BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/PM/AS/2021-22/15034]

UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995

In respect of:
Manish Kandhari HUF [PAN: AALHM2189K]
2335 Acharya J C Bose Road
Kolkata, West Bengal 700020

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

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BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as "SEBI") observed large scale reversal of trades in Stock Options segment of the Bombay Stock Exchange (hereinafter referred to as "BSE"). SEBI observed that such large-scale reversal of trades in Stock Options resulted in creation of artificial volume at BSE. In view of this, SEBI conducted an investigation into the trading activities in the illiquid Stock Options segment of BSE for the period April 01, 2014 to September 30, 2015 (hereinafter referred to as "Investigation Period").

2. Pursuant to the investigation, it was observed that a total of 2,91,643 trades comprising 81.38% of all the trades executed in Stock Options segment of BSE during the Investigation Period were trades which involved reversal of buy and sell positions by the clients and counterparties in a contract. The reversal trades involved squaring off transactions, but with significant difference in the sell value and buy value of the transactions. These reversal trades allegedly resulted in creation of artificial volumes. **Manish Kandhari HUF [PAN: AALHM2189K]** (hereinafter referred to as "Noticee") was one among the various entities who had indulged in execution of reversal trades which involved squaring off transactions with a significant difference in the buy value and sell value on the same day without any basis for such change in the contract price. The reversal trade of the Noticee allegedly resulted in 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 Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices related to Securities Markets) Regulations, 2003 (hereinafter referred to as "PFUTP Regulations, 2003").

APPOINTMENT OF ADJUDICATING OFFICER

3. I was appointed as Adjudicating Officer in the matter, conveyed vide communique dated June 28, 2021, under Section 19 read with Section 15 I(1) of the Securities and

Exchange Board of India Act, 1992 (hereinafter referred to as "SEBI Act, 1992") and Rule 3 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as "Adjudication Rules"), to conduct the adjudication proceedings in the manner specified under Rule 4 of Adjudication Rules read with Section 15 I (1) and (2) of SEBI Act, 1992, and if satisfied that penalty is liable, impose such penalty as deemed fit in terms of Rule 5 of Adjudication Rules and Section 15HA of the SEBI Act, 1992.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. Show Cause Notice No. SEBI/HO/CDMRD/DoP/P/OW/2021/15553/1 dated July 16, 2021 (hereinafter referred to as "SCN") was issued to the Noticee under Rule 4(1) of the Adjudication Rules read with Section 15I of the SEBI Act, 1992, to show cause as to why an inquiry should not be held against the Noticee and penalty be not imposed on the Noticee under Section 15HA of the SEBI Act, 1992 for the alleged violations of Regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of the PFUTP Regulations, 2003.

5. It was, *inter-alia*, alleged in the SCN that 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 was alleged to have engaged in two such reversal trades (one buy trade and one sell trade) in one unique contract, which resulted in generation of alleged artificial volume of 1,60,000 units. These trades of the Noticee involved reversal with the same counterparty on the same day, but at different prices.

6. The summary of dealings in the Stock Option contract in which the Noticee allegedly executed reversal trades during the Investigation Period is mentioned in **Table 1**:

Table 1: Summary of dealings in contracts wherein the Noticee executed reversal trades

Sr. No.	Contract Name	Average Buy Rate (Rs.)	Total Buy Volume (No. of units)	Average Sell Rate (Rs.)	Total Sell Volume (No. of Units)	% of Artificial Volume generated by Noticee in the contract to Noticee's Total Volume in the Contract	% of Artificial Volume generated by Noticee in the contract to Total Volume in the Contract
1.	SAIL15AUG40.00CEW1	11.50	80000	17.80	80000	100%	57.14%

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

7. The abovementioned reversal trades and volumes are illustrated through the dealings of Noticee in one contract viz. SAIL15AUG40.00CEW1during the Investigation Period, as follows:

7.1. During the Investigation Period, two trades for 1,60,000 units were executed by the Noticee in the said contract on 24/07/2015.

