BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/JP/AD/2021-22/15394]

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

Sumit Agarwal

(PAN: ACVPA8636K)

In the matter of dealing in Illiquid Stock Options at BSE Ltd.

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') observed large scale reversal of trades in the Stock Options segment at BSE Ltd. (hereinafter referred to as '**BSE**') leading to alleged creation of artificial volume in the stock options segment. In this regard, SEBI conducted an investigation into the trading activity in the illiquid Stock Options Segment at BSE for the period April 01, 2014 to September 30, 2015 (hereinafter referred to as "**Investigation Period**").

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 by various entities at BSE during the investigation period were the trades which involved reversal of buy and sell positions by the entities in a contract on the same day and hence reversal of such trades were observed as non-genuine resulting into misleading appearance of trading.

3. It was observed that Sumit Agarwal (PAN: ACVPA8636K) (hereinafter referred to as "**Noticee**") was one of the various entities who indulged in the execution of alleged non-genuine trades in the Stock Options Segment at BSE during the above referred investigation period. It was observed that the Noticee had entered into reversal trades with counterparty which involved squaring off transaction with significant difference in sell value and buy value of the transaction. Therefore, it was alleged that Noticee had executed the reversal trades which were non-genuine in nature and have created false or misleading appearance of trading and resulted in creation of artificial volume in the Stock Options segment at BSE. It was alleged that the Noticee had violated the provisions of Regulations 3 (a), (b), (c), (d) and Regulation 4(1), 4(2) (a) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Markets) Regulations, 2003 (hereinafter referred to as "**PFUTP Regulations**"). In view of the above reasons, adjudication proceeding has been initiated against the Noticee under the provisions of section 15HA of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act**').

<u>APPOINTMENT OF ADJUDICATING OFFICER</u>

4. The undersigned was appointed as the Adjudicating Officer by the Competent Authority vide order dated July 02, 2021 which was conveyed vide communique dated July 06, 2021 under Section 19 read with Section 15-I of the SEBI Act read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as '**Adjudication Rules**') to inquire into and adjudge under the provisions of section 15HA of the SEBI Act for the aforementioned alleged violation of the provisions of PFUTP Regulations by the Noticee.

SHOW CAUSE NOTICE, REPLY AND HEARING

5. Show Cause Notice Ref. No. AO/JP/16497/2021 dated July 27, 2021 (hereinafter referred to as '**SCN**') was issued to the Noticee in terms of Rule 4 of the Adjudication Rules requiring the Noticee to show cause as to why an inquiry should not be held against him and why penalty, if any, should not be imposed on him under the provisions of section 15HA of the SEBI Act. The SCN was sent to the Noticee through Speed Post Acknowledgement Due (SPAD) and was served on the Noticee.

   The allegations levelled against the Noticee under the SCN are as under;

   i. That the Noticee was one of the entities who indulged in reversal trades which allegedly created false and misleading appearance of trading and generated artificial volumes in the Stock Options Segment at BSE during the investigation period. The Noticee was alleged to have indulged into 2 such reversal trades in 1 contract which led to generation of artificial volume of 3,16,000 units. It was alleged that these reversal of the trades of the Noticee took place with the same counterparty on the same day within short time gap from placing of respective buy / sell orders at different prices.

   ii. It was alleged that 2 trades for 3,16,000 units were executed by the Noticee in the Contract No. SYND15MAR120.00PEW2 on 23/02/2015. While dealing in the said contract on 23/02/2015 at 13:48:25.843248 hrs, the Noticee entered into a buy order for 1,58,000 units at Rs. 0.5 per unit which was traded with counterparty sell order at time 13:48:25.843905 hrs. Thereafter, on same day (23/02/2015) at 13:48:30.242774 hrs, the Noticee entered a sell order for same quantity of 1,58,000 units at a price Rs. 3.35 per unit which was matched / traded with the buy order of same counterparty for 1,58,000 units at time 13:48:30.343813 hrs. at price of Rs. 3.35 per unit.

