BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
ADJUDICATION ORDER NO.: Order/RM/RV/2021-22/14891

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:

MANOHARLAL AGARWAL HUF

PAN: AAEHM6941E

47, Navyug Co-op, Society,

Opp Manekbag Hall, Ambawadi,

Ahmedabad, Gujarat - 380015

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 Bombay Stock Exchange (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 the BSE for the period April 01, 2014 to September 30, 2015 (hereinafter referred to as "**Investigation Period**").

2. It was observed during the course of investigation that a total of 2,91,643 trades comprising 81.38% 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 Mr. Manoharlal Agarwal HUF (hereinafter referred to as "**Noticee**") was one such client whose reversal trades involved squaring off open positions with a significant difference without any basis for such change in the contract price. The aforesaid reversal trades allegedly resulted into generation of artificial volumes, leading to allegations that the Noticee had violated the provisions of regulations 3(a),(b),(c),(d) and regulations 4(1),4(2)(a) of the SEBI (Prohibition of Fraudulent and Unfair Trading Practices related to Securities Markets) Regulations, 2003 (hereinafter referred to as "**PFUTP Regulations, 2003**").

<u>APPOINTMENT OF ADJUDICATING OFFICER</u>

3. SEBI initiated adjudication proceedings and appointed the undersigned as Adjudicating Officer under section 15-I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act**") read with rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as "**Adjudication Rules**") vide order dated April 30, 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.

<u>SHOW CAUSE NOTICE, REPLY AND HEARING</u>

4. A Show Cause Notice bearing reference no. PTA/RRM/RV/OW/2021/0000017029/1 dated July 30, 2021 (hereinafter referred to as "**SCN**") was issued to the Noticee under Rule 4(1) of the Adjudication Rules

to show cause as to why an inquiry should not be initiated against the Noticee and 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. The SCN issued to the Noticee, *inter alia*, mentioned / alleged the following:

"….

5. The Noticee was one of the entities which indulged in reversal trades which allegedly created false and misleading appearance of trading, generating artificial volumes in the Stock Options Segment of BSE during the investigation period. The Noticee is alleged to have engaged in reversal trades through 2 trades in 1 unique contract, which led to generation of alleged artificial volume of 68000 units. These trades of the Noticee involved reversal with the same counterparty on the same day, but at different prices.

… ."

7. A summary of dealings of Noticee in 1 Stock Options contract in which the said Noticee allegedly executed reversal trades during the investigation period, is as follows:-

S. No.	**Contract Name**	**Avg. Buy Rate (in Rs.)**	**Total Buy Volume (no. of units)**	**Avg. Sell Rate (in 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	KARB15JUN120.00CEW2	12.50	34000	18.50	34000	100%	32.69%

8. *The abovementioned reversal trades and volumes are illustrated through the dealings of Noticee in the one contract viz, "*KARB15JUN120.00CEW2*" during the investigation period, as follows:-*

(a) During the investigation it was found that Noticee executed 1 trade reversal through 2 non-genuine transactions on 05/06/2015 and with same counter party i.e. J B OVERSEAS.

(b) While dealing in the said contract on 05/06/2015, at 15:14:53:13 hrs the Noticee entered into a sell trade with the counterparty J B OVERSEAS, for 34000 units at Rs 18.50. At 15:17:59.28 hrs the Noticee entered into a buy trade with same counterparty J B OVERSEAS for 34000 units at Rs. 12.50 per unit.

(c) It was also found that during investigation period, Noticee had only traded in one contract i.e. KARB15JUN120.00CEW2 therefore 100% of trade of the Noticee was in the contract of KARB15JUN120.00CEW2 itself.

(d) The Noticee's trades while dealing in the above said contract during the investigation period allegedly generated artificial volume of 68000 units, which made up 32.69 % of total market volume in the said contract during this period.