7.2. While dealing in the said contract on 24/07/2015, at 13:45:17.25 hrs, the Noticee entered into a buy trade with counterparty Kundan Care Products Limited for 80000 units at Rs. 11.50 per unit. At 13:47:24.77 hrs the Noticee entered into a sell trade with the same counterparty, for 80000 units.

7.3. The Noticee's two trades while dealing in the above said contract during the Investigation Period allegedly generated artificial volume of 160000 units, which made up 57.14% of total market volume in the said contract during this period.

8. In view of the foregoing, it was alleged that the 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 Regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of the PFUTP Regulations, 2003.

9. The SCN was served on the Noticee by way of Speed Post Acknowledgement Due. Manish Kandhari, Karta of the Noticee, acknowledged the receipt of SCN on behalf of the Noticee, vide letter dated August 05, 2021. In the letter the following main contentions were raised:

9.1. Trades executed by the Noticee in Stock Options segment of BSE were genuine and were executed on the platform provided by the Stock Exchange. The Noticee was also subjected to various charges and taxes on the transactions *inter alia* including exchange turnover charges, service tax, STT, SEBI turnover fee, stamp duty etc.

9.2. It is untenable to suddenly label these transactions as artificial and non-genuine after a period of six to seven years from the date of transactions on completely untenable grounds and unjustified reasons. Therefore, the SCN is liable to be set aside on this reason alone.

9.3. BSE had launched Weekly Expiry Contracts which were short term contracts and one can invest very small amount and get good returns. So, to try how it operates, the Noticee for the first time placed an order to buy 80000 units of SAIL 15 Aug 40 Call at 1:45 pm at Rs. 11.50/- and immediately placed an order to sell the same quantity at Rs. 17.80/-. The sale also was executed, and it was a surprise profit in a very short time. Though the Noticee was surprised to have such an immediate profit, the Noticee was afraid that this may also cause loss immediate loss in future. As a result, the Noticee decided to never transact again.

9.4. It is only from SEBI that the Noticee has understood that the trades matched with the same counterparty which the Noticee was oblivious at the relevant time of trade. It can be treated as a one- off case of sheer luck and co-incidence and was no way manipulative. Upon understanding the counterparty details from SEBI, the Noticee checked the details of counterparty. The Noticee submitted that it neither knows the counterparty, M/s Kundan Care Products Limited, nor any of its promoters or directors nor has had any relationship, financial or otherwise, with the counterparty.

9.5. Settlement of the transaction has taken place through the Exchange approved by SEBI and there is absolutely no reason why unknown and unrelated counterparty would deliberately allow the Noticee to make a gain in such a transaction. The transaction is merely a co-incidence and was not intentional, non-genuine or manipulative as alleged in the SCN.

9.6. The alleged trades are wrongly categorised as non-genuine, for the reasons recorded hereunder:

(a) The word "non-genuine" is not defined in PFUTP Regulations, 2003 or any of the Acts/Regulations of SEBI. This leaves us to rely on dictionary meaning of the word to test whether the alleged trades fall under the categories of artificial volume through non-genuine trades.

(b) The term "non-genuine" is opposite of "genuine" which is defined as "really coming from its reputed source etc; not sham; properly so called; pure bred."

(c) The alleged trades have all traits of being genuine and therefore cannot be categorised as non-genuine. These trades were executed on the anonymous platform of the Exchange, without any knowledge of counterparty, at price ranges that were permitted by the Exchange and SEBI and the obligations arising out of it have been settled through the clearing mechanism of the Exchange.

(d) Since the trades do not fall under the definition of non-genuine transactions, they cannot be categorised to be creating artificial volume and effectively cannot be said to be creating false and misleading appearance of trading or cannot be categorised as manipulative or deceptive trades.

(e) If the intention was to carry out artificial volume and create a false and misleading appearance of trading or execute manipulative and deceptive trades, the frequency of such trades would have been much higher. No one can achieve the alleged manipulative goals with such infrequent non-genuine trades, which is a one- off case of one buy trade and one sell trade.

(f) In the current case the Noticee executed trades only one buy trade which it squared off on the same day. The Noticee understood that it's a very risky segment and therefore has never traded again on BSE Stock Options segment. The Noticee has absolutely no relationship or knowledge of the counterparty and therefore can have never executed non-genuine transitions that have financial impact with such an unknown party.

