BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO.: Order/GR/BM/2021-22/15503]

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

Gouri Sankar Agarwal (HUF)

(PAN: AADHG0482P)

In the matter of trading in Illiquid Stock Options at BSE

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 Bombay Stock Exchange (here in after referred to as **'BSE'**) leading to creation of artificial volume at BSE. Pursuant to a preliminary examination conducted in the Illiquid Stock Options matter, Interim order was passed by SEBI on August 20, 2015 which was confirmed vide Orders dated July 30, 2016 and August 22, 2016. In this regard, SEBI conducted an investigation into the trading activity

in the illiquid stock options Segment at BSE for the period April 01, 2014 to September 30, 2015 (hereinafter referred to as **"Investigation Period/IP"**) and completed in the year 2018. The investigation revealed that 14,720 entities were involved in executing non-genuine trades in BSE's stock option segment during the investigation period.

2. It was observed during the course of investigation that a total of 2,91,643 trades comprising 81.38% of all the trades executed in the stock options segment at BSE during the investigation period were trades which involved reversal of buy and sell positions by the clients and counterparties in a contract on the same day. It was also observed that the aforesaid 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 investigation period.

3. In view of the large scale reversal of trades that were observed in the illiquid stock options segment at BSE, it is alleged that these trades were non-genuine in nature. It was observed that **Gouri Sankar Agarwal (HUF) (PAN No. AADHG0482P)** (hereinafter referred to as **"Noticee"**) was one of the various entities which indulged in execution of the non-genuine trades in the stock options segment at BSE during the above referred investigation period. It was observed that Noticee had entered into reversal trades with its counterparties which involved squaring off transactions with significant difference in sell value and buy value of the transactions.

4. Therefore, it was alleged that Noticee had executed the reversal trades which were non-genuine in nature and have created false or misleading appearance of trading in terms of creation of artificial volume in the stock options segment at BSE and therefore, it is alleged that the Noticee has violated the provisions of Regulations 3(a), (b), (c), (d) and Regulation 4(1), 4(2) (a) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Markets) Regulations, 2003 (here in after referred to as "PFUTP Regulations"). In view of the above, adjudication proceedings have been initiated against the Noticee under the provisions of section 15 HA of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as 'SEBI Act').

APPOINTMENT OF ADJUDICATING OFFICER

5. While disposing of the aforesaid interim order vide final order dated April 05, 2018, it was considered and decided that appropriate action would be initiated against the said 14, 720 entities in a phased manner. Further, during the course of hearing in the case of **R. S. Ispat Ltd Vs SEBI**, the Hon'ble Securities Appellate Tribunal (SAT), vide its Order dated October 14, 2019, inter alia observed that *"SEBI may consider holding a Lok Adalat or adopting any other alternative dispute resolution process with regard to the Illiquid Stock Options*".

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

7. In this regard, SEBI after being satisfied that there are sufficient grounds to inquire into the affairs and adjudicate upon the alleged violations as mentioned above inter-alia in respect of the Noticee, had appointed the undersigned as Adjudicating Officer ('AO'), conveyed vide communique dated April 26, 2021, under Section 19 read with Section 15-I(1) of the SEBI Act, 1992 (hereinafter referred to as "SEBI Act") and Rule 3 of the 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 Section15-I (1) and (2) of the SEBI Act, and if satisfied that penalty is liable, may impose such penalty as deemed fit in terms of Rule 5 of Adjudication Rules and Section 15HA of the SEBI Act.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

8. Show Cause Notice with reference number SEBI/HO/EAD/EAD-4/P/OW/2021/0000022008/1 dated September 02, 2021 (hereinafter referred to as **"SCN"**) was issued to the Noticee in terms of Rule 4 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as **"Adjudication Rules"**) read with Section 15-I of the SEBI Act, to show cause as to why an inquiry should not be initiated and penalty should not be imposed under Section 15HA of the SEBI Act, on the Noticee for the alleged violation of Regulation 3 (a), (b), (c), (d) and 4 (1), 4 (2) (a) of PFUTP Regulations. The allegations levelled against the Noticee in the SCN are summarized as below:

a) That 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) That the Noticee traded in 2 unique contracts executing 4 non-genuine trades, which resulted in artificial volume of total 1,79,000 units.

c) The trades entered by the Noticee were reversed on the same day with same counterparties at a substantial price difference without any basis for significant change in the contract price which indicates that these trades are artificial and are non-genuine in nature.