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

…"

6. The SCN was served on the Noticee via Speed Post Acknowledgement Due ("**SPAD**"). Thereafter, the Noticee, vide letter dated August 15, 2021, acknowledged the receipt of the SCN and submitted the following:

   a. The Noticee, interalia, submitted that it is untenable to suddenly label these transactions as artificial and non-genuine after a period of 6 to 7 years from the date of the transactions on completely untenable grounds and unjustified reasons. Therefore the SCN is liable to be set aside on this reason alone, leave apart other valid reasons and explanations given in the reply.

   b. The Noticee submitted that the alleged trades are wrongly categorized as non-genuine stating that the word "non-genuine" is not defined in PFUTP Regulations or any of the Acts/Regulations of SEBI, leaving the noticee to rely on dictionary meaning of the word.

   c. The notice submitted that the alleged trades have all traits of being genuine and therefore cannot be categorized as non-genuine. These trades were executed on the anonymous platform of BSE, which is regulated and recognized by SEBI, without any knowledge of counter party, at price ranges that were permitted by the Exchange and SEBI and the obligations arising out of it have been settled through the clearing mechanism of the Exchange.

   d. The Noticee submitted that since the trades do not fall under the definition of non-genuine transactions, they cannot be categorised to be creating artificial volume and effectively cannot be said to be creating false and misleading appearance of trading or cannot be categorized as manipulative or deceptive trades.

   e. The Noticee submitted that if the intention was to carry out artificial volume and create a false and misleading appearance of trading or execute manipulative and deceptive trades, the frequency of such trades would have been much higher. No one can achieve the alleged manipulative goals with such infrequent alleged non-genuine trades, which is a one off case of 1 buy trade and 1 sell trade.

f. **The Noticee submitted that in the current case the Noticee executed only one trade which it squared off on the same day. The Noticee understood that it's a very risky segment as contrary to what was suggested by the Broker and therefore has not traded ever again on BSE Stock Options Segment. Further as aforesaid the Noticee is no way related or connected to the counter party and therefore can have never executed non-genuine transactions that have financial impact with such an unknown party.**

g. The Noticee submitted that the SCN fails to highlight any possible reason for executing the alleged non-genuine trades and what has been achieved by executing such trades. Without even having indicated any purpose for carrying out non-genuine trades, there is no reason to categorise them as non-genuine, artificial, manipulative, deceptive or creating false and misleading appearance of trading as wrongly alleged in the SCN.

h. The Noticee submitted that the SCN completely ignores several critical facts and has wrongly categorise the trades as artificial and non-genuine as:

    The SCN is issued based on imaginary and presumptive grounds. It categorizes trades of the Noticee as non-genuine in spite of the fact that these transactions were carried out on the platform provided by the BSE Ltd. and have been settled through the clearing corporation by way of movement of funds. If at all there was a fault in the platform provided by the stock exchange, SEBI should have taken action against the Stock

Exchange and as SEBI has not taken any action against stock exchange till date, it is clear that trades executed on the stock exchanged should also not be termed as non-genuine or fraudulent. Surely there can be no fault in the trading of such huge number of market participants, which comprised of 81.38% of all trades on Exchange and if it is so, then SEBI cannot take action on the investors without taking any action on the Exchange, which allowed such huge number of alleged non-genuine transactions.

i. The SCN ignores the fact that options are derivative contracts based on certain underlying and the total trades in the underlying and all its derivative contracts is to be compared to identify the % volume. It is submitted that the volume in stock options was extremely negligible when compared with the total volume of the underlying and all the derivatives contract in the underlying and such small quantity of trading is completely incapacitated to create any kind of artificial volume.

   i For manipulating any security, the entire series of its derivatives contracts has to be manipulated, but that it not the case in the current SCN. It is an admitted position that the Noticee did not carry out any manipulative transactions in the underlying securities and merely carrying out few trades in options contracts cannot create any false and misleading appearance of trading or result in a manipulative or deceptive device as falsely alleged.

   ii The SCN fails to take into consideration that the anonymous systems of the Stock Exchange does not allow a transacting party to know the details of the counter party and therefore the allegation of executing reversal trades cannot hold good. It is humble submitted that the transactions were in the nature of reversal trades was not known to the Noticee before being informed by SEBI.

iii Though the SCN claims that the trades were reversed at significant price difference, it has only compared the value of premium of the contracts. However in case of options contract the notional value i.e. the value of Strike Price plus the premium is to be considered. In the current case the notional rate of sell contract was Rs. 138.5 (120+18.5) and the same for buy contract was Rs. 132.5 (120+12.5). Price difference os merely Rs. 6 which comes to 4.5% of the Notional Rate and is no way significant or abnormal. The noticee submits that when the price difference is compared with the notional value its change absolutely normal and similar changes are observed in multiple contracts on the Exchanges including the ones having higher volumes than the alleged contracts of the Noticee. Therefore the Noticee submits that the allegation that there was a significant price difference is incorrect and untenable.