9.7. The SCN fails to highlight any possible reason for executing the alleged non-genuine trades and what has been achieved by executing such trades. Without even having indicated any purpose for carrying out non-genuine trades, there is no reason to categorise them as non-genuine, artificial, manipulative, deceptive or creating false and misleading appearance of trading as wrongly alleged in the SCN.

9.8. The SCN is issued based on imaginary and presumptive grounds. It categorises trades of the Noticee as non-genuine inspite of the fact that these transactions were carried out on the platform provided by the BSE and have been settled through the clearing corporation by way of movement of funds. If at all there was a fault in the platform provided by the Stock Exchange, SEBI should have taken action against it and as SEBI has not taken any action against Stock Exchange till date, it is clear that trades executed on the Stock Exchange should also not be termed as non-genuine or fraudulent. Surely there can be no fault in the trading of such huge number of market participants, which comprised of 81.38% of all trades on Exchange and if it is so, then SEBI cannot take action on the investors without taking any action on the Exchange, which allowed such huge number of non-genuine transactions.

9.9. The SCN ignores the fact that options are derivative contracts based on certain underlying and the total trades in the underlying and all its derivative contracts is to be compared to identify the % volume. It is submitted that the volume in Stock Options was extremely negligible when compared with the total volume of the underlying and all the derivatives contract in the underlying and such small quantity of trading is completely incapacitated to create any kind of artificial volume.

9.10. For manipulating any security, the entire series of its derivatives contracts have to be manipulated, but that is not the case in the current SCN. It is an admitted position that the Noticee did not carry out any manipulative transactions in the underlying securities and merely carrying out few trades in options contracts cannot create any false and misleading appearance of trading or result in a manipulative or deceptive device as falsely alleged.

9.11. The SCN fails to take into consideration that the anonymous systems of the Stock Exchange do not allow a transacting party to know the details of the counterparty and therefore the allegation of executing reversal trades cannot hold good. It is humbly submitted that the transactions were in the nature of reversal trades was not known to the Noticee before being informed by SEBI.

9.12. Though the SCN claims that the trades were reversed at significant price difference, it has only compared the value of premium of the contracts. However, in case of options contract the notional value i.e. the value of Strike Price plus the premium is to be considered. When the price difference is compared with the notional value its change is normal and similar changes are observed in multiple contracts on the Exchanges including the ones having higher volumes than the alleged contracts of the Noticee. Therefore, the Noticee submits that the allegation that there was a significant price difference is incorrect and untenable.

9.13. SEBI has issued Risk Disclosure Document (RDD) that records risks of trading on the Stock Options segment of the Exchange. Clauses 1.2 and 1.3 deal with risk of low liquidity and risk of wider spreads. From these clauses it can be construed that SEBI was aware of the possible (significant as per SCN but not actually significant) price difference and losses/profits due to lower liquidity and wider spreads. The SCN itself records that the contracts in which the Noticee dealt were illiquid and therefore the spreads were bound to be wide resulting in so called significant price difference in view of SEBI, which is also appreciated by the RDD issued by SEBI. However, this knowledge has been ignored while issuing the SCN and the SCN wrongly goes on to allege that these trades are non-genuine. Such a conclusion is untenable in light of the fact that SEBI itself recognises that significant price difference may occur in contracts with lower liquidity and wider spreads.

9.14. The SCN fails to appreciate that though SEBI and Exchanges had put in place a mechanism of price band in Capital Market Segment to control extreme volatility, which may result in trades taking place at unrealistic prices. No such price band mechanism was in place for options segment. This means that all prices at which our trades were executed were genuine.

9.15. The SCN fails to appreciate that pricing of options is a complex arithmetical calculation based on several variables most of which are subjective and presumptive thus making a huge range of price to be completely valid and genuine. The price of an option is derived based on complex formulas dealing with price of the underlying, time to expiry, expected volatility, rate of interest etc., all of which are dynamic thus resulting in exponential increase in the lower and upper valid prices of options as a result SEBI and Exchanges in their wisdom did not stipulate any price band for options. After having failed to put in place such a mechanism due to complexity of such a product inspite of having infinite wherewithal with SEBI and Exchanges, it cannot be expected of common investors and traders to know the correct range of option prices.

