BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

ADJUDICATION ORDER NO.: Order/SM/SM/2021-22/14688

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:

Abhirup Dutta

PAN: CBGPD7685F

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

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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 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 2,91,744 trades, comprising 81.41% 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 Abhirup Dutta (PAN: CBGPD7685F) (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. MRD2_DCAP/AO-SM/OW/2021/19757/1 dated August 17, 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 penalty not be imposed on the Noticee under Section 15HA of the SEBI Act for the violations alleged to have been committed by the Noticee.

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

"….

5. The Noticee was one of the entities which indulged in reversal trades which allegedly created false and misleading appearance of trading, generating artificial volumes in the Stock Options Segment of BSE during the investigation period. The Noticee is alleged to have engaged in two such reversal trades in one unique contract, which led to generation of alleged artificial volume of 80,000 units. These trades of the Noticee involved reversal with the same counterparty on the same day, but at different prices.

…

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

Sr. No.	Contract Name	Avg. Buy Rate (Rs.)	Total Buy Volume (no. of Units)	Avg. sell rate (Rs.)	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	FEDB15JUL80.00PE	6.00	40,000	11.00	40,000	100%	37.04%

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

8. *The abovementioned reversal trades and volumes are illustrated through the dealings of Noticee in the one contract, viz., "FEDB15JUL80.00PE" during the investigation period, as follows:*

   (a) *During the investigation period, 2 trades for 80,000 units were executed by the Noticee in the said contract on 22/07/2015.*

   (b) *While dealing in the said contract on 22/07/2015, at 14:25:33.982739 hrs the Noticee entered into a buy trade with counterparty Hora Finance Investment for 40,000 units at Rs. 6 per unit. At 14:25:50.982720 hrs the Noticee entered into a sell trade with the same counterparty, for 40,000 units at Rs. 11 per unit.*

   (c) *The Noticee's two trades while dealing in the aforesaid contract during the investigation period allegedly generated artificial volume of 80,000 units, which made up 37.04% of total market volume in the said contract during this period.*

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

   …"

6. The SCN was served on the Noticee via Speed Post Acknowledgement Due (SPAD) and via email dated August 18, 2021. Vide email dated August 25, 2021, the Noticee acknowledged receipt of the SCN and sought one-month time to act upon the SCN,

citing personal reasons. Further, vide email dated September 23, 2021, the Noticee sought additional time to file reply to the SCN. Finally, vide email dated October 7, 2021, the Noticee submitted his reply to the SCN.

7. In terms of adjudication rules, vide hearing notice no. SEBI/HO/MRD2_DCAP/AO-SM/OW/2021/30929/1 dated October 29, 2021, the Noticee was granted an opportunity of personal hearing on November 24, 2021, scheduled to be conducted online through Cisco Webex platform. Vide email dated November 22, 2021, the Noticee confirmed his attendance in the aforesaid hearing. On the stipulated date of hearing, Shri Manas Shankar Ray, the Authorized Representative ("**AR**") of the Noticee, appeared before the Adjudicating Officer. During the course of the hearing, the AR reiterated the submissions made by the Noticee vide email dated October 7, 2021 and requested for an opportunity to make post-hearing submissions. Vide email dated December 3, 2021, the Noticee made additional submissions in respect of the SCN.

8. The main contentions of the Noticee, as submitted by him in his written submissions and during the personal hearing, are as follows:
   a. *The trades of the Noticee were genuine and bona fide, conducted by and on the advice of a recognized stock broker, executed on the trading platform of BSE, and were authorized by the stock exchange/SEBI in terms of the extant rules and regulations governing such trade. Further, the buy and sale were very much within the range permitted by the stock exchange/SEBI and the settlement took place through the recognized clearing corporation.*

b. *The transaction appears to have been executed by the Stockbroker without any reference to the Noticee.*

c. *The impugned trades are more than six years old, with no alert/ objection received by the Noticee from the stock broker/ stock exchange/ SEBI in the intervening period. Thus, the present proceedings are barred in light of the inordinate delay and on account of the doctrine of laches.*

d. *While the SCN alleges market manipulation by the Noticee, complete and relevant documents which are essential for a comprehensive analysis of the impugned trade and its impact on the market have not been provided to the Noticee. In this regard, the Noticee relied on the following orders:*