j. Taking reference to Clauses 1.2 and 1.3 of SEBI Risk Disclosure Document which deals with Risk of low liquidity and Risk of wider spreads, Noticeee has submitted that SEBI was aware of the possible (significant as per SCN but not actually significant) price difference and losses / profits due to lower liquidity and wider spreads. The SCN itself records that the contracts in which the Noticee dealt were illiquid and therefore the spreads were bound to be wide resulting in so called significant price difference in view of SEBI, which is also appreciated by the RDD issued by SEBI. However this knowledge has been ignored while issuing the SCN and the SCN wrongly goes on to allege that these trades are non-genuine. Such a conclusion is absolutely untenable in light of the fact that SEBI itself recognises that significant price difference may occur in contracts with lower liquidity and wider spreads.

k. The Noticee submitted that the SCN fails to appreciate that though SEBI and Exchanges had put in place a mechanism of price band in Capital Market

Segment to control extreme volatility, which may result in trades taking place at unrealistic prices. No such price band mechanism was in place for options segment. This in itself means that all prices at which our trades were executed were genuine.

l. The Noticee submitted that the SCN fails to appreciate that pricing of options is a complex arithmetical calculation based on several variables most of which are subjective and presumptive thus making a huge range of price to be completely valid and genuine. The price of an option is derived based on complex formulas dealing with price of the strike price, underlying, time to expiry, expected volatility, rate of interest etc., all of which are dynamic thus resulting in exponential increase in the lower and upper valid prices of options as a result of which SEBI and Exchanges in their wisdom did not stipulate any price band for options. After having failed to put in place such a mechanism due to complexity of such a product in spite of having infinite wherewithal with SEBI and Exchanges, it cannot be expected of common investors and traders to know the correct range of option prices.

m. The Noticee submitted that the SCN does not provide an iota of evidence as to how the Noticee was related or connected to the counter party. Therefore it is submitted that without the theory of collusion or meeting of minds between the two parties being established, the allegations in the SCN do not hold good.

n. The Noticee submitted that it is also not a case in the SCN that other investors have got carried away or have been misled due to the trades carried out by the Noticee. Further it is not even alleged that third parties suffered any loss due to the transactions carried out by the Noticee. So no other party has been affected by these trades as it got reversed with same party (which the Noticee understand only through SEBI) and no impact what so ever has been caused to anyone because of these trades.

o. The Noticee submitted that there is no charge of price manipulation in the SCN and without manipulating price of a security or contract no person can gain anything from artificial trades.

p. In support of his defense, the Noticee quoted the decisions of SAT in the following matters:

   i. Jagruti Securities vs SEBI. [2008 SCC Online SAT 184 : 2008 SAT 184]

   ii. S.P.J. Stock Brokers Pvt. Ltd. vs Securities and Exchange Board of India [2013 SCC Online SAT 67: [2013] SAT 17]

   iii. HB Stockholdings Limited vs SEBI [2013 SCC OnLine SAT 56 : [2013] SAT 44]

   iv. **R.K. Global vs. SEBI** (Appeal No. 158 of 2008, Date of decision 16th September, 2010)

q. The Noticee submitted that the SCN does not allege that the Noticee colluded with the counter party and in absence of any such allegation or material, the allegation of carrying out fraudulent or artificial trades does not hold good. At best it surely deserves benefit of doubt in favour of the Noticee.

r. The Noticee submitted that the SCN alleges that by executing the trades mentioned in the SCN, the Noticee has violated Regulation 3(a), (b), (c), (d), 4(1), 4(2)(a) of PFUTP Regulations, the same has been denied for the reasons stated hereinunder:

Regulation 2(1)(c) quotes as under:

“fraud” includes any act, expression, omission or concealment committed whether in a deceitful manner or not by a person or by any other person with his connivance or by his agent while dealing in securities in order to induce another person or his agent to deal in securities, whether or not there is any wrongful gain or avoidance of any loss, and shall also include –

(1) a knowing misrepresentation of the truth or concealment of material fact in order that another person may act to his detriment;

(2) a suggestion as to a fact which is not true by one who does not believe it to be true;

(3) an active concealment of a fact by a person having knowledge or belief of the fact;

(4) a promise made without any intention of performing it;

(5) a representation made in a reckless and careless manner whether it be true or false

(6) any such act or omission as any other law specifically declares to be fraudulent,

(7) deceptive behaviour by a person depriving another of informed consent or full participation,

(8) a false statement made without reasonable ground for believing it to be true.

