

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
ADJUDICATION ORDER NO.: Order/SM/AR/2021-22/14791

**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:
Abhishek Kayan HUF
PAN: AAHHA2896K

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

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) observed large scale reversal of trades in the Stock Options segment of the Bombay Stock Exchange (hereinafter referred to as “**BSE**”) leading to the alleged creation of artificial volume. In this regard, SEBI conducted an investigation into the trading activity in the illiquid Stock Options segment at the BSE for the period April 01, 2014 to September 30, 2015 (hereinafter referred to as “**Investigation Period**”).
2. It was observed during the course of investigation that a total 2,91,744 trades, comprising 81.41% 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 Abhishek Kayan HUF (PAN: AAHHA2896K) (hereinafter referred to as “**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 September 27, 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. MRD2_DCAP/AO-SM/OW/2021/34871/1 dated November 30, 2021 (hereinafter referred to as “**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 penalty 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 two such reversal trades in one unique contract, which led to generation of alleged artificial volume of 1,52,000 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 the Stock Options contract in which the Noticee allegedly executed reversal trades during the investigation period, is as follows:

Sr. No.	Contract Name	Avg. Buy Rate (Rs.)	Total Buy Volume (no. of Units)	Avg. 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	IOBL15JUN34.00CE W1	5	76000	7	76000	100	61.29

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

8. *The abovementioned reversal trades and volumes are illustrated through the dealings of Noticee in one contract, viz., “IOBL15JUN34.00CEW1” during the investigation period, as follows:*

(a) During the investigation period, 2 trades for 1,52,000 units were executed by the Noticee in the said contract on 04/06/2015.

(b) While dealing in the said contract on 04/06/2015, at 14:52:33.219155 hrs the Noticee entered into a sell trade with counterparty SARSWATI SALES PVT LTD for 76,000 units at Rs. 7.00 per unit. At 14:52:36.609801 hrs the Noticee entered into a buy trade with the same counterparty, for 76,000 units at Rs. 5.00 per unit.

(c) The Noticee’s two trades while dealing in the aforesaid contract during the investigation period allegedly generated artificial volume of 1,52,000 units, which made up 61.29% 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 was served on the Noticee via Speed Post Acknowledgement Due (SPAD) and via email dated November 30, 2021. Vide letter dated December 27, 2021, the

authorised representative (“AR”) of the Noticee, advocate Shri Bharat Redij, acknowledged receipt of the SCN and submitted its reply to the SCN.

7. In terms of adjudication rules, vide hearing notice no. SEBI/HO/MRD2_DCAP/AO-SM/OW/2021/38853/1 dated December 23, 2021, the Noticee was granted an opportunity of personal hearing on January 17, 2022, scheduled to be conducted online through Cisco Webex platform. Vide email dated January 17, 2022, the Noticee confirmed its attendance in the aforesaid hearing. On the stipulated date of hearing, the Authorized Representative (“AR”) of the Noticee, appeared before the Adjudicating Officer. During the course of the hearing, the AR reiterated the submissions made by the Noticee vide letter dated December 27, 2021.

8. The main contentions of the Noticee, as submitted by him in his written submissions and during the personal hearing, are as follows:

a. *While the SCN alleges market manipulation by the Noticee, complete and relevant documents which are essential for a comprehensive analysis of the impugned trade and its impact on the market have not been provided to the Noticee. In this regard, the Noticee relied on the following orders:*

- *Decision of Hon'ble SAT in the matter of **Price Waterhouse Coopers. vs. SEBI***
- *Decision of Hon'ble Supreme Court in the matter of **Trilok Nath vs. Union of India***

b. Cross examination of the counterparty entity not provided. In order to establish the charge of reversal trade, SEBI ought to demonstrate that the Noticee had any meeting of mind with the counterparty. In this regard, the Noticee relied on the following orders:

- Decision of Hon'ble SAT in the matter of **Ramalinga Raju case**.

c. Cross examination of BSE officials in-charge of relevant function not provided. The trades of the Noticee were genuine and bona fide, executed on the floor of the exchange with due compliance of all rules and regulations. In this regard, the Noticee has relied on the following orders:

- Decision of Hon'ble Supreme Court of India in the matter of **Andaman Timber Industries vs. Commissioner of Central Excise, Kolkata**

d. Proceedings initiated after a long and inordinate delay. The impugned trades are more than six years old. Such an approach is against the settled principles of law. In this regard, the Noticee has relied on the following orders:

- Decision of the Hon'ble Bombay High Court in the **Sambhaji Shripati Banker case**
- Decision of the Hon'ble Supreme Court of India in the **Bhatinda District Co-op Milk P. Union Ltd. Case**
- Decision of Hon'ble SAT in **Ashlesh Shah case**.

e. BSE and SEBI have themselves allowed and permitted trading in options for 'far months' with a strike price that are at large variance to current market price.

