BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/PM/AS/2022-23/15947]

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 Saboo HUF [PAN: AAKHM1492G]

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 buy value and sell value of the transactions. These reversal trades allegedly resulted in creation of artificial volumes. **Manish Saboo HUF [PAN: AAKHM1492G]** (hereinafter referred to as "Noticee") was one among the various entities which had indulged in execution of reversal trades that 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 06, 2021, under Section 19 read with Section 15 I(1) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "SEBI Act, 1992") and Rule 3 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as "Adjudication Rules"), to conduct the adjudication proceedings in the manner specified under Rule 4 of Adjudication Rules read with Section 15 I (1) and (2) of SEBI Act, 1992, and if satisfied that penalty is liable, impose such penalty as deemed fit in terms of Rule 5 of Adjudication Rules and Section 15HA of the SEBI Act, 1992.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. Show Cause Notice No. SEBI/HO/CDMRD/DoP/P/OW/2021/18238/1 dated August 10, 2021 (hereinafter referred to as "SCN") was issued to the Noticee under Rule 4(1) of the Adjudication Rules read with Section 15I of the SEBI Act, 1992, to show cause as to why an inquiry should not be held against the Noticee and penalty be not imposed on the Noticee under Section 15HA of the SEBI Act, 1992 for the alleged violations of Regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of the PFUTP Regulations, 2003.

5. It was, *inter-alia*, alleged in the SCN that the Noticee was one of the entities which indulged in reversal trades which allegedly created false and misleading appearance of trading, generating artificial volumes in the Stock Options segment of BSE during the Investigation Period. The Noticee was alleged to have engaged in two such reversal trades (one buy trade and one sell trade) in one unique contract, which resulted in generation of alleged artificial volume of 4,00,000 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.	NHPC15JUN24.00PEW2	3.00	200000	5.00	200000	100%	74.07%

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. NHPC15JUN24.00PEW2 during the Investigation Period, as follows:

7.1. During the Investigation Period, two trades for 4,00,000 units were executed by the Noticee in the said contract on 11/06/2015.

7.2. While dealing in the said contract on 11/06/2015, at 14:53:37.42 hrs, the Noticee entered into a buy trade with counterparty Annex Tradelinks Private Limited for 2,00,00 units at Rs. 3.00 per unit. At 14:54:53.71 hrs the Noticee entered into a sell trade with the same counterparty, for 2,00,000 units.

7.3. The Noticee's two trades while dealing in the above said contract during the Investigation Period allegedly generated artificial volume of 4,00,000 units, which made up 74.07% of total market volume in the said contract during this period.

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

9. The SCN was served on the Noticee by way of Speed Post Acknowledgement Due. Manish Saboo, Karta of the Noticee, acknowledged the receipt of SCN on behalf of the Noticee, vide letter dated August 31, 2021. In the letter, while denying the allegations contained in the SCN, the Noticee raised the following main contentions:

9.1. Trades executed by the Noticee in Stock Options segment of BSE were executed on BSE and, on completion of the transaction, the Noticee was levied STT, service tax, transaction charge, SEBI turnover fees, clearing charges and brokerage. These charges could not have been levied on non-genuine transactions.
9.2. The anonymous systems of the Stock Exchange do not allow a transacting party to know the details of the counterparty.
9.3. Underlying scrip in which the Noticee traded was highly liquid in nature, thus the allegation that the Noticee deliberately traded in only those options that were illiquid in nature is unfair.
9.4. The market prices are driven by the market forces comprising of multiple traders on the online platform during the trading hours. Therefore, the allegation that the Noticee deliberately squared off the trade requires a revisit.
9.5. The trades in question were in normal course of business and there is nothing amiss in the executed trades.

9.6. None of the trades are deceptive in nature or have any impact on the investors or their investment decision. The allegation of creation of artificial or reversal trade is of no consequence in option segment of the Stock Exchange.