(9) the act of an issuer of securities giving out misinformation that affects the market price of the security, resulting in investors being effectively misled even though they did not rely on the statement itself or anything derived from it other than the market price.

The Noticee submitted that there is nothing on record to substantiate that the Noticee knowingly misrepresented the truth or concealed material fact,

suggested a fact that the Noticee believed is untrue, concealed any fact required to be disclosed. Further the Noticee never made any promise or representation, and has not omitted any obligation under other law. Even further the Noticee's behaviour was no way deceptive, nor has the Noticee made any false statement. Lastly the Noticee has not issued any securities and the question of giving misinformation in relation thereto does not arise.

As none of the Noticee's acts fall under the definition of 'fraud' as provided under Regulation 2(1)(c), the Noticee cannot be charged of having violated PFUTP Regulations.

s. An analysis of the applicability of the PFUTP Regulations in the SCN has been produced by the Noticee, as under:

Sr. No.	**Reg. / Sec. No.**	**Regulation**	**Explanation**
1.	3	No person shall directly or indirectly-	
2.	3(a)	buy, sell or otherwise deal in securities in a fraudulent manner;	None of the Noticee's acts can be categorized as fraud under Reg. 2(1)(c) The Noticee transacted on the anonymous trading system of the Exchange without the knowledge of who the counter party was. The trades are validly settled on the Exchange Platform. The trades were within the price range permitted by the Exchange. There is no charge of meeting of mind or collusion with the counter party.

Sr. No.	Reg. / Sec. No.	Regulation	Explanation
3.	Reg. 3(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;	None of the Noticee's acts can be said to have been in the form of a manipulative or deceptive device or in contravention to the provisions of the Act, rules or regulations of SEBI. The trades were validly executed on the platform of the Exchange and fully settled. No one has been alleged to have been affected by the trades which are allegedly manipulative. The alleged trades have taken place only once during the IP of 1.5 years and with such infrequent trades, it is impossible to form a manipulative or deceptive device or contrivance in contravention to the provisions of Act and Rules of SEBI.
4.	Reg. 3(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	The SCN fails to establish that The Noticee employed any device, scheme or artifice to defraud anyone. Further when the allegation pertains to carrying out a fraud, there has to be a defrauded party or someone has to be induced to trade. No person has claimed to be defrauded or have been induced to trade because of the Noticee's trades.

Sr. No.	Reg. / Sec. No.	Regulation	Explanation
		recognized stock exchange;	
5.	Reg. 3(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. **Already responded in explanations above.**	
6.	4(1)	Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.	**Already responded in explanations above.**
7.	4(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:—	
8.	4(2)(a)	indulging in an act which creates false or misleading appearance of	The trades were in normal course and the settlement has been made by the Exchange and the transactions have been correctly reflected in the books of accounts and therefore the trades are perfectly genuine.

Sr. No.	Reg. / Sec. No.	Regulation	Explanation
		trading in the securities market;	Further BSE never highlighted any issue with the said transactions. No false or misleading appearance of trading has been created by alleged trades.

t. The Noticee has cited the relevant extract from Judgment passed by the Hon'ble Securities Appellate Tribunal in the matter of Global Earth Properties Ltd. vs. SEBI (Appeal No. 212 of 2020, Date of decision 14th September, 2020 and stated that in the cases disposed off by SAT as is this case or any other case, the Noticees had carried out multiple reversal trades. In the present case it is to be noted that only 1 buy and 1 sell trade was carried out and therefore it is only on instance of reversal. This is a case of sheer luck and co-incidence and cannot be said to be manipulative. Taking into account preponderance of probability also, it cannot be alleged that a one of case was intentional and non-genuine.

u. The Noticee submitted that in the appeal of Dhvani Darshan Kothari & Anr. vs Securities and Exchange Board of India (Appeal No. 276 of 2020 decided on January 21, 2021) the Hon'ble SAT held that purchasing off market and selling online to the same counter party may raise a strong suspicion that the transfer may not be genuine, but further held that reasons have to be recorded to show as to how the trades were manipulative or fraudulent and that one transfer cannot make it circular / reversal or synchronized nor execution of one trade would be treated at par with the trades executed by other entities which was large in number. The said finding of this Tribunal is squarely applicable in the instant case.

