BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
ADJUDICATION ORDER NO.: Order/JK/LS/2022-23/16019

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

In respect of:

Om Prakash Banka HUF

PAN: AAAHO7226A

In the matter of dealings in Illiquid Stock Options at BSE

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") observed large scale reversal of trades in the Stock Options segment of the BSE Limited (hereinafter referred to as "**BSE**") leading to the 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 2,91,744 trades comprising approximately 81.41% of all the trades executed in the Stock Options Segment at the BSE during the investigation period were trades which involved reversal of buy and sell positions by the clients and counterparties in a contract on the same day. It was observed that Om Prakash Banka HUF (hereinafter referred to as "**Noticee**") was one such client whose reversal trades involved squaring off the open positions with a significant price difference without any basis for such change in the contract price. The aforesaid reversal trades allegedly resulted into generation of artificial volumes, leading to allegations that the Noticee had violated the provisions of Regulations 3(a),(b),(c),(d) and Regulations 4(1),4(2)(a) of the

SEBI (Prohibition of Fraudulent and Unfair Trading Practices related to Securities Markets) Regulations, 2003 (hereinafter referred to as "**PFUTP Regulations, 2003**").

APPOINTMENT OF ADJUDICATING OFFICER

3. SEBI initiated the adjudication proceedings and appointed the undersigned as Adjudicating Officer (hereinafter referred to as "**AO**") under section 15-I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act**") read with rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as "**Adjudication Rules**") vide order dated July 02, 2021 to inquire into and adjudge under section 15HA of the SEBI Act against the Noticee for the alleged violation of the aforesaid provisions of PFUTP Regulations, 2003. The appointment of the AO was communicated vide the communique dated July 06, 2021.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. A Show Cause Notice bearing reference no. SEBI/IVD/ID11/OW/JK/LS/P/18281/6/2021 dated August 06, 2021 (hereinafter referred to as "**SCN**") was issued to the Noticee under Rule 4(1) of the Adjudication Rules to show cause as to why an inquiry should not be initiated against the Noticee and why penalty should not be imposed on the Noticee under Section 15HA of the SEBI Act for the violations alleged to have been committed by the Noticee.

5. It was, inter alia, alleged in the SCN that the Noticee had executed 2 reversal trades in one unique stock options contract with same counterparty at a substantial price difference without any basis for significant change in the contract price and created false and misleading appearance of trading and led to generation of artificial volume of 3,11,882 units in the said contract in the Stock Options Segment of BSE during the Investigation Period and such trades were thus, non-genuine in nature. A summary of dealings of the Noticee in the said Stock Options contract,

in which the Noticee allegedly executed non-genuine trades during the I.P., is given below in Table 1 and Table 2:

Table 1: Details of dealings in contract wherein the Noticee executed reversal trades									
Trade Date	**Scrip/ Contract Name**	**Expiry**	**Strike Price (Rs.)**	**Buyer Name**	**Seller Name**	**Trade Time**	**Trade Rate (Rs.)**	**Trade Value (Rs.)**	**Traded Qty.**
23/06/2015	GMRI15JUN20.00PE	25-06-2015	20	Om Prakash Banka HUF	Gopalka Savings & Investment Private Limited	13:23:40.417441	3.3	3633425.3	155941
23/06/2015	GMRI15JUN20.00PE	25-06-2015	20	Gopalka Savings & Investment Private Limited	Om Prakash Banka HUF	13:23:46.042621	5.9	4038871.9	155941

Table 2: Summary of dealings in contract wherein the Noticee executed reversal trades							
S. No.	**Scrip/ Contract Name**	**Avg. Buy Rate (Rs.)**	**Total Buy Volume (no. of units)**	**Avg. Sell Rate (Rs.)**	**Total Sell Volume (no. of units)**	**% of Artificial Volume generated by Noticee in the contract to Noticee's Total Volume in the Contract**	**% of Artificial Volume generated by Noticee in the contract to Total Volume in the Contract**
1.	GMRI15JUN20.00PE	3.3	155941	5.9	155941	100%	16.5%