9.16. The SCN does not provide an iota of evidence as to how the Noticee was related or connected to the counterparty. Therefore, it is submitted that without the theory of collusion or meeting of minds between the two parties being established, the allegations in the SCN do not hold good. Further, there is no reason for unknown people to deliberately allow profits or losses to one another without being related and the SCN failed to highlight any relationship between buyers and sellers.

9.17. It is also not a case in the SCN that other investors have got carried away or have been misled due to the trades carried out by the Noticee. Further it is not even alleged that third parties suffered any loss due to the transactions carried out by the Noticee. No other party has been affected by these trades as it got reversed with same party (which the Noticee understand only through SEBI) and no impact whatsoever has been caused to anyone because of these trades.

9.18. Above all there is no charge of price manipulation in the SCN and without manipulating price of a security or contract no person can gain anything from artificial trades.

9.19. The Noticee placed reliance on the following decisions of the Hon'ble Securities Appellate Tribunal (SAT):

(a) Jagruti Securities vs. SEBI [2008 SCC Online SAT 184: 2008 SAT 184];

(b) S.P.J. Stock Brokers Pvt Ltd. vs. SEBI [2013 SCC Online SAT 67: [2013] SAT 17];

(c) HB Stockholdings Limited vs. SEBI [2013 SCC Online SAT 56: [2013] SAT 44];

(d) R.K. Global vs. SEBI (Appeal No. 158 of 2008, Date of Decision-16th September 2010.

9.20. The Noticee denied violation of Regulations 3(a), (b), (c), 4(1) and 4(2) of PFUTP Regulations, 2003 as alleged in the SCN. There is nothing on record to substantiate that the Noticee knowingly misrepresented the truth or concealed material fact, suggested a fact that the Noticee believed is untrue, concealed any fact required to be disclosed. The Noticee never made any promise or representation and has not omitted any obligation under other law. The Noticee's behaviour was no way deceptive, nor has the Noticee made any false statement. Lastly, the Noticee has not issued any securities and the question of giving misinformation in relation thereto does not arise. As none of the Noticee's acts fall under the definition of "fraud" as provided under Regulation 2(1)(c), the Noticee cannot be charged of having violated PFUTP Regulations, 2003.

9.21. With respect to the judgment passed by Hon'ble SAT in the matter of Global Earth Properties Ltd. vs. SEBI (Appeal No. 212 of 2020, Date of Decision 14th September, 2020) and in other cases disposed of by SAT, the Noticees had carried out large number of reversal trades. In the present case it is to be noted that only one buy and one sell trade was carried out and therefore it is only one instance of reversal. This is a case of sheer luck and co-incidence and cannot be said to be manipulative. Taking into account preponderance of probability also, it cannot be alleged that a one- off case was intentional and non-genuine.

9.22. Such one instance of reversal cannot be alleged to be creating artificial volume of trading in the market as compared to the overall trading in the Stock Options segment. As per the SCN more than 1500 Crores units were traded in the Stock Options segment of BSE.

9.23. Without prejudice to the aforesaid, if at all it is held that the Noticee violated the aforesaid PFUTP Regulations, 2003 then in that case it is submitted that no penalty should be imposed on the Noticee taking into consideration the mitigating circumstances and factors under Section 15 J of the SEBI Act, 1992.

(a) The Noticee was under the belief that since the transactions executed were under the Stock Exchange mechanism and were therefore genuine;
(b) No illegal gain has been made by the Noticee while trading in the Stock Options segment;
(c) No loss has been caused to any investor or group of investors as a result of the Noticee's trading nor the same has been alleged against the Noticee in the SCN;
(d) This is the first time, SEBI has taken any kind of action against the Noticee.