So in the current case even if SEBI has a suspicion that the Noticee's trades were allegedly non-genuine the fact that it is only 1 instance and the SAT has decided the matter in favour of the Appellant, the same principle should be accepted by SEBI and the SCN against the Noticee may be dropped without any adverse inference.

Such one instance of reversal cannot be alleged to be creating artificial volume of trading in the market as compared to the overall trading in the stock options segment. As per the SCN more than 1500 Crores units were traded in the stock options segment of BSE Ltd.

v. It has been submitted by the Noticee that without prejudice to the aforesaid, if at all it is held that the Noticee violated the aforesaid PFUTP Regulations, then in that case it is submitted that no penalty should be imposed on the Noticee taking into consideration the mitigating circumstances and factors under Section 15 J of the SEBI Act.
   i. The Noticee was under the belief that since the transactions executed were under the stock exchange mechanism and were therefore genuine;
   ii. No illegal gain has been made by the Noticee while trading in the stock options segment;
   iii. No loss has been caused to any investor or group of investor as a result of the Noticee's trading nor the same has been alleged against the Noticee in the SCN;
   iv. This is the first time, SEBI has taken any kind of action against the Noticee.

w. The Noticee requested for reliance on the following judgments:

   a. The Hon'ble Bombay High Court in the matter of S*ecurities & Exchange Board of India v. Cabot International Capital Corporation*, 2004 SCC Online Bom 180

   b. Yogi Sungwon (India) Ltd. v/s SEBI - Appeal No. 36 of 2000, Order dated May 04, 2001, of Hon'ble Securities Appellate Tribunal

   c. National Highway Authority of India v/s SEBI - Appeal No. 232 of 2020, Order dated August 27, 2020

x. The Noticee further submitted that SEBI had initially passed an interim order dated 20th August, 2015 in the matter of stock options segment of BSE Ltd. and restrained 59 persons/entities from buying, selling, or dealing in the securities market till further directions. After concluding the investigation in the matter SEBI found that 14,720 entities were involved in executing non-genuine reversal trades on the stock options segment and passed the Order dated 05th April, 2018 inter alia recording thus:

   " 14. In summary,

   a) As per the investigation report, 14,720 entities have been found to have executed non-genuine trades.

   b) The Hon'ble Supreme Court in the case of Rakhi Trading Pvt. Ltd. has upheld that similar trades are in violation of SEBI (PFUTP) Regulations, 2003.

   c) SEBI has decided to take appropriate action against all 14,720 entities in phases.

   d) In the 1st Phase, Adjudication Proceedings have been initiated against 567 entities including 56 of the 59 entities (against whom directions were issued vide Interim Order and Confirmatory Order). One entity (out of the 59 entities) *would fall in a subsequent phase of action. Two entities (out of the 59 entities) do not meet the criteria as detailed in paragraph 4 of this order.*

e) Any person found to be in violation of SEBI (PFUTP) Regulations, 2003, is 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.

f) BSE has taken steps to prevent / significantly reduce the possibility of misuse of the exchange platform in such a manner.

g) There is a need for some similarity of approach in taking action against the various entities even though the difference in amount of profit made / loss incurred through the non-genuine trades varies and can be the basis of some differences."

Notice submitted that it was not part of the 59 entities against whom the Interim Order was passed and neither part of the first 567 entities against whom the Adjudication Proceedings were initiated. SEBI itself considered the Noticee's trades to be so minuscule, that it initiated Adjudication Proceedings against the Noticee in the last stage and therefore it is prayed that a lenient view be taken in the present matter.