6. From the above tables, the following was noted as regard to dealings of the Noticee in the Stock Options contract of "GMRI15JUN20.00PE" during the Investigation Period:
   (a) The Noticee executed 2 non-genuine trades in the aforesaid contract for a total of 3,11,882 units on 23/06/2015.
   (b) While dealing in the said contract on 23/06/2015, at 13:23:40 hrs the Noticee entered into a buy trade with counterparty Gopalka Savings & Investment Private Limited for 1,55,941 units at Rs. 3.3 per unit. At 13:23:46 hrs the Noticee entered into a sell trade with the same counterparty for 1,55,941 units at Rs. 5.9 per unit.
   (c) The Noticee's aforesaid 2 non-genuine trades allegedly generated artificial volume of 3,11,882 units, which made up 16.5% of total market volume and 100% of the Noticee's total volume in the said contract.

7. It was alleged in the SCN that the Noticee, by indulging in execution of non-genuine reversal of trades in stock options with same counterparty on the same day, created false and misleading appearance of trading in stock options and therefore allegedly violated Regulation 3(a), (b), (c), (d), 4(1) and 4(2)(a) of PFUTP Regulations, 2003.

8. In pursuance of the SCN, the Noticee vide letter dated August 23, 2021 submitted his reply to the SCN. The Notice of hearing dated October 04, 2021 was issued to the Noticee providing with an opportunity of hearing on October 21, 2021. Vide the email dated October 15, 2021, the Noticee sent the authorization letter in favor of his representatives to appear for the hearing. On the scheduled date of hearing *i.e.* October 21, 2021, Mr. Ankit Daga, Authorized Representative ("**AR**") on behalf of the Noticee appeared for the hearing through online Webex platform. During the course of the hearing, the AR reiterated the submissions made *vide* reply dated August 23, 2021 and sought one week's time to make additional written submissions in the matter.

9. The Noticee, *vide* the aforesaid letter dated August 23, 2021, submitted his reply to the SCN. Contentions made by him have been summarized as under:

(i) The Noticee denied the allegations and observations made in the SCN against the Noticee.

(ii) The ingredients of the said PFTUP Regulations are not attracted in the present case as the trades were executed on the floor of the exchange in the normal course of business and none of the trades were deceptive in nature or had any impact on the investors or their investment decision which is a sine qua non of "fraud" and there was no direct/indirect nexus with the counter party brokers or the clients. Further, for the transaction to be termed fraudulent, as per the definition of "fraud", there has to be an "inducement" and SEBI has not even alleged inducement.

(iii) There is no nexus, directly or indirectly with the counter-party brokers or the clients.

(iv) The SCN is arbitrary as it does not state the reasons, rational, cause of action, locus and invoking of jurisdiction after over Six (6) years from the dates of settled transactions.

(v) The allegation that he deliberately traded in illiquid stock options in unfair as the underlying scrip in which he traded is frequently traded in cash market and no list of illiquid stock options contracts was issued by exchanges or regulator. Further, SEBI has held that he transacted in 'illiquid options' on the basis that his trades were in far off strike prices and therefore, very few entities were trading in such strike rates. However, in that case, it may also be concluded that said trades could have had no effect on other investors or market at large and that such illiquidity would be the reason for volatility and alleged reversal transactions since variations in options price would be dramatic if the chosen strike price is thinly traded.

(vi) The total number of alleged non-genuine trades against him were 2, which is a meagre part of overall 2,91,744 trades in market (constituting a miniscule 0.0007% of market volume of alleged non- genuine trades). Further, he traded just one day out of one and half year of the investigation period and rather he traded on just one day in his entire life till date. Thus, it erroneous to allege that his trades created artificial volume on BSE.

(vii) He did not act in concert or in collusion with anyone and nor was he part of any group or connected with anyone for the purpose of influencing price or for any manipulative activity as alleged or otherwise. There is no connection or relation whatsoever between him and the counterparty viz., Gopalka Savings & Investment Private Limited. As all his transactions have been carried out on the floor of stock exchange through screen-based trading, where the automated system itself matches orders on a price-time priority basis and hence it is not possible for anybody to have access over identity of counter party and choose with whom it wants to deal or not to deal.

