BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER No.: ORDER/VV/AS/2021-22/15776]

UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992.

In respect of:

Shree Onkar Apartments Pvt Ltd,
18, Rabindra Sarani Poddar Court,
2nd Floor, Room No-6,
Kolkata - 700 001 (West Bengal).

In the matter of dealing in Illiquid Stock Options at BSE

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1. Securities and Exchange Board of India ('**SEBI'**) observed large scale reversal of trades in the Stock Options Segment of the BSE Limited (hereinafter be referred to as '**BSE'**) and, pursuant to this, it conducted investigation into the trading activities of certain entities in illiquid Stock Options at the BSE for the period April 01, 2014 to September 30, 2015 (hereinafter be referred to as '**Investigation Period**'). Investigation revealed that during the Investigation Period, a total of 2,91,643 trades (comprising 81.40% of all the trades executed in the Stock Options Segment of BSE) involved reversal of buy and sell positions by the clients and counterparties in a contract. The reversal trades are considered as non-genuine trades, if it involves an entity reversing its buy or sell positions in a contract with subsequent sell or buy positions with the same counterparty during the same day. In this regard, artificial volume is considered as the volume (no. of units) reversed in non-genuine trades, comprising both original volume and reversed volume while keeping out the volume which is not reversed. Shree Onkar Apartments Pvt Ltd (hereinafter be referred to as '**Noticee'**) was allegedly one of the various entities which were indulged in execution of such alleged non-genuine trades.

2. It was observed from the trade log that the Noticee, during the Investigation Period traded in 2 unique contracts in stock options of BSE, out of which he allegedly executed 6 non-genuine reversal trades in both contracts, resulting in artificial volume of total 3,66,0000 units. Alleged non-genuine trades of the Noticee resulted into negative close out difference of Rs. 12,84,000 to it. Following is noted from the dealings of Noticee in aforesaid 2 contracts at BSE:

   a) The Noticee has allegedly executed non genuine trades in 2 contracts, wherein, all the trades that had been executed by the Noticee in these contracts were allegedly non genuine trades.

b) Number of trades of the Noticee, which are alleged to be non-genuine, have contributed significantly when compared with the total number of trades from the market in the above contracts. The alleged non genuine trades of the Noticee ranged from 10.81% to 33.33% of the total trades that had taken place in the aforementioned contracts.

c) The whole volume of 3,66,000 units generated by the Noticee in the said contracts due to its alleged non genuine trades was artificial volume, and further this alleged artificial volume, generated by the Noticee, also contributed significantly to the extent of 27.06% to 30.47% of the total volume in said contracts in the market.

d) These alleged non genuine trades, executed by the Noticee in said contracts, had significant differential in buy rates and sell rates considering that the trades were reversed within few seconds on same day. The Noticee has allegedly engaged in the non-genuine transactions in the option segment of BSE for the purpose of creating false appearance of trading.

3. In view of the foregoing, it was alleged that Noticee indulged in execution of reversal trades in Stock Options at BSE during the Investigation Period. Such reversal trades are non-genuine in nature and have created false or misleading appearance of trading in terms of artificial volumes in stock options and therefore alleged to be manipulative, deceptive in nature. Thus, it is alleged that Noticee violated the provisions of Regulations 3(a),(b),(c),(d), 4(1) and 4(2)(a) of SEBI (Prohibition of Fraudulent and Unfair Trading Practices related to Securities Markets) Regulations, 2003 (hereinafter, referred to as "**PFUTP Regulations**").

4. Based on above findings of the investigation, the competent authority in SEBI *prima facie* felt satisfied that there are sufficient grounds to inquire and adjudicate the alleged violations of the provision of Regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of the PFUTP Regulations by the Noticee and appointed undersigned as Adjudicating Officer vide *communication order* dated July 27, 2021 to inquire and adjudge under Rule 5 of SEBI (Procedure for Holding Inquiry and imposing penalties) Rules, 1995 (hereinafter be referred to as "**Adjudication Rules**") and under section 15HA of the SEBI Act, the alleged violations by the Noticee.

5. Accordingly, in terms of Rule 4(1) of the Adjudication Rules read with section 15I of the SEBI Act, a notice to show cause no. EAD – 9/ADJ/SCN/VKV/AKS/39926/2021 dated December 29, 2021 (hereinafter referred to as '**SCN'**) was issued to the Noticee calling upon it to show cause as to why an inquiry should not be held against it in terms of Rule 4 of the Adjudication Rules and penalty be not imposed under Section 15HA of the SEBI Act for the aforesaid alleged violations.