Hence, by virtue of reversal of said 1,58,000 units on same day / within short time only, a total 3,16,000 units were traded by the Noticee with counterparty which had allegedly generated artificial volume of 3,16,000 units contributing 100 % artificial volume rise in the said contract.

iii. It was therefore alleged that the Noticee had indulged into non-genuine trades by execution of reversal trades in Stock Options with same counterparty on the same day, which had created false or misleading appearance of trading in the aforementioned contract traded in the option segment of BSE and created artificial volumes in stock options which was manipulative and deceptive in nature. Therefore, it was alleged that the Noticee has violated Regulation 3(a), (b), (c), (d), 4(1) and 4(2)(a) of PFUTP Regulations, 2003.

6. In pursuance of the SCN, the Noticee vide email dated August 16, 2021 had submitted reply towards the SCN *inter-alia* denied all the allegations. Thereafter, the Notice of hearing dated October 11, 2021 was issued to Noticee providing an opportunity of hearing on October 28, 2021, to attend hearing either physically or virtually through Zoom Platform. Pursuant to the Notice of Hearing dated October 11, 2021, the Noticee had submitted another reply dated October 20, 2021 (received through email dated October 22, 2021) *inter-alia* confirming for attending the schedule hearing in virtual mode through zoom platform. On the scheduled date of hearing (i.e. October 28, 2021), the Noticee appeared in person for the virtual hearing through Zoom platform. During the course of hearing, the Noticee reiterated the submissions made by the Noticee in his reply dated August 16, 2021 and October 20, 2021.

7. The relevant part of the reply / submissions dated August 16, 2021 and October 20, 2021 made by the Noticee is produced below:

   i. At the outset, the Noticee denied all the allegations made in the SCN and submitted that Noticee had entered into the transactions in good faith and without malafide intention.

ii. *That he is small investor and regular trader dealing in Futures/Options and also in delivery based securities in small amounts through SEBI registered stock brokers.*

iii. *That SCN was issued after a period of 6 years which is barred by the Limitation and same also suffers from vice of delay, latches and acquiescence.*

iv. *That the impugned trades were executed at the floor of stock exchange through registered stock brokers and the entire trading process is like blind mechanism, therefore, it is impossible to know who is/are the counterparties to trades. Further, Noticee submitted that the there is no meeting of minds with the alleged counter parties and the matching of trades is a mere coincidence.*

v. *That BSE has allowed trading in these shares and no alert was given either by the stock broker or by the stock exchange to take any caution to stop trading. Therefore, under these circumstances it is erroneous to come to a conclusion that the Noticee executed non-genuine trades which resulted in artificial volume.*

vi. *That due payments have been made/received for the purchase/sale made by the Noticee and all the transactions are recorded in our books of account, records and Income tax return.*

vii. *That trades are very minuscule to attract any adverse inference.*

viii. *That his single trade where the Noticee did not have any control over the market and systems, can not be treated as manipulative.*

ix. *The Noticee submitted that a lenient view be taken and the proceedings may be dropped.*

CONSIDERATION OF ISSUES AND FINDINGS:

8. I have taken into consideration the facts and circumstances of the case, allegations levelled against the Noticee and the reply / submissions of the Noticee. The issues that arise for consideration in the instant matter are as under:

Issue No. I - Whether reversal trades in illiquid Stock options carried out by the Noticee during the Investigation Period were in violation of regulations 3(a), (b), (c), (d) and regulations 4(1), 4(2)(a) of the PFUTP Regulations, 2003?

Issue No. II - If yes, whether Noticee is liable for imposition of monetary penalty under Section 15HA of SEBI Act?

Issue No. III- If yes, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5 (2) of the Adjudication Rules?

9. On perusal of the material available on records, my findings are as under:

Issue No. I -Whether reversal trades in illiquid Stock options carried out by the Noticee during the Investigation Period were in violation of regulations 3(a), (b), (c), (d) and regulations 4(1), 4(2)(a) of the PFUTP Regulations, 2003?