(viii) The Hon'ble Securities Appellate Tribunal judgements in the matter of Jagruti Securities (2008 SCC online SAT 184) and S.P.J Stockbroker Pvt Ltd (2013 SCC Online SAT 67) held that the alleged trades cannot be treated as illegal per se unless there is some cogent connection between the counterparties or there is "mischievous meeting of minds amongst certain parties". The Noticee has also mentioned that in the Hon'ble Securities Appellate Tribunal judgement in the matter of Sanjay Agrawal vs. SEBI where it was held that in order to establish an allegation of reversal trade between parties a cogent evidence or connection between the parties needs to be established. The Noticee submitted that SEBI has neither alleged meeting of minds nor established any connection with counterparty. The Noticee further submitted that there was no relation between him and promoters/directors/key management persons of underlying scrips in the cash segment.

(ix) None of his trades were questioned by the brokers and the exchange.

(x) Besides recording common generic allegations against him, not a single instance or observation on his specific role in alleged reversal is delineated in the SCN. In this regard the Noticee has mentioned Hon'ble Supreme Court judgement in the matter of Commissioner of Central Excise, Bangalore vs. M/s Brindavan Beverages (P) Ltd. and Ors [Civil Appeal 3417 of 2002].

(xi) He acted as bonafide trader/investor and have transacted in stock option segment in normal course of dealing and his trading was very much within his own financial and risk bearing capacity. He further submitted that there was no grievance by any investor, broker, stock exchange or any other agency concerned with respect to his dealing in the options segment of BSE Ltd.

10. Pursuant to the hearing on October 21, 2021 in the matter, the AR, vide email dated October 27, 2021, made further submissions wherein he reiterated the submission of the Noticee that the SCN was issued after a lapse of 6 years, thus, it was time barred, bad-in-law and liable to be dropped. In this regard, the AR relied upon the judgment of the Hon’ble SAT in the matter of Ashlesh Gunvantbhai Shah Vs. Securities and Exchange Board of India, Mumbai [Appeal nos. 169, 171, 172, 231 of 2019 And Oths.]. The AR further submitted that AO has the power to waive or reduce the minimum penalty prescribed under the Act by keeping in view the circumstance prescribed under Section 15J and quoted decision of Hon’ble Supreme Court in the case of Bhavesh Pabri [Civil Appeal No.(S) .11311 OF 2013] in this regard. The AR made a plea that no penalty be imposed upon the Noticee in this matter.

CONSIDERATION OF ISSUES AND FINDINGS

11. I have carefully pursued the charges levelled against the Noticee, his reply and the documents/ material available on record. I have also taken into consideration the facts and circumstances of the case. The issues that arise for consideration in the instant case are:

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

    (b) Does the violation, if any, attract monetary penalty under section 15HA of the SEBI Act?

    (c) If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in section 15J of the SEBI Act?

12. Before proceeding further, I would like to refer to the relevant provisions of the PFUTP Regulations, 2003, as below:

    "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. Before advancing into the merits of the case, I would like to deal with the issue pertaining to delay, as alleged by the Noticee, that the SCN is time barred as it was issued after a lapse of 6 years from the date of execution of the trades by the Noticee.

14. Firstly, I note that the 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, August 22, 2016 and August 24, 2016. Meanwhile, SEBI initiated the investigation relating to stock options segment of BSE which was completed in the year 2018. The investigation revealed that 14,720 entities were involved in executing non-genuine trades in BSE's stock option segment during the investigation period. The proceedings initiated vide the aforementioned Interim Order were disposed of *vide* Final Order dated April 05, 2018 also considering that appropriate action was initiated against the said 14, 720 entities in a phased manner

    In the case of R. S. Ispat Ltd Vs SEBI, the Hon'ble Securities Appellate Tribunal (hereinafter referred to as "SAT"), vide its Order dated October 14, 2019, inter alia observed that *“SEBI may consider holding a Lok Adalat or adopting any other alternative dispute resolution process with regard to the Illiquid Stock Options”.*

A Settlement Scheme was framed under the SEBI (Settlement Proceedings) Regulations, 2018, which provided one-time opportunity for settlement of proceedings in the Illiquid Stock Options matter. The said scheme was kept open from August 01, 2020 till December 31, 2020. Adjudication proceedings were initiated against those entities who had not availed of the opportunity of settlement.