d) A summary of dealings of the Noticee in 2 stock options contracts in which it allegedly executed non genuine trades during the investigation period, is as follows:

S. No.	Contract Name	Avg. Buy Rate (Rs)	Total Buy Volume (No. of units)	Avg. Sell Rate (Rs)	Total Sell Volume (No. of units)	Total Artificial Volume generated by the Noticee	% of Non Genuine trades of Noticee in the contract to Noticee's Total trades in the Contract	% of Non Genuine trades of Noticee in the contract to Total trades in the Contract	% of Artificial Volume generated by Noticee in the contract to Noticee's Total Volume in the Contract	% of Artificial Volume generated by Noticee in the contract to Total Volume in the Contract
1	CENT15FEB420.00CE	65	9500	108	9500	19000	100	33.33	100	38
2	HDIL15APR120.00CE	3	80000	5.5	80000	160000	100	25	100	21.74

9. The SCN was issued to the Noticee via Speed Post Acknowledgement Due (SPAD) and also via email dated September 02, 2021, both of which were duly delivered to the Noticee. Noticee, vide letter dated September 20, 2021, replied to the said SCN. Thereafter, vide e-mail dated September 15, 2021, an opportunity of personal hearing was granted to the Noticee on September 30, 2021. The Authorised Representative ('AR') of the Noticee, vide mail dated September 28, 2021, requested for adjournment of the aforesaid hearing which was accepted and subsequently, the personal hearing was scheduled on October 21, 2021. The AR of the Noticee attended the said hearing. During the course of hearing, the AR reiterated the submissions made by the Noticee in its reply dated September 20, 2021. Subsequently, the Noticee made additional submissions vide letters dated October 22, 2021 and February 07, 2022.

10. The details of the Noticee's reply dated September 20, 2021 and October 22, 2021 has been summarized as below:

a) The exercise of issuance of the SCN against them after more than 6 years is totally unreasonable, and suffers from serious laches, and therefore ought to be set aside. In this regard, Noticee relied interalia on the judgements of the Hon'ble Securities Appellate Tribunal (hereinafter referred as "SAT") in the matter of Khandwala Securities vs SEBI, and of the Hon'ble Supreme Court in the matter of Mansaram vs S P Pathak and Others. Trading decisions are taken upon the principle of "as on" basis and after a lapse of more than 5.5 years, it is not possible to remember details behind the decision taken at that point of time.

b) The SCN is silent on the connection of parties, counter parties, broker and counterparty broker to their trades. The SCN assumes that there was meeting of mind on mere surmises and conjectures. There is no *credible evidence to deduce meeting of minds between the counter party to the impugned trades and us. They were never aware of counterparty. They traded on blind mechanism of BSE Ltd and the identity of counterparty could not have been known. Since, the SCN is issued on the premise that the stock options were illiquid, the probability of matching of orders with same parties resulting in reversal is very high.*

c) *Squaring off of their trades with a difference in values were based on their understanding of the market and hence, could not have led to generation of artificial volumes, as wrongly alleged.*

d) *Their dealings in the stock options cannot be termed as "illiquid".*

e) *The online transparent trading mechanism of BSE was primarily instrumental in offering the trading platform and the ask and bid limits in the stock options were also determined by BSE. They have no role to play in terms of formulating or determining the limits. The limits were in place as had been implemented by the BSE presumably based on guidelines and circulars issued by SEBI.*

f) *There is no allegation against them in the matter of creation of any false price in the stock options since all the trades were within the circuit filters of the day of the trade. Further, all of their trades stood settled and cleared in terms pay in and payout per BSE guidelines.*

g) *The buy and sell rates should have been compared on the basis of notional values, instead of the premium. It may be appreciated that the Notional value represents the total underlying amount of the derivative, which is much larger than the market value of contracts. The volume of derivatives was very small vis-à-vis the volume of underlying securities and therefore, such a small volume is not sufficient to create any kind of artificial volume.*

h) *There have been no complaints and/or loss caused to any investor as regards the matter, and that no person has been claimed to be defrauded and all taxes including STT, stamp duty, etc. have been paid by them.*

i) *Only brokers are in position to match alleged trades with counter party brokers and it was impossible for the Noticee to enter into alleged matching of trades.*

j) *The SCN also failed to appreciate that of the 2,91,643 trades carried on during the investigation period, they have merely executed a single contract for four trades of 1,52,000 units which is 0.0013% of the total trades of the investigation period, which could never tantamount to execution of non genuine reversal of trades.*

