

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/AK/DK/2021-22/14893]**

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

In respect of
Sourabh Goenka

[PAN: BFLPG5924C]

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

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) observed large scale reversal of trades in Stock Options segment of Bombay Stock Exchange Ltd. (hereinafter referred to as “**BSE**”). SEBI observed that such large scale reversal of trades in Stock Options led to creation of artificial volume at BSE. In view of the same, SEBI conducted an investigation into the trading activities of certain entities in illiquid Stock Options at BSE for the period April 1, 2014 to September 30, 2015 (hereinafter referred to as “**Investigation Period**”).
2. It was observed that during the Investigation Period, total 2,91,744 trades comprising 81.4% of all the trades executed in Stock Options Segment of BSE were found to be non-genuine trades. In view of the large scale reversal of trades that were observed in the illiquid Stock Options segment at BSE, it is alleged that these trades were non-genuine in nature.
3. It was observed that Mr. **Sourabh Goenka** (PAN- BFLPG5924C) (hereinafter referred to as “**Noticee**”) was one of the various entities who indulged in the execution of alleged non-genuine trades in the Stock Options segment at BSE during the Investigation Period. It was observed that the Noticee had entered into reversal trades with his counterparty which involved squaring off transactions with significant difference in the value of buy order and sell order. Therefore, it is alleged that Noticee had executed the reversal trades which were non-genuine in nature and has created false and misleading appearance of trading in terms of creation of artificial volume in the Stock Options segment at BSE and thus, it is alleged that the Noticee has violated the provisions of Regulations 3(a), (b), (c), (d) and Regulation 4(1), 4(2)(a) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Markets) Regulations, 2003 (hereinafter referred to as

“**PFUTP Regulations**”). In view of the same, adjudication proceedings have been initiated against the Noticee under provisions of Section 15HA of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as ‘**SEBI Act**’).

APPOINTMENT OF ADJUDICATING OFFICER

4. Pursuant to investigation, SEBI, was of the view that there are sufficient grounds to adjudicate upon the alleged violations as mentioned above, *inter-alia*, in respect of the Noticee and had therefore appointed the undersigned as the Adjudicating Officer vide Order dated July 02, 2021 under Section 19 read with Section 15I(1) of the SEBI Act and Rule 3 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as “**Adjudication Rules**”) to conduct adjudication proceedings in the manner specified under Rule 4 of Adjudication Rules read with Section 15I (1) and (2) of SEBI Act, and if satisfied that the Noticee is liable for penalty, may impose such penalty as deemed fit in terms of Rule 5 of Adjudication Rules 1995 and Section 15HA of SEBI Act.

SHOW CAUSE NOTICE, REPLY AND HEARING

5. A Show Cause Notice bearing Reference No. SEBI/HO/LAD2/LAD2_DRAII/P/OW/2021/0000023395/1 dated September 09, 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 be not held against him and why penalty should not be imposed under Section 15HA of the SEBI Act, 1992 for the violations alleged to have been committed by him. The SCN was sent to the Noticee vide Speed Post AD and was duly served on the Noticee. The SCN issued to the Noticee *inter alia* mentioned the following:

- i. During the Investigation Period, in the Stock Options segment, it was observed that the Noticee had traded in 1 (one) unique contract, wherein, he had allegedly executed 2 (two) non-genuine trades each for 10,000 units on July 28, 2015 which resulted in artificial volume of total 20,000 units.
- ii. Summary of dealings of the Noticee in the Stock Options contract in which he allegedly executed non-genuine trades during the Investigation Period is as follows:

CLIENT NAME	CP_NAME	SCRIP_NAME	TRADE_DATE	CLIENT_ORDER_TIME	CP_CLIENT_ORDER_TIME	TRADE_TIME	BUY/SELL ORDER	TRADE_RATE	TRADE_QUANTITY
Sourabh Goenka	N M Impex Private Ltd	BHRT15JUL460.00PE	28/07/2015	13:06:17.771671	13:06:18.270985	13:06:18.270985	BUY	27	10,000