10. It is alleged that the Noticee had executed reversal trades which were non-genuine and the same has resulted in the generation of artificial volume/ misleading appearance of trading in the Stock Option contracts at BSE. With respect to the aforesaid allegations, I have examined the details of trade / order logs / Annexure B of the SCN and I found that the Noticee had indulged into 2 trades under 1 contract on February 23, 2015 for 3,16,000 units with same counterparty in the stock Option segment at BSE. It is relevant to mention that the trade details (viz. quantity numbers, price at which trades is executed by the Noticee with the counter party, time of order and trade etc.) are not in dispute by the Noticee. Now, in order to examine whether the aforesaid two trades were

non-genuine and created misleading appearance of trading / created artificial volume in the contract, the Annexure B of the SCN and material available on records have been examined by me and the following has been observed:

i. During the investigation period, 2 trades for 3,16,000 units were executed by the Noticee in the Contract No. SYND15MAR120.00PEW2 on 23/02/2015. At first trade on 23/02/2015, the Noticee entered buy order for 1,58,000 units at Rs. 0.5 per unit at time 13:48:25.843248 hrs, which was traded / matched with the counterparty sell order at time 13:48:25.843905 hrs. for same price and quantity.

ii. In the second trade of the contract, on same day (i.e. 23/02/2015), the Noticee entered a sell order for same quantity of 1,58,000 units at a price Rs. 3.35 per unit at time 13:48:30.242774 hrs, which was again matched / traded with the buy order of same counterparty at time 13:48:30.343813 hrs. for same 1,58,000 units at same price of Rs. 3.35 per unit.

11. The brief of trade details executed by the Noticee is produced in table below:

Contract/ Scrip Name	Date	Order Time & Name of Party	Counter Party Order Time & Name of Counter Party	Trade Time	Order Rate	Counter Party Order Rate	Total Buy Volume (no. of units)	Total Sell Volume (no. of units)	% of Artificial Volume generated by Noticee in the contract
SYND15 MAR120. 00PEW2	23/02/2015	13:48:25. 843248 Sumit Agarwal	13:48:25. 843905 Mahakaleshwar Mines & Metals Pvt Ltd	13:48:25 .843905	0.5	0.5	158000	158000	100%
SYND15 MAR120. 00PEW2	23/02/2015	13:48:30. 343813 Mahakaleshwar Mines & Metals Pvt Ltd	13:48:30. 242774 Sumit Agarwal	13:48:30 .343813	3.35	3.35	158000	158000	

12. From the above trading pattern, it is clear that the Noticee along with counterparty had ultimately reversed the position without meaningful change of ownership in said contract. The trade reversal in this case indicates that intention of the Noticee was not to do regular trading and such reversal of trading by the Noticee was not intended transfer the beneficial ownership. Further, non-genuineness of these transactions executed by the Noticee is evident from the fact that there was no commercial basis to trade as such within a short time gap of few minutes to reverse the position with the same counterparty with significant price difference when the value of the underlying had not undergone any significant change. It is clear that the trade executed by the Noticee squared up with a significant price difference within a very short span of time and such reversal trades of the Noticee were instrumental in contributing artificial volume rise at BSE in the said contract for a total of 3,16,000 units in the contract which contributed 100% artificial volume rise in the said contract. Thus, the aforesaid trades were non genuine and were in the nature of misleading appearance of trading.

13. It is relevant to mention that reversal trades are considered as those trades in which an entity reverse buy or sell positions in a contract with subsequent sell or buy positions during the same day. The said reversal trades are non- genuine trades as they are not executed in the normal course of trading, without basic trading rationale, without meaningful change in the beneficial ownership and leads to false or misleading appearance of trading in terms of generation of artificial volumes and hence these trades are deceptive and manipulative. From the facts/material made available on record, I find that reversal trades executed by the Noticee with his counterparty with a predetermined arrangement to book profit or losses respectively and therefore, the parties to the trades were not trading in the normal sense or ordinary course of business. Therefore, the Noticee by indulging in such reversal trades with counterparty in the illiquid stock option segment at BSE has managed to generate artificial volume in the Stock Options segment during the investigation period.

