BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
ADJUDICATION ORDER NO. Order/MR/VB/2021-22/14793

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:

Mr. Sudhir Kedia

PAN: AGAPK6830E

In the matter of dealings in Illiquid Stock Options at the BSE

A. BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as the "**SEBI**") conducted an investigation into the trading activity in illiquid stock options on BSE Limited (hereinafter referred to as the "**BSE**") for the period April 01, 2014 to September 30, 2015 (hereinafter referred to as the "**investigation period**") after observing large scale reversal of trades in the stock options segment of the BSE.

2. The investigation revealed that during the investigation period, out of the total trades executed on the BSE stock options segment, around 81% were reversal / non-genuine. It was observed that Mr. Sudhir Kedia (hereinafter referred to as the **"Noticee"**) was one among the various entities who had indulged in execution of reversal trades in stock options segment of BSE during the investigation period. The aforesaid reversal trades allegedly resulted into generation of artificial volumes, leading to allegations that the Noticee had violated regulations 3(a), (b), (c), (d), 4(1) and 4(2) (a) of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as the "**PFUTP Regulations**").

B. APPOINTMENT OF ADJUDICATING OFFICER

3. SEBI initiated adjudication proceedings and appointed the undersigned as the adjudicating officer under section 15I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the "**SEBI Act**") read with rule 3 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as the "**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 the PFUTP Regulations. The said appointment was communicated *vide* communiqué dated June 28, 2021.

C. SHOW CAUSE NOTICE, REPLY AND HEARING

4. A show cause notice dated August 30, 2021 bearing number "SEBI / HO /LAD1/LAD1_DOP3/P/OW/2021/0000021484/1/2021" (hereinafter referred to as the "**SCN**") was served upon the Noticee under rule 4(1) of the Adjudication Rules to show cause as to why an inquiry should not be held and penalty not be imposed against him under section 15HA of the SEBI Act for the alleged violation of regulations 3(a),(b),(c),(d), 4(1) and 4(2)(a) of the PFUTP Regulations. The SCN was served to the Noticee vide an e-mail dated September 1, 2021. The SCN was also duly served to the Noticee vide Registered Post AD on September 6, 2021.

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

   a) The Noticee was one of the entities which had indulged in reversal trades which allegedly created false and misleading appearance of trading, generating artificial volumes in stock options segment of the BSE during the investigation period;

   b) The Noticee had engaged in three (3) trades in one (1) unique contract which led to generation of artificial volume in the aforesaid unique contract;

c) In the said contract, the trades entered by the Noticee were reversed with the same counterparty at a substantial price difference without any basis for significant change in the contract price, which indicates that these trades were artificial and non-genuine in nature;

d) The Noticee's three (3) trades while dealing in the above said contract during the investigation period had allegedly generated artificial volume of 1,04,000 units, which made up 5.75% of total market volume in the said contract during the investigation period and 50% of total market volume in the said contract on January 27, 2015.

6. By indulging in execution of the aforesaid non-genuine reversal trades, the Noticee has allegedly violated regulations 3(a),(b),(c),(d), 4(1) and 4(2)(a) of the PFUTP Regulations.

7. The Noticee submitted his reply to the aforesaid SCN (hereinafter referred to as the **"reply"**) *vide* email dated September 14, 2021 and *inter alia*, raised the following contentions:

a) That there has been a considerable delay in the issuance of the SCN and initiation of proceedings. In light of the said delay, the Noticee is not in possession of the relevant documents to defend himself effectively;

b) That the volume generated by the Noticee during the entire investigation period may not be said to be voluminous and in absence of multiple transactions, the inference of fraud and / or undue trade practice cannot be drawn;

c) That the Noticee is not aware of the identity of the counterparty.