Sourabh Goenka	N M Impex Private Ltd	BHRT1 5JUL46 0.00PE	28/07/2015	13:16:19.243324	13:16:19.039875	13:16:19.243324	SELL	47.15	10,000
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- iii. From the above table, the following is observed as regards the dealings of the Noticee:
- While dealing in the said contract on July 28, 2015 at 13:06:18.27 hrs the Noticee entered into a buy trade with counterparty N M Impex Private Ltd for 10,000 units at Rs. 27 per unit. At 13:16:19.24 hrs, the Noticee entered into a sell trade with the same counterparty, for the same quantity i.e. 10,000 units at Rs. 47.15 per unit.
 - The Noticee's 2 (two) trades while dealing in the above said contract during the Investigation Period allegedly generated artificial volume of 20,000 units, which made up 4.2% of total market volume in the said contract during this period.
- iv. Such trades were observed to be non-genuine in nature and also created false and misleading appearance of trading in Stock Options and therefore were alleged to be manipulative and deceptive in nature. In view of the same, SEBI initiated adjudication proceedings against the Noticee for violation of the provisions of Regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of PFUTP Regulations.
6. In response to the Show Cause Notice, Noticee vide Reply submitted through email dated October 14, 2021 stated as under:
- "... We would like to admit that at the time we were told this was the right way and we had no knowledge of the consequences. We would like to admit my mistake and would like to request you to please consider the penalty amount as it is too high in these adverse times of CORONA. It is my humble request to please consider the penalty as we have learnt our lesson and would be more alert in the future"*
7. Thereafter, vide Hearing Notice bearing Ref. No. SEBI/HO/LAD2/LAD2_DRAII/P/OW/2021/0000033616/1 dated November 22, 2021, in the interest of natural justice and in terms of Rule 4(3) of Adjudication Rules, the Noticee was provided an opportunity of personal hearing on December 17, 2021 through WebEx platform.
8. Subsequently, Chartered Accountant Mohit Agarwal (Authorized Representative) who appeared on behalf of the Noticee made brief submissions similar to those made vide aforesaid email dated October 14, 2021 and requested that another opportunity of hearing may be given wherein the Noticee shall appear personally for the hearing. However, vide further reply submitted vide email dated January 31, 2022, the Noticee stated as under:

“We would like to state that we have no further submissions to make in this case. You are hereby requested to further proceed with the Proceedings and humbly request you to consider the Profit made while finalising the Penalty amount since the profit made is very low as compared to the minimum penalty amount.”

CONSIDERATION OF ISSUES:

9. After perusal of the material available on record, the issues that arise for consideration are as under:

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

II. If yes, whether the Noticee is liable for monetary penalty under Section 15HA of the SEBI Act?

III. If so, what quantum of monetary penalty should be imposed on the Noticee?

FINDINGS

10. The relevant provisions of PFUTP Regulations which are alleged to have been violated are as under:

Regulation 3: - Prohibition of certain dealings in securities

3. 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.

Regulation 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;

11. It has been alleged that the Noticee had indulged in execution of reversal of trades in Stock Options with same entity on the same day. Such trades were non-genuine in nature and had created false and misleading appearance of trading in terms of artificial volume in Stock Options and therefore are alleged to be manipulative and deceptive in nature.
12. I note that vide Reply dated October 14, 2021, Noticee admitted his mistake and requested to consider the penalty amount as it is too high in these adverse times of CORONA.
13. I note that reversal trades are those trades in which a party 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 non-genuine trades as they are not executed in normal course of trading, lack basic trading rationale, and lead to false or misleading appearance of trading in terms of generation of artificial volume, hence are deceptive and manipulative. Artificial volume is considered to be the volume (no. of units) reversed in both legs of said reversal trades while keeping out the volume, if any, which is not reversed.
14. I note that the Noticee had executed 2 (two) non-genuine trades in 1 (one) contract on July 28, 2015. The details of non-genuine trades executed by the Noticee are mentioned hereunder:

S. No.	Contract Name	Average Buy Rate	Total Buy Volume (No of Units)	Average Sell Rate	Total Sell Volume (No of Units)	No of non-genuine trades executed by entity in the contract	Total number of trades executed by entity in the contract	Total number of trades executed in the Contract	Total volume in the Contract	% of Non-genuine trades of Noticee in the contract to Noticee's Total trades in the Contract	% of Non-genuine trades of Entity 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
1	BHRT15JUL460.00PE	27	10,000	47.15	10,000	2	2	39	4,76,000	100%	5.13%	100%	4.2%