9.7. BSE and SEBI have allowed trading in Options for far months with strike prices which are at a large variance to current market price.

9.8. There is no connection whatsoever between the Noticee and counterparties to the impugned trades.

9.9. There is no material on record or in the price movement of the impugned options contracts and the underlying securities that the Noticee's trade were intended to induce anyone. Thus, provisions of Regulations 3 and Regulation 4 of PFUTP Regulations, 2003 are not attracted.

9.10. The SCN deserves to be withdrawn as it is issued beyond a reasonable time period.

10. Vide Hearing Notice No. SEBI/HO/CDMRD/DoP/P/OW/2021/29864/1 dated October 25, 2021, the Noticee was granted an opportunity of Hearing, however, the Noticee neither responded to the Hearing Notice nor appeared for Hearing on the scheduled date. In the interest of natural justice another Hearing Notice No. SEBI/HO/CDMRD/DoP/P/OW/2021/34555/1 dated November 29, 2021 was served on the Noticee. The Noticee availed the opportunity of Hearing on December 20, 2021 through video conference. During the Hearing, Authorized Representative Mr. Souvik Bhadra, Advocate made certain additional submissions and was given time till December 31, 2021 to make these submission in writing. In the post Hearing submissions, the Noticee made the following additional contentions:

10.1. The Noticee has been clubbed with offenders who might have traded in substantive volume. It would be unfair to treat the Noticee in the same way without referring to the specific facts and circumstances concerning the Noticee.

10.2. After placing the orders to the broker, the Noticee had no way of controlling the Broker. If there is any allegation of wrongdoing, the same lies with the concerned broker and/or BSE and not with the Noticee.

10.3. Trade by the Noticee is one-off instance. There was no earlier or subsequent instance of trading of this nature. A small quantity of two trades is not enough to create artificial volume.

10.4. It is upto SEBI to provide evidence. Only if SEBI provides necessary evidence, the Noticee would be able to respond to the same. In this context, the Noticee placed reliance on the judgement of Hon'ble SAT in the case of HB Stockholdings vs. SEBI.

10.5. The Noticee also cited the Hon'ble SAT judgment in Jayantilal Khandelwal and Sons Pvt. Ltd. vs. SEBI [Appeal No. 63 of 2007, Date of Decision: 23/11/2010] to state that there is nothing on record to substantiate that the Noticee knowingly misrepresented anything or had any intention to defraud anyone.

Therefore, it cannot be stated that the Noticee is guilty of fraud or deceit or manipulation.

10.6. Penalty should not be imposed solely on the ground that most of the trades were found to be synchronized. In paragraph 16 of S.P.J. Stock Brokers Pvt. Ltd. vs. SEBI decided in Appeal No. 52 of 2013 and in paragraph 39 of KSL Industries Ltd. vs. SEBI Appeal No. 9 of 2003 by Hon'ble SAT reported in [2003] 48SC L285(SAT), the same has been upheld.

10.7. Considering the facts and circumstances and singular lack of evidence, order be passed that the Noticee is not in breach of Regulations 3(a), (b), (c),(d) and 4(1) and 4(2)(a) of PFUTP Regulations, 2003 and no penalty be imposed.