8. After considering the material available on record, the undersigned was of the opinion that an inquiry should be held in the matter in accordance with the Adjudication Rules. Accordingly, an opportunity of personal hearing was granted to the Noticee on October 25, 2021 and the same was communicated to him *vide* Notice of Hearing dated September 28, 2021. In view of the prevailing

circumstances owing to Covid-19 pandemic, the hearing was scheduled through video conferencing on Webex platform. On the scheduled date of hearing, the Authorized Representative (hereinafter referred to as the **"AR"**) of the Noticee, namely, Subash Agarwal & Associates, appeared before me through video conferencing. The AR reiterated the submissions made in the reply and requested to file further submissions. The AR vide e-mail dated October 25, 2021 made further submissions, wherein it was, *inter alia,* stated as follows:

a) That the burden of proof to prove the facts alleged against the Noticee is unequivocally cast upon the Adjudicating Authority;

b) No proof of causal connection between the Noticee and the counter-party has been provided;

c) That the transaction has not adversely impacted any third party;

d) That as per the Risk Disclosure Document issued by SEBI, the possibility of a wide spread price difference in the illiquid options contract prevails. Since there is no price band mechanism in place, the alleged trades were traded / executed genuinely.

D. CONSIDERARTION OF ISSUES AND FINDINGS

9. I have carefully perused the charges levelled against the Noticee in the SCN, his reply and the documents / material available on record. The issues that arise for consideration in the instant matter are:

a) **Issue No. I**: Whether the Noticee has violated provisions of regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of the PFUTP Regulations;

b) **Issue No. II:** Does the violation, if any, attract monetary penalty under section 15HA of the SEBI Act?; and

c) **Issue No. III:** If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in section 15J of the SEBI Act?

10. Before proceeding with the case on merits, I would like to deal with the contentions raised by the Noticee in the replies dated September 14, 2021 and October 25, 2021.

11. The Noticee has, *inter alia,* contended that there has been a delay of more than six years in the initiation of proceedings and due to the lapse of a long time, the Noticee is not in a position to rebut the allegations in an effective manner. Further, the Noticee has also stated that in terms of section 149 of the Income Tax Act, 1961 (hereinafter referred to as the **"IT Act"**), the Noticee is required to maintain the financial documents for a period of three years and *in lieu of* the delay, the Noticee is not in possession of the relevant documents to make an effective defence. I note that the investigation as regards violation of the PFUTP Regulations is an exhaustive, time consuming process, which may require detailed analysis of the case facts. In this regard, I note that the Hon'ble Securities Appellate Tribunal in the matter of ***Bipin R Vora Vs. SEBI***[1] has, *inter alia,* 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".*

12. Further, I would also like to refer to the decision of the Hon'ble Securities Appellate Tribunal in the matter of ***Rajendra Aggarwal Vs. SEBI***[2] wherein the Hon'ble Tribunal while rejecting the contention of the Noticee therein regarding delay of four years in issuance of SCN, has, *inter alia,* held that:

[1] Decided on March 22, 2006
[2] Decided on September 17, 2021

"The investigation was against a large number of entities which apparently took time and ultimately notices were issued to 35 entities. Consequently, we do not find any inordinate delay in the issuance of the show cause notice nor do we find any merit in the contention that there was an inordinate delay."

13. In view of the aforementioned case laws, I am of the view that it would inequitable and unjust to put up any unreasonable limit upon the regulator to initiate proceedings within a fixed span of time and that there has been no inordinate delay in initiation of proceedings against the Noticee. Here, I would like to bring it on record that the investigation into the trading activity in illiquid stock options was conducted for 21,652 entities and a total of 14,720 entities were found to be in alleged violation of the PFUTP Regulations against whom adjudication proceedings were approved in phased manner starting from the year 2018. In the backdrop of the approved adjudication proceedings against 14,720 entities, SEBI decided to introduce a Settlement Scheme (hereinafter referred to as the "**Scheme**") in terms of regulation 26 of the Securities and Exchange Board of India (Settlement Proceedings) Regulations, 2018 (hereinafter referred to as the "**Settlement Regulations**"). Accordingly, SEBI framed the Scheme in accordance with the provisions of the Settlement Regulations which provided a onetime opportunity to the entities against whom adjudication proceedings were approved for the aforementioned violations, to settle the said pending proceedings. SEBI issued a public notice dated July 27, 2020 about the launching of the Scheme and the modalities for availing the benefit of the Scheme. In addition to the same, all the entities were intimated through email and letters.