15. From the above-mentioned table and table mentioned at Para 5, it is noted as under:

- (a) I note that during the Investigation Period, total 2 (two) trades for a total of 20,000 units were executed in the “BHRT15JUL460.00PE” contract on July 28, 2015 wherein the Noticee was party to both the said trades.
 - (b) The Noticee placed a buy order for 10,000 units at a price of Rs. 27 per unit and the said order matched with the sell order (which was also for 10,000 units at a price of Rs. 27 per unit) of counterparty N M Impex Private Ltd. I note that the said buy order by the Noticee was placed at 13:06:17.771671 almost at the same time as that of the entry of the sell order by the Counterparty. Subsequently within 10 (ten) minutes, at 13:16:19.243324, the Noticee placed a sell order for 10,000 units at a price of Rs 47.15 per unit and the said order matched with the same counterparty (i.e. N M Impex Private Ltd), who placed a buy order for the same quantity (i.e. 10,000 units) and same price (i.e. Rs. 47.15)
 - (c) From the above, it is noted that while dealing in the said contract during the Investigation Period, the Noticee indulged in reversal trades by executing 1 (one) buy trade and 1 (one) sell trade with the same counterparty viz N M Impex Private Ltd, on the same day for the same quantity.
 - (d) Thus, the Noticee, through his dealings in the contract viz, “BHRT15JUL460.00PE” during the Investigation Period, executed 2 (two) non genuine trades which is 100% of the total trades executed by the Noticee in the said contract which led to generation of artificial volume of 20,000 units amounting to 4.2% of the total volume generated in the said contract during the Investigation Period.
16. From the above pattern of trades, I note that the Noticee had bought and sold option contracts with the same counter party and also reversed him trade within 10 (ten) minutes from his earlier buy trade, and that too at a substantial price difference. The non-genuineness of these transactions executed by the Noticee is evident from the fact that such pattern of dealing appears to be not driven by market factors as none of the parameters (underlying stock price, volatility, etc.) for option pricing have undergone any change during the period of trades. Therefore, I am inclined to find that the aforesaid trades of Noticee were non genuine and have created false or misleading appearance of trading in terms of artificial volume in Stock Options and thus the same are manipulative and deceptive in nature.
 17. In this regard, I place reliance on the judgement of the Hon’ble Supreme Court in the matter of **SEBI vs. Rakhi Trading Private Ltd (2018) 13 SCC 753** in which the Hon’ble Supreme Court held as under:

“46. 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...”

18. I would further like to note that in the matter of **SEBI vs. Kishore R Ajmera (AIR 2016 SC 1079)** vide Order dated February 23, 2016, the Supreme Court observed as under:

“26...While the screen based trading system keeps the identity of the parties anonymous it will be too naive to rest the final conclusions on said basis which overlooks a meeting of minds elsewhere. Direct proof of such meeting of minds elsewhere would rarely be forthcoming. The test, in our considered view, is one of preponderance of probabilities so far as adjudication of civil liability arising out of violation of the Act or the provisions of the Regulations framed thereunder is concerned...”

19. In line with the principle of ‘preponderance of probabilities’ test which has been held as the appropriate test for adjudication of civil liability arising out of violation of the SEBI Act or Regulations framed thereunder by the Hon’ble Supreme Court in the aforesaid Order in the matter of **Kishore R Ajmera**, the factors to be considered in the present matter are as under:
- a. The isolated trade and reversal in the same option contract,
 - b. The same counter party being involved in both the trades,
 - c. The gap between the trade and the reversal trade being 10 (ten) minutes,
 - d. The substantial difference in the buy and sell rate within a span of 10 (ten) minutes,
 - e. The high volume of trade in turn creating an artificial volume of 20,000 units.
20. The non-genuineness of the aforesaid trades executed by the Noticee is evident from the fact that there was no commercial basis as to why, within a short span of time (viz. approx. 10 (ten) minutes), the Noticee reversed the position with the same counterparty but with a significant price difference. Such short span of time in reversing the trades in the contract suggests the non-genuineness of these trades executed by the Noticee. The fact that the orders of the Noticee and his counterparty matched with such precision (considering that there was a perfect match of price and quantity of orders placed by the Noticee and the counterparty who reversed their respective positions within a span of 10 (ten) minutes) indicates a prior meeting of minds with a view to execute the reversal trades at a predetermined price. These trades were done in illiquid option contracts and consequently 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.
21. The non-genuine and deceptive transactions of the Noticee are covered under the definition of 'fraud' and the dealings of the Noticee as discussed herein above were “fraudulent”, as defined under Regulation 2(1)(c) of the PFUTP Regulations and prohibited under the provisions of Regulations 3(a), 3(b), 3(c) and 3(d) and 4(1) and 4(2)(a) of the PFUTP Regulations.

22. In this context, I deem it appropriate to refer to the Hon'ble Securities Appellate Tribunal Order dated July 14, 2006, in the case of **Ketan Parekh vs. SEBI (Appeal no. 2/2004)**, wherein it held as under:

"20. ...The nature of the transaction executed, the frequency with which such transactions are undertaken, the value of the transactions, whether they involve circular trading and whether there is real change of beneficial ownership, 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."

23. Further, the Hon'ble Securities Appellate Tribunal while dealing with the issue of reversal trades done in illiquid Stock Option contracts, in its judgement dated September 14, 2020 in the matter of **Global Earth Properties and Developers Pvt Ltd (Appeal No: 212/2020)** held as under:

"20. ... 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 and even though direct evidence is not available in the instant case but in the peculiar facts and circumstances of the present case there is an irresistible inference that can be drawn that there was meeting of minds between the Appellants and the counter parties, and collusion with a view to trade at a predetermined price."