9.24. With regard to imposition of penalty, the Noticee placed reliance on the following judgments:

(a) Order of Hon'ble Bombay High Court in the matter of SEBI vs. Cabot International Capital Corporation [2004 SCC Online Bom 180]
(b) Order of Hon'ble SAT in the matter of Yogi Sungwon (India) Ltd. vs. SEBI [Appleal No. 36 of 2000, Order dated May 04, 2001]
(c) Order of Hon'ble SAT in the matter of National Highway Authority of India vs. SEBI [Appeal No. 232 of 2020, Order dated August 27, 2020]

9.25. Noticee was not part of the 59 entities against whom SEBI passed Interim Order and neither part of the first 567 entities against whom the Adjudication Proceedings were initiated. SEBI itself considered the Noticee's trade to be so miniscule that it initiated Adjudication Proceedings against the Noticee in the last stage and therefore it is prayed that a lenient view be taken in the present matter. In this regard, the Noticee placed reliance on the Order of Hon'ble Supreme Court in the matter of SEBI vs. Bhavesh Pabari. SEBI, in view of this judgment, has in various matters imposed penalty lesser than the minimum prescribed penalty.

9.26. In the present matter, it has been alleged that Noticee executed only one reversal transaction comprising of two (one buy and one sell) fraudulent and non-genuine trades in one unique contract which created an artificial volume of 160000 units, comparing the same with the other orders of Illiquid Options passed by SEBI, it is submitted that a lesser penalty like warning etc. may at most be imposed taking into consideration the mitigating factors and circumstances as mentioned above.

9.27. The present proceedings be quashed since no primary violation of any PFUTP Regulations, 2003 is made out against the Noticee and the genuineness of the trades has also been explained hereinabove. Therefore, the question of holding an inquiry against the Noticee in terms of Rule 4 of Adjudication Rules and imposing penalty for the alleged violation does not arise.

10. Vide Hearing Notice dated September 23, 2021, the Noticee was granted an opportunity of Hearing on October 22, 2021 through video conference. During the Hearing, Authorized Representative of Noticee, Mr. Ravi Vijay Ramaiya, reiterated the submissions made in the letter dated August 05, 2021 and submitted that he would make a post-hearing submission by October 29, 2021. In the post-hearing submission, letter dated November 01, 2021, the following additional contentions were mentioned:

10.1. The Order of Hon'ble SAT in the matter of Dhvani Darshan Kothari & Anr vs. SEBI [Appeal No. 276 of 2020, Date of decision: January 21, 2021] is squarely applicable in the instant case.
10.2. The fact that this was a one-off case and the Noticee has itself preferred to refrain from trading in similar manner and has not done a single repetition of the trade similar to the alleged trades SEBI should take a pragmatic view.
10.3. In SEBI Adjudication Order no. EAD/AO-NP/JR/39/2017 dated May 22, 2017 in the matter of inspection of IFCI Financial Services Limited no penalty was imposed by the Adjudicating Officer.
10.4. Taking into account the fact that the Noticee has ensured non-execution of similar trades and no serious observations are made where investors' interest would be adversely affected, no penalty should be levied upon the Noticee.

CONSIDERATION OF ISSUES AND FINDINGS

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

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

11.2. Does the violation, if any, attract monetary penalty under Section 15HA of the SEBI Act, 1992?

11.3. 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, 1992?

12. Before dealing with the aforesaid issues, I would first deal with the contention of the Noticee in respect of consideration of the transactions as artificial and non-genuine after a delay of six to seven years. I note that 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. Meanwhile, SEBI initiated a detailed investigation relating to Stock Options segment of BSE which was 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. The proceedings initiated vide the afore-mentioned Interim Order were disposed of vide Final Order dated April 05, 2018 also considering that appropriate action was initiated against the said 14,720 entities in a phased manner. During the course of hearing in the case of **R. S. Ispat Ltd vs. SEBI,** the Hon'ble SAT, vide its Order dated October 14, 2019 *inter alia* observed, *"SEBI may consider holding a Lok Adalat or adopting any other alternative dispute resolution process with regard to the Illiquid Stock Options".* 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. The Noticee did not avail the opportunity of settlement and pursuant to appointment of Adjudication Officer on June 28, 2021, SCN was issued on July 16, 2021. In compliance with principles of natural justice, after receipt of reply, an opportunity of was Hearing granted on October 22, 2021 and upon conclusion of hearing, additional written submissions were received from the Noticee on November 01, 2021.

