BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

ADJUDICATION ORDER NO. Order/MR/VB/2021-22/14990

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:

Sudhir Agarwal HUF

PAN: AATHS4550C

In the matter of dealings in Illiquid Stock Options at the BSE

A. BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as the "**SEBI**") conducted an investigation into the trading activity in illiquid stock options on BSE Limited (hereinafter referred to as the "**BSE**") for the period April 01, 2014 to September 30, 2015 (hereinafter referred to as the "**investigation period**") after observing large scale reversal of trades in the stock options segment of the BSE.

2. The investigation revealed that during the investigation period, out of the total trades executed on the BSE stock options segment, around 81% were reversal / non-genuine. It was observed that Sudhir Agarwal HUF (hereinafter referred to as the **"Noticee"**) was one among the various entities who had indulged in execution of reversal trades in stock options segment of BSE during the investigation period. The aforesaid reversal trades allegedly resulted into generation of artificial volumes, leading to allegations that the Noticee had violated regulations 3(a), (b), (c), (d), 4(1) and 4(2) (a) of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as the "**PFUTP Regulations**").

B. APPOINTMENT OF ADJUDICATING OFFICER

3. SEBI initiated adjudication proceedings and appointed the undersigned as the adjudicating officer under section 15I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the "**SEBI Act**") read with rule 3 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as the "**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 the PFUTP Regulations. The said appointment was communicated vide communiqué dated June 28, 2021.

C. SHOW CAUSE NOTICE, REPLY AND HEARING

4. A show cause notice dated August 30, 2021 bearing number "SEBI / HO /LAD1/LAD1_DOP3/P/OW/2021/0000021480/1/2021" (hereinafter referred to as the "**SCN**") was served upon the Noticee under rule 4(1) of the Adjudication Rules to show cause as to why an inquiry should not be held and penalty not be imposed against the Noticee under section 15HA of the SEBI Act for the alleged violation of regulations 3(a),(b),(c),(d), 4(1) and 4(2)(a) of the PFUTP Regulations. The SCN was served to the Noticee vide an e-mail dated September 1, 2021. The SCN was also duly served to the Noticee vide Registered Post AD on September 4, 2021.

5. The SCN issued to the Noticee, *inter alia,* alleged the following:

a) The Noticee was one of the entities which had indulged in reversal trades which allegedly created false and misleading appearance of trading, generating artificial volumes in stock options segment of the BSE during the investigation period;

b) The Noticee had engaged in two (2) trades in one (1) unique contract which led to generation of artificial volume in the aforesaid unique contract;

c) In the said contract, the trades entered by the Noticee were reversed with the same counterparty at a substantial price difference without any basis, which indicates that these trades were artificial and non-genuine in nature;

d) The Noticee's two (2) trades in the said contract during the investigation period had allegedly generated artificial volume of 32,00,000 units, which made up 41.99% of total market volume in the said contract during the investigation period and 100% of total market volume in the said contract on March 17, 2015, i.e., the day on which the Noticee traded.

6. By indulging in execution of the aforesaid non-genuine reversal trades, the Noticee has allegedly violated regulations 3(a),(b),(c),(d), 4(1) and 4(2)(a) of the PFUTP Regulations.

7. The Noticee submitted its reply to the aforesaid SCN (hereinafter referred to as the **"reply"**) *vide* email dated September 19, 2021 and *inter alia*, raised the following contentions:

a) That the contract in which the Noticee has traded were not banned at any time and hence, there was no bar on trading in the said contract;

b) That the Noticee is in no way related to the counterparty and that the matching of both the trades with the same counterparty was by chance and not malafide;

c) That there has been no investor complaints in the present matter;

d) That the allegation in the SCN about 100% of trades of the Noticee being non-genuine is erroneous and Noticee's share is merely a fraction of the whole volume, if volume generated by all contract traded on that day is considered; and

e) That the trades executed by the Noticee cannot be labelled as non-genuine only because there was a huge price variation.