In this regard Noticee has drawn attention to the judgment passed by the Hon'ble Supreme Court in the matter of Adjudicating Officer, Securities and Exchange Board of India v. Bhavesh Pabari.

y. The Noticee submitted that in view of the aforesaid judgment passed by the Hon'ble Supreme court, SEBI has, in various matters imposed penalty lesser than the minimum prescribed penalty. Two of such cases are mentioned hereinunder:

i. AO Order dated 26th February, 2021 in the matter of Octant Interactive Technologies Limited

ii. AO Order dated 29th March, 2019, in the matter of Sangam Advisors Ltd

z. The Noticee submitted that it has been alleged that Noticee executed only one reversal transaction comprising of two (one buy and one sell) fraudulent and non-genuine trades in 1 unique contracts which created an artificial volume of 68,000 units, comparing the same with the other orders of Illiquid Options passed by SEBI and various orders cited above, and further submitted that a lesser penalty like warning etc. may at most be imposed taking into consideration the mitigating factors and circumstances as mentioned above.

aa. The Noticee submitted that in view of the facts stated, arguments advanced and authorities cited, it is his humble prayer that the present proceedings be quashed since no primary violation of any PFUTP Regulations is made out against the Noticee and the genuineness of the trades has also been explained hereinabove. Therefore the question of holding an inquiry against the Noticee in terms of Rule 4 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 and imposing penalty for the alleged violation does not arise.

7. In the interest of natural justice and in terms of the Adjudication Rules, the Noticee was provided with an opportunity of personal hearing in the matter on September 6, 2021 at 11.30 am through the online Webex platform. Mr. Ravi Ramaiya, Chartered Account, appeared as the Authorised Representative ("**AR**") on behalf of the Noticee on the stipulated date of hearing. During the course of the hearing, the AR reiterated the submissions made by the Noticee in his reply dated August 15, 2021. Reply to few of the questions, asked during the hearing, were replied through mail dated

September 8, 2021 (also sent through post that was received on September 11, 2021), i.e. subsequent to hearing date, which consisted following information :

a. *The Noticee has been transacting in securities markets since 2001.*

b. *The Karta was very young when the HUF was formed and therefore the exact date of forming the HUF is not known.*

c. *Mr. Manoharlal Agarwal was the Karta of HUF. Upon the death of Mr. Manoharlal Agarwal on 15/3/1996, his son Mr. Vedprakash Agarwal became the Karta.*

d. Names of other brokers through which the *Noticee has transacted is Nariman Finvest Pvt. Ltd.*

e. *The Noticee has not transacted on BSE Options segment before or after the IP.*

f. *The Broker had advised the Noticee for doing the trade and it was done with my consent and direction. Since the broker was not given any authority to transact on behalf of the Noticee, there is no POA or Authority Letter to that effect.*

8. Further, the AR submitted that though he admits that he executed 2 trades (one buy and one sell) and that too in only 1 contract which too on the guidance of the broker, yet, he realized the risk involved and never traded again in illiquid option. In view of the submissions to SCN and that Noticee had traded in the stock options segment of the BSE Ltd. only once, Noticee requested for a lenient view of the Adjudicating Officer.

<u>CONSIDERATION OF ISSUES AND FINDINGS</u>

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

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

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

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

10. Before advancing into the merits of the case, I would like to deal with the issue pertaining to the delay, as alleged by the Noticee, in point 6 (a) in reply to SCN.

Pursuant to a preliminary examination conducted in the Illiquid Stock Options matter, Interim order was passed by SEBI on August 20, 2015 which was confirmed vide Orders dated July 30, 2016 and August 22, 2016. Meanwhile, SEBI initiated a detailed investigation relating to stock options segment of BSE which was completed in the year 2018. The investigation revealed that 14,720 entities were involved in executing non-genuine trades in BSE's stock option segment during the investigation period. The proceedings initiated vide the aforementioned Interim Order were disposed of vide Final Order dated April 05, 2018 also considering that appropriate action was initiated against the said 14, 720 entities in a phased manner.

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

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

As can be seen from the narration of facts in the foregoing paragraphs, pursuant to appointment of AO, SCN was issued on July 30, 2021. In compliance with principles of natural justice, after receipt of reply, an opportunity of personal hearing was scheduled on September 6, 2021 and upon conclusion of hearing, additional written submissions *(if any)* were received from you/your AR on September 8, 2021.