    - *Order of Hon'ble SAT in the matter of **HB Stock Holdings Ltd. vs. SEBI***
    - *Order of Hon'ble SAT in the matter of **Bharat Jayantilal Patel vs. SEBI** (Order dated September 15, 2010 in Appeal No. 126 of 2010)*

e. *The trades were conducted on the screen based anonymous trading platform of BSE without any knowledge of the counterparty. The choice of counterparty is based on automated price matching mechanism of the exchange and is beyond the control of the investor.*

f. *The Noticee is not in any way related/ connected to the counterparty to the transaction, and the SCN also does not allege any such connection/ collusion with the counterparty, let alone giving any evidence to support such allegation.*

g. *The Noticee has conducted only one reversal trade (i.e., 1 buy and 1 sale trade) of 40,000 units each, in one contract during the investigation period spanning 18 months. Evidently, this one-off transaction, involving a miniscule volume, cannot be* *said to have any substantial impact on the market in order to warrant the serious allegations of "manipulative, fraudulent and unfair trade practices" under the PFUTP Regulations. Further, there was a gap of about 17 seconds between the buy and sell trades of the Noticee, which cannot be said to be abnormal in derivative trading.*

h. *The SCN is silent as to on what basis the concerned stock option is termed as illiquid and why such illiquid option was allowed by the exchange/ SEBI to be traded on the exchange platform in the first place. There was no occasion for the Noticee to know that the said stock option was illiquid at the time of trading.*

i. *Trading in stock options, by its very nature, is extremely volatile with very fast momentum, and the price movement is highly unpredictable. The investor/ broker is required to be nimble-footed and make quick transactions including reversal of trades in a short span of time depending on the market movement and outlook to be able to maximize profits/ minimize loss. The SCN presumes the trade to be "without any basis", without taking into consideration the very nature of options trading and without specifying how and why the trade can be termed so.*

j. *The average buy rate was Rs. 6 and average sell rate was Rs. 11 and the total buy/ sell volume was only 40,000 units, which cannot be said to be "substantial" in derivatives trading.*

k. *The Noticee has earned a nominal profit of Rs. 2,00,000. Therefore, it is illogical and preposterous to presume that any investor would engage in market manipulation and creation of artificial volume to generate such nominal profit.*

l. *During the investigation period, the stock exchange and SEBI were actively promoting the derivatives segment, including for illiquid stocks, by providing various* *incentives to trading members and other participants with a view to increase retail participation in the segment. Accordingly, the stock brokers were encouraging/ pushing the retail investors to enter into such trades, for which the Noticee cannot be held liable.*

m. *While SCN has been issued to the Noticee, who is a mere victim of the impugned transaction, it is not known what actions have been taken against the concerned stock exchange which actively incentivized and allowed such trades on its platform and the stock broker who conducted the trade.*

n. *Allegations as serious as fraud and market manipulation ought to be backed up by credible evidence and a finding of actual indulgence in fraud. The onus to prove the allegations levelled in the SCN against the Noticee lies squarely on SEBI. In this regard, the Noticee relied on the following orders:*

   - *Order of Hon'ble SAT in the matter of **Samir Arora vs. SEBI** (2005) 59 SCL 96 (SAT)*
   - *Order of Hon'ble SAT in the matter of **Nirmal Bang Securities (P) Ltd. vs. SEBI**, (2004) 49 SCL 421*
   - *Order of Hon'ble SAT in the matter of **KSL & Industries Ltd vs. SEBI** (Appeal No. 9 of 2003)*

o. *For an action to constitute a breach of the PFUTP Regulations, there has to be an element of mala fide or wilful intent to defraud. Any action, which being devoid of mens rea and in compliance with regulatory measures ought not be viewed as an act of fraud.*

p. *The Noticee submitted that his was an isolated Case of matching trade, which is not sufficient proof of market manipulation. In this regard, the Noticee relied on the following orders*