11. Further, vide letter dated February 07, 2022, the Noticee submitted that they rely on the order dated 20.01.2022 of the Ld. Adjudicating Officer, SEBI in the matter Neha Sethi, wherein the Ld. AO was pleased to exonerate the Noticee since there was insufficient material to conclude the allegations against the Noticee and it was found not a fit case for imposition of penalty. The Noticee therefore submitted that the concerned case is also not a fit case for imposition of any penalty.

<u>ISSUES FOR CONSIDERATION AND FINDINGS</u>

12. I have carefully perused the SCN, the documents / material available on record and submissions of the Noticee. The issues that arise for consideration in the present case are:

1) Whether the Noticee violated the provisions of Regulation 3 (a), (b), (c), (d) and 4 (1), 4 (2) (a) of PFUTP Regulations?
2) Whether the Noticee is liable for imposition of monetary penalty under Section 15HA of the SEBI Act?

3) If yes, then what should be the quantum of monetary penalty?

13. It is pertinent to mention here the relevant provisions of Regulation 3 (a), (b), (c), (d) and 4 (1), 4 (2) (a) of PFUTP Regulations, allegedly violated by the Noticee:-

Regulation 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."*

Regulation 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;"*

Issue No. I: Whether the Noticee has violated the provisions of Regulations 3(a), (b), (c), (d) , 4(1) and 4(2)(a) of the PFUTP Regulations, 2003?

14. I note that the allegations levelled in the SCN are mainly to the effect that the Noticee has created false and misleading appearance of trading in terms of artificial volumes in the stock options segment of BSE by way of reversal of trades in illiquid stock options and thereby the Noticee violated the provisions of Regulation 3 (a), (b), (c), (d) and 4 (1), 4 (2) (a) of PFUTP Regulations.

15. Reversal trades have been considered 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 non-genuine trades as they are not executed in normal course of trading, lack basic trading rationale, and allegedly lead to false or misleading appearance of trading in terms of generation of artificial volume, hence, are deceptive and manipulative. Artificial volume is considered to be the volume (no. of units)

reversed in both legs of said reversal trades while keeping out the volume, if any, which is not reversed.

16. Pursuant to investigations, it was observed that during the investigation period, total 2,91,643 trades comprising substantial 81.38% of all the trades executed in Stock Options Segment of BSE 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 investigation period.

17. It was also observed that said non-genuine trades were not restricted to any specific contract or between any specific set of entities. It was observed that the Noticee was one of the various entities which were allegedly indulged in execution of non-genuine trades in Stock Options Segment of BSE during the investigation period. As regards all the dealings of the Noticee in the Stock Options segment of BSE during the investigation period, it was observed that the Noticee had traded in total 2 unique contracts, from which it allegedly executed 4 non-genuine trades, which resulted in artificial volume of total 1,80,000 units.

18. Summary of dealings of the Noticee in the said 2 Stock Options contracts, in which it executed non-genuine trades during the investigation period, is as follows:

S. No.	Contract Name	Avg. Buy Rate (Rs)	Total Buy Volume (No. of units)	Avg. Sell Rate (Rs)	Total Sell Volume (No. of units)	Total Artificial Volume generated by the Noticee	% of Non Genuine trades of Noticee in the contract to Noticee's Total trades in the Contract	% of Non Genuine trades of Noticee in the contract to Total trades in the Contract	% of Artificial Volume generated by Noticee in the contract to Noticee's Total Volume in the Contract	% of Artificial Volume generated by Noticee in the contract to Total Volume in the Contract
1	CENT15FEB420.00CE	65	9500	108	9500	19000	100	33.33	100	38
2	HDIL15APR120.00CE	3	80000	5.5	80000	160000	100	25	100	21.74

19. From the above table, following is noted as regards to dealings of Noticee in said 2 contracts:

a) In all the above 2 contracts, all the trades executed by Noticee were allegedly non-genuine trades.

b) No. of non-genuine trades of Noticee has significantly contributed to the total no. of trades from the market in the above contracts, as a substantial 25% to 33.33% of the trades happened in the aforementioned contracts were due to alleged non-genuine trades executed by the Noticee.

c) A substantial 100% of volume generated by the Noticee in all 2 contracts was artificial volume, and further artificial volume generated by the Noticee also contributed to significant 21.74% to 38% of the total volume from the market in the said 2 contracts.

d) Alleged non-genuine trades executed by Noticee in above contracts had significant differential in buy rates and sell rates considering that the trades were reversed on same day.