11. I further note that there is no provision under SEBI Act which prescribes a time limit for taking cognizance of a breach of the provision of SEBI Act and Rules and Regulations made thereunder. Further, as per Section 11C of SEBI Act, SEBI can initiate investigation at any point of time, for any period of alleged violation or any period of alleged transactions. I also note that the investigations relating to the PFUTP Regulations, 2003 are complex (considering the volume of transactions, connections and examination of trading of shares, etc.) and time consuming. In this regard, I feel it is pertinent to note that, in the matter of SEBI Vs Bhavesh Pabari (2019) SCC Online SC 294, the Hon'ble Supreme Court of India has, *inter alia*, observed as follows:

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

12. Further, I note that the Hon'ble SAT in the matter of Pooja Vinay Jain vs SEBI (Appeal No. 152 of 2019, Date of Decision – 17.03.2020) 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*"

13. I also note that the Hon'ble SAT in the matter of Bipin R Vora vs SEBI held that, "*As regards the plea of delay and 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 view of the aforesaid and considering the facts of the aforesaid matter, I do not find any merit in the contentions of the Noticee.

15. With respect to the alleged violations in the instant matter, I note that it is pertinent to refer to the relevant provisions of the PFUTP Regulations, 2003, which are reproduced as follows:

PFUTP Regulations, 2003

2. 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 6[manipulative] 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;*

16. I note that the allegation against the Noticee is that, while dealing in the stock option contracts at BSE during the Investigation Period, the Noticee had executed reversal trades which were allegedly non-genuine trades and the same had resulted in generation of artificial volume in stock options contracts at BSE. Reversal trades are considered as those trades in which an entity reverses its buy or sell positions in a contract with subsequent sell or buy positions with the same counterparty during the same day. The said reversal trades are alleged to be non-genuine as they are not executed in the normal course of trading, lack basic trading rationale, lead to false or misleading appearance of trading in terms of generation of artificial volumes and hence are deceptive and manipulative.

17. I note from the trade log of the Noticee that the Noticee had traded in 1 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 1 contract. I further note that the above mentioned trades of the Noticee had resulted in the creation of artificial volume of a total of 68000 units in the said 1 contract. The summary of the non-genuine trades of the Noticee are as follows:

Contract Name	**Avg Buy Rate (in ₹)**	**Buy Qty (No. of units)**	**Avg Sell Rate (in ₹)**	**Sell Qty (No. of units)**	**% of non-genuine trades of noticee in the contract to noticee's total trades in the contract**	**% of non-genuine trades of noticee in the contract to total trades in the contract**	**% 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**
KARB15JUN120.00 CEW2	12.5	34000	18.5	34000	100%	50%	100%	32.69%

18. It is noted that the Noticee had executed non-genuine trades in 1 contract, wherein the percentage of non-genuine trades of the Noticee to the total trades in the contract was 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. It is also noted that artificial volume generated by the Noticee contributed 32.69% to the total volume from the market in the said contract. The non-genuine trades executed by the Noticee in the above contract had significant difference between buy and sell rates considering that the trades were reversed on the same day.

Upon perusing the trade log, I note that the trades executed by the Noticee in the contract were squared up within a short span of time with the same counterparty. To illustrate, on June 5, 2015, at 15:14:42, the Noticee placed a sell limit order for 34000 units at a price of ₹18.50 per unit and the said order was matched with the buy limit order (which was also for 34000 units at a price of ₹18.50 per unit) of counterparty client J B OVERSEAS. I note that the said buy limit order was placed at 15:14:53, i.e. after the entry of the sell limit order by the Noticee. I also note that there was no modification of either price or quantity by either the Noticee or the counterparty and the sell limit order of the Noticee got executed into trade immediately upon the entry of the buy limit order by the counterparty. Subsequently, at 15:17:58, the Noticee placed a buy limit order for 34,000 units at a price of ₹12.50 per unit and the said order was matched with the same counterparty (i.e. J B OVERSEAS), who placed a sell limit order for the same quantity (i.e. 34,000) and price (i.e. ₹12.50). I note that the said sell limit order was placed by the counterparty at 15:17:59, i.e. after the entry of the buy order by the Noticee. I also note that there was no modification of either price or quantity by either the Noticee or the counterparty and the buy limit order of the Noticee got executed into trade immediately upon the entry of the sell limit order by the counterparty.