As can be seen from the narration of facts in the foregoing paragraphs, pursuant to communication of the appointment as AO on July 06, 2021, the SCN was issued on August 06, 2021. In compliance with principles of natural justice, after receipt of reply, an opportunity of personal hearing was granted on October 21, 2021 and upon conclusion of hearing, the AR of the Noticee *vide* email dated October 21, 2021 confirmed the minutes of the hearing. The AR of the Noticee made additional submissions *vide* email dated October 27, 2021.

15. Secondly, I note that there are no timelines prescribed in the SEBI Act, 1992 for the purpose of identifying trades as non-genuine. In this regard, I feel it is pertinent to note that, in the matter of SEBI Vs Bhavesh Pabari (2019) SCC Online SC 294, the Hon’ble Supreme Court of India has, inter alia, held that:

“*There are judgments which hold that when the period of limitation is not prescribed, such power must be exercised within a reasonable time. What would be reasonable time, would depend upon the facts and circumstances of the case, nature of the default/statute, prejudice caused, whether the third-party rights had been created etc.”*

16. Thirdly, SEBI is the apex regulator in the securities market with overarching authority over all market intermediaries and persons trading in the securities market. In this regard, I note that the Hon’ble SAT in the matter 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"*

17. I also note that the Hon'ble SAT in the matter of Vaman Madhav Apte & Ors. Vs. SEBI (Appeal No. 449 of 2014) *vide* Order dated March 04, 2016 held that:

    "Argument of the appellants that the proceedings initiated against the appellants suffer from gross delay and laches and, therefore, the impugned order is liable to be quashed and set aside is without any merit, because firstly, neither the SEBI Act nor the regulations framed thereunder prescribe any time limit for initiating proceedings against the persons who have violated the securities laws. Secondly, neither the SEBI Act nor the regulations framed thereunder provide that if there is delay in initiating proceedings, no action can be taken against the person who has committed violations of the securities laws."

18. In view of the aforesaid and considering the facts of the present matter, I do not find any merit in the aforesaid contentions of the Noticee with regard to delay in issuance of SCN.

19. Before proceeding to the issues, the following technical issue raised by the Noticee is being addressed. It is contended that no specific role has been attributed to Noticee in the SCN in alleged reversal of trades and generic allegations have been mentioned. In this regard, it is noted that all the relevant and relied upon information and records in respect of Noticee were already provided to Noticee in the SCN, wherein inter-alia allegation is made in respect of Noticee for execution of non-genuine reversal trades resulting into generation of artificial volume, and in this regard, to substantiate the allegation, illustration of alleged non genuine trade of Noticee was provided and additionally a summary of execution of such trades were given in tabular format. It is specifically noted that the SCN provided relevant narrative on reversal trades being allegedly non-genuine in nature, and further, the

SCN also provided the trade log of all the trades executed by Noticee while dealing in stock options segment of BSE during the Investigation Period and trade log of all the reversal trades executed by Noticee during the Investigation Period in stock options segment of BSE in form of Annexure-B to the SCN, and detailed contract wise summary of his dealing in one contract in which he is alleged to have executed non genuine trades in form of Annexure-C. Given the above, it is noted that Noticee was provided with relevant information about allegations, along with the supporting information in form of details of his alleged non genuine trades. Further, liberty was provided to Noticee to respond to the SCN. Therefore, I do not find any merit in the aforesaid contention of the Noticee.

20. I note that the allegation against the Noticee is that, while dealing in the stock option contracts at BSE during the Investigation Period, the Noticee had executed reversal trades which were allegedly non-genuine trades and the same had resulted in creation of artificial volume in stock options contracts at BSE. Reversal trades are considered as those trades in which an entity reverses its buy or sell position in a contract with subsequent sell or buy position 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.