14. The Scheme was initially kept open for a period of three months commencing from August 01, 2020 to October 31, 2020 (both days inclusive). Subsequently, vide public notice dated October 31, 2020, SEBI extended the period of the Scheme till December 31, 2020 to enable the entities to avail the benefit of the scheme in view of the disruptions caused due to the Covid-

19 pandemic. Thereafter, a settlement order was passed by SEBI on January 15, 2021 and pursuant to the said order, adjudication proceedings were initiated against those entities which had failed to avail the opportunity of settlement. Given the fact that the investigation in the present matter was against multiple entities and that a settlement scheme was also floated by the Board, the SCN issued in the present case cannot be labelled as one issued after inordinate delay. Therefore the contentions of the Noticee, in this regard, hold no merit.

15. Secondly, the Noticee has argued that trading was done by placing orders telephonically to the stock broker and not through punching of saudas directly in the terminal. Therefore, the broker might have committed an error and that the Noticee cannot be held liable for the mistake / fraud committed by the broker using the account of the Noticee. In this regard, I am of the view that primary responsibility to assure the legality of the transactions was upon the Noticee. The broker was acting on the instructions of the Noticee and Noticee having consented to the said trades, which were executed by the broker on his behalf should have ensured the genuineness of the trades. Further, it must also be noted that the Noticee has failed to bring on record any evidence to substantiate his claims. If the broker had acted fraudulently and without the consent of the Noticee or due to fat finger syndrome etc., as alleged by the Noticee in the reply dated October 25, 2021, the Noticee ought to have taken up the matter immediately after the said transaction with the relevant authorities or should have taken appropriate legal action. Since the Noticee has failed to produce any evidence in this regard, I note that the contentions of the Noticee are without any merit and are, therefore, rejected.

16. Thirdly, the Noticee has argued that the trades executed by the Noticee, namely three (3) trades, are miniscule in nature and in absence of multiple transactions and / or voluminous transactions, inference of fraud / undue trade practices cannot be drawn. In this regard, I would like to refer to the decision of

the Hon’ble Supreme Court in the matter of ***SEBI Vs. Rakhi Trading***[3] wherein the Hon’ble Supreme Court, *inter alia,* held that:

> *“37. …………..The stock market is not a platform for any fraudulent or unfair trade practice. The field is open to all the investors. By synchronization and rapid reverse trade, as has been carried out by the traders in the instant case, the price discovery system itself is affected. Except the parties who have pre-fixed the price nobody is in the position to participate in the trade. It also has an adverse impact on the fairness, integrity and transparency of the stock market.”*

17. I would also like to refer to the decision of the Hon’ble Supreme Court in the matter of ***The Chairman***, ***SEBI Vs. Shri Ram Mutual Fund***[4] wherein the Hon’ble Supreme Court, *inter alia,* held that:

> *“20. 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…”*

18. I would also like to refer to the decision of the Hon’ble Securities Appellate Tribunal in the matter of ***Shivam Investments Vs. SEBI***[5] wherein the Hon’ble Tribunal, *inter alia,* held that:

> *“We are of the view that in the facts and circumstances of this case, the volume of trades, as contended by the appellant, is not relevant since the wrong doing stands established.”*

19. Thus, in the present matter, the thrust of the allegations is upon establishing the violation of the PFUTP Regulations and therefore if the same is

[3] Decided on February 8, 2018
[4] [2006] 68 SCL 216 (SC)
[5] Decided on April 12, 2012.

established, it becomes irrelevant, how minor the severity of violation actually is. Thus, in view of the above observation of the Hon'ble Supreme Court and the Hon'ble Tribunal, it becomes very clear that irrespective of the number of trades executed by the Noticee, reversal trades impact the price discovery system, integrity and fairness of the market. Therefore, number of transactions carried out can be no defense to the violation of the PFUTP Regulations. Therefore, the contention of the Noticee in this regard is liable to be rejected.