8. After considering the material available on record, it was decided that an inquiry should be held in the matter in accordance with the Adjudication Rules. Accordingly, an opportunity of personal hearing was granted to the Noticee on October 29, 2021 and the same was communicated vide Notice of Hearing dated October 4, 2021. The said hearing notice was served upon the Noticee vide email on October 6, 2021 and vide speed post on October 9, 2021. Vide email dated October 25, 2021, the Noticee requested adjournment of the scheduled hearing which was granted and the hearing was rescheduled to November 18, 2021. The said hearing was not attended by the Noticee and vide email dated December 2, 2021, the Noticee requested another opportunity of hearing in the matter. Thereafter, another opportunity of hearing was granted on December 28, 2021. The said hearing was further postponed to January 6, 2022 due to certain administrative exigencies and the Noticee was duly informed about the same vide email dated December 15, 2021.

9. On the scheduled date of hearing i.e. January 6, 2022, the Authorized Representative (hereinafter referred to as the **"AR"**) of the Noticee, namely, Advocate Shreya Khandelwal, appeared before me through video conferencing. The AR reiterated the submissions made in the reply and requested to file further submissions. The AR vide e-mail dated January 11, 2022 made further submissions, *inter alia,* as under:

a) That the SCN has been issued after a delay of more than six years and on this ground alone the SCN is liable to be quashed;

b) That the volume generated by the Noticee during the entire investigation period may not be said to be voluminous and in absence of multiple transactions, the inference of fraud and / or undue trade practice cannot be drawn;

c) That the Noticee is not aware of the identity of the counterparty; and

d) That the Hon'ble Securities Appellate Tribunal vide its decision in the case of ***Narendra Vallabhji Bahuva Vs. SEBI***[1] has held that one single trade cannot lead to a conclusion that the appellant was involved in fraudulent execution of trades with manipulative intent.

CONSIDERARTION OF ISSUES AND FINDINGS

10. I have carefully perused the charges levelled against the Noticee in the SCN, the replies dated September 19, 2021 and January 11, 2022 and the documents / material available on record. The issues that arise for consideration in the instant matter are:

a) **Issue No. I**: Whether the Noticee has violated provisions of regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of the PFUTP Regulations;

b) **Issue No. II:** Does the violation, if any, attract monetary penalty under section 15HA of the SEBI Act?; and

c) **Issue No. III:** 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?

11. Before dealing with aforesaid issues, I would like to deal with the contentions raised by the Noticee in the replies dated September 20, 2021 and January 11, 2022.

12. The Noticee has, *inter alia,* stated that the contract in which the Noticee has traded was never banned and there was no bar on trading in the said contract. The Noticee has further stated that BSE allowing trading in these shares, renders

[1] Decided on July 14, 2021

bonafides the trading in these shares. I find that the SCN has nowhere alleged that the said contract was banned or that it was unlawful to trade in the said contract. The allegation on the Noticee was of generating artificial volume in the said contract by executing reversal trades. The said contract was legally valid and merely trading in the said contract is not a violation *per se* rather executing reversal / non-genuine trades and generating artificial volume in the said contract amounts to violation of the PFUTP Regulations, as is the case in the present matter. Therefore, the contention of the Noticee is liable to be rejected.

13. Secondly, the Noticee has argued that the Noticee is not aware of the identity of the counterparty and that no causal connection has been established between the Noticee and the counterparty. I find that counterparty being the same in both legs of the reversal transaction cannot be a mere coincidence. The same can only be done through a pre-planned meeting of minds to deal in such manner. In this light, I consider it important to refer to decision of the Hon'ble Supreme Court in the matter of ***SEBI Vs. Kishore R Ajmera***[2] wherein the Hon'ble Supreme Court, *inter alia,* held:

> *"22. 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.*
>
> *……*
>
> *26…..Direct proof of such meeting of minds elsewhere would rarely be forthcoming. The test, in our considered view, is one of preponderance of probabilities as far as*

[2] AIR 2016 SC 1079

adjudication of civil liability arising out of the violation of the Act or provision of the Regulations framed thereunder 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."