21. I note from the trade log of the Noticee that the Noticee had traded in one unique contract in stock options segment of BSE during the Investigation Period. It is observed that the Noticee had executed 2 non-genuine trades in the said contract. I further note that the above mentioned trades of the Noticee had resulted in the creation of artificial volume of a total of 3,11,882 units in the said one contract. The summary of the non-genuine trades of the Noticee are as follows:

S. No.	*Scrip/ Contract Name*	*Avg. Buy Rate (Rs.)*	*Total Buy Volume (no. of units)*	*Avg. Sell Rate (Rs.)*	*Total Sell Volume (no. of units)*	*% of Artificial Volume generated by Noticee in the contract to Noticee's Total Volume in the Contract*	*% of Artificial Volume generated by Noticee in the contract to Total Volume in the Contract*
1.	GMRI15JUN20.00PE	3.3	155941	5.9	155941	100%	16.50%

22. It is noted that the Noticee had executed non-genuine trades in one contract, wherein the percentage of artificial volume generated by the Noticee to the total volume in the said contract was 16.50%. Further, the artificial volume generated by the Noticee in the contract amounted to a substantial 100% of total volume generated by him in the contract. The non-genuine trades executed by the Noticee in the above contract had significant price difference between buy rate (₹ 3.30 per unit) and sell rate (₹ 5.90 per unit) and the trades were reversed on the same day within short span of time.

23. The non-genuineness of these transactions executed by the Noticee is evident from the fact that the time difference between the placement of the orders by the Noticee and the counterparty was very small, i.e. approximately same time for both the trades. The fact that the orders of the Noticee and its counterparty matched with such precision (considering there was a perfect match of price and quantity for both the trades) indicates a prior meeting of minds with a view to execute the reversal trades at a predetermined price. Since these trades were done in illiquid option contracts, there was very little trading in the said contract and hence, there was no price discovery in the strictest terms. The wide variation in prices of the said contracts, within a short span of time (i.e. approx. 6 seconds), is a clear indication that there was pre-determination in the prices by the counterparties while executing the trades. Therefore, it is observed that the Noticee had indulged in reversal trades with its counterparty in the stock options segment of BSE and the same were non-genuine trades.

24. The Noticee has contended that he traded in the options contract on BSE were the underlying scrip was frequently traded in the cash market and the alleged 2 trades of the Noticee were executed on the anonymous screen based trading platform provided by BSE where the identity of the counterparty remain undisclosed and, hence, the question of any non-genuine trade did not arise. Further, there is no connection or relation whatsoever between him and the counterparty.

In this regard, I place reliance on the judgment of Hon'ble Supreme Court in the matter in respect of SEBI v Rakhi Trading Private Limited (Civil Appeal Nos. 1969, 3174-3177 and 3180 of 2011 decided on February 8, 2018), in which the Hon'ble Supreme Court has held the following:

"*Considering the reversal transactions, quantity, price and time and sale, parties being persistent in number of such trade transactions with huge price variations, it will be too naive to hold that the transactions are through screen-based trading and hence anonymous. Such conclusion would be over-looking the prior meeting of minds involving synchronization of buy and sell order and not negotiated deals as per the board's circular. The impugned transactions are manipulative/ deceptive device to create a desired loss and/or profit. Such synchronized trading is violative of transparent norms of trading in securities..."*

25. Therefore, I find that it cannot a mere coincidence or chance that the Noticee could match his trades with the same counterparty with whom he had undertaken first leg of the respective trades (with the corresponding price and quantity, in both the trades, entered by both the Noticee and counterparty being equal). It indicates meeting of minds between him and the counterparty. In this context, I would also like to rely on the judgment of the Hon'ble Supreme Court of India in SEBI Vs Kishore R Ajmera (AIR 2016 SC 1079), wherein it was held that "*…in the absence of direct proof of meeting of minds elsewhere in synchronized transactions, the test should be one of preponderance of probabilities as far as adjudication of civil liability arising out of the violation of the Act or provision of the Regulations is concerned. The conclusion has to be gathered from various circumstances like that volume of the trade effected; the period of persistence in trading in the particular scrip; the particulars of the buy and sell orders, namely, the volume thereof; the proximity of time between the two and such other relevant factors. The illustrations are not exhaustive..."*

26. The Hon'ble Supreme Court of India further held in the same matter that "*…It is a fundamental principle of law that proof of an allegation levelled against a person*

may be in the form of direct substantive evidence or, as in many cases, such proof may have to be inferred by a logical process of reasoning from the totality of the attending facts and circumstances surrounding the allegations/charges made and levelled. While direct evidence is a more certain basis to come to a conclusion, yet, in the absence thereof the Courts cannot be helpless. It is the judicial duty to take note of the immediate and proximate facts and circumstances surrounding the events on which the charges/allegations are founded and to reach what would appear to the Court to be a reasonable conclusion therefrom. The test would always be that what inferential process that a reasonable/prudent man would adopt to arrive at a conclusion."