20. Fourthly, the Noticee has vehemently argued that the Noticee is not aware of the identity of the counterparty and that no causal connection has been established between the Noticee and the counterparty. I have analyzed the contention raised by the Noticee and I am of the opinion that counterparty being the same in both legs of the reversal transaction cannot be a mere coincidence. The same can only be done through a pre-planned meeting of minds to deal in such manner. In this light, I consider it important to refer to decision of the Hon'ble Supreme Court in the matter of ***SEBI Vs. Kishore R Ajmera***[6] wherein the Hon'ble Supreme Court, *inter alia,* held:

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

[6] AIR 2016 SC 1079

26.....Direct proof of such meeting of minds elsewhere would rarely be forthcoming. The test, in our considered view, is 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 framed thereunder 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."

21. Thus, in this regard, I note that although there might not be any direct evidence connecting the parties with each other but the trading behavior of the Noticee makes it amply clear that the reversal trades in the present case could not have been executed without prior meeting of minds at some level. Therefore, the present argument of the Noticee holds no merit.

22. The Noticee has also contended that price behavioral pattern of the particular scrip in question has not changed after the alleged transaction and that there has been no adverse impact upon any of the third parties. In this regard, I must note that the impugned reversal trades impacted the sanctity of the market as the same effected the legitimate price discovery and execution of trades as per market mechanism on the stock options segment of BSE. I would like to refer to the decision of Hon'ble Supreme Court in the matter of ***SEBI Vs. Rakhi Trading***[7] wherein it was, *inter alia,* held that:

"41. According to SAT, only if there is market impact on account of sham transactions, could there be violation of the PFUTP Regulations. We find it extremely difficult to agree with the proposition. As already noted above, SAT has missed the crucial factors affecting the market integrity, which may be direct or indirect. The stock market is not a platform for any fraudulent or unfair trade practice. The field is open to all the investors. By synchronization and

[7] Decided on February 8, 2018

> *rapid reverse trade, as has been carried out by the traders in the instant case, the price discovery system itself is affected. Except the parties who have pre-fixed the price nobody is in the position to participate in the trade. It also has an adverse impact on the fairness, integrity and transparency of the stock market."*

Therefore, the contentions of the Noticee in this regard are rejected.

23. Lastly, the Noticee has argued that as per the Risk Disclosure Document (the **"RDD"**) issued by SEBI, the possibility of wide spread price difference in illiquid options contract prevails. Further, the Noticee has contended that in absence of any price band mechanism in the options segment, the prices and the manner in which the trades were executed cannot be said to be non-genuine. In this context, I note that RDD is not a binding or mandatory provision of an Act, Regulation, Circular, etc. but merely a document in the nature of general advisory. RDD warns the investors dealing in derivatives markets about the risks involved in the derivatives market as the derivative products are complex, risky and high leverage products. RDD cannot be used as a permit for deliberate structuring of manipulative trades which lack economic rationale and run contrary to the dynamics of price discovery in option trading. The transactions of the Noticee show that the Noticee reversed the options contracts bought / sold on the same day, within a short span of time, at a substantially different price without there being any analogous change in the price of the underlying stock.

24. Further, analysis of such trades also indicates that price differentials have been deliberately structured for manipulative purposes as one party to the contract had deliberately foregone profitable position at the time of executing trade. The aforesaid pattern cannot be said to be falling with the economic rationale of a reasonable investor to buy at lesser price and sell at higher price. Any rational / reasonable investor would never engage in financial transactions to book loss on purpose. Had the counterparties for trades of the Noticee been different, intraday squaring of positions would not have been possible as no genuine counter party investor would ever forego profits. The fact that the

counterparties are same, corroborates that the trades were not genuine and executed for manipulative purposes. Thus, I am of the opinion that this contention of the Noticee holds no merit and is therefore rejected.