14. Thus, I note that although there might not be any direct evidence connecting the parties with each other but the trading behavior of the Noticee makes it amply clear that the reversal trades in the present case could not have been executed without prior meeting of minds at some level.

15. Thirdly, the Noticee has stated that there has been no investor complaints in the matter. I find that the Board has the statutory power to initiate inquiry against entities in violation of the laws related to securities market including the PFUTP Regulations. Therefore, the fact that there have not been any investor complaint in the present matter cannot be a defense to the Noticee whose reversal trades attracted violations of the PFUTP Regulations.

16. Fourthly, the Noticee has argued that the allegation in the SCN about 100% of trades of the Noticee being non-genuine is erroneous and Noticee's share is merely a fraction of the whole volume, if volume generated by all contracts traded on that day is considered. In this regard, I am of the view that the data provided to the Noticee is not erroneous. On March 17, 2015, the total volume generated in the contract "NNHPC15MAR16.00PEW3" was 32,00,000 units and the total volume generated by the Noticee on March 17, 2015 in the said contract was also 32,00,000 units, which made up 100% of the total volume generated on the said date in the particular contract.

17. Thus, the suggestion of the Noticee to compare the volume generated by it in its particular contract with the entire volume generated across all the contracts is without any legal or logical basis. The Noticee has not provided any logical explanation

to substantiate its argument. Further, even I cannot think of any reason/explanation whatsoever so as to why the volume generated in one contract shall be compared with the volume generated in other contracts. Furthermore, since volume generated in one contract, i.e. contract in which the Noticee traded, could not have impacted the volume generated in other contracts, it would be illogical to compare one contract in light of the other. Thus, the contention of the Noticee is rejected.

18. Fifthly, the Noticee has stated that only for reason of huge price difference, the trades of the Noticee cannot be classified as non-genuine. Here, I would like to state that the non-genuineness of the trades in the present matter is not stemming merely from the price difference and that there are other factors such as, reversal of trades within a few minutes on the same day, matching of counterparties in both the legs of the transaction etc., which go on to establish the non-genuineness of these transactions.

19. Sixthly, the Noticee has stated that there has been an inordinate delay of more than six years in the initiation of proceedings. I note that the investigation as regards violation of the PFUTP Regulations is an exhaustive, time consuming process, which may require detailed analysis of the case facts. In this regard, I note that the Hon'ble Securities Appellate Tribunal in the matter of ***Bipin R Vora Vs. SEBI***[3] has, *inter alia,* 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".*

[3] Decided on March 22, 2006

20. Further, I would also like to refer to the decision of the Hon'ble Securities Appellate Tribunal in the matter of ***Rajendra Aggarwal Vs. SEBI***[4] wherein the Hon'ble Tribunal while rejecting the contention of the Noticee therein regarding delay of four years in issuance of SCN, has, *inter alia,* held that:

> *"The investigation was against a large number of entities which apparently took time and ultimately notices were issued to 35 entities. Consequently, we do not find any inordinate delay in the issuance of the show cause notice nor do we find any merit in the contention that there was an inordinate delay."*