14. With respect to the allegation, the Noticee has contended that the SCN was issued after a period of 6 years which is barred by the Limitation and same also suffers from vice of delay, latches and acquiescence. I have observed that the Noticee was provided with relevant / relied upon documents along with SCN and the Noticee was provided enough time to file reply / submissions and therefore, no prejudice was caused. Moreover, I also note that SEBI Act / Adjudication Rules does not prescribes the limitation period w.r.t. initiation of such proceedings.

15. Further, I note that in case of *Ravi Mohan & Ors. v. SEBI* decided on August 08, 2013 by the Hon'ble Securities Appellate Tribunal (**Hon'ble SAT**), while referring to its own decision in *HB Stockholdings Ltd. v. SEBI (Appeal no. 114 of 2012) decided on August 27, 2013* and judgement of Hon'ble Supreme Court in case of Collector of Central Excise, New Delhi v. Bhagsons Paint Industry (India)reported in2003 (158) ELT 129 (S.C.) held as under :

> *14. "....Based on decision of this Tribunal in case of HB Stockholdings Ltd. vs. SEBI (Appeal no. 114 of 2012 decided on 27.08.2013) it is contended on behalf of the appellants that in view of the delay of more than 8 years in issuing the show cause notice, the impugned order is liable to be quashed and set aside. There is no merit in this contention, because, this Tribunal while setting aside the decision of SEBI on merits has clearly held in para 20 of the order, that delay itself may not be fatal in each and every case. Moreover, the Apex Court in case of Collector of Central Excise, New Delhi vs. Bhagsons Paint Industry (India) reported in 2003 (158) ELT 129 (S.C) has held that if there no statutory bar for adjudicating the matter beyond a particular date, the Tribunal cannot set aside the adjudication order merely on the ground that the adjudication order is passed after a lapse of several years from the date of issuing notice...."*

16. I also note that the Hon'ble SAT in case of *Pooja Vinay Jain vs SEBI (Appeal No. 152 of 2019) decided on March 17, 2020* held that-

"The record would show that all the documents concerning the defense of the appellant were filed by her before the AO. Therefore, for want of any prejudice the proceedings cannot be quashed simply on the ground of delay in launching the same"

Further, I note that the Hon’ble SAT in the matter of *Bipin R Vora vs SEBI decided on March 22, 2006* held that-

“As regards the plea of delay and latches and submission that the show cause notice is barred by limitation, I do not find any merit in these contentions as the time and efforts involved in an investigation though may vary from case to case, generally investigations per-se is a time consuming process which invariably involve collection, scrutiny and careful examination of voluminous records/ order-trade details of all the concerned including the exchanges/recording of statements etc. and therefore no time limit can be fixed in this regard to enable a regulator to take appropriate disciplinary action for the safeguard and improvement of the system/market”.

17. Therefore, in view of the aforesaid judgments, the contention of Noticee that present proceeding is barred by limitation and suffers from vice of delay/latches /acquiescence, is not acceptable.

18. The Noticee has contended that BSE had allowed trading and no alert was given either by the stock broker or by the stock exchange cautioning such trading. The Noticee has submitted that his single contract did not have any impact over the market and hence can not be treated as manipulative. I note that aforesaid contentions of Noticee are not tenable in view of observations made at *para 10 to para13* above.