25. Before proceeding on to the merits of the case, I would like to refer to the relevant provisions of the PFUTP Regulations as below:

> ***"3. Prohibition of certain dealings in securities***
>
> *No person shall directly or indirectly—*
>
> *(a) buy, sell or otherwise deal in securities in a fraudulent manner;*
>
> *(b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;*
>
> *(c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;*
>
> *(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under."*

> ***"4. Prohibition of manipulative, fraudulent and unfair trade practices***
>
> *(1) Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.*
>
> *(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:—*
>
> *(a) indulging in an act which creates false or misleading appearance of trading in the securities market;"*

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

27. I note from the trades of the Noticee that the Noticee had traded in one contract in the stock options segment of BSE during the investigation period and executed three trades in the said contract. The aforesaid trades of the Noticee generated an artificial volume of 1,04,000 units in the said contract. Summary of the trades executed by the Noticee is produced for sake of convenience:

Particulars	**Buy**	**Sell**	
CONTRACT NAME	IBRL15JAN85.00CE	IBRL15JAN85.00CE	IBRL15JAN85.00CE
TRADE DATE	27/01/2015	27/01/2015	27/01/2015
CLIENT NAME WITH PAN	Mr. Sudhir Kedia. AGAPK6830E	Coral Drugs Pvt. Ltd. [AABCC1933G]	Coral Drugs Pvt. Ltd. [AABCC1933G]
CP CLIENT NAME	Coral Drugs Pvt. Ltd. AABCC1933G	Sudhir Kedia AGAPK6830E	Sudhir Kedia AGAPK6830E
ORDER NO.	1422342904687000006	1422342904687000004	1422342904687000004
CP ORDER NO.	1422342904687000007	1422342904687000001	1422342904687000003
TRADE TIME	14:04:17.075928	12:46:08.154561	12:46:08.154561
ORDER LMTIME	14:04:16.335721	12:46:08.154561	12:46:08.154561
CP ORDER LMTIME	14:04:17.075928	12:45:19.030617	12:45:47.885941
TRADE RATE	0.1	1.05	2.1
TRADE VALUE	4425200	344200	4180800
PREMIUM TRADE VALUE	5200	4200	100800

ORDER_LMRATE	0.1	2.1	2.1
CP ORDER LMRATE	0.1	1.05	2.1
TRADED QTY (no. of units)	52000	4000	48000
ORDER LMQTY	52000	104000	104000

28. It is noted that the trades executed by the Noticee were squared up within a short span of time with the same counterparties. The Noticee on January 27, 2015 at 12:46:08.154561 hrs. entered into two sell trades with the counterparty Coral Drugs Pvt. Ltd. for 4000 units and 48000 units for INR 1.05 and INR 2.1 per unit respectively in the contract 'IBRL15JAN85.00CE'. Thereafter, on the same day, the Noticee entered into a buy trade at 14:04:17.075928 hrs. with the same counterparty for 52,000 units at the rate of INR 0.1 per unit. Thus, while dealing in the said contract during the investigation period, the Noticee executed reversal trades with the same counterparty viz. Coral Drugs Pvt. Ltd. on the same day and therefore, the Noticee generated an artificial volume of 1,04,000 units in the said contract which was 5.75% of the volume traded in the said contract in the investigation period and 50% of the volume traded in the particular contract on January 27, 2015. I would like to put it on record that the aforementioned facts were not disputed by the Noticee in his reply to the SCN.

29. 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 his counterparties with significant price difference. The fact that the transactions in a particular contract were reversed with the same counterparties indicates a prior meeting of minds with a view to execute the reversal trades at a pre-determined price. Since these trades were done in illiquid option contract, there was negligible trading in the said contract and hence, there was no price discovery in the strictest terms. Thus, it is observed that Noticee had indulged in reversal trades with his counterparties in the stock options segment of BSE and the same were non-genuine trades.

30. Therefore, the trading behaviour of the Noticee confirms that such trades were not normal indicating 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 the PFUTP Regulations by the Noticee stands established.