21. In view of the aforementioned case laws, I am of the view that it would inequitable and unjust to put up any unreasonable limit upon the regulator to initiate proceedings within a fixed span of time and that there has been no inordinate delay in initiation of proceedings against the Noticee. Here, I would like to bring it on record that the investigation into the trading activity in illiquid stock options was conducted for 21,652 entities and a total of 14,720 entities were found to be in alleged violation of the PFUTP Regulations against whom adjudication proceedings were approved in phased manner starting from the year 2018. In the backdrop of the approved adjudication proceedings against 14,720 entities, SEBI decided to introduce a Settlement Scheme (hereinafter referred to as the "**Scheme**") in terms of regulation 26 of the Securities and Exchange Board of India (Settlement Proceedings) Regulations, 2018 (hereinafter referred to as the "**Settlement Regulations**"). Accordingly, SEBI framed the Scheme in accordance with the provisions of the Settlement Regulations which provided onetime opportunity to the entities against whom adjudication proceedings were approved for the aforementioned violations, to settle the said pending proceedings. SEBI issued a public notice dated July 27, 2020 about the launching of the Scheme and the modalities for availing the benefit of the Scheme. In addition to the same, all the entities were intimated through email and letters.

[4] Decided on September 17, 2021

22. The Scheme was initially kept open for a period of three months commencing from August 01, 2020 to October 31, 2020 (both days inclusive). Subsequently, vide public notice dated October 31, 2020, SEBI extended the period of the Scheme till December 31, 2020 to enable the entities to avail the benefit of the scheme in view of the disruptions caused due to the Covid-19 pandemic. Thereafter, a settlement order was passed by SEBI on January 15, 2021 and pursuant to the said order, adjudication proceedings were initiated against those entities which had failed to avail the opportunity of settlement. Given the fact that the investigation in the present matter was against multiple entities and that a settlement scheme was also floated by the Board, the SCN issued in the present case cannot be labelled as one issued after inordinate delay. Therefore, the contentions of the Noticee, in this regard, hold no merit.

23. Lastly, the Noticee has placed reliance on the decision of the Hon'ble Securities Appellate Tribunal in the matter of ***Narendra Vallabhji Bahuva Vs. SEBI***[5] wherein the Hon'ble Tribunal has held that one single trade cannot lead to a conclusion that the appellant was involved in fraudulent execution of trades with manipulative intent. Here, I would like to state that the decision of the Hon'ble Tribunal in the said case cannot be made applicable in the present matter as the facts of the present matter are distinguishable. In the above case, only 5,000 shares out of 33,890 shares had matched in the reversal leg which took place on the next day. In the present matter, entire 16,00,000 units of the Noticee have matched in the reversal leg with the same counterparty leading to generation of artificial volume of 32,00,000 units, on the same day and that to within a span of few minutes. Therefore, the above judgment of the Hon'ble Tribunal cannot be made applicable in the present factual scenario. Thus, the Noticee's contention does not hold any merit.

24. In order to decide the Issue No. I, I would like to refer to the relevant provisions of the PFUTP Regulations as below:

"3. Prohibition of certain dealings in securities

[5] Decided on July 14, 2021

No person shall directly or indirectly—

(a) buy, sell or otherwise deal in securities in a fraudulent manner;

(b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;

(c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;

(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under."

"4. Prohibition of manipulative, fraudulent and unfair trade practices

(1) Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.

(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:—

(a) indulging in an act which creates false or misleading appearance of trading in the securities market;"

25. I note that 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 non-genuine and the same had resulted in generation of artificial volume in stock option contracts at BSE. Reversal trades are considered to be 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.

26. The said reversal trades are considered to be non-genuine trades 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. In this regard, I would like to place my reliance on the decision of the Hon'ble Supreme Court in the matter of ***SEBI Vs. Rakhi Trading Pvt Ltd***[6] wherein the Hon'ble Supreme Court, *inter alia,* held that:

> *"31…. The non-genuineness of these transactions is evident from the fact that there was no commercial basis to suddenly, within a matter of minutes, reverse a transaction when the value of the underlying had not undergone any significant change.*
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> *……*
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> *……*
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> *……*
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> *73. Applying the test laid down in Kishore R. Ajmera case to the present case, I find that by cumulative analysis of the reversal transactions between Respondent and Kasam Holding, quantity, time and significant variation of prices, without major variation in the underlying price of the securities clearly indicate that the Respondent's trades are not genuine and had only misleading appearance of trading in the securities market, without intending to transfer beneficial ownership."*

