

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/AK/DK/2021-22/14949]**

**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 Agarwal HUF

[PAN: AAZHS2070P]

In the matter of dealings 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 Sourabh Agarwal HUF (PAN- AAZHS2070P) (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 the same 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 or 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 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/2021/0000023394/1 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 it and why penalty should not be imposed under Section 15HA of the SEBI Act, 1992 for the violations alleged to have been committed. 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, it had allegedly executed 2 (two) non-genuine trades each for 50,000 units on March 18, 2015 which resulted in artificial volume of total 1,00,000 units.
- ii. Summary of dealings of the Noticee in the Stock Options contract in which it allegedly executed non-genuine trades during the Investigation Period is as follows:

CLIENT NAME	CP_ NAME	SC RIP _N AM E	TRA DE_ DAT E	CLIENT T_ORD ER_TI ME	CP_ _ORDE R_TIM E	TRADE _TIME	BUY/S ELL _ORD ER	AVG _TR AD E_R ATE	TRA DE_ QTY
Sourabh Agarwal (HUF)	Gavity Advisory LLP	GR SM 15	18/03 /2015	13:16:48. 490800	13:16:48. 890807	13:16:48. 890807	BUY	1	50,000

		MA R38 50.0 0C E							
Sourabh Agarwal (HUF)	Gavity Advisory LLP	GR SM 15 MA R38 50.0 0C E	18/03 /2015	13:16:52. 091001	13:16:52. 190925	13:16:52. 190925	SELL	15	50,000

- iii. From the above table, the following is observed as regards the dealings of the Noticee:
 - a. While dealing in the said contract on March 18, 2015 at 13:16:48.89 hrs the Noticee entered into a buy trade with counterparty Gavity Advisory LLP for 50,000 units at Re. 1 per unit. At 13:16:52.19 hrs, the Noticee entered into a sell trade with the same counterparty, for the same quantity i.e. 50,000 units at Rs. 15 per unit.
 - b. The Noticee's 2 (two) trades while dealing in the above said contract during the Investigation Period allegedly generated artificial volume of 1,00,000 units, which made up 33.14% 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 or 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. However, no response was received from the Noticee. Thereafter, vide Hearing Notice bearing Ref. No. SEBI/HO/LAD2/LAD2_DRAII/ P/OW/2021/0000030655/1 dated October 28, 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 November 30, 2021 through WebEx Platform.
7. Sourabh Agarwal (Karta) of the Noticee appeared on behalf of it for the scheduled hearing and submitted that whatever has happened was illegal but the Noticee cannot be blamed

for the same as the Noticee was given wrong information by the financial advisors. The Karta of the Noticee concluded by requesting time till December 07, 2021 to file a Reply.

8. Thereafter vide email, the Karta of the Noticee submitted Reply dated December 07, 2021 wherein it was *inter alia* stated as under:
 - a. We have received both the SCN and Hearing Notice, but due to certain circumstances and ignorance, delay has occurred in filing our Reply.
 - b. In RK Stock Holding Pvt Ltd, Sourabh Agarwal HUF's share trading account was opened.
 - c. We have never done anything illegal intentionally.
 - d. We were always told that the transactions that happened through the Account were legal and in accordance with Indian Rules and Regulations. Due to this, we did not utilize the Settlement Scheme, 2020 of SEBI.
 - e. I never had any thoughts of doing anything which is beyond Indian law.
 - f. I may be liable just for holding the trading account. As we all know that being owner of the vehicle and causing an accident with the same vehicle are two different things. It is not necessary that the person who committed the accident is the owner of such vehicle, the person can be driver or friend or relative of the owner of the vehicle or any other person. In that case, the mistake is more of the person who drove the vehicle than owner of the vehicle. If your great institution investigates deeply, then you will also find the same condition.
 - g. However, being the account holder, I cannot turn away from my mistake.
 - h. Whatever decision SEBI takes that shall be acceptable to me. We request you to consider our condition and helplessness to forgive us. We would like to assure you that in future, we will never give a reason to complaint.

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 or 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 the Karta of the Noticee admitted that whatever happened was illegal but the Noticee cannot be blamed as it was misled by the financial advisors. I further note that in the Reply submitted, Noticee compared the allegations of violation in the SCN with the liability of an owner of vehicle whose vehicle was used by some other person to commit an accident. In this regard, it may be noted that being the owner of the trading account, the Noticee cannot absolve itself from liability even though it may have been misled. Further, even the Noticee in its Reply admitted that being the account holder, it cannot turn away from its mistake.
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 March 18, 2015. The details of non-genuine trades executed by the Noticee are mentioned hereunder:

S. No.	Contract Name	Average Buy Rate	Buy Quantity (No of Units)	Average Sell Rate	Sell Quantity (No of Units)	No of reversal 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 reversal trades of Noticee in the contract to Noticee's Total trades in the Contract	% of reversal 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	GRSM15MAR3850.00CE	1	50,000	15	50,000	2	2	12	3,01,750	100%	16.67%	100%	33.14%

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

- I note that during the Investigation Period, total 2 (two) trades for 50,000 units each were executed in the “GRSM15MAR3850.00CE” contract on March 18, 2015 wherein the Noticee was party to both the said trades.
- The Noticee placed a buy order for 50,000 units at a price of Re. 1 per unit and the said order matched with the sell order (which was also for 50,000 units at a price of Rs. 1 per unit) of counterparty Gavity Advisory LLP. I note that the said buy order by the Noticee was placed at 13:16:48.490800 almost at the same time as that of the entry of the sell order by the Counterparty. Subsequently within 4(four) seconds, at 13:16:52.091001, the Noticee placed a sell order for 50,000 units at a price of Rs 15 per unit and the said order matched with the same counterparty (i.e. Gavity Advisory LLP), who placed a buy order for the same quantity (i.e. 50,000 units) and same price (i.e. Rs. 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 Gavity Advisory LLP, on the same day for the same quantity.
- (d) Thus, the Noticee, through the dealings in contract viz, “GRSM15MAR3850.00CE” 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 1,00,000 units amounting to 33.14% 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 the trades within 4 (four) seconds from the 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 4(four) seconds,
 - d. The substantial difference in the buy and sell rate within a span of 4 (four) seconds,
 - e. The high volume of trade in turn creating an artificial volume of 1,00,000 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. 4 (four) seconds), 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 the 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 4 (four) seconds) 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 its 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. 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.

25. Considering the aforesaid factors, I conclude that the trading behaviour of the Noticee has resulted in creation of false or misleading appearance of trading in terms of artificial 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.

26. 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..."

27. 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.

28. 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....

29. 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. I also note that the Karta of the Noticee expressed helplessness by stating that they were misled. 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.

ORDER

30. 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., Sourabh Agarwal HUF, under Section 15HA of the Securities and Exchange Board of India Act, 1992.
31. 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

32. 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

33. 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.

34. 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 10, 2022

Place: Mumbai

**AMITESH KUMAR
ADJUDICATING OFFICER**