31. At this juncture, reference is drawn to the decision of the Hon'ble Supreme Court of India in the matter of ***SEBI Vs. Shri Ram Mutual Fund***[8] wherein it was, *inter alia,* held that –

> *"20. 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 b*ecomes wholly irrelevant…"

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

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

33. 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:-

[8] [2006] 68 SCL 216(SC)

> ***"Factors to be taken into account by the adjudicating officer.***
> *15J. While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-*
>
> *(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*
>
> *(b) the amount of loss caused to an investor or group of investors as a result of the default;*
>
> *(c) the repetitive nature of the default.*
>
> *Explanation.—For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 15A to 15E,clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section."*

34. I observe that the although the material available on record does not quantify any disproportionate gains or unfair advantage, if any, made by the Noticee and the losses, if any, suffered by the investors due to such violations on part of the said Noticee or establish repetitiveness of the violation, I would like to note that section 15J is not exhaustive in nature. Once the factum of violation of legal provisions is established, an appropriate penalty must follow.

35. I would like to place my reliance on the decision of the Hon'ble Supreme Court in the matter of ***Adjudicating Officer, SEBI Vs. Bhavesh Pabari***[9] wherein the Hon'ble Supreme Court, *inter alia,* held that section 15 J of the SEBI Act is not exhaustive in nature and the imposition of penalty is dependent upon the satisfaction of substantive provisions as contained in the SEBI Act. The Hon'ble Supreme Court, *inter alia*, held that:

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

[9] Decided on February 28, 2019.

(b) and (c) of Section 15J which can be taken note of by the Adjudicating Officer while determining the quantum of penalty.

12…… Section 15J of the SEBI Act enumerates by way of illustration(s) the factors which the Adjudicating Officer should take into consideration for determining the quantum of penalty imposable. The imposition of penalty depends upon satisfaction of the substantive provisions as contained in Sections 15A to Section 15HA of the SEBI Act."

36. In light of the aforesaid judgment, the present matter deems to be a fit case for imposition for penalty.

37. Therefore, I hold that the Notice had indulged in execution of reversal trades in stock options with same entity on the same day, which are non-genuine in nature and had created false or misleading appearance of trading in terms of artificial volumes. In this regard, I place reliance on the decision of the Hon'ble Securities Appellate Tribunal in the matter of ***Global Earth Properties Vs. SEBI***[10] wherein the Hon'ble Tribunal, *inter alia,* held that:

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

Thus, the Noticee stands in violated the provisions of regulations 3 (a), (b), (c), (d), 4 (1) and 4(2)(a) of the PFUTP Regulations.

[10] Decided on September 14, 2020

ORDER

38. Having considered all the facts and circumstances of the case, the material available on record, the factors mentioned in, but not limited to, section 15J of the SEBI Act and in exercise of 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 on the Noticee:

Name of the Noticee	Provisions violated	Penalty
Sudhir Kedia PAN: AGAPK6830E	Regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of the PFUTP Regulations.	INR. 5,00,000/- (Rupees Five Lakh only)

39. I am of the view that the said penalty is commensurate with the violation on the part of the Noticee.

40. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft 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 on the following path, by clicking on the payment link:

ENFORCEMENT → Orders → Orders of AO → PAY NOW

41. The aforesaid Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to "The Division Chief (Legal Affairs Department-1/DOP-3), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C – 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051". The Noticee shall also provide the following details while forwarding Demand Draft / payment information:

- Name and PAN of the Noticee
- Name of the case / matter
- Purpose of Payment – Payment of penalty under AO proceedings
- Bank Name and Account Number

- Transaction Number

42. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, SEBI may initiate consequential actions including but not limited to recovery proceedings 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.

43. In terms of the provisions of rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticee viz. Mr. Sudhir Kedia and also to the Securities and Exchange Board of India.

Date: January 27, 2022 **Mohamed Rahaz P. M.**
Place: Mumbai **Adjudicating Officer**