19. The Noticee has also contended that the impugned trades were executed at the floor of stock exchange through registered stock brokers and the entire trading was done at anonymous systems of stock exchange, therefore, it is impossible to know who is/are the counterparties to trades. Further, Noticee submitted that the there is no meeting of minds with the alleged counterparty and the matching of trades is a mere coincidence. I don’t agree the with contention of the Noticee as it is not mere coincidence that Noticee could match his trades with the same counter party on the same day within short time gap unless there is some meeting of minds to match the orders / trades. On this issue, I would like to rely on the judgment of the Hon’ble Supreme Court in *SEBI v Kishore R Ajmera (AIR 2016 SC 1079)* decided on February 23, 2016, wherein it was held that –

"*…in the absence of direct proof of meeting of minds elsewhere in synchronized transactions, the test should be one of preponderance of probabilities as far as adjudication of civil liability arising out of the violation of the Act or provision of the Regulations is concerned. The conclusion has to be gathered from various circumstances like that volume of the trade effected; the period of persistence in trading in the particular scrip; the particulars of the buy and sell orders, namely, the volume hereof; the proximity of time between the two and such other relevant factors. The illustrations are not exhaustive...*"

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."

20. I note that direct evidence is not forthcoming in such kind of cases as regards to meeting of minds or collusion of the Noticee with counterparty. However, I note that the trading behaviour of the Noticee makes it clear that aforesaid non-genuine trades could not have been possible without meeting of minds at some level. In this context, it is again appropriate to refer to the Hon'ble SAT order dated July 14, 2006, in the case of *Ketan Parekh vs. SEBI (Appeal no. 2/2004),* wherein the Hon'ble SAT has held that –

"The nature of transactions executed, the frequency with which such transactions are undertaken, the value of the transactions, the conditions then prevailing in the market are some of the factors which go to show the intention of the parties. This list of factors, in the very nature of things, cannot be exhaustive. Any one factor may or may not be decisive and it is from the cumulative effect of these that an inference will have to be drawn."

21. At this juncture, it is pertinent to refer to the decision of the Hon’ble Supreme Court of India in the matter of *Securities and Exchange Board of India v. Rakhi Trading Private Limited (Civil Appeal Nos. 1969, 3174-3177 and 3180 of 2011 dated February 08, 2018)* wherein, the Hon’ble Supreme Court observed that the traders having engaged in a fraudulent and unfair trade practice while dealing in securities, are liable to be proceeded against for violation of Regulations 3(a), 4(1) and 4(2)(a) of the PFUTP Regulations. The Apex Court also held that - *“considering the reversal transactions, quantity, price and time and sale, parties being persistent in the number of such trade transactions with huge price variations, it will be too naïve 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.”* The Hon'ble Apex Court has also held that in the absence of direct proof of meeting of minds, the test should be one of preponderance of probability and also stated that the conclusion has to be gathered from various circumstances like volume of trade, period of persistence of trading, particulars of buy and sell orders, proximity of time between the two and such other relevant factors.

The Hon’ble Supreme Court had further observed that-

“*……..quantity, time and significant variation of prices, without major variation in the underlying price of the securities clearly indicate that Respondent’s trades are not genuine and had only misleading appearance of trading in the securities market……….*”

“35…. *Contextually and in simple words, it means a practice which does not conform to the fair and transparent principles of trades in the stock market. In the instant case, one party booked gains and the other party booked a loss. Nobody intentionally trades for a loss. An intentional trading for loss per se, is not a genuine dealing in securities. The platform of the stock exchange has been used for a non-genuine trade. Trading is always with the aim to make profits. But if one party consistently makes losses and that too in a pre-planned manner and rapid trades, it is not genuine……*”

22. Additionally, the Hon'ble SAT in similar matter of illiquid stock option case vide Order dated September 14, 2020 in case of Global *Earth Properties and Developers Pvt Ltd Vs SEBI (Appeal No. 212 of 2020)* relied upon the aforesaid Order of the Hon'ble Supreme Court in Rakhi Trading case supra 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.*"

23. Further, the Noticee's contention that trades are very minuscule to attract any adverse inference, is not accepted in view of aforesaid observations and especially keeping in mind that Hon'ble SAT vide order dated January 13, 2022 in case of *Shruti Saragoi vs SEBI Appeal No 814 of 2021* upheld the adjudication order dated November 12, 2021 wherein in similar case, the entity entered into 2 trades in 1 contract just for total 3,000 units (i.e. 1500 buy units and 1500 sell units) as against 3,16,000 units in this case of Noticee.

