BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/PR/TB/2022-23/15812]

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

Vinay Sodha

(PAN: BGWPS6518J)

In the matter of Trading in Illiquid Stock Options on BSE

BACKGROUND OF THE CASE

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

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 the BSE during the investigation period were trades which involved reversal of buy and sell positions by the clients and counterparties in a contract on the same day. It was observed that **Vinay Sodha** (PAN: **BGWPS6518J**) (hereinafter referred to as the "**Noticee**") was one such client whose reversal trades involved squaring off open positions with a significant difference without any basis for such change in the contract price. The aforesaid reversal trades allegedly resulted into generation of artificial volumes, leading to allegations that the Noticee had violated the provisions of regulations 3(a), (b), (c), (d) and regulations 4(1), 4(2)(a) of the SEBI (Prohibition of Fraudulent and Unfair Trading Practices related to Securities

Markets) Regulations, 2003 (hereinafter referred to as "**PFUTP Regulations, 2003**").

APPOINTMENT OF ADJUDICATING OFFICER

3. SEBI initiated adjudication proceedings and appointed the undersigned as Adjudicating Officer under section 15-I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act**") read with rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as "**Adjudication Rules**") vide order dated April 30, 2021 to inquire into and adjudge under section 15HA of the SEBI Act against the Noticee for the alleged violation of the aforesaid provisions of PFUTP Regulations, 2003.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. A Show Cause Notice bearing reference no. SEBI/HO/DEPA-III/DEPA-III_SSU/P/OW/2021/18095/1 dated August 05, 2021 (hereinafter referred to as "Show Cause Notice" or "SCN") was issued to the Noticee under Rule 4(1) of the Adjudication Rules to show cause as to why an inquiry should not be initiated against the Noticee and why penalty should not be imposed on the Noticee under Section 15HA of the SEBI Act for the violations alleged to have been committed by the Noticee.

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

"….

5. The Noticee was one of the entities which indulged in reversal trades which allegedly created false and misleading appearance of trading, generating artificial volumes in the Stock Options Segment of BSE during the investigation period. The Noticee is alleged to have engaged in 2 such trades in 1 unique contract, which led to generation of alleged artificial volume of 2,00,000 units. These trades of the Noticee involved reversal with the same counterparty on the same day, but at different prices."

7. *A summary of dealings of Noticee in 1 Stock Options contract in which the said Noticee allegedly executed reversal trades during the investigation period, is as follows:*

Contract Name	**Avg. Buy Rate (Rs.)**	**Total Buy Volume (no. of units)**	**Avg. Sell Rate (Rs.)**	**Total Sell Volume (no. of units)**	**Total Number of Volume Generated**	**% 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**
HDIL15FEB120.00CEW3	1.05	1,00,000	0.05	1,00,000	2,00,000	100	14.04

8. *The abovementioned reversal trades and volumes are illustrated through the dealings of Noticee in one contract viz., "HDIL15FEB120.00CEW3" during the investigation period, as follows:*
   (a) *During the investigation period, 2 trades for 2,00,000 units were executed by the Noticee in the said contract on 13/02/2015.*
   (b) *While dealing in the said contract on 13/02/2015, at 11:55:02.986362 hrs the Noticee entered into a buy trade with counterparty Shir Commodities and Futures Private Limited for 1,00,000 units at ₹1.05 per unit. At 13:01:49.914042 hrs the Noticee entered into a sell trade with the same counterparty, for* 1,00,*000 units at ₹0.05 per unit.*
   (c) *The Noticee's two trades while dealing in the above said contract during the investigation period allegedly generated artificial volume of 2,00,000 units, which made up 14.04% of total market volume in the said contract during this period.*

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

…"

6. The SCN ref no SEBI/HO/DEPA-III/DEPA-III_SSU/P/OW/2021/18095/1 dated August 05, 2021 was served on the Noticee via Speed Post Acknowledgement Due (SPAD). The same returned undelivered. However, he replied vide email dated August 23, 2021 that he had never traded options or futures since the time he had started investing in market. Besides, he mentioned that he had heard neither the name of Besan Equity Limited nor the name of Mr Tulshyan. Subsequently, vide email dated September 17, 2021, the Noticee was requested to submit whether he had traded through the member Lalit Kumar Tulshyan. Vide email dated September 17, 2021, the Noticee submitted that the trades were indeed executed. However, he had no knowledge that the trades were made in an illiquid stock. He also submitted that apart from these two trades nothing is done throughout the trading history. Further, he requested to consider this as one - off trade.

