% of Artificial Volume generated by Entity in the contract to Total Volume in the Contract
30	IBRL15APR55.00CEW1	12.50	24000	7.50	24000	100%	15%	100%	6%
31	IBRL15APR75.00PEW3	12.50	20000	7.50	20000	100%	100%	100%	100%
32	ITCL15APR300.00CEW2	26.00	25000	16.90	25000	100%	100%	100%	100%
33	ITCL15APR310.00CEW2	17.90	20000	11.50	20000	100%	25%	100%	15%
34	ITCL15APR340.00PEW2	18.50	32000	7.10	32000	100%	50%	100%	42%
35	ITCL15APR350.00PEW3	30.90	28000	20.90	28000	100%	50%	100%	52%
36	KARB15APR105.00CEW1	20.00	20000	13.50	20000	100%	12%	100%	4%
37	KARB15APR140.00PEW3	20.00	20000	11.50	20000	100%	33%	100%	28%
38	KARB15MAR110.00CE	15.50	10000	10.50	10000	100%	50%	100%	33%
39	MARU15APR3750.00CE	48.00	20000	26.00	20000	100%	0%	100%	4%
40	MARU15APR3750.00PE	170.00	20000	148.50	20000	100%	100%	100%	100%
41	MCRS15APR225.00CEW3	25.70	28000	14.90	28000	100%	33%	100%	38%
42	MCRS15APR230.00CEW1	19.45	25000	13.50	25000	100%	50%	100%	50%
43	MCRS15APR260.00PEW2	20.90	25000	12.10	25000	100%	25%	100%	28%
44	NTPC15APR135.00CEW1	21.00	24000	13.50	24000	100%	50%	100%	46%
45	NTPC15APR140.00CEW2	13.50	10000	8.50	10000	100%	100%	100%	100%
46	NTPC15APR170.00PEW2	19.50	20000	13.50	20000	100%	50%	100%	50%
47	OBNK15APR200.00CEW1	26.50	20000	16.50	20000	100%	50%	100%	44%
48	OBNK15APR205.00CEW2	21.50	25000	11.50	25000	100%	100%	100%	100%
49	OBNK15APR235.00PEW3	13.50	25000	8.50	25000	100%	50%	100%	56%
50	ONGC15APR290.00CEW2	30.50	20000	20.50	20000	100%	50%	100%	40%
51	ONGC15APR300.00CEW1	18.50	15000	10.50	15000	100%	50%	100%	43%
52	ONGC15APR330.00PEW1	19.00	25000	10.50	25000	100%	100%	100%	100%
53	ONGC15APR340.00PEW2	30.50	15000	22.50	15000	100%	100%	100%	100%
54	ONGC15APR340.00PEW3	29.50	20000	18.50	20000	100%	100%	100%	100%
55	SYND15APR120.00PEW3	19.50	20000	12.50	20000	100%	50%	100%	43%
56	SYND15APR85.00CEW2	25.50	18000	17.50	18000	100%	100%	100%	100%
57	SYND15APR90.00CEW1	21.50	20000	12.50	20000	100%	50%	100%	42%
58	VOLT15APR260.00CEW1	21.00	25000	13.50	25000	100%	14%	100%	4%
59	VOLT15APR290.00PEW2	17.00	15000	10.50	15000	100%	100%	100%	100%
60	VOLT15APR300.00PEW3	30.00	20000	19.50	20000	100%	100%	100%	100%

Sr. No.	SCRIPNAME	Average Buy rate	Buy Quantity	Average Sell rate	Sell Quantity	% of Non Genuine trades of Entity in the contract to Entity's Total trades in the Contract	% of Non Genuine trades of Entity in the contract to Total trades in the Contract	% of Artificial Volume generated by Entity in the contract to Entity's Total Volume in the Contract	% of Artificial Volume generated by Entity in the contract to Total Volume in the Contract
61	ZEEL15APR340.00CEW1	19.50	20000	10.50	20000	100%	50%	100%	42%
62	ZEEL15APR370.00PEW2	19.00	20000	13.00	20000	100%	50%	100%	43%

18. It is noted that the Noticee had executed non-genuine trades in 62 contracts, wherein percentage of non-genuine trades of the Noticee in stock options contracts to total trades in the contracts were in the range of 0% to 100%. Out of the said 62 contracts, the trades of the Noticee contributed to 100% of artificial volume in 12 contracts. Further, percentage of artificial volume generated by the Noticee in the contract to the total volume in the contract was in the range of 1% to 100%. Non-genuine trades executed by the Noticee in the above contracts had significant differential in buy rates and sell rates considering that the trades were reversed on same day.