- *Order of Hon'ble Supreme Court in the matter of* ***SEBI vs. Kishore Ajmera****, (2016) SCC 368*
- *Order of Hon'ble SAT in the matter of* ***HB Stock Holdings Ltd. vs. SEBI***
- *Order of Hon'ble SAT in the matter of* ***Rajesh Kumar vs. SEBI*** *(Order dated November 19, 2020 relying on its own decision in the matter of* ***M/s Nishith M. Shah HUF vs. SEBI*** *(Appeal No. 97 of 2019, Order dated January 16, 2020)*

CONSIDERATION OF ISSUES AND FINDINGS

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

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

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

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

10. Before advancing into the merits of the case, I would like to deal with the issue pertaining to delay, as alleged by the Noticee, in the issuance of the SCN.

11. I note that there is no provision under SEBI Act which prescribes a time limit for taking cognizance of a breach of the provision of SEBI Act and Rules and Regulations made thereunder. Further, as per Section 11C of SEBI Act, SEBI can initiate investigation at any point of time, for any period of alleged violation or any period of alleged transactions. 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. In this regard, I feel it is pertinent to note that, in the matter of **SEBI vs. Bhavesh Pabari** (2019) SCC Online SC 294, the Hon'ble Supreme Court of India has, *inter alia*, observed that - "*…There are judgments which hold that when the period of limitation is not prescribed, such power must be exercised within a reasonable time. What would be reasonable time, would depend upon the facts and circumstances of the case, nature of the default/statute, prejudice caused, whether the third party rights had been created etc.*"

12. Further, I note that the Hon'ble SAT in the matter of **Pooja Vinay Jain vs. SEBI** held that - "*The record would show that all the documents concerning the defense of the appellant were filed by her before the AO. Therefore, for want of any prejudice the proceedings cannot be quashed simply on the ground of delay in launching the same*"

13. I also note that the Hon'ble SAT in the matter of **Bipin R Vora vs. SEBI** held that - "*As regards the plea of delay and latches 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 view of the aforesaid, I note that contentions of Noticee in this regard are without merit.

14. With respect to the alleged violations in the instant matter, I would like to refer to the relevant provisions of the PFUTP Regulations, 2003, which are reproduced as follows:

    PFUTP Regulations, 2003

    3. Prohibition of certain dealings in securities

    No person shall directly or indirectly—

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

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

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

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

4. Prohibition of manipulative, fraudulent and unfair trade practices

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

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

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

15. I note that the allegation against the Noticee is that, while dealing in the stock option contracts at BSE during the Investigation Period, the Noticee had executed reversal trades which were allegedly non-genuine trades and the same had resulted in generation of artificial volume in stock options contracts at BSE. Reversal trades are considered as those trades in which an entity reverses 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 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.

16. I note from the trade log of the Noticee that he had traded in one unique contract in the stock options segment of BSE during the Investigation Period. It is observed that the Noticee had executed two non-genuine trades in this one contract. I further note that the abovementioned trades of the Noticee had resulted in the creation of artificial volume of a total of 80,000 units in the said contract. A summary of the non-genuine trades of the Noticee is as follows:

Sr. 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	FEDB15JUL80.00PE	6.00	40,000	11.00	40,000	100%	37.04%

17. It is noted that the Noticee had executed non-genuine trades in one contract, wherein the percentage of such non-genuine trades of the Noticee to the total trades in the contract was 37.04%. The non-genuine trades executed by the Noticee in the above contract had significant difference between buy and sell rates considering that the trades were reversed on the same day.

18. Upon perusing the trade log, I note that the trades executed by the Noticee in the contract were squared up within a short span of time with his counterparty. To illustrate, on July 22, 2015 at 14:25:33.466612, the Noticee placed a buy limit order for 40,000 units at a price of ₹6 per unit and the said order was matched with the sell limit order placed at 14:25:33.982739 for the exact same price (i.e., ₹6) and quantity (i.e., 40,000) by the counterparty, viz., Hora Finance Investment. I also note that there was no modification of either price or quantity by either the Noticee or the counterparty and the buy limit order of the Noticee got executed into trade immediately upon the entry of the sell limit order by the counterparty. Subsequently, at 14:25:50.967159, the Noticee placed a sell limit order for 40,000 units at a price of ₹ 11 per unit and the said order was matched with the same counterparty, i.e., Hora Finance Investment, who placed a buy limit order at 14:25:50.982720 for the same price (i.e., ₹11) and quantity (i.e., 40,000). I also note that there was no modification of either price or quantity by either the Noticee or the counterparty.