7. In the interest of natural justice and in terms of the Adjudication Rules, the Noticee was provided with an opportunity of personal hearing in the matter on October 26, 2021 through the online WebEx platform. The Noticee appeared for the hearing on the stipulated date of hearing. During the course of the hearing, The Noticee accepted all charges against him. The Noticee submitted that he has been holding an account for the past fifteen years and he transacts in the cash segment only. He did not have any knowledge of this transaction and he came to know about this transaction only after the receipt of the SCN.

CONSIDERATION OF ISSUES AND FINDINGS

8. I have carefully perused the charges levelled against the Noticee, his reply and the documents / material available on record. The issues that arise for consideration in the present case are:
   (a) Whether the Noticee has violated provisions of regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of PFUTP Regulations, 2003?
   (b) Does the violation, if any, attract monetary penalty under section 15HA of the SEBI Act, 1992?

(c) If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in section 15J of the SEBI Act, 1992?

9. With respect to the alleged violations in the instant matter, I note that it is pertinent to refer to the relevant provisions of the PFUTP Regulations, 2003, which are reproduced as follows:

PFUTP Regulations, 2003

3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

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

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

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

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

4. Prohibition of manipulative, fraudulent and unfair trade practices

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

(2) Dealing in securities shall be deemed to be a 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;

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

11. The Noticee has accepted that the trades were carried out from his account, although he did not have any knowledge of the same. In this regard, I note from the trade log of the Noticee that he had traded in 2 unique contracts in the stock options segment of BSE during the IP. It is observed that the Noticee has allegedly executed 2 non genuine trades in 1 Stock Options contract. I further note that the above mentioned trades of the Noticee had resulted in the creation of artificial volume of total 2,00,000 units. Summary of non-genuine trades of the Noticee is as follows:

Contract Name	**Avg. Buy Rate (₹**	**Total Buy Volume (no. of units)**	**Avg. Sell Rate (₹**	**Total Sell Volume (no. of units)**	**Total Number of Volume Generated**	**% 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**
HDIL15FEB120.00CEW3	1.05	1,00,000	0.05	1,00,000	2,00,000	100	10	100	14.04

12. It is noted that the Noticee had executed non-genuine trades in 1 contract, wherein the percentage of non-genuine trades of the Noticee in stock options contracts to total trades in the contracts was 10.0% in the aforesaid contract. Further, the artificial volume generated by Noticee in the contract amounted to a substantial 100% of total volume generated by him in the contract. It is also noted that the percentage of artificial volume generated by the Noticee in the contracts to the

total volume of the market in the said contract was 14.04%. The non-genuine trades executed by the Noticee in the above contract had significant difference between buy and sell rates considering that the trades were reversed on the same day.

13. Upon perusing the trade log, I note that the trades executed by the Noticee in the contract HDIL15FEB120.00CEW3 were squared up within a short span of time with the same counterparty. To illustrate, on February 13, 2015, at 11:55:02.986362, the Noticee placed a buy limit order for 1,00,000 units at a price of ₹1.05 per unit and the said order was matched with the sell limit order (which was also for 1,00,000 units at a price of ₹1.05 per unit) of counterparty Shir Commodities and Futures Private Limited. I note that the said sell limit order was placed at 11:55:02.424418, i.e. before the entry of the buy limit order by the Noticee. I also note that there was no modification of either price or quantity by either the Noticee or the counterparty and the sell limit order of the counterparty got executed into trade immediately upon the entry of the buy limit order by the Noticee. Subsequently, at 13:01:47.929477, the Noticee placed a sell limit order for 1,00,000 units at a price of ₹0.05 per unit and the said order was matched with the same counterparty (i.e. Shir Commodities and Futures Private Limited), who placed a buy limit order for 2,08,000 units and price of ₹0.05 per unit. I note that the said buy limit order was placed by the counterparty at 13:01:49.796292, i.e. after the entry of the sell order by the Noticee. I also note that there was no modification of either price or quantity by either the Noticee or the counterparty and the sell limit order of the Noticee got executed into trade shortly upon the entry of the buy limit order by the counterparty.

14. 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 approximately 1 hour 4 minutes, the Noticee reversed the position with the same counterparty with significant price difference. Such a short span of time taken for reversing the trades in an illiquid stock option contract suggests the non-genuineness of these trades executed by the Noticee. The fact that the orders of the Noticee and his counterparty matched with such precision (considering that there was a perfect

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

15. I note that the allegations against the Noticee pertain to the reversal trades executed by him, on the same day with same counterparty with substantial price difference between buy and sell rates, without any change in the price of underlying scrips. I note that Noticee's buy and sell trades were executed with a substantial price difference within a short period of time, without any change in the price of underlying scrips, on the same day with the same counterparty. In the instant case, the facts as regards reversal trades have been considered in totality to allege violation of provisions of PFUTP Regulations, 2003.