20. For the purpose of understanding, the trading pattern of the Noticee in the aforementioned 2 contracts in respect of non-genuine trades and artificial volume created by the Noticee, are illustrated through the dealings of the Noticee in the contract viz, **"HDIL15APR120.00CE"** as under:

Trade Date	**Client Name**	**CP Client Name**	**Trade Time**	**Trade Rate (Rs.)**	**Traded Quantity**
23/04/2015	Gouri Sankar Agarwal (HUF)	Sarswati Sales Pvt Ltd	14:32:37.559337	3	80000
23/04/2015	Sarswati Sales Pvt Ltd	Gouri Sankar Agarwal (HUF)	14:33:39.167123	5.5	80000

(a) During the investigation period, total 2 trades for 80,000 units were executed in the said contract on 23/04/2015, wherein Noticee was party to all the said trades.

(b) While dealing in the said contract on 23/04/2015, Noticee at 14:32:37 hrs entered into 1 buy trade with counter party viz, Sarswati Sales Pvt Ltd for 80,000 units at rate of Rs. 3 per unit. Thereafter, on the same day, within 1 minute 2 seconds from the above trade, Noticee, at 14:33:39 hrs entered into 1 sell trade with same counterparty for 80,000 units at rate of Rs. 5.5 per unit.

(c) From the above, it is noted that while dealing in the said contract during the I.P., Noticee executed total 2 reversal trades (1 buy trade + 1 sell trade), with the same counterparty viz, Sarswati Sales Pvt Ltd on the same day and with significant price differential in buy and sell rate.

(d) Thus, Noticee, through dealing in the contract viz, "HDIL15APR120.00CE" during the I.P., executed 2 non genuine trades which is 25% of the total trades from the market in the said contract during the I.P., and thereby, Noticee generated artificial volume of 1,60,000 units which is 21.74% of the volume traded in the said contract from the market during the investigation period.

21. From the above trading pattern of the Noticee, I note that the Noticee had bought and sold option contracts with the same counter parties and also reversed its trades on the same day, from its earlier buy, at substantial price difference without any actual basis for the same. 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 7 seconds to 1 minute 2 seconds approximately. Such pattern of dealings

suggests that they were not driven by the market parameters like underlying stock price, volatility, etc.

22. The aforementioned reversal trades were carried out by the Noticee in an illiquid stock options contracts where there was no participation of public. Reversal trades were undertaken by the Noticee with its counterparty with a predetermined arrangement to book profit or losses respectively, and, therefore, the parties to the trades were not trading in the normal sense and ordinary course of business.

23. Noticee has *inter alia* contended that the instant SCN has been issued after a delay of 6 years, however, no satisfactory reasons have been given to explain the delay in the issuance of SCN. In this regard, Noticee relied *inter alia* on the judgements of the Hon'ble Securities Appellate Tribunal (hereinafter referred as "SAT") in the matter of *Khandwala Securities vs SEBI*, and of the Hon'ble Supreme Court in the matter of *Mansaram vs S P Pathak and Others*. Noticee has also contended that the trading decisions are taken upon the principle of "as on" basis and after a lapse of more than 5.5 years, it is not possible to remember details behind the decision taken at that point of time. In this regard the narration of facts detailed in the paragraphs 1 to 6 above may be seen. I note that SEBI initiated the investigation as soon as information regarding malafide actions came to its notice. Further, under the SEBI Act there is no limitation on initiation of adjudication proceedings for violation of various provisions of Act and Regulations made thereunder. Further, I note that the investigation as regards violation of PFUTP Regulations, 2003, is an exhaustive and time consuming process, which may

require detailed analysis of the case facts. In this regard, I note that the Hon'ble SAT in the matter of **Pooja Vinay Jain vs SEBI** (Appeal No. 152 of 2019 decided on March 17, 2020) held that, *"The record would show that all the documents concerning the defense of the appellant were filed by her before the AO. Therefore, for want of any prejudice the proceedings cannot be quashed simply on the ground of delay in launching the same"*.