27. In the instant matter, I note that though direct evidence regarding meeting of minds or collusion of the Noticee with the counterparty is not forthcoming, however the trading behavior of the Noticee makes it amply clear that the aforesaid non-genuine trades could not have been possible without meeting of minds at some level. In this context, I find it pertinent to refer to the Hon'ble SAT Order dated July 14, 2006 in the matter of Ketan Parekh Vs SEBI (Appeal No. 2 of 2004), wherein the Hon'ble SAT has held that "*…The nature of transactions executed, the frequency with which such transactions are undertaken, the value of the transactions, the conditions then prevailing in the market are some of the factors which go to show the intention of the parties. This list of factors, in the very nature of things, cannot be exhaustive. Any one factor may or may not be decisive and it is from the cumulative effect of these that an inference will have to be drawn."*

28. Additionally, the Hon'ble SAT in its judgment dated September 14, 2020 in the matter of Global Earth Properties and Developers Pvt. Ltd. Vs SEBI (Appeal No. 212 of 2020) relied upon the aforesaid judgment of the Hon'ble Supreme Court and held that "*…It is not a mere coincidence that the Appellants could match the trades with the counter party with whom he had undertaken the first leg of respective trade. In our opinion, the trades were non-genuine trades and even though direct evidence is not available in the instant case but in the peculiar facts*

and circumstances of the present case there is an irresistible inference that can be drawn that there was meeting of minds between the Appellants and the counter parties, and collusion with a view to trade at a predetermined price."

29. Further, with regard to the submission of the Noticee regarding imposition of no penalty against it in the instant matter, I rely on the Hon'ble SAT judgment dated September 14, 2020 in the matter of Global Earth Properties and Developers Pvt. Ltd. Vs SEBI (Appeal No. 212 of 2020), wherein the Hon'ble SAT has observed the following:

"…We find that the AO has taken into consideration not only the factors contained in Sec. 15J of the SEBI Act but has also taken into consideration the number of total trades, the artificial volume generated, the loss incurred, etc while imposing the penalty. It may be stated here that the minimum penalty under Sec. 15HA is Rs.5 Lacs and maximum penalty is Rs. 25 crores or three times the profit made. We find that the AO has exercised its discretion which is neither harsh nor arbitrary. We do not find any error in the quantum of penalty imposed by the AO."

I would also like to rely on the judgment dated November 24, 2021 of the Hon'ble SAT, in the matter of Radha Malani vs. SEBI (appeal no. 698 of 2021) which also had similar violations related to non-genuine trades in illiquid stock options in BSE, wherein the Hon'ble SAT has observed the following:

"*Having heard the learned counsel for the appellant, 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).*

In view of the aforesaid, the appeal is dismissed with no order as to costs."

Therefore, I do not find any merit in the aforesaid contentions of the Noticee.

30. The Noticee has contended that none of his trades were deceptive in nature or had any impact on the investors or their investment decision which is a sine qua non for "fraud".

In this regard, I note the following from the judgment of the Hon'ble SAT in the matter of Ketan Parekh vs SEBI (supra): "*In other words, if the factum of manipulation is established it will necessarily follow that the investors in the market had been induced to buy or sell and that no further proof in this regard is required. The market, as already observed, is so wide spread that it may not be humanly possible for the Board to track the persons who were actually induced to buy or sell securities as a result of manipulation and law can never impose on the Board a burden which is impossible to be discharged. This, in our view, clearly flows from the plain language of Regulation 4 (a) of the Regulations.*"

In view of the abovementioned judgement, the contention of the Noticee are without any merits.

31. The Noticee has also contended that his trades were very insignificant and he traded on just one day during the Investigation Period and therefore, it is erroneous to allege that his trades created artificial volume on the exchange. I note that the impugned stock option contract was illiquid, as stated in the SCN, and also the Noticee's non-genuine trades in the said contract constituted 16.50% of the total volume in the contract. This points to the contribution of the Noticee, irrespective of quantum of reversal trades or volume generated, in the creation of misleading appearance of trading through his impugned trades.