CONSIDERATION OF ISSUES AND FINDINGS

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

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

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

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

12. Before dealing with other issues, I would first deal with the contention of the Noticee regarding delay in issuing of SCN. I note that pursuant to a preliminary examination conducted in the Illiquid Stock Options matter, Interim order was passed by SEBI on August 20, 2015 which was confirmed vide Orders dated July 30, 2016 and August 22, 2016. Meanwhile, SEBI initiated a detailed investigation relating to Stock Options segment of BSE which was completed in the year 2018. The investigation revealed that 14,720 entities were involved in executing non-genuine trades in BSE's Stock Option segment during the Investigation Period. The proceedings initiated vide the afore-mentioned Interim Order were disposed of vide Final Order dated April 05, 2018 and appropriate action was initiated against the said 14,720 entities in a phased manner. During the course of hearing in the case of **R. S. Ispat Ltd vs. SEBI,** the Hon'ble SAT, vide its Order dated October 14, 2019 *inter alia* observed, *"SEBI may consider holding a Lok Adalat or adopting any other alternative dispute resolution process with regard to the Illiquid Stock Options".* A Settlement Scheme was framed under the SEBI (Settlement Proceedings) Regulations, 2018, which provided one-time opportunity for settlement of proceedings in the Illiquid Stock Options matter. The said Scheme was kept open from August 01, 2020 till December 31, 2020. Adjudication proceedings were initiated against those entities who had not availed of the opportunity of settlement. The Noticee did not avail the opportunity of settlement and pursuant to appointment of Adjudicating Officer on July 06, 2021, SCN was issued on August 10, 2021. In compliance with principles of natural justice, after receipt of reply to SCN, two opportunities of Hearing were granted which the Noticee availed on December 20, 2021 and upon conclusion of the Hearing, additional written submissions were received from the Noticee on December 31, 2021.

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

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

14. In this context, I also find it relevant to refer to the order of Hon'ble Supreme Court of India in the matter of **SEBI vs. Bhavesh Pabari** (2019) SCC Online SC 294, where, *inter alia*, it was observed, *"There are judgments which hold that when the period of limitation is not prescribed, such power must be exercised within a reasonable time. What would be reasonable time, would depend upon the facts and circumstances of the case, nature of the default/statute, prejudice caused, whether the third¬party rights had been created etc."* and order of Hon'ble SAT in the matter of **Pooja Vinay Jain vs. SEBI** (Appeal No. 152 of 2019, Date of Decision – 17.03.2020) where it was held, *"The record would show that all the documents concerning the defense of the appellant were filed by her before the AO. Therefore, for want of any prejudice the proceedings cannot be quashed simply on the ground of delay in launching the same."*

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

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

*"**3. Prohibition of certain dealings in securities***
No person shall directly or indirectly—
(a) buy, sell or otherwise deal in securities in a fraudulent manner;
(b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;
(c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;
(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.

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

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

19. I note from the trade log of the Noticee that it had executed two non-genuine trades in one unique contract in the Stock Options segment of BSE during the Investigation Period which had resulted in the creation of artificial volume of a total of 4,00,000 units in the said contract. A summary of the non-genuine trades of the Noticee executed on **June 11, 2015** in the contract **NHPC15JUN24.00PEW2** is mentioned in **Table 2** below:

Table 2: Summary of Non-genuine trades executed by the Noticee on June 11, 2015 in contract NHPC15JUN24.00PEW2

Buy Client Name	Sell Client Name	Buy Order Time	Sell Order Time	Trade Time	Buy Order Rate Rs.	Sell Order Rate Rs.	Traded Rate Rs.	Buy Order Qty Units	Sell Order Qty Units	Traded Qty Units
Manish Saboo HUF	Annex Tradelinks Pvt Ltd	14:53:37. 421609	14:53:37. 233858	14:53:37. 421609	3.00	3.00	3.00	200000	200000	200000
Annex Tradelinks Pvt Ltd	Manish Saboo HUF	14:54:53. 546541	14:54:53. 718448	14:54:53. 718448	5.00	5.00	5.00	200000	200000	200000