24. I also note that the Hon'ble SAT in the matter of **Bipin R Vora vs SEBI** (decided on March 22, 2006) held that, *"As regards the plea of delay and 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"*.

25. In view of the above, and considering the facts and circumstances, I note that there was no delay in the issuance of SCN in the matter as argued by the Noticee, so the contentions of the Noticee in this regard are without merits. Further, delay in initiating the proceedings itself should not be a ground for discharging the Noticee.

26. Noticee has *inter alia* contended that the SCN is silent on the connection of parties, counter parties, broker and counterparty broker to their trades and that the SCN assumes that there was meeting of mind on mere surmises and conjectures. Further, Noticee also contended

that there is no credible evidence to deduce meeting of minds between the counter party to the impugned trades and us and that they were never aware of counterparty. They traded on blind mechanism of BSE Ltd and the identity of counterparty could not have been known. Also that since the SCN is issued on the premise that the stock options were illiquid, the probability of matching of orders with same parties resulting in reversal is very high. I note that it is not a mere coincidence that Noticee could match its trades with the same counterparties with whom it had undertaken the 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 the Hon'ble Supreme Court in **SEBI v Kishore R Ajmera** (AIR 2016 SC 1079) decided on February 23, 2016, 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..."*

27. Further, the Hon'ble Supreme Court had 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."

28. I note in this regard 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 judgement of the Hon'ble SAT order dated July 14, 2006, in the matter of **Ketan Parekh vs. SEBI** (Appeal no. 2/2004), 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."*.

29. 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….."

30. Further, the Hon'ble SAT in its judgement dated September 14, 2020 in the matter of **Global Earth Properties and Developers Pvt Ltd** relied upon the aforesaid judgment of Hon'ble Supreme Court and held that, *"It is not a mere coincidence that the Appellants could match the trades with the counter party with whom he had undertaken the first leg of respective trade. In our opinion, the trades were non-genuine trades and even though direct evidence is not available in the instant case but in the peculiar facts and circumstances of the present case there is an irresistible inference that can be drawn that there was meeting of minds between the Appellants and the counter parties, and collusion with a view to trade at a predetermined price."*

31. Therefore, the contentions of the Noticee in this regard are without merits.

32. Noticee has *inter alia* contended that squaring off of their trades with a difference in values were based on their understanding of the market and hence, could not have led to generation of artificial volumes, as wrongly alleged. I note that all the trades executed by Noticee in the relevant contracts were in the form of reversal trades, in which the buy and sell rates had substantial difference without any trading strategy or changes in price of underlying scrip to justify the same as per the records. I note that considering the nature of trades in *toto* along with attending circumstances, it is discernible that the aforesaid reversal trades were non-genuine, and were executed without the intention of mere change in rights to exercise the

impugned contract. Therefore, I note that aforesaid contentions are liable to be set aside on the above grounds.

33. Noticee has *inter alia* contended that their dealings in the stock options cannot be termed as "illiquid". I note that Noticee's trades in the contracts under consideration contributed in the range of 21.74% to 38% to the total market volume generated during the IP in said contracts. I note that Noticee's trades contributed substantially to the volume generated in the said contracts, which indicates that the said contracts were thinly traded and that Noticee contributed substantially to artificial volume in such contracts

34. The Noticee has also contended that there is no allegation against them in the matter of creation of any false price in the stock options since all the trades were within the circuit filters of the day of the trade. Further, all of their trades stood settled and cleared in terms of pay in and pay out as per BSE guidelines. Also the online transparent trading mechanism of BSE was primarily instrumental in offering the trading platform and the ask and bid limits in the stock options were also determined by BSE and that they have no role to play in terms of formulating or determining the limits. The limits were in place as had been implemented by the BSE presumably based on guidelines and circulars issued by SEBI. I note that manipulation of price has not been alleged as part of the instant considerations. I also note that even though the trades were executed within prescribed limits set by BSE, the trading pattern exhibited while executing the aforesaid trades indicates their non-genuineness.

35. The Noticee has further contended that the buy and sell rates should have been compared on the basis of notional values, instead of the premium and the volume of derivatives was very small vis-à-vis the volume of underlying securities and therefore, such a small volume is not sufficient to create any kind of artificial volume. I note that as regards instant considerations, the market value i.e. premium, which is the rate at which contracts were bought and sold on exchange platform are relevant. Notional value represents the total underlying amount of the derivative, which is much larger than the market value of contracts, and is not relevant as regards instant considerations. So, I reject the contentions of Noticee in this regard.