19. I note from the trade log that the trades executed by the Noticee in a contract were squared up within a short span of time with its counterparties. To illustrate, the Noticee on March 24, 2015 at 12:05:14 hrs entered into 1 sell trade with counter party viz. Ashlar Commodities Private Limited for 24,000 units at rate of Rs. 16.5 per unit in the contract “ALBK15APR120.00PEW1”. Thereafter, on the same day, Noticee at 12:05:27 hrs entered into 1 buy trade with same counterparty for 24,000 units at the rate of Rs. 25.5 per unit in the same contract. It is noted that while dealing in the said contract during the I.P., the Noticee executed 2 reversal trades (1 buy trade + 1 sell trade) with same counterparty viz. Ashlar Commodities Private Limited on the same day and with significant price differential in buy and sell rate. Thus, the Noticee, through

its dealing in the contract viz. “ALBK15APR120.00PEW1” during the I.P., executed 2 non genuine trades which is 100% of the total trades from the market in the said contract during the I.P., and thereby, Noticee generated artificial volume of 48,000 units which is 100% of the volume traded in the said contract from the market during the I.P.

20. The non-genuineness of these transactions executed by the Noticee is evident from the fact that there was no commercial basis as to why, within a short span of time, the Noticee reversed the position with its counterparties with significant price difference. I note from the trade log of the Noticee that the time taken by the Noticee for reversing its non-genuine trades ranged from 4 seconds to 48 seconds. 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 counterparties indicates a prior meeting of mind 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 contracts, 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 its counterparties in the stock options segment of BSE and the same were non-genuine trades.

21. Noticee has *interalia* submitted that it had no connection with any of the counterparties in impugned trades and that all the transactions had been carried out via automated screen based trading, so that there was no prior meeting of minds and the allegations against the Noticee in the instant proceedings are not established. I note that it is not mere coincidence that Noticee could match its trades with the same counterparties with whom it had

undertaken first leg of the respective trades. This is the outcome of meeting of minds elsewhere and it was a deliberate attempt to deal in such a fashion. Here I would like to rely on the judgment of Hon'ble Supreme Court in SEBI v 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..."*

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

23. I note that direct evidence is not forthcoming in the present matter as regards to meeting of minds or collusion of the Noticee with other entities. However, I note that the trading behaviour of the Noticee makes it clear that aforesaid non-genuine trades could not have been possible without meeting of minds at some level. In this context, I deem it appropriate to refer to the Hon'ble SAT order dated July 14, 2006, in the case of Ketan Parekh vs. SEBI (Appeal no.

2/2004), 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."*

24. Noticee has interalia contended that the artificial volume generated by the impugned trades was miniscule and that there was no major movement in price of the underlying scrips, so that trades by the Noticee had no impact on the market. In this regard, I note that in the instant proceedings, only the role of Noticee in generation of artificial volume by execution of reversal trades in the impugned stock options is under consideration. 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….."*

25. The trading behaviour of the Noticee confirms that such trades were not normal and wide variation in prices of the trades in the same contract in a short time without any basis for such wide variation, all indicate that the trades executed by the Noticee were not genuine trades and being non-genuine, created an appearance of artificial trading volumes in respective contracts. In view of the above, I find that the allegation of violation of regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of PFUTP Regulations 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…".*

26. 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, which reads as under:

*[1][**Penalty for fraudulent and unfair trade practices.***

15HA. If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty [2][which shall not be less than five lakh rupees but which may extend to twenty - five crore rupees or three times the amount of profits made out of such practices, whichever is higher].

27. 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.

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

[2] Substituted for the words —twenty-five crore rupees or three times the amount of profits made out of such failure, whichever is higher ‖ by the Securities Laws (Amendment) Act, 2014, w.e.f. 08-09-2014

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.

28. Though the records available before me does mention about amount of gain/loss of the entities involved in the non-genuine trades including the Noticee. However, it is worth considering that entities involved in these non-genuine trades have either booked gains or loss and the gains or loss appears to be of notional in nature. Generally, there is nil or negligible participation of the public in the trading in illiquid stock option contracts. Hence, the impact of these non-genuine trade has 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. The Noticee has entered into 127 non-genuine transactions in 62 stock option contracts which demonstrates the repetitive nature of the default on its part.

ORDER

29. 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 the powers conferred upon me under Section 15-I of the SEBI Act, 1992 read with Rule 5 of the Adjudication Rules, I hereby impose a penalty of Rs. 10,40,000/- (Rupees Ten lakh Forty Thousand only) on the Noticee viz. Shiva Commodities Pvt. Ltd. under the provisions of Section 15HA of the SEBI Act, 1992. I am of the view that the said penalty is commensurate with the lapse/omission on the part of the Noticee.

30. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order 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. In case of any difficulties in payment of penalties, the Noticee may contact the support at portalhelp@sebi.gov.in.

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

32. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticee viz. Shiva Commodities Pvt. Ltd. and also to the Securities and Exchange Board of India.

Date: May 31, 2021 **K SARAVANAN**

Place: Mumbai **ADJUDICATING OFFICER**