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

20. I note from the trade log that the Noticee and counterparty Annex Tradelinks Private Limited on June 11, 2015 placed their buy and sell orders within the difference of split seconds and precisely at the same rate and quantity in the contract 'NHPC15JUN24.00PEW2'. In the first leg of the reversal trade, the Noticee placed its buy order at 14.53:37.42 hrs for 2,00,000 units at Rs. 3.00 per unit which exactly matched with counterparty's sell order placed at 14:53.37.23 hrs also for 2,00,000 units at Rs. 3.00 per unit. In the second leg of reversal trade, the Noticee placed its sell order at 14:54:53.71 hrs for 2,00,000 units at Rs. 5.00 per unit which exactly matched with counterparty's buy order placed at 14:54:53.54 hrs also for 2,00,000 units at Rs. 5.00 per unit. Thus, the trades executed by the Noticee in the contract 'NHPC15JUN24.00PEW2' were squared up within a short span of time of one minute with the same counterparty and with price difference in buy and sell rates. The Noticee's trades generated artificial volume of 4,00,000 units which constituted 74.07% of the total volume in the contract.

21. The contention raised by the Noticee that the trades were settled through the Stock Exchange mechanism does not establish genuineness of trades or preclude execution of artificial and non-genuine trades. The Noticee mentioned about liquidity of the underlying scrip, however, I note that the allegation made against the Noticee pertain to Stock Option contract viz. 'NHPC15JUN24.00PEW2' which were illiquid on BSE. It is also pertinent to mention that it is not the allegation that the Noticee has traded in 'illiquid' contract, the allegation is that the trades executed by the Noticee in the contract were non-genuine and hence has resulted in creation of artificial volume.

22. Noticee has also contended that the impugned trades are not deceptive in nature or have any impact on the investors or their investment decision. I am of the view that the misuse of Stock Options as shown above displays an unreal picture of market activity to other investors. Apart from presenting wrong picture of liquidity to gullible investors which could affect their trading decisions, such activity also damages market integrity.

23. With respect to the Noticee's contention that the Stock Exchanges/SEBI permit trading in far month Options with strike prices which are at a large variance to current market price, I note that the price of a particular option contract is the premium paid, and for a given strike price, the premium cannot vary widely within a short span of time of one minute without significant movement in the underlying price or change in other factors which determine option price.

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

25. Another contention of the Noticee is that the impugned trade is an one-off instance and that it has been clubbed with offenders who might have traded in substantive volume. It would be unfair to treat the Noticee in the same way and that a small quantity of two trades is not enough to create artificial volume. In this context, I note that as brought out above, the trades executed by the Noticee were non- genuine and were carried out at artificial prices. While the instance of reversal was only once, it does not take away from the fact that the trades were artificial and non-genuine in nature and constituted 74.07% of the volume traded in the said contract.

26. The Noticee has also mentioned that if there is any allegation of wrongdoing, the same lies with the concerned broker and/or BSE and not with the Noticee. In this regard, I note that while stock broker is mandated to act as per the advice of its client viz. the Noticee, the obligation to ensure genuineness of the trades lay with the Noticee. I also note that Stock Exchange mere provides a platform for carrying out the trades, while the obligation to ensure genuineness of the trades in respect of the current matter primarily lies with the Noticee.

27. I also note that it is not mere coincidence that the Noticee could match its trades with the same counterparty with whom it had undertaken first leg of the trades. It indicates meeting of minds. In this context, I would like to rely on the judgment of the Hon'ble Supreme Court of India in **SEBI vs. Kishore R Ajmera** (AIR 2016 SC 1079), wherein it was held:

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

28. 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."*

29. 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."

30. 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…..".

31. 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."

32. 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.

33. 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 one minute with the same counterparty clearly indicate a prior meeting of mind with a view to execute the reversal trade at a pre-determined price.

34. 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.

35. 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…".*

36. 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."*

37. 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."

38. 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.

39. 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

40. 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 Saboo HUF [PAN: AAKHM1492G]	Regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of PFUTP Regulations, 2003	**Rs. 5,00, 000 (Rupees Five Lakh only)**

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

42. 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**

43. 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

44. 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.

45. 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: 2022.04.12 10:11:56 +05'30'

DATE: April 12, 2022 **PRIYANKA MAHAPATRA**
PLACE: MUMBAI **ADJUDICATING OFFICER**