BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

ADJUDICATION ORDER NO. Order/MR/VV/2021-22/15178

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:

Sudhir Kumar Saha

PAN: AKOPS3633F

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 Sudhir Kumar Saha (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 July 2, 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 July 6, 2021.

C. SHOW CAUSE NOTICE, REPLY AND HEARING

4. A show cause notice dated October 28, 2021 bearing number "SEBI/HO /LAD1/LAD1_DOP3/P/OW/2021/30499/1" (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 the Noticee 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 October 28, 2021. The SCN was also duly served to the Noticee vide Registered Post AD on November 3, 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 two (2) 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, which indicates that these trades were artificial and non-genuine in nature;

d) The Noticee's two (2) trades in the said contract during the investigation period had allegedly generated artificial volume of 1,32,000 units, 100% of total market volume in the said contract on June 29, 2015, i.e., the day on which the Noticee traded.

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 SCN vide speed post dated November 18, 2021 and *inter alia*, requested certain documents such as complete trade and order log for the trades executed by the Noticee in all scrips/options during the financial year 2015-16, order book maintained by the broker fo r the Noticee, etc. In response, the Noticee was informed vide letter and email dated November 25, 2021 that the documents relied upon in the matter have already been provided along with the SCN and no other document would be relied upon in the matter. Accordingly, the Noticee was requested to file the reply, based on the SCN and the documents provided along with it to the Noticee.

8. Thereafter, the Noticee filed a detailed reply dated December 10, 2021 to the said SCN vide email dated December 10, 2021 and also vide speed post on December 13, 2021 (hereinafter referred to as the **"reply"**) wherein the Noticee has, *inter alia,* raised the following contentions:

a) That the refusal to provide documents requested by the Noticee is contrary to the settled principles of natural justice and affects Noticee's right to file an effective reply;

b) That there has been an inordinate delay of more than six years in issuance of the SCN;

c) That the Noticee has no connection whatsoever with the counterparty;

d) That the SCN has provided no evidence to show that the trades executed by the Noticee were fraudulent;

e) That none of the ingredients of the PFUTP Regulations were violated in light of the following reasons:

i. Trades were executed on the online screen-based exchange platform with due compliance of the SEBI Act, Rules and Regulations;
ii. That no warning in this regard was issued to the Noticee by BSE or SEBI;
iii. That since the stocks were illiquid, any small quantity or volume would look significant as there are no active traders in the stock; and
iv. That there is no nexus with the counterparty.

f) That as per the SCN, the Noticee has executed only one reversal trade, which is a very small number in itself and the trades of the Noticee did not distort the equilibrium of the market or cause any loss to investors at large; and

g) That the Noticee has not violated the provisions of regulation 3(a), (b), (c), (d), and 4(1) and 4(2) (a) of the PFUTP Regulations, as alleged.

9. After considering the material available on record, it was decided 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 January 11, 2022. On the scheduled date of hearing i.e. January 11, 2022, the Authorized Representative (hereinafter referred to as the **"AR"**) of the Noticee, namely, Mr. Varun Nathani, appeared before me through video conferencing and reiterated the submissions made in the reply and sought time to file additional reply. The request of the AR was granted and the Noticee vide email dated January 15, 2022 filed additional submissions, wherein it was, *inter alia*, submitted as under;

a. That non-provision of the documents, as requested by the Noticee, has gravely prejudiced and impaired the Noticee's ability to comprehensively deal with allegations levelled in the SCN and therefore they may not be relied upon by the Adjudicating Officer in the present matter; and

b. That there has been an inordinate delay in issuance of SCN; and

c. That in case the Adjudicating Officer comes to a conclusion that the trades of the Noticee were non-genuine in nature, no penalty be levied upon the Noticee and the Noticee be let off with an administrative warning.

CONSIDERARTION OF ISSUES AND FINDINGS

10. I have carefully perused the charges levelled against the Noticee in the SCN, the replies dated December 10, 2021 and January 15, 2022 and the 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?

11. Before dealing with aforesaid issues, I would like to deal with the contentions raised by the Noticee in the replies dated December 10, 2021 and January 15, 2022.