- f. *The trade undertaken by the Noticee could have had no effect on other investors or market at large.*
- g. *Stock Exchanges regularly come out with list of illiquid scrips in cash segment. However, no such list is issued by exchanges or regulators for dealing in stock options contracts.*
- h. *As BSE did not have a system to prevent inadvertent reversal of trades at the relevant point in time, no adverse inferences can be drawn against the Noticee.*
- i. *The Noticee traded in the Stock Exchange in ordinary course consequent to bonafide trading in its option segment.*
- j. *The ‘artificial volume’ generate by the trade of the Noticee was low percentage to the total trades in the impugned contract.*
- k. *The allegation of creation of ‘misleading appearance’ or ‘reversal’ trade is of no consequence in the option segment of the exchange.*
- l. *No relationship or ‘meeting of mind’ with the counterparty or its trading member. The transaction of the Noticee have been carried out on the floor of the exchange. In case of screen based trading, the automated system itself matches orders on a price-time priority basis hence it is not possible for anybody to have access over identity of the counter party. In this regard, the Noticee has relied on the following orders:*

- *Decision of Hon’ble SAT in **Sanjay Agarwal case***
- *Decision of Hon’ble SAT in **Smitaben N. Shah case***
- *Decision of Hon’ble SAT in **Amaresh Pathak case***

- m. All trades of the Noticee were within prudential norms of the exchange and as per procedures and guidelines of BSE. Further, no cautionary warning, advisory, communication or alarm was raised by BSE at any point of time. The mere fact that Noticee traded in option segment cannot be a ground to rope the Noticee into the instant proceedings.
- n. No 'inducement' or creation of artificial volume on the exchange and SEBI has not explicated any inducement in the entire Show Cause Notice.
- o. SEBI ought to demonstrate that there was indeed some synchronization between parties. In this regard, the Noticee has relied on the following order:
- Decision of the Hon'ble SAT in the **Almonds Entertainment case**
 - Decision of the Hon'ble SAT in the **Jagruti Securities Case**
 - Decision of the Hon'ble SAT in the **S.P.J. Stockbroker Pvt. Ltd case**
- p. Not a single instance or observation on the specific role of the Noticee in alleged reversal is delineated in the Show Cause Notice. In this regard, the Noticee has relied on the following order:
- Decision of Hon'ble Supreme Court of India in the **Commissioner of Central Excise, Bangalore vs M/s Brindavan Beverages (p) Ltd and Ors case**
- q. The Noticee believes that there has been no grievance by any investor, broker, stock exchange or any other agency concerned with respect to the dealing of the Noticee in the option segment of BSE Ltd.
- r. No disproportionate gain or unfair advantage occurred to the Noticee due to the alleged violation.

CONSIDERATION OF ISSUES AND FINDINGS

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

- a. Whether the Noticee has violated the 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?
- 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?

10.Before advancing into the merits of the case, I would like to deal with the issue pertaining to delay, as alleged by the Noticee, in the issuance of the SCN.

11.I note that there is no provision under SEBI Act which prescribes a time limit for taking cognizance of a breach of the provision of SEBI Act and Rules and Regulations made thereunder. Further, as per Section 11C of SEBI Act, 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 and funds, etc.) and time consuming. In this regard, I feel it is pertinent to note that, in the matter of **SEBI vs. Bhavesh Pabari** (2019) SCC Online SC 294,

the Hon'ble Supreme Court of India has, *inter alia*, observed that - "...*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.*"

12. Further, I note that the Hon'ble SAT in the matter of **Pooja Vinay Jain vs. SEBI** held that - "*The record would show that all the documents concerning the defense of the appellant were filed by her before the AO. Therefore, for want of any prejudice the proceedings cannot be quashed simply on the ground of delay in launching the same*"

13. I also note that the Hon'ble SAT in the matter of **Bipin R Vora vs. SEBI** held that - "*As regards the plea of delay and laches 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. Further, it is noted 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 aforementioned 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 Securities Appellate Tribunal (SAT), vide its Order dated October 14, 2019, *inter alia* observed that "*SEBI may consider holding a Lok Adalat or adopting any other alternative dispute resolution process with regard to the Illiquid Stock Options*".