13. I note that there is no provision under SEBI Act which prescribes a time limit for breach of the provision of SEBI Act, 1992 and Rules and Regulations made thereunder. Further, as per Section 11C of SEBI Act, 1992, SEBI can initiate investigation at any point of time, for any period of alleged violation or any period of alleged transactions. I also note that the investigations relating to the PFUTP Regulations, 2003 are complex (considering the volume of transactions, connections, examination of trading of shares, etc.) and time consuming. In this regard, Hon'ble SAT in the matter of **Bipin R Vora vs. SEBI** [Date of Decision -22.03.2006] held:

"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".

14. In this context, I also find it relevant to refer to the order of Hon'ble Supreme Court of India in the matter of **SEBI vs. Bhavesh Pabari** (2019) SCC Online SC 294, where, *inter alia*, it was observed, *"There are judgments which hold that when the period of limitation is not prescribed, such power must be exercised within a reasonable time. What would be reasonable time, would depend upon the facts and circumstances of the case, nature of the default/statute, prejudice caused, whether the third¬party rights had been created etc."* and order of Hon'ble SAT in the matter of **Pooja Vinay Jain vs. SEBI** (Appeal No. 152 of 2019, Date of Decision – 17.03.2020) where it was held, *"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."*

15. In view of the above, I do not find any merit in the contention raised by the Noticee regarding delay in initiation of proceedings.

16. I would like to refer to the relevant provisions of PFUTP Regulations, 2003 which the Noticee is alleged to have violated:

*"**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;"

17. The allegation against the Noticee is that while dealing in the Stock Option contracts at BSE during the Investigation Period, the Noticee had executed reversal trade which was allegedly non-genuine and the same had resulted in generation of artificial volume in Stock Options contracts at BSE.

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

19. I note from the trade log of the Noticee that it had executed two non-genuine trades in one unique contract in the Stock Options segment of BSE during the Investigation Period which had resulted in the creation of artificial volume of a total of 1,60,000 units in the said contract. A summary of the non-genuine trades of the Noticee executed on **July 24, 2015** in the contract **SAIL15AUG40.00CEW1** is mentioned in **Table 2** below:

Table 2: Summary of Non-genuine trades executed by the Noticee on July 24, 2015 in contract SAIL15AUG40.00CEW1

Buy Client Name	Sell Client Name	Buy Order Time	Sell Order Time	Trade Time	Buy Order Rate Rs.	Sell Order Rate Rs.	Traded Rate Rs.	Buy Order Qty Units	Sell Order Qty Units	Traded Qty Units
Manish Kandhari HUF	Kundan Care Products Limited	13:45:16. 566598	13:45:17. 253942	13:45:17. 253942	11.5	11.5	11.5	80000	80000	80000
Kundan Care Products Limited	Manish Kandhari HUF	13:47:24 723408	13:47:77 0309	13:47:24. 770309	17.8	17.8	17.8	80000	80000	80000

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

20. I note from the trade log that the trades executed by the Noticee in the contract 'SAIL15AUG40.00CEW1' were squared up within a short span of time of two minutes with the same counterparty. The Noticee on July 24, 2015 at 13:45:17.25 hrs entered into one buy trade with counterparty Kundan Care Products Limited for 80000 units at Rs. 11.50 per unit in the said contract. Thereafter, on the same day, Noticee entered into one sell trade with same counterparty at 13:47:24.77 hrs for 80,000 units at the rate of Rs. 17.80 per unit. While dealing in the said contract during the Investigation Period, the Noticee executed reversal trade with same counterparty Kundan Care Products Limited on the same day within a time gap of two minutes and with significance price difference in buy and sell rates. I also note that the Noticee and the counterparty placed their buy and sell orders within a difference of seconds and at precisely the same rate and quantity. The Noticee's trades generated artificial volume of 1,60,000 units which constituted 57.14% of the total volume in the contract.