27. I note from the trades of the Noticee that the Noticee had traded in one contract in the stock options segment of BSE during the investigation period and executed two trades in the said contract. The aforesaid trades of the Noticee generated an artificial volume of 32,00,000 units in the said contract. Summary of the trades executed by the Noticee is produced below for the sake of convenience:

Particulars	**Buy**	**Sell**
CONTRACT NAME	NHPC15MAR16.00PEW3	NHPC15MAR16.00PEW3
TRADE Date	17/3/2015	17/03/2015
CLIENT NAME WITH PAN	SUDHIR AGARWAL HUF (AATHS4550C)	V.K. MERCANTILE PRIVATE LIMITED (AABCV0257A)
CP CLIENT NAME	V.K. MERCANTILE PRIVATE LIMITED	SUDHIR AGARWAL HUF (AATHS4550C)
ORDER NO.	1426564116801008002	1426564116801008001
CP ORDER NO.	1426564116801008003	1426564116801008000
TRADE TIME	11:32:38.922270	11:19:52.444301
ORDER LMTIME	11:32:38.183980	11:19:52.444301

[6] Decided on February 8, 2018

CP ORDER LMTIME	11:32:38.922270	11:19:51.743431
TRADE RATE	0.05	0.55
TRADE VALUE	25680000	26480000
PREMIUM TRADE VALUE	80000	880000
ORDER_LMRATE	0.05	0.55
CP ORDER LMRATE	0.05	0.55
TRADED QTY (no. of units)	1600000	1600000
ORDER LMQTY	1600000	1600000

28. I find that that the trades executed by the Noticee were squared up within a short span of time with the same counterparties. The Noticee on March 17, 2015 at 11:19:52.444301 hrs. entered into a sell trade with the counterparty V.K. Mercantile Private Limited for 16,00,000 units at the rate of INR 0.55 per unit in the contract 'NHPC15MAR16.00PEW3'. Thereafter, on the same day, the Noticee entered into a buy trade at 11:32:38.922270 hrs. with the same counterparty for 16,00,000 units at the rate of INR 0.05 per unit.

29. Thus, while dealing in the said contract during the investigation period, the Noticee executed reversal trades with the same counterparty viz. V.K. Mercantile Private Limited on the same day, within a span of few minutes. Such matching of trades, without any change in the actual beneficial ownership, cannot be said to be a mere coincidence. Therefore, the Noticee generated an artificial volume of 32,00,000 units in the said contract which was 41.99% of the volume traded in the said contract in the investigation period and 100% of the volume traded in the particular contract on March 17, 2015. The said trades of the Noticee have also contributed in creation of large artificial volume in the said contract, which may have attracted other gullible investors in the said contract.

30. I find that 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, the Noticee reversed the position with his counterparties with significant price difference. The fact that the transactions in a particular contract were reversed with the same counterparties on the same day within a short span of time indicates a prior meeting of minds with a view to execute the reversal trades at a pre-determined

price. Since these trades were done in illiquid option contract, there was negligible trading in the said contract and hence, there was no price discovery in the strictest terms.

31. 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 the Hon'ble Securities Appellate Tribunal 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."*

32. I find that the trading behaviour of the Noticee confirms that such trades were not normal indicating 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 this regard, I place reliance on the decision of the Hon'ble Securities Appellate Tribunal in the matter of ***Global Earth Properties Vs. SEBI***[7] wherein the Hon'ble Tribunal, *inter alia,* held that:

> *"12. .....The reversal of trades executed by the Appellant cannot be called a normal trading transaction in as much as these trades were reversed within a short span ranging from a few seconds to a few minutes with the same counter parties. By no stretch of imagination it can be held to be a mere coincidence that the Appellants trades matched consistently with the same counter parties unless there was a meeting of minds with a view to trade at a predetermined time. Such kind of transaction, in our opinion, is a manipulative device and is also synchronized trading."*