12. Firstly, the Noticee has stated that the refusal to provide documents is contrary to the settled principles of natural justice and has affected the Noticee's ability to file an effective reply. The Noticee has also placed reliance on the decision of the Hon'ble

Securities Appellate Tribunal in the matter of ***Price Water House Vs. SEBI***[1]**.** In this regard, it must be noted that the opinion relied upon by the Noticee in the ***Price Water House***[2] case is the minority opinion while the majority had rejected the said plea. The relevant extract of order passed by the majority is reproduced hereunder:

> *".....If any material collected during the course of investigation has not been relied upon in the show cause notice, it will not deprive the appellant to produce its defence before the Board to show that it was not a party to the fraud. In our this view, we are supported by the judgment of the Supreme Court in the case of Natwar Singh vs Director of Enforcement (2010) 13 SCC 255 where the Apex Court has observed that even the principles of natural justice do not require supply of documents upon which no reliance has been placed by the authority to set the law into motion."*

13. Thus, I find that the present contention of the Noticee is misplaced as all the relevant documents such as the relevant trade log of all non-genuine trades of Noticee in stock option segment of BSE during the investigation period and summary of reversal trades executed by the Noticee were duly provided to the Noticee. Further, Hon'ble Securities Appellate Tribunal, in the matter of ***Shruti Vora Vs. SEBI***[3] has held that :

> *"...... In the instant case, the show cause notice relies upon certain documents which have been made available. Thus the investigation report is not required to be supplied. The Learned Counsel has also placed reliance upon a minority view of this tribunal in Price Waterhouse vs Securities and Exchange Board of India decided by this Tribunal in Appeal No.8 of 2011 on June 1, 2011 wherein it was observed that fairness demands that the entire material collected during the course of investigation should be made available for inspection to the person whose conduct was in question and that said material should also be supplied. In our opinion, the said minority view is directly against the decision of the Supreme Court in Natwar Singh case (supra). A bare reading of the provision of the Act and the Rules as referred to above do not provide supply of documents upon which no reliance has been placed by the AO, nor even the principles*

[1] Decided on June 1, 2011.
[2] Supra
[3] Decided on February 12, 2020.

of natural justice require supply of such documents which has not been relied upon by the AO. We are of the opinion that we cannot compel the AO to deviate from the prescribed procedure and supply of such documents which is not warranted in law. In our view, on a reading of the Act and the Rules we find that there is no duty cast upon the AO to disclose or provide all the documents in his possession especially when such documents are not being relied upon."

14. In light of the aforesaid decisions, I am of the view that an adjudicating officer being a quasi-judicial authority has a duty to disclose the materials which have been relied upon in the adjudication proceedings. It is not necessary for the adjudicating officer to make available all the material that might have been collected during the course of investigation but has not been relied upon for proving charge against the Noticee. No prejudice can, therefore be said, to have been caused to the Noticee due to the non-disclosure of all the documents sought by him. The documents which are not relied upon in the matter are not required to be collected and provided to the Noticee. Further, the Noticee has filed a detailed reply on merits and therefore, it cannot be said that prejudice has been caused to the Noticee due to non-disclosure of those documents. The documents sought by the Noticee are neither relied upon nor taken into account to decide the matter. Therefore, it is improper for the Noticee to argue that the non-disclosure of all the documents sought by him is bad in law and contrary to the settled principles of natural justice.

15. Secondly, the Noticee has argued that the SCN has been issued after an inordinate delay of six years. 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***[4] 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

[4] Decided on March 22, 2006.

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".

16. 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***[5] 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:

"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."

17. 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 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

[5] Decided on September 17, 2021.

Scheme. In addition to the same, all the entities were intimated through email and letters.

18. 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 contention of the Noticee about there being an inordinate delay in issuance of the SCN holds no merit.

19. Thirdly, the Noticee has argued that the Noticee is not aware of the identity of the counterparty and that the Noticee was in no way connected to the counterparty. I find 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*

[6] Decided on February 23, 2016.

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.

……

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."

20. Thus, 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.

21. Fourthly, the Noticee has argued that the Adjudicating Officer has not provided any evidence to prove that the trades executed by the Noticee are fraudulent in nature. Here, I would like to state that the SCN issued to the Noticee was self-explanatory in nature and contained relevant data in the form of annexures which was duly given to the Noticee. The data provided to the Noticee captured the time, date, quantity and other factors involved in the present matter and the same sufficiently establishes the fraudulent nature of transaction involved.

22. Further, the Noticee has also argued that following factors go on to establish that the Noticee has not violated the PFUTP Regulations, namely:

i. Trades were executed on the online screen-based exchange platform with due compliance of the SEBI Act, Rules and Regulations;

ii. That no warning in this regard was issued to the Noticee by BSE or SEBI;

iii. That since the stocks were illiquid, any small quantity or volume would look significant as there are no active traders in the stock; and

iv. That there is no nexus with the counterparty.

23. With regard to contention at Para 22(i), I find that trades cannot be blindly labelled as genuine only for the reason of them being traded on the online screen-based exchange. There are multiple other factors such as counterparties being same, short time span within which the trades were reversed etc. which go on to establish the fraudulent nature of the transactions and therefore this contention of the Noticee is not sustainable.