19. 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 less than 17 seconds, the Noticee reversed the position with his counterparty with a significant price difference. 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 orders of the Noticee and his counterparty matched with such precision (considering that there was a perfect match of price and quantity as well as a short time difference between placing of the orders by the Noticee

and counterparty) indicates a prior meeting of minds with a view to execute the reversal trades at a predetermined price. Since these trades were done in illiquid option contracts, there was very little trading in the said contract and hence, there was no price discovery in the strictest terms. The wide variation in prices of the said contracts, within a short span of time, is a clear indication that there was pre-determination in the prices by the counterparties while executing the trades. Therefore, it is observed that the Noticee had indulged in reversal trades with his counterparty in the stock options segment of BSE and the same were non-genuine trades.

20. The Noticee has *inter alia* contended that the trades were conducted on the screen based anonymous trading platform of BSE without any knowledge of the counterparty, and that the choice of counterparty is based on automated price matching mechanism of the exchange. Noticee has also contended that no material has been produced that the parties to the trades had conspired or colluded between themselves, and that serious allegations like fraud and market manipulation ought to be backed by credible evidence. In this regard, I note that both legs of the alleged reversal trade were synchronized, i.e., orders entered simultaneously by the Noticee and his counterparty at matching prices and volume. While such synchronized trades may occur by accident in a liquid stock, execution of synchronized trades in an illiquid stock with anonymous trading indicates a prior meeting of minds with a view to execute the reversal trades at a pre-determined price. There is also no justification for the wide variation in prices of the same contract within a short span of time, except for an element of pre-determination in the prices by both counterparties while reversing the trade. Thus, the nature of trading as brought out above clearly indicates an element of prior meeting of minds and hence collusion to carry out trades at pre-determined prices. Thus, the aforesaid contentions of the Noticee are unacceptable. In this regard, I place reliance on the judgment of Hon'ble Supreme Court in the matter in respect of **SEBI vs. Rakhi Trading Private Limited** (Civil Appeal Nos. 1969, 3174-3177 and 3180 of 2011 decided on February 8, 2018), in which the Hon'ble Supreme Court has held 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...."*

21. With regard to the contention of the Noticee that he has not been provided with complete and relevant documents essential for comprehensive analysis of the impugned trade and its impact on the market, I note that the SCN dated August 17, 2021 and the allegations levelled therein were on the basis of the documents/ records enclosed along with the said SCN, which were duly served upon the Noticee. The present Adjudication proceeding has only relied upon the documents/ records which were enclosed as annexures to the SCN and no statement of third parties/ persons

have been relied upon in the proceedings. Thus, the contention of the Noticee is without merit.

22. I note that during the preliminary submissions, the Noticee had *inter alia* submitted that the impugned trades were conducted by and on the advice of a recognized stock broker. However, during the personal hearing and in the post hearing submissions, the Noticee has submitted that “The transaction appears to have been executed by the Stockbroker without any reference to the Noticee”. In this regard, I note that the Noticee has not provided any evidence in support of his claim that the impugned trades were unauthorized, such as any complaint filed by the Noticee in respect of the alleged unauthorized trading done by the stock broker. Further, the Noticee has neither disputed the fact that he had received a contract note in respect of the impugned trades and had also received the proceeds from the trade in his bank account, nor has he submitted any evidence to claim otherwise. Therefore, based on the documents available on record, I find the contentions of the Noticee that the transactions were done without his consent, unacceptable.

23. I note that it is not a mere coincidence that Noticee could match his trades (with the corresponding price and quantity entered by both the Noticee and counterparty being equal) with the same counterparty with whom he 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. 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..."