21. The contentions raised by the Noticee that the trades were settled through the Stock Exchange mechanism does not establish genuineness of trades or preclude execution of artificial and non-genuine trades. With regard to the submissions of the Noticee that reversal of the trades in one unique contract was sheer luck and co-incidence, insufficient to achieve manipulative goals, or create misleading appearance, or create any artificial volume, I note that material on record does not substantiate that the trades were a mere coincidence. The precision with which order placement have been done in terms of time, price and quantity indicate a prior meeting of minds with a *mala fide* intent to execute the reversal trades at a pre-determined price.

22. The Noticee's contention that the alleged reversal trades were genuine, I note that non-genuineness of trades executed by the Noticee is evident from the fact that there was no commercial basis as to why, within a short span of time of two minutes, the Noticee reversed the position with its counterparty with a significant price difference. Reversing the trades in an illiquid Stock Option contract in such a short span of time taken suggests the non-genuineness of these trades. The fact that the trade in a particular contract was reversed with the same counterparty indicates a prior meeting of minds with a view to execute the reversal trades at a pre-determined price. The wide variation in prices of the said contract, 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. Thus, it is observed that Noticee had indulged in reversal trades with its counterparty in the Stock Options segment of BSE and the same were non-genuine.

23. Noticee has argued that one instance of reversal trade cannot be alleged to be creating artificial volume as compared to overall trading and the fact SEBI itself considered the Noticee's trade to be so miniscule that it initiated Adjudication Proceedings against the Noticee in the last stage. In this regard, I note as brought out above, the trades executed by the Noticee were non- genuine and were carried out at artificial prices. While the instance of reversal was only once, it does not take away from the fact that the trades were artificial and non-genuine in nature and constituted 57.4% of the volume traded in the said contract.

24. With regard to the allegation of significant difference in buy and sell trade prices, Noticee has highlighted that only value of premium of the trades have been compared. Further, Noticee has contended that SEBI has not put in place any price band in options segment and that pricing of options is complex arithmetic calculation which meant that all prices at which the trades were executed were genuine. The Noticee cited Risk Disclosure Document issued by SEBI to conclude that SEBI is aware of possibility of trades being executed at substantial price difference. It is relevant to mention here that the price of a particular option contract is the premium paid, and for a given strike price, the premium cannot vary widely within a short span of time of two minutes without significant movement in the underlying price or change in other factors which determine option price. The Noticee has not provided any justification of such price movement. Mention of possibility of wider spreads in Risk Disclosure Document is in the context of illiquid Stock Options, I note that it is not the allegation that the Noticee has traded in 'illiquid' contract, the allegation is that the trades executed by the Noticee in the contract were non-genuine and hence has resulted in creation of artificial volume. I also note that Exchange mechanism for Option contracts allows wider range in prices and it is agreed that a wider price in buy and sell rates may not indicate manipulation *ipso facto*. However, significant price difference between two legs of a reversal trade is considered along with precision in order placement in terms of time, price and quantity to allege violation of provision of PFUTP Regulations, 2003.

25. Noticee has contended that no other party has been affected by these trades and no impact whatsoever has been caused to anyone because of these trades. I am of the view that the misuse of Stock Options as shown above displays an unreal picture of market activity to other investors. Apart from presenting wrong picture of liquidity to gullible investors which could affect their trading decisions, such activity also damages market integrity.

26. Noticee also contended it was completely unaware of the identity of the actual counterparty and that no evidence has been put forth in the SCN to suggest that it had any prior consensus or there existed a meeting of minds with the counter party. I note that it is not mere coincidence that the Noticee could match its trades with the same counterparty with whom it had undertaken first leg of the trades. It indicates meeting of minds. In this context, I would like to rely on the judgment of the Hon'ble Supreme Court of India in **SEBI vs. Kishore R Ajmera** (AIR 2016 SC 1079), wherein it was held:

"…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. The Hon'ble Supreme Court of India further held in the said case *"…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. Though direct evidence regarding meeting of minds or collusion of the Noticee with the counterparty is not forthcoming, the trading behaviour of the Noticee, as detailed earlier, 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 deem it appropriate to refer to the Order dated July 14, 2006 passed by Hon'ble SAT, in the case of **Ketan Parekh vs. SEBI** (Appeal no. 2/2004), wherein, it was held:

