BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/PM/AS/2022-23/15829]

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 Kumar Soni [PAN: CHOPS2296B]
91 Lal Madhab Mukherjee Lane,
Kolkata, West Bengal 700007

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 Kumar Soni [PAN: CHOPS2296B]** (hereinafter referred to as "Noticee") was one among various entities who indulged in execution of reversal trade 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 July 6, 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 entity is liable for penalty, 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/2021/16154/1 dated July 23, 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 who 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 sell trade and one buy trade) in one unique contract, which resulted in generation of alleged artificial volume of 1,08,000 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.	FEDB15MAY145.00PEW3	5.55	54000	8.80	54000	100%	24.77%

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. 'FEDB15MAY145.00PEW3' during the Investigation Period, as follows:

7.1. During the Investigation Period, two trades for 1,08,000 units were executed by the Noticee in the said contract on 20/05/2015.

7.2. While dealing in the said contract on 20/05/2015, at 14:02:39.34 hrs, the Noticee entered into a sell trade with counterparty Fastner Machinery Dealers Pvt Limited for 54,000 units at Rs. 8.80 per unit. At 14:02:45.14 hrs the Noticee entered into a buy trade with the same counterparty, for 54,000 units.

7.3. The Noticee's two trades while dealing in the above said contract during the Investigation Period allegedly generated artificial volume of 1,08,000 units, which made up 24.77% 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. The Noticee acknowledged the receipt of the SCN vide his letter dated August 05, 2021. In his letter the Noticee contended that he neither has any idea about the counterparty nor the process followed by the broker while executing such trades, therefore, allegations contained in the SCN are wrong and unfair. The Noticee further mentioned that he was a KYC compliant client of the broker and the trades were done at normal course of trading.

10. Vide Hearing Notice No. SEBI/HO/CDMRD/DoP/P/OW/2021/25471/1 dated September 23, 2021, the Noticee was granted an opportunity of Hearing on October 26, 2021. Upon request of the Noticee the Hearing was rescheduled to November 16, 2021. Due to COVID pandemic the Hearing was conducted through video conference. During the Hearing, Authorized Representative of the Noticee, Mr. Dinesh Kumar Soni, reiterated the submissions made in the letter dated August 05, 2021.

CONSIDERATION OF ISSUES AND FINDINGS

11. I have considered the facts and circumstances of the case, the material/documents made available on record and submission 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. 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;"

13. 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.

14. 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.

15. I note from the trade log of the Noticee that he 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 creation of artificial volume of a total of 1,08,000 units in the said contract. A summary of the non-genuine trades of the Noticee executed on **May 20, 2015** in the contract **FEDB15MAY145.00PEW3** is mentioned in **Table 2** below:

Table 2: Summary of Non-genuine trades executed by the Noticee on May 20, 2015 in contract FEDB15MAY145.00PEW3

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
Fastner Machinery Dealers Pvt Ltd	Manish Kumar Soni	14:02:39. 315541	14:02:39. 347014	14:02:39. 347014	8.80	8.80	8.80	54000	54000	54000
Manish Kumar Soni	Fastner Machinery Dealers Pvt Ltd	14:02:45. 143586	14:02:45. 112768	14:02:45. 143586	5.55	5.55	5.55	54000	54000	54000

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

16. I note from the trade log that the trades executed by the Noticee in the contract 'FEDB15MAY145.00PEW3' were squared up within a short span of time of six seconds with the same counterparty. The Noticee on May 20, 2015 at 14:02:39.34 hrs entered into one sell trade with counterparty Fastner Machinery Dealers Pvt. Ltd. for 54,000 units at Rs. 8.80 per unit in the said contract. Thereafter, on the same day, Noticee entered into one buy trade with same counterparty at 14:02:45.14 hrs for 54,000 units at the rate of Rs. 5.55 per unit. While dealing in the said contract during the Investigation Period, the Noticee executed reversal trade with same counterparty Fastner Machinery Dealers Pvt. Ltd. on the same day within a time gap of six seconds with price difference in sell and buy rates. I also note that the Noticee and the counterparty placed their sell and buy orders within a difference of split seconds and at precisely the same rates and quantities in both the legs of reversal trade. The Noticee's trades generated artificial volume of 1,08,000 units which constituted 24.77% of the total volume in the contract.

17. The Noticee's only contention is that he was unaware of the process followed by the stock broker for executing the trades. I note that while a stock broker is mandated to act as per the advice of its clients, the obligation to ensure genuineness of the trades lay with the client i.e. in this case the Noticee. The Noticee has neither claimed nor produced any records to indicate that the impugned trades were executed without his consent.

18. The non-genuineness of trades executed by the Noticee is evident from the fact that time difference between the placement of orders by the Noticee and counterparty was within a span of split seconds i.e. approximately same time for both the trades. The fact that the orders of the Noticee and his counterparty matched with such precision in terms of price and quantity in both legs of the reversal trade indicate a prior meeting of minds with a view to execute the reversal trades at pre-determined prices. There was no commercial basis as to why, within a short span of time of six seconds, the Noticee reversed the position with its counterparty. Reversing the trades in an illiquid Stock Option contract in such a short span of time suggests non-genuineness of these trades. The variation in prices of the said contract, within a short span of time of merely six seconds, 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.

19. I also note that it is not mere coincidence that the Noticee could match his trades with the same counterparty with whom he had undertaken first leg of the reversal trade. 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..."

20. 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."*

21. 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."

22. 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…..".

23. 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."

24. 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 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)."* Thereafter, Hon'ble SAT in its judgements passed in the matters of **Shruti Saraogi vs. SEBI** [Appeal No. 814/2021, Date of Decision; January 13, 2022] and **Arun Kumar Agarwal HUF vs. SEBI** [Appeal No. 59 of 2022, Date of Decision: February 07, 2022] with respect to dealings in illiquid Stock Options at BSE has dismissed the appeals on the same grounds.

25. 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 six seconds with the same counterparty clearly indicate a prior meeting of mind with a view to execute the reversal trade at a pre-determined price.

26. 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.

27. 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…".*

28. 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."*

29. 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."

30. 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 discretion by Adjudicating Officer can be exercised subject to the minimum penalty prescribed by the statute.

31. 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

32. 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 Kumar Soni [PAN: CHOPS2296B]	Regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of PFUTP Regulations, 2003	**Rs. 5,00, 000 (Rupees Five Lakh only)**

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

34. 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**

35. 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

36. 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.

37. 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: 2022.04.08 15:02:39 +05'30'

DATE: April 8, 2022
PLACE: MUMBAI

PRIYANKA MAHAPATRA
ADJUDICATING OFFICER