24. The observations made in the aforesaid judgments of Hon'ble Supreme Court / Hon'ble SAT apply with full force to the facts and circumstances of the present case. Therefore, applying the ratio of the above judgments, I am convinced that the execution of trades by the Noticee in the illiquid options segment with such precision in terms of order placement, time, price, quantity etc. and also the fact that the transactions were reversed with the same counterparty clearly indicates a prior meeting of mind with a view to execute the reversal trade at a pre-determined price. It is observed that in respect of these trades executed in the illiquid stock options contract, the only reason for the wide variation in prices of the same contract and execution time within few minutes especially when one party intentionally suffered loss, was a clear indication that there was pre-determination in the prices by both the counterparties when executing the

trades. Thus, the nature of trading, as brought out above, clearly indicates an element of prior meeting of minds and there was collusion between the Noticee and his counterparty to carry out the trades at predetermined prices. It is not possible to comprehend as to why the Noticee and counterparty would enter into an option contract with such price variation and square up the position unless there is ulterior intent to execute such non-genuine trades.

25. Therefore, from the foregoing paragraphs and the observations/findings contained therein, I hold that the Noticee has violated the provisions of Regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of PFUTP Regulations, 2003 which are produced as under;

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;

Issue No. II -Whether Noticee is liable for imposition of monetary penalty under Section 15HA of SEBI Act? and

Issue No. III- If yes, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5 (2) of the Adjudication Rules?

26. It is clearly observed from the above that the Noticee was instrumental in causing misleading appearance of trading / creation of artificial volume in the illiquid stock option contracts at BSE during the investigation period by executing reversal / non-genuine transactions. From the manner in which Noticee executed the above mentioned transactions, the Noticee has violated the statutory provisions of law. In this context, I reply upon the judgment of the Hon'ble Supreme Court of India in the matter of *Chairman, SEBI Vs Shriram Mutual Fund {[2006]5 SCC 361}* wherein the Hon'ble Supreme Court of India held that 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.

27. In view of the above, I conclude that the Noticee is liable for monetary penalty under the provisions of Section 15HA of the SEBI Act, which reads as under:

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

28. In this regard, the provisions of Section 15J of the SEBI Act and Rule 5 of the Adjudication Rules require that while adjudging the quantum of penalty, 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.

29. It is not possible from the material available on record to quantify the amount of loss caused to investors or gain made by the Noticee as a result of the reversal trades / non-genuine trades executed by the Noticee. However, as observed above that Noticee has entered into 2 non-genuine trades during the investigation period and therefore, minimum penalty as stipulated under section 15 HA of the SEBI Act shall commensurate with the violations committed by the Noticee.

ORDER

30. Having considered all the facts and circumstances of the case, the material available on record and the factors mentioned in the preceding paragraphs, I, in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, hereby impose a penalty of Rs.5,00,000/- (Rupees Five Lakh only) on the Noticee viz. Sumit Agarwal (PAN: ACVPA8636K) under the provisions of Section 15HA of the SEBI Act for the violation of Regulations 3(a), (b), (c), (d), 4(1) and 4(2) (a) of the PFUTP Regulations. I am of the view that the said penalty is commensurate with the default committed by the Noticee.

31. 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 and the said DD should be forwarded to the Division Chief, Enforcement Department - I (EFD), Division of Regulatory Action -3] 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 details:

1. Case Name:	
2. Name of Payee:	
3. Date of payment:	
4. Amount Paid:	
5.Transaction No:	
6. Bank Details in which payment is made:	
7. Payment is made for: (like penalties /disgorgement/recovery/Settlement amount and legal charges along with order details)	

32. Payment can also be made online by following the below path at SEBI website www.sebi.gov.in ENFORCEMENT → Orders → Orders of AO → Click on PAY NOW or at https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html.

33. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated 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.

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

Date: March 16, 2022 **JAI PARKASH**

Place: Mumbai **ADJUDICATING OFFICER**