"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 also place reliance on the judgment of Hon'ble Supreme Court in the matter in respect of **SEBI vs. Rakhi Trading Private Limited** (Civil Appeal Nos. 1969, 3174-3177 and 3180 of 2011; Date of Decision-February 8, 2018), in which the Hon'ble Supreme Court held:

"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 screenbased 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. vs. SEBI** (Appeal No. 212 of 2020, Date of Decision: September 14, 2020) relied upon the aforesaid judgement of Hon'ble Supreme Court and held:

"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. It find it pertinent to note that the Adjudication Order No. Order/AP/SS/2021-22/13331 dated September 6, 2021 passed in respect of Radha Malani in the matter of dealings in Illiquid Stock Options at BSE was challenged before the Hon'ble SAT. Hon'ble SAT, in its judgement dated November 24, 2021 in the matter of **Radha Malani vs. SEBI** (Appeal No. 698 of 2021), dismissed the appeal and observed *"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)."*

32. The observations made in the aforesaid judgments apply to the facts and circumstances of the present case. Therefore, I am convinced that the execution of trades by the Noticee in the Stock Options segment of BSE with such precision in terms of order placement, time, price, quantity etc. and also the fact that the trade was reversed within two minutes with the same counterparty clearly indicate a prior meeting of mind with a view to execute the reversal trade at a pre-determined price.

33. I conclude that the trading behaviour of the Noticee has resulted in creating an appearance of artificial trading volume in the contract. 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.

34. The Hon'ble Supreme Court of India in the matter of **SEBI Vs. Shri Ram Mutual Fund** [2006] 68 SCL 216(SC) held *"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…".

35. In view of the same, 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, 1992 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."*

36. While determining the quantum of penalty under Section 15HA of the SEBI Act, it is important to consider the relevant 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."

37. As established above, the trades by the Noticee were non-genuine in nature and created a misleading appearance of trading in Stock Options segment of BSE. Material and documents made available on record does not show any disproportionate gains or unfair advantage made by the Noticee and the losses, if any, suffered by the investors due to the violations on part of the Noticee. The Noticee has entered into two non-genuine trades in one Stock Option contract during the Investigation Period. I note that the violation was not repetitive in nature and Noticee has cited several judgments on discretion exercisable by Adjudicating Officer for determining penalty depending facts and circumstances of the case. I note that discretion by Adjudicating Officer can be exercised subject to the minimum penalty prescribed by the statute.

38. Therefore, taking into account the facts and circumstances of this matter, I am of the view that minimum penalty as specified under Section 15HA of the SEBI Act, 1992 will commensurate with the violations committed by the Noticee.

ORDER

39. Having considered all the facts and circumstances of the case, the material available on record, the factors mentioned in section 15 J 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 for violation of the provisions of Regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of PFUTP Regulations, 2003:

Name of the Noticee	Violation Provisions	Penalty
Manish Kandhari HUF [PAN: AALHM2189K]	Regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of PFUTP Regulations, 2003	**Rs. 5,00, 000 (Rupees Five Lakh only)**

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

41. 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, www.sebi.gov.in on the following path, by clicking on the payment link:

Enforcement → **Orders** → **Orders of AO** → **Pay Now**

42. The Noticee shall forward the aforesaid Demand Draft / payment confirmation details to the Division Chief, Enforcement Department (EFD), Division of Regulatory Action - 4 [EFD-DRA-4] SEBI Bhavan-II, Plot No.C7-A,' G' Block, Bandra Kurla Complex Bandra (East), Mumbai – 400 051 and also send an email to tad@sebi.gov.in with the following details:

Sr. No.	Particulars	Details
1	Name of the Case	
2	Name of Payee/Noticee and PAN	
3	Date of Payment	
4	Amount Paid	

5	Transaction Number	
6	Bank Name and Account Number	
7	Purpose of Payment	Payment of penalty under adjudication proceedings

43. 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.

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

PRIYANKA MAHAPATRA

Digitally signed by PRIYANKA MAHAPATRA
Date: 2022.02.18 15:50:15 +05'30'

DATE: February 18, 2022
PLACE: MUMBAI

PRIYANKA MAHAPATRA
ADJUDICATING OFFICER