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.

As can be seen from the narration of facts in the foregoing paragraphs, pursuant to appointment of AO on September 27, 2021, SCN was issued on November 30, 2021. In compliance with principles of natural justice, after receipt of reply, an opportunity of personal hearing was scheduled on January 17, 2022 and upon conclusion of hearing, additional written submissions (*if any*) were received from the noticees on January 17, 2022.

In view of the aforesaid, I note that contentions of Noticee in this regard are without merit.

15. With respect to the alleged violations in the instant matter, I would like 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 manipulative, fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following:*
 - (a) *indulging in an act which creates false or misleading appearance of trading in the securities market;*

16.I note that 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 trades which were allegedly non-genuine trades and the same had resulted in generation of artificial volume in stock options contracts at BSE. Reversal trades are considered as 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.

17.I note from the trade log of the Noticee that he had traded in one unique contract in the stock options segment of BSE during the Investigation Period. It is observed that the Noticee had executed two non-genuine trades in this one contract. I further note that the abovementioned trades of the Noticee had resulted in the creation of artificial volume of a total of 1,52,000 units in the said contract. A summary of the non-genuine trades of the Noticee is as follows:

Sr. No.	Contract Name	Avg. Buy Rate (₹)	Total Buy Volume (no. of Units)	Avg. sell rate (₹)	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	IOBL15JUN34.00CE W1	5	76000	7	76000	100	61.29

18.It is noted that the Noticee had executed non-genuine trades in one contract, wherein the percentage of such non-genuine trades of the Noticee to the total trades in the contract was 50.00%. Further, the percentage of artificial volume generated by the entity to the total volume in the contract was 61.29%. 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.

19.Upon perusing the trade log, I note that the trades executed by the Noticee in the contract were squared up within a short span of time with his counterparty. To illustrate, on 04/06/2015 at 14:52:33.172382 hrs, the counter party, i.e. SARSWATI SALES PVT LTD placed a buy limit order for 76,000 units at a price of Rs. 7.00 per unit and the said order was matched with the sell limit order placed at 14:52:33.219155 hrs for the exact same price (i.e., Rs.7.00) and quantity (i.e., 76,000) 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 immediately upon the entry of the buy limit order by the counterparty. Subsequently, at

14:52:36.578942 hrs, the same counterparty, i.e. SARSWATI SALES PVT LTD placed a sell limit order for 76,000 units at a price of Rs. 5.00 per unit per unit and the said order was matched with the Noticee, who placed a buy limit order at 14:52:36.609801 for the same price (i.e., Rs.5.00) and quantity (i.e., 76,000). I also note that there was no modification of either price or quantity by either the Noticee or the counterparty.

20. 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 of less than 4 seconds, the Noticee reversed the position with his counterparty with a 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 his counterparty in the stock options segment of BSE and the same were non-genuine trades.

21. The Noticee has *inter alia* contended that the trades were conducted on the screen based anonymous trading platform of BSE without any knowledge of the counterparty, and that the choice of counterparty is based on automated price matching mechanism of the exchange. Noticee has also contended that no material has been produced that the parties to the trades had conspired or colluded between themselves, and that serious allegations like fraud and market manipulation ought to be backed by credible evidence. In this regard, I note that both legs of the alleged reversal trade were synchronized, i.e., orders entered simultaneously by the Noticee and his counterparty at matching prices and volume. While such synchronized trades may occur by accident in a liquid stock, execution of synchronized trades in an illiquid stock with anonymous trading indicates a prior meeting of minds with a view to execute the reversal trades at a pre-determined price. There is also no justification for the wide variation in prices of the same contract within a short span of time, except for an element of pre-determination in the prices by both counterparties while reversing the trade. Thus, the nature of trading as brought out above clearly indicates an element of prior meeting of minds and hence collusion to carry out trades at pre-determined prices. Thus, the aforesaid contentions of the Noticee are unacceptable. In this regard, I 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 decided on February 8, 2018), in which the Hon'ble Supreme Court has 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....”