24. With regard to contention at Para 22(ii), I find that BSE or SEBI cannot be said to be under any obligation whatsoever to issue cautionary warnings to the wrongdoers instead of initiation of appropriate legal proceedings and thus this contention of the Noticee is also not tenable in law.

25. With regard to Para 22(iii), I note that thrust of allegations in the present matter is not upon the quantity/volume generated by the Noticee rather it is upon the genuineness of the said quantity/volume. Since in the present matter, the volume generated by the Noticee is non-genuine in nature, the contention of the Noticee is without any merit.

26. The contention of the Noticee at Para 22(iv) has already been dealt with in detail at Para 19 and 20 above and therefore requires no further discussion.

27. Fifthly, the Noticee has stated that as per the SCN, the Noticee has executed one reversal trade, which is a very small number in itself and therefore, the trades of the Noticee did not distort the equilibrium of the market or cause any loss to investors at large. I find that the number of trades entered into by the Noticee or loss caused to the investors is not of much relevance, as long as the trades result into violation of the PFUTP Regulations. At this juncture, I would like to refer to the decision of the Hon'ble

Supreme Court in the matter of ***SEBI Vs. Rakhi Trading***[7] 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."*

28. I would also like to refer to the decision of the Hon'ble Securities Appellate Tribunal in the matter of ***Shivam Investments Vs. SEBI***[8] 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."*

29. In view of the above judgments, it is amply clear that the Noticee merely executing two trades is not of much relevance as long as the factum of violation of the PFUTP Regulations stands established. Further, as held in the above judgments, such trades affect the price discovery system, fairness, integrity and transparency of the market, which in turn, impacts the investors at large.

30. Lastly, vide reply dated January 15, 2022, the Noticee has raised contention about non-provision of documents and relied upon the decision of the Hon'ble Securities Appellate Tribunal in the matter of ***Price Waterhouse Vs. SEBI***[9]**.** The Noticee has also raised the contention of delay in issuance of the SCN. Since both the above contentions have already been dealt with at Para 12-14 and Para 15-18 respectively, the same does not merit any further discussion.

---

[7] Decided on February 8, 2018

[8] Decided on April 12, 2012.

[9] Decided on June 1, 2011

31. In order to decide the Issue No. I, 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;"*

32. 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 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.

33. The said reversal trades are considered 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. In this regard, I would like to place my reliance on the decision of the Hon'ble Supreme Court in the matter of ***SEBI Vs. Rakhi Trading Pvt Limited***[10] wherein the Hon'ble Supreme Court, *inter alia,* held that:

> *"31…. The non-genuineness of these transactions is evident from the fact that there was no commercial basis to suddenly, within a matter of minutes, reverse a transaction when the value of the underlying had not undergone any significant change.*
>
> *………*
>
> *………*
>
> *73. Applying the test laid down in Kishore R. Ajmera case to the present case, I find that by cumulative analysis of the reversal transactions between Respondent and Kasam Holding, quantity, time and significant variation of prices, without major variation in the underlying price of the securities clearly indicate that the Respondent's trades are not genuine and had only misleading appearance of trading in the securities market, without intending to transfer beneficial ownership."*

34. 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 two trades in the said contract. The aforesaid trades of the Noticee generated an artificial volume of 1,32,000 units in the said contract. Summary of the trades executed by the Noticee is produced below for the sake of convenience:

Particulars	Buy	Sell
CONTRACT NAME	IDEA15JUL160.00CEW4	IDEA15JUL160.00CEW4
TRADE DATE	29/06/2015	29/06/2015
CLIENT NAME WITH PAN	Sudhir Kumar Saha AKOPS3633F	J B Overseas AAIFJ6651J
CP CLIENT NAME	J B Overseas AAIFJ6651J	Sudhir Kumar Saha AKOPS3633F
ORDER NO.	1435570887108000001	1435570887108000003
CP ORDER NO.	1435570887108000000	1435570887108000002

[10] Decided on February 8, 2018

TRADE TIME	15:11:27.155346	15:11:30.858560
ORDER LMTIME	15:11:27.155346	15:11:30.858560
CP ORDER LMTIME	15:11:27.108169	15:11:30.858436
TRADE RATE	8	12.5
TRADE VALUE	11088000	11385000
PREMIUM TRADE VALUE	528000	825000
ORDER_LMRATE	8	12.5
CP ORDER LMRATE	8	12.5
TRADED QTY (no. of units)	66000	66000
ORDER LMQTY	66000	66000

35. I find that that the trades executed by the Noticee were squared up within a span of few seconds with the same counterparties. The Noticee on June 29, 2015 at 15:11:27.155346 hrs. entered into a buy trade with the counterparty J B Overseas for 66,000 units at the rate of INR 8 per unit in the contract 'IDEA15JUL160.00CEW4'. Thereafter, on the same day, the Noticee entered into a sell trade at 15:11:30.858560 hrs. with the same counterparty for 66,000 units at the rate of INR 12.5 per unit.