[7] Decided on September 14, 2020

33. Further, the above stance was also reiterated by the Hon'ble Securities Appellate Tribunal in the matter of ***Shruti Daga Vs. SEBI***[8] wherein the SCN was issued with similar set of facts as that of in the present matter. In the said case, the Hon'ble Securities Appellate Tribunal dismissed the appeal stating that controversy involved in the said case is squarely covered by the decision of the Hon'ble Tribunal in ***Global Earth Properties Vs. SEBI***[9]***.***

34. In view of the above, Issue No. I, i.e., whether the Noticee has violated the provisions of regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of the PFUTP Regulations stands answered in affirmative.

35. Since, it is established that the Noticee is in violation of the aforesaid provisions of the PFUTP Regulations, it becomes pertinent to answer Issue No. II, i.e. whether the violation attracts any monetary penalty under section 15HA of the SEBI Act. In this regard, reference is drawn to the decision of the Hon'ble Supreme Court of India in the matter of ***SEBI Vs. Shri Ram Mutual Fund***[10] wherein it was, *inter alia,* held that –

> *"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…*"

36. In view of the same, I am convinced that it is a fit case for imposition of monetary penalty on the Noticee under section 15HA of the SEBI Act 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."*

[8] Decided on February 1, 2022
[9] Decided on September 14, 2020
[10] [2006] 68 SCL 216(SC)

37. As Issue No. II has been decided in affirmative, the quantum of monetary penalty under section 15HA of the SEBI Act that can be imposed on the Noticee after taking into consideration the factors mentioned in section 15J of the SEBI Act, as framed under Issue No. III, needs to be determined. In this regard, it is important to consider the factors as stipulated in section 15J of the SEBI Act which reads as under:-

> ***"Factors to be taken into account by the adjudicating officer.***
>
> ***15J.*** *While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-*
>
> *(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*
>
> *(b) the amount of loss caused to an investor or group of investors as a result of the default;*
>
> *(c) the repetitive nature of the default.*
>
> *Explanation.—For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 15A to 15E,clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section."*

38. In this case, 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 or establish repetitiveness of the violation. However, the act of Noticee in executing the aforesaid two non-genuine trades is in violation of the provisions of regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of the PFUTP Regulations which has been established in the aforesaid paragraphs. Once the factum of violation of legal provisions is established, an appropriate penalty must follow. Having taken into account the facts and circumstances of this case, I am of the view that a penalty of INR 5,00,000/- (Rupees Five Lakh only) is commensurate with the violation on the part of the Noticee.

ORDER

39. After taking into consideration all the facts and circumstances of the case, the material available on record and in exercise of power conferred upon me under section 15I of the SEBI Act read with rule 5 of the Adjudication Rules, I hereby impose following penalty under section 15HA of the SEBI Act on the Noticee:

Name of the Noticee	Provisions violated	Penalty
Sudhir Agarwal HUF PAN: AATHS4550C	Regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of the PFUTP Regulations.	INR. 5,00,000/- (Rupees Five Lakh only)

40. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, OR through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link:

ENFORCEMENT → Orders → Orders of AO → PAY NOW

41. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to "The Division Chief (EFD-1/FDMD-1), Securities and Exchange Board of India, SEBI Bhavan II, Plot No. C – 7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051" and also send an email to tad@sebi.gov.in. The Noticee shall also provide the following details while forwarding Demand Draft / 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

42. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, SEBI may initiate consequential actions including but not limited to recovery proceedings under section 28A of the SEBI Act for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties.

43. In terms of the provisions of rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticee viz. Sudhir Agarwal HUF and also to the Securities and Exchange Board of India.

Date: February 16, 2022 **Mohamed Rahaz P. M.**

Place: Mumbai **Adjudicating Officer**