36. Noticee has contended that no complaints or loss had been caused to any investor, and no person had claimed to be defrauded. Also that, all taxes including STT, stamp duty etc had been paid by the Noticee. Noticee has also contended that only the stock brokers were in a position to enter into alleged matching of trades. I note that Noticee was obligated to ensure genuineness of the trades executed by it on the exchange platform. The aforesaid obligation was mandatory not withstanding any warning issued by BSE or other intermediaries, any grievance submitted by any investor or any preventive measures installed by SEBI in this regard.

37. The Noticee has also contended that the SCN also failed to appreciate that of the 2,91,643 trades carried on during the investigation period, they have merely executed a single contract for four trades of 1,52,000 units which is 0.0013% of the total trades of the investigation period, which could never tantamount to execution of non-genuine reversal of trades. In this

regard I note that the Noticee has executed in 2 contracts as against 1 as claimed by the Noticee. I further note that as established in the preceding paragraphs, 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 the Noticee was one of the various entities who indulged in execution of reversal trades in stock options segment of BSE during the IP. Further almost in all the aforesaid illiquid stock option trades there was negligible participation by the public. Hence, it would be appropriate to consider the impact of these transactions in *toto*. Therefore, I do not find any merit in the contentions of the Noticee in this regard.

38. Further, the Noticee has placed reliance on the adjudication order dated 20-01-2022 passed in favour of Ms. Neha Sethi wherin only one reversal trade was done and contended that this is also not a fit case for imposition of any penalty. In this regard, I note that Hon'ble SAT in the matter of **Radha Malani vs SEBI** (Appeal No. 698 of 2021) vide Order dated November 24, 2021 has upheld the Adjudication Order dated September 06, 2021 wherein the case facts involved one reversal trade in one contract. Thus, I find no merit in the above contention of the Noticee. Further, I note from the facts of the instant case that the Noticee has indulged in multiple reversal trades in more than one contract.

39. Therefore, the trading behaviour of the Noticee confirms that such trades were not normal and wide variation in prices of the trades in the same contract in a short time without any

basis for such wide variation, all indicate that the trades executed by the Noticee were not genuine trades and being non-genuine, created an appearance of artificial trading volumes in 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, 2003 by the Noticee stands established.

Issue 2: Does the violation, if any, attract monetary penalty under Section 15HA of the SEBI Act?

40. Considering the finding that the Noticee as mentioned above has executed non-genuine trades resulting in the creation of artificial volume, thereby violating provisions of Regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of PFUTP Regulations, 2003 and in terms of the judgment of the Hon'ble Supreme Court of India in the matter of **SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC)** decided on May 23, 2006 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…",* 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:

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.

Issue 3: 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?

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

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

42. I observe, that 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. However, the Noticee has entered into 4 non-genuine trades in 2 stock option contracts which demonstrates the repetitive nature of default on its part.

43. Therefore, I note that the Noticee had indulged in execution of reversal trades in stock options contracts in the IP which were non-genuine and created false and misleading appearance of trading in terms of artificial volumes in the illiquid stock options at BSE, leading to the violation of Regulation 3(a),(b),(c),(d) and 4(1),(2)(a) of the PFUTP Regulations, 2003.

ORDER

44. 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 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	Violation provisions	Penalty
Gouri Sankar Agarwal (HUF) **(PAN: AADHG0482P)**	Regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of PFUTP Regulations, 2003	**Rs 5,00,000/-** (**Rupees Five Lakhs only**)

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

45. 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

46. The aforesaid Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to **"The Division Chief (Enforcement Department 1 DRA-1), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C – 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400051"**. The Noticee shall also provide the following details while forwarding DD / payment information:

1. Case Name:	
2. Name of the Noticee:	
3. PAN No. of the Noticee	
4. Date of payment:	
5. Amount paid:	
6. Transaction no.:	
7. Bank details in which payment is made:	
8. Payment is made for: (like penalties/ disgorgement/ recovery/ settlement amount etc.)	

47. 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.

48. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticee and also to the Securities and Exchange Board of India.

Date: March 23, 2022 **G. RAMAR**

Place: Mumbai **ADJUDICATING OFFICER**