16. Noticee has contended that he had no knowledge of counterparty to the trades. Thus, the Noticee contends that he had not colluded with the counterparties and that he did not commit any fraud. I note that it is not mere coincidence that the Noticee could match his trades with the same counterparty with whom he had undertaken first leg of the respective trades. This is the outcome of meeting of minds elsewhere and it was a deliberate attempt to deal in such a manner. I note in matters dealing with violation of PFUTP Regulations, 2003, the reason as regards execution of non-genuine trades might not be immediately forthcoming. However, the correct test instead, is one of preponderance of probabilities. Here I would like to rely on the judgment of Hon'ble Supreme Court in the matter of *Securities and Exchange Board of India* vs. *Kishore R. Ajmera* [(2016) 6 SCC 368: AIR 2016 SC 1079] wherein, the Supreme Court has held, "*…According to us, knowledge of who the 2nd party / client or the broker is, is not relevant at all. While the screen based trading system keeps the identity of the parties anonymous it*

will be too naïve to rest the final conclusions on the said basis which overlooks a meeting of minds elsewhere. Direct proof of such meeting of minds elsewhere would rarely be forthcoming. The test, in our considered view, is one of preponderance of probabilities so far as adjudication of civil liability arising out of violation of the Act or the provisions 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…".

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

18. In the instant matter, I note that though direct evidence regarding meeting of minds or collusion of the Noticee with the counterparty is not forthcoming, the trading behavior of the Noticee makes it clear that the aforesaid non-genuine trades could not have been possible without meeting of minds at some level. In this context, I find it pertinent to refer to the Hon'ble SAT Order dated July 14, 2006 in the matter of Ketan Parekh Vs SEBI (Appeal No. 2 of 2004), wherein the Hon'ble SAT has held that *"…The nature of transactions executed, the frequency with which such transactions are undertaken, the value of the transactions, the conditions then prevailing in the market are some of the factors which go to show the intention of the parties. This list of factors, in the very nature of things, cannot be exhaustive.*

Any one factor may or may not be decisive and it is from the cumulative effect of these that an inference will have to be drawn."

19. In the matter of SEBI Vs Rakhi Trading Pvt Ltd (Civil Appeal no, 1969 of 2011, 3174-3177 of 2011 and 3180 of 2011, decided on February 08, 2018), the Hon'ble Supreme Court of India 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....".*

20. Additionally, 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 judgement 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.*"

21. Hon'ble SAT in its judgement dated November 24, 2021 dismissed the appeal of Radha Malani against SEBI and held that "*Having heard the learned counsel for the appellant, in our view the controversy involved in the present appeal is squarely covered by a decision of this Tribunal in Global Earth Properties and Developers Pvt. Ltd. vs. SEBI (Appeal No. 212 of 2020 decided on September 14, 2020).*"

22. 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. 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…".*

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

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

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

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

    Factors to be taken into account by the adjudicating officer.

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

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

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

(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.

25. I observe that the material / document made 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, Noticee has entered into 2 non genuine trades in 1 Stock Option contract during the investigation period.

26. Therefore, I note that Noticee 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 stock options, leading to violation of regulation 3(a), (b), (c), (d) and 4(1), (2)(a) of the PFUTP Regulations, 2003.

ORDER

27. Having considered all the facts and circumstances of the case, the material available on record, the factors mentioned in section 15J of the SEBI Act, 1992 and in exercise of power conferred upon me under section 15-I of the SEBI Act, 1992 read with rule 5 of the Adjudication Rules, 1995, I hereby impose following penalty under section 15HA of the SEBI Act, 1992 on the Noticee:

Name of the Noticee	**Violation provisions**	**Penalty**
Vinay Sodha PAN: BGWPS6518J	regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of PFUTP Regulations, 2003	₹ 5,00,000/- (Rupees Five Lakh only)

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

28. 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

29. The aforesaid Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to "The Division Chief (Enforcement Department 1 DRA-2), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C – 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051 and also send an email to tad@sebi.gov.in with the following detail:

1.	Case Name	
2.	Name of the 'Payer / Noticee' along with PAN of Noticee	
3.	Date of Payment	
4.	Amount Paid	
5.	Transaction No.	
6.	Bank Name and Account No.	
7.	Purpose of payment	

30. 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, 1992 for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties.

31. In terms of the provisions of rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticee viz. Vinay Sodha and also to the Securities and Exchange Board of India.

Date: April 06, 2022	**PRABHAS KUMAR RATH**
Place: Mumbai	**ADJUDICATING OFFICER**