36. Thus, while dealing in the said contract during the investigation period, the Noticee executed reversal trades with the same counterparty viz. J B Overseas on the same day, within a span of few seconds. Such matching of trades cannot be said to be a mere coincidence. Therefore, the Noticee generated an artificial volume of 1,32,000 units in the said contract which was 100% of the volume traded in the particular contract on June 29, 2015. The said trades of the Noticee have also contributed in creation of large artificial volume in the said contract, which may have attracted other gullible investors in the said contract.

37. I find that 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 on the same day within a short span of time 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.

38. In this context, I deem it appropriate to refer to the decision of the Hon'ble Securities Appellate Tribunal in the case of ***Ketan Parekh Vs. SEBI***[11], wherein the Hon'ble Securities Appellate Tribunal has, *inter alia,* 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."*

39. I find that 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 this regard, I place reliance on the decision of the Hon'ble Securities Appellate Tribunal in the matter of **Global Earth Properties Vs. SEBI**[12] 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."*

40. Further, the above stance was also reiterated by the Hon'ble Securities Appellate Tribunal in the matter of ***Shruti Daga Vs. SEBI***[13] wherein the SCN was issued with similar set of facts as that of in the present matter. In the said case, the Hon'ble Securities Appellate Tribunal dismissed the appeal stating that controversy involved

---

[11] Decided on July 14, 2006.
[12] Decided on September 14, 2020
[13] Decided on February 1, 2022

in the said case is squarely covered by the decision of the Hon'ble Tribunal in ***Global Earth Properties Vs. SEBI***[14]***.***

41. In view of the above, Issue No. I, i.e., whether the Noticee has violated the provisions of regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of the PFUTP Regulations stands answered in affirmative.

42. Since, it is established that the Noticee is in violation of the aforesaid provisions of the PFUTP Regulations, it becomes pertinent to answer Issue No. II, i.e. whether the violation attracts any monetary penalty under section 15HA of the SEBI Act. In this regard, reference is drawn to the decision of the Hon'ble Supreme Court of India in the matter of ***SEBI Vs. Shri Ram Mutual Fund***[15] 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 becomes wholly irrelevant…*"

43. 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."*

44. As Issue No. II has been decided in affirmative, the quantum of monetary penalty under section 15HA of the SEBI Act that can be imposed on the Noticee after taking into consideration the factors mentioned in section 15J of the SEBI Act, as

[14] Decided on September 14, 2020
[15] Decided on May 23, 2006.

framed under Issue No. III, needs to be determined. In this regard, it is important to consider the factors as stipulated in section 15J of the SEBI Act which reads as under:-

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

45. In this case, 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 or establish repetitiveness of the violation. However, the act of Noticee in executing the aforesaid two non-genuine trades is in violation of the provisions of regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of the PFUTP Regulations which has been established in the aforesaid paragraphs. Once the factum of violation of legal provisions is established, an appropriate penalty must follow. Here, I would like to refer to the submission of the Noticee vide reply dated January 15, 2022 wherein the Noticee has submitted that in the event the Noticee is found to be in violation of the PFUTP Regulations, no penalty be levied on the Noticee and the Noticee be let off with an administrative warning. In this regard, I have perused the text of section 15HA of the SEBI Act which mandates a minimum penalty of five lakh rupees extendable up to twenty five crore rupees or three times the amount of profits made, whichever is higher. In the present case, having taken into account the facts and circumstances of

this case, I am of the view that a minimum penalty of INR 5,00,000/- (Rupees Five Lakh only) is commensurate with the violation on the part of the Noticee.

ORDER

46. After taking into consideration all the facts and circumstances of the case, the material available on record and in exercise of power conferred upon me under section 15I 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 Kumar Saha PAN: AKOPS3633F	Regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of the PFUTP Regulations.	INR. 5,00,000/- (Five Lakh Rupees)

47. 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

48. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to "The Division Chief (EFD-1/FDMD-1), Securities and Exchange Board of India, SEBI Bhavan II, Plot No. C – 7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051" and also send an email to tad@sebi.gov.in. 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

49. 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.

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

Date: February 25, 2022 **Mohamed Rahaz P. M.**
Place: Mumbai **Adjudicating Officer**