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

25. In the instant matter, I note that though direct evidence regarding meeting of minds or collusion of the Noticee with the counterparty is not forthcoming, the trading behavior of the Noticee makes it clear that the aforesaid non-genuine trades could not have been

possible without meeting of minds at some level. In this context, I find it pertinent to refer to the Hon'ble SAT Order dated July 14, 2006 in the matter of **Ketan Parekh vs. SEBI** (Appeal No. 2 of 2004), wherein the Hon'ble SAT has held that - *"…The nature of transactions executed, the frequency with which such transactions are undertaken, the value of the transactions, the conditions then prevailing in the market are some of the factors which go to show the intention of the parties. This list of factors, in the very nature of things, cannot be exhaustive. Any one factor may or may not be decisive and it is from the cumulative effect of these that an inference will have to be drawn."*

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

27. 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)*."

28. The trading behavior of the Noticee which confirms that the trades executed by the Noticee were not normal, the wide variation in prices of the trades in the same contract in 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 aforesaid, I find that the allegation of violation of regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of PFUTP Regulations, 2003 by the Noticee stands established. The Hon'ble Supreme Court of India in the matter of **SEBI vs. Shri Ram Mutual Fund** [2006] 68 SCL 216(SC) held that - *"…In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant...."*

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

Penalty for fraudulent and unfair trade practices

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

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

Factors to be taken into account while adjudging quantum of penalty

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

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

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

(c) the repetitive nature of the default.

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

31. I observe that the material/ documents made available on record does not quantify any disproportionate gains or unfair advantage, if any, made by the Noticee and the losses, if any, incurred by the genuine investors as a result of the reversal trades/ non-genuine trades executed by the Noticee. However, the Noticee has entered into two non-genuine trades in one stock option contract during the investigation period. Therefore, I note that the Noticee indulged in execution of reversal trades in stock options on BSE during the Investigation Period which were non-genuine and created false and

misleading appearance of trading in terms of artificial volumes in stock options, leading to violation of regulation 3(a), (b), (c), (d), 4(1) and 4(2)(a) of PFUTP Regulations, 2003.

ORDER

32. After taking into consideration all the facts and circumstances of the case, the material/ documents made available on record including the submissions of the Noticee, the factors mentioned in section 15J of the SEBI Act and in exercise of the power conferred upon me under section 15-I of the SEBI Act read with rule 5 of the Adjudication Rules, I hereby impose following penalty under section 15HA of the SEBI Act, 1992 on the Noticee:

Name of the Noticee	Provisions violated	Penalty
Abhirup Dutta **(PAN: CBGPD7685F)**	Regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of PFUTP Regulations, 2003	Rs. 5,00,000/- (Rupees Five Lakh only)

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

33. The Noticee shall remit/ pay the said amount of penalty within 45 (forty five) days of the receipt of this order either by way of Demand Draft ("**DD**") in favour of "SEBI -Penalties Remittable to Government of India", payable at Mumbai or through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in, i.e., on the payment link: ENFORCEMENT → Orders → Orders of AO → PAY NOW or at https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html.

34. The Noticee shall forward the aforesaid DD/ payment confirmation details to the Division Chief, Enforcement Department-I (EFD), Division of Regulatory Action-I [EFD1-DRA-1] SEBI Bhavan, Plot No.C4-A,‘ G’ Block, Bandra Kurla Complex (BKC), Bandra (East), Mumbai – 400 051 and also send an email to tad@sebi.gov.in with the following detail:

1.	Case Name	
2.	Name and PAN of the ‘Payer/ Noticee’	
3.	Date of payment	
4.	Amount paid	
5.	Transaction No.	
6.	Bank details from which payment is made	
7.	Payment is made for	Penalty under AO proceedings

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

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

SUDEEP MISHRA

Digitally signed by SUDEEP MISHRA
Date: 2021.12.31 12:05:50 +05'30'

DATE: December 31, 2021 **SUDEEP MISHRA**

PLACE: MUMBAI **ADJUDICATING OFFICER**