22. With regard to the contention of the Noticee that he has not been provided with complete and relevant documents essential for comprehensive analysis of the impugned trade and its impact on the market, I note that the SCN dated November 30, 2021 and the allegations levelled therein were on the basis of the documents/ records enclosed along with the said SCN, which were duly served upon the Noticee. The present Adjudication proceeding has only relied upon the documents/ records which were enclosed as annexures to the SCN and no statement of third parties/ persons have been relied upon in the proceedings. Thus, the contention of the Noticee is without merit.

23. I note that it is not a mere coincidence that Noticee could match his trades (with the corresponding price and quantity entered by both the Noticee and counterparty being equal) 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 fashion. 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 that - “...*in the absence of direct proof of meeting of minds elsewhere in synchronized transactions, the test should be one of*

preponderance of probabilities as far as adjudication of civil liability arising out of the violation of the Act or provision of the Regulations is concerned. The conclusion has to be gathered from various circumstances like that volume of the trade effected; the period of persistence in trading in the particular scrip; the particulars of the buy and sell orders, namely, the volume thereof; the proximity of time between the two and such other relevant factors. The illustrations are not exhaustive...”

24.The Hon’ble Supreme Court of India 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.*”

25.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."*

26. Additionally, the Hon'ble SAT in its judgment dated September 14, 2020 in the matter of **Global Earth Properties and Developers Pvt. Ltd. vs. SEBI** (Appeal No. 212 of 2020) relied upon the aforesaid judgment of the 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."*

27. I 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 opined that - *"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)."

28. The trading behavior of the Noticee which confirms that the trades executed by the Noticee were not normal, the 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 aforesaid, 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) 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...."*

29. 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:

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.

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

Factors to be taken into account while adjudging quantum of penalty

15J. *While adjudging quantum of penalty under 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.

31. I observe that the material/ documents made available on record does not quantify any disproportionate gains or unfair advantage, if any, made by the Noticee and the losses, if any, incurred by the genuine investors as a result of the reversal trades/ non-genuine trades executed by the Noticee. However, the Noticee has entered into two non-genuine trades in one stock option contract during the investigation period. Therefore, I note that the Noticee indulged in execution of reversal trades in stock options on BSE during the Investigation Period 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), 4(1) and 4(2)(a) of PFUTP Regulations, 2003.

ORDER

32. After taking into consideration all the facts and circumstances of the case, the material/ documents made available on record including the submissions of the Noticee, the factors mentioned in section 15J of the SEBI Act and in exercise of the power conferred upon me under section 15-I of the SEBI Act read with rule 5 of the Adjudication Rules, I hereby impose following penalty under section 15HA of the SEBI Act, 1992 on the Noticee:

Name of the Noticee	Provisions violated	Penalty
Abhishek Kayan HUF (PAN:AABTA6513H)	Regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of PFUTP Regulations, 2003	Rs. 5,00,000/- (Rupees Five Lakh only)

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

33. The Noticee shall remit/ pay the said amount of penalty within 45 (forty five) days of the receipt of this order either by way of Demand Draft (“DD”) 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, i.e., on the payment link: ENFORCEMENT → Orders → Orders of AO → PAY NOW or at <https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html>.

34.The Noticee shall forward the aforesaid DD/ payment confirmation details to the Division Chief, Enforcement Department-I (EFD), Division of Regulatory Action-I [EFD1-DRA-1] SEBI Bhavan, Plot No.C4-A,' G' Block, Bandra Kurla Complex (BKC), Bandra (East), Mumbai – 400 051 and also send an email to tad@sebi.gov.in with the following detail:

1.	Case Name	
2.	Name and PAN of the 'Payer/ Noticee'	
3.	Date of payment	
4.	Amount paid	
5.	Transaction No.	
6.	Bank details from which payment is made	
7.	Payment is made for	Penalty under AO proceedings

35.In the event of failure to pay the aforesaid amount of penalty within 45 days of receipt of this Order, recovery proceedings may be initiated under section 28A of the SEBI Act for realization of the said penalty amount along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties.

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

DATE: February 08, 2022

SUDEEP MISHRA

PLACE: MUMBAI

ADJUDICATING OFFICER