24. It is further noted that, in **Radha Malani vs. SEBI (Appeal No. 698/2021)**, vide Order dated November 24, 2021, SAT relying upon its aforesaid Order in the matter of **Global Earth Properties and Developers Ltd** dismissed an appeal filed against an Order wherein monetary penalty was imposed against a person who had executed 1 (one) buy and 1 (one) sell trade in 1 (one) Option Contract with the same counterparty within a very short span of time but with a substantial price difference between the buy order and sell order. These trades were also executed in the illiquid Stock Options listed at BSE.
25. It is further noted that, in **Radha Malani vs. SEBI (Appeal No. 698/2021)**, vide Order dated November 24, 2021, SAT relying upon its aforesaid Order in the matter of **Global Earth Properties and Developers Ltd** dismissed an appeal filed against an Order wherein monetary penalty was imposed against a person who had executed 1 (one) buy and 1 (one) sell trade in 1 (one) Option Contract with the same counterparty within a very short span of time but with a substantial price difference between the buy order and sell order. These trades were also executed in the illiquid Stock Options listed at BSE. Thereafter, SAT in **Shruti Saraogi vs. SEBI (Appeal No. 814 of 2021)** vide order dated January 13, 2022 while dealing with similar facts in an Illiquid Stock Options matter again relied upon its aforesaid Order in the matter of **Global Earth Properties and Developers Ltd** to dismiss an appeal filed by a person who was imposed with a monetary penalty in the impugned Order for the dealings in illiquid Stock Options which were in the nature of reversal trades. The facts involved in the said matters are similar to the facts involved in the present matter and therefore these orders of SAT are squarely applicable to the present matter also.

26. Considering the aforesaid factors, I conclude that the trading behaviour of the Noticee has resulted in creation of artificial trading volumes in the Stock Options contract. In view of the same, I find that the allegation of violation of Regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of PFUTP Regulations, 2003 by the Noticee stands established.

27. The Hon'ble Supreme Court of India in the matter of ***The Chairman, SEBI vs. Shriram Mutual Fund and Ors*** [2006] 5 SCC 361 decided on May 23, 2006 held as under:

"20. In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant..."

28. In view of the same, I am convinced that it is a fit case for imposition of monetary penalty on the Noticee under the provisions of Section 15HA of the SEBI Act, 1992 which reads as under:

Penalty for Fraudulent and unfair trade practices

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

29. While determining the quantum of penalty under Section 15HA of the SEBI Act, it is important to consider the factors relevantly as stipulated in Section 15J of the SEBI Act which reads as under:

Factors to be taken into account while adjudging quantum of penalty

15J. ...

(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....

30. I observe, 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, I note that in terms of Sec. 15HA, the penalty cannot be less than Rs. 5 Lakhs. In this regard, I note that Hon'ble SAT in its aforesaid Order in the matter of ***Shruti Saraogi*** observed that the minimum penalty that can be imposed under Sec. 15HA is Rs. 5 Lakhs. Therefore, I do not find any reason to impose a lesser amount of penalty on the Noticee.

ORDER

31. After taking into consideration the nature and gravity of the violations established in the preceding paragraphs and in exercise of the powers conferred upon me 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, I hereby impose a penalty of Rs. 5,00,000 (Rupees Five Lakhs Only) on the Noticee i.e., Mr. Sourabh Goenka, under Section 15HA of the Securities and Exchange Board of India Act, 1992.

32. The Noticee shall remit/pay the aforesaid amount of penalty within 45 days of receipt of this Order either by way of Demand Draft in favour of “SEBI – Penalties Remittable to Government of India”, payable at Mumbai, OR through online payment facility available on the SEBI website www.sebi.gov.in on the following path, by clicking on the payment link:

ENFORCEMENT → Orders → Orders of AO → PAY NOW

33. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to “Securities and Exchange Board of India”, SEBI Bhavan, Plot No. C - 4 A, “G” Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051”. The Noticee shall also provide the following details while forwarding DD / payment information:

- Name and PAN of the Noticee
- Name of the case / matter
- Purpose of Payment – Payment of penalty under AO proceedings
- Bank Name and Account Number
- Transaction Number

34. In the event of failure to pay the aforesaid amount of penalty within 45 days of the receipt of this Order, SEBI may initiate consequential actions including but not limited to recovery proceedings under Section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.
35. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticee and also to the Securities and Exchange Board of India.

Date: February 02, 2022
Place: Mumbai

AMITESH KUMAR
ADJUDICATING OFFICER