19. The non-genuineness of these transactions executed by the Noticee is evident from the fact that there was no commercial basis as to why, within a short span of time (viz. approx. 3 minutes), the Noticee reversed the position with the same counterparty client with a significant price difference. Such a short span of time taken for reversing the trades in an illiquid stock option contract suggests the non-genuineness of these trades executed by the Noticee. The fact that the orders of the Noticee and her counterparty matched with such precision (considering that there was a perfect match of price and quantity as well as a short time difference between placing of the orders by the Noticee and counterparty) indicates a prior meeting of minds with a view to execute the reversal trades at a predetermined price. Since these trades were done in illiquid option contracts, there was very little trading in the said contract and hence, there was no price discovery in the strictest terms. The wide variation in prices of the said contracts, within a short span of time, is a clear indication that there was pre-determination in the prices by the counterparties while executing the trades. Therefore, it is observed that the Noticee had indulged in reversal trades with his counterparty in the stock options segment of BSE and the same were non-genuine trades.

20. The Notice has *inter alia* contended about the awareness of SEBI regarding the possibility of trades being executed at substantial price difference and possible loss due to lower liquidity and wider spreads in illiquid stock options and the contracts the Noticee traded in being illiquid. However, I note that the allegation in the instant matter is not whether the Noticee has traded in an illiquid contract or not but whether the trades executed by the Noticee in the concerned Illiquid

contract were non-genuine or not. Therefore, I dismiss the contentions of the Noticee in this regard.

21. I note that it is not a mere coincidence that Noticee could match his trades (with the corresponding price and quantity entered by both the Noticee and counterparty being equal) with the same counterparty with whom she had undertaken first leg of the respective 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 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..."*

22. 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."

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

24. In the matter of SEBI Vs Rakhi Trading Pvt Ltd (Civil Appeal no, 1969 of 2011, 3174-3177 of 2011 and 3180 of 2011, decided on February 08, 2018), the Hon'ble Supreme Court of India held that *"…Considering the reversal transactions, quantity, price and time and sale, parties being persistent in number of such trade transactions with huge price variations, it will be too naive to hold that the transactions are through screen-based trading and hence anonymous. Such conclusion would be over-looking the prior meeting of minds involving synchronization of buy and sell order and not negotiated deals as per the board's circular. The impugned transactions are manipulative/deceptive device to create a desired loss and/or profit. Such synchronized trading is violative of transparent norms of trading in securities...."*

25. 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) and judgement dated November 24, 2021 in the matter of Radha Malani vs. SEBI (Appeal No.698 of 2021) 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."*

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

27. 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.*

28. 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.*

29. I observe that the material / documents made available on record does not quantify any disproportionate gains or unfair advantage, if any, made by the Noticee and the losses, if any, suffered by the investors due to such violations on part of the said Noticee. However, Noticee has entered into 2 non-genuine trades in 1 stock option contract during the investigation period.

30. 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 PFTUP Regulations, 2003.

31. I further note that the AR of the Noticee has requested for imposing only the minimum penalty as stipulated under the relevant Act considering the fact that the Noticee executed only 2 trades and that too in only 1 contract.

ORDER

32. After taking into consideration all the facts and circumstances of the case, the material / documents made available on record including the submissions of the Noticee, the factors mentioned in section 15J of the SEBI Act and in exercise of the power conferred upon me under section 15-I of the SEBI Act read with rule 5 of the Adjudication Rules, I hereby impose a penalty of ₹5,00,000/- (Rupees Five Lakh only) on the Noticee, viz. Mr. Manoharlal Agarwal 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

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

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

ENFORCEMENT → Orders → Orders of AO → PAY NOW.

34. The Noticee shall forward the aforesaid DD / payment confirmation details to the Division Chief, Enforcement Department -I (EFD1), FDM2 Division [EFD1-FDM2] SEBI Bhavan, Plot No.C-7,' 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	

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

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

DATE: February 01, 2022 **RAM RUDRA MURARI**

PLACE: MUMBAI **ADJUDICATING OFFICER**