32. The Noticee has relied upon certain judgments of Hon'ble Supreme Court of India and Hon'ble SAT in support of his contentions. In this regard, I note that the instant matter has distinguished facts and circumstances as mentioned by me in preceding paragraphs. It has been noted that the Noticee created artificial volume in Stock Options which was manipulative and deceptive in nature. Once the Noticee has been found to have indulged in such reversal transactions in illiquid Stock Options he is liable for his acts and omissions.

33. The trading behavior of the Noticee confirms that the reversal trades executed by the him were not normal and the wide variation in prices of the trades in the same contract in a short time (i.e. within few seconds) without any basis for such wide variation, all indicate that the trades executed by the Noticee were not genuine trades, thus, the Noticee created a misleading appearance of trading in the aforesaid contract which led to generation of artificial volume. In view of the aforesaid, I find that the allegation of violation of Regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of PFUTP Regulations, 2003 by the Noticee stands established. The Hon'ble Supreme Court of India in the matter of SEBI Vs Shri Ram Mutual Fund [2006] 68 SCL 216(SC) held that "*…In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant."*

34. In view of the aforesaid judgment of the Hon'ble Supreme Court, I am convinced that, in the instant matter, the Noticee is liable for monetary penalty under the provisions of section 15HA of the SEBI Act, which reads as follows:

Penalty for fraudulent and unfair trade practices

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

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

Factors to be taken into account while adjudging quantum of penalty

15J. *While adjudging quantum of penalty under 15-I, the adjudicating officer shall have due regard to the following factors, namely: -*

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to an investor or group of investors as a result of the default;

(c) the repetitive nature of the default.

Explanation. —For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.

36. I note that, the material available on record does not quantify any disproportionate gains or unfair advantage, if any, made by the Noticee and the losses, if any, suffered by the investors due to such violations on part of the said Noticee. However, the Noticee has entered into two non- genuine trades which demonstrates the violation of PFUTP Regulations, 2003 and therefore, minimum penalty as stipulated under Section 15 HA of the SEBI Act shall commensurate with the violations committed by the Noticee.

37. Therefore, I note that the Noticee indulged in execution of reversal trades in stock options on BSE in the Investigation Period which were non-genuine and created false and misleading appearance of trading in terms of artificial volumes in stock options, leading to violation of Regulation 3(a), (b), (c), (d), 4(1) and 4(2)(a) of PFUTP Regulations, 2003.

ORDER

38. After taking into consideration all the facts and circumstances of the case, the material / documents made available on record including the submissions of the Noticee, the factors mentioned in section 15J of the SEBI Act and in exercise of the power conferred upon me under section 15-I of the SEBI Act read with rule 5 of the Adjudication Rules, I hereby impose a penalty of ₹5,00,000/- (Rupees Five Lakh only) on the Noticee, *viz*. Om Prakash Banka HUF, under section 15HA of the SEBI Act for the violation of Regulation 3(a), (b), (c), (d), 4(1) and 4(2)(a) of

PFUTP Regulations, 2003. I am of the view that the said penalty is commensurate with the lapse / omission committed by the Noticee.

39. The Noticee shall remit / pay the said amount of penalty within 45 (forty five) days of the receipt of this order either by way of Demand Draft ("**DD**") in favour of "SEBI -Penalties Remittable to Government of India", payable at Mumbai or through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in, i.e.

ENFORCEMENT → Orders → Orders of AO → PAY NOW

40. The Noticee shall forward the aforesaid DD / payment confirmation details to the Division Chief, Enforcement Department - I (EFD-I), Division of Regulatory Action -IV [EFD1-DRA-IV] SEBI Bhavan - II, Plot No.C7-A,' G' Block, Bandra Kurla Complex (BKC), Bandra (East), Mumbai – 400 051 and also send an email to tad@sebi.gov.in with the following detail:

1.	Case Name	
2.	Name of the 'Payer / Noticee' along with PAN of Noticee	
3.	Date of Payment	
4.	Amount Paid	
5.	Transaction No.	
6.	Bank Name and Account No.	
7.	Purpose of payment	

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

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

Date: April 13, 2022
Place: MUMBAI

JITENDRA KUMAR
ADJUDICATING OFFICER