6. Vide letter dated January 24, 2022, Mr. Kuntal Kumar Goswami, Advocate on behalf of the Noticee Company, denied the charges alleged against it in the SCN. Subsequently, after considering the Noticee reply and the material available on record, the Noticee has been granted an opportunity of hearing on February 15, 2022, in terms of Rule 4(3) of the Adjudication Rules, 1995. Thereafter, vide e-mail dated February 14, 2022, the Noticee requested for adjournment and stated that - the Noticee company was amalgamated into another company in 2019 and it is in process for communication with present Directors and collecting relevant information and documents relevant to the above case matter. Considering the said request, the hearing has been adjourned to March 03, 2022. Meanwhile, vide letter dated March 02, 2022, Mr. Kuntal Kumar Goswami, Advocate on behalf of the Noticee Company filed reply along with the copy of National Company Law Tribunal, Kolkata Bench ("**NCLT**") order dated October 29, 2019. On schedule date of hearing Mr. Subhankar Ghosh, Advocate appeared for hearing on the behalf of the Noticee and submitted the Noticee Company has been amalgamated into Saraf Engineers Ltd. w.e.f. 19.10.2019 pursuant to Hon'ble NCLT order October 29, 2019 and advanced the argument on the basis of Noticee's reply dated March 02, 2022.

7. The Noticee vide its reply dated March 02, 2022, *inter alia* submitted as follows:

    a) Shree Onkar Apartments Pvt Ltd, the Noticee was amalgamated into Saraf Engineers Pvt Ltd ("**Saraf**") w.e.f. 29.10.2019 vide order of Hon'ble NCLT, Kolkata Bench.

    b) Saraf was not aware of the fact and allegations framed in the SCN, as the allegations belonged to the period 01.04.2014 to 31.03.2015, which was far long ago from the date of amalgamation so the question of acknowledging the allegations does not arise as the Saraf was not aware of such activity done by the Noticee.

    c) The validity of the SCN does not exist and should be quashed as the Noticee did not exist on the date on which SCN was served, so the question of adjudication proceedings is invalid as the notice itself is *void-ab-initio*.

    d) The Noticee has placed reliance upon the judgement of the Hon'ble Bombay High Court in the matter of *Implenia Services and Solutions Pvt Ltd vs. Deputy/Assistant Commissioner of Income Tax, circle- 3(4)*{Writ Petition (L) No. 14088 of 2021}, wherein it *inter alia* held that:

        "*the impugned notice u/s 148 issued dated 27th March, 2021 be quashed on the ground that it has been issued to a non-existing entity ………. In the circumstances notice dated 27th March, 2021 issued under section 148 of the Act is quashed and set aside.*"

e) The Noticee has further placed reliance upon the judgement of the Hon'ble Supreme Court in the matter of *Principal Commissioner of Income Tax, New Delhi vs. Maruti Suzuki India Limited* {Civil Appeal No 5409 of 2019, SLP(C) No 4298 of2019}, wherein the Apex Court *inter alia* held that:

> *"despite the fact that the assessing officer was informed of the amalgamating company having ceased to exist as a result of the approved scheme of amalgamation, the jurisdictional notice was issued only in its name. The basis on which jurisdiction was invoked was fundamentally at odds with the legal principle that the amalgamating entity ceases to exist upon the approved scheme of amalgamation. Participation in the proceedings by the appellant in the circumstances cannot operate as an estoppel against law ……………. The Apex Court has reiterated the settled position that the basis on which jurisdiction is invoked is under Section 148 of the Act and when such jurisdiction was invoked on the basis of something which was fundamentally at odds with the legal principle that the amalgamating entity ceases to exist upon the approved scheme of amalgamation, the notice is bad in law".*

f) On the basis of the above Judiciary Pronouncement, it is well settled law that the SCN issued to a non-existing company is bad in law and *void ab initio* and should be quashed. Accordingly, Adjudicating Officer is requested to null the SCN and drop the adjudicating proceedings as the said proceedings is not tenable in the eyes of law.

8. I have considered the allegation levelled in the terms of reference, the relevant material brought on record, reply/ submissions of the Noticees and oral submissions made during the personal hearing before the undersigned. From the perusal of the NCLT order dated October 29, 2019 and the Company Master Data available on the website of Ministry of Corporate Affairs (**"MCA"**), I note that the Noticee has been amalgamated into Saraf. As per the approved scheme of amalgamation, the Noticee was dissolved without being wound–up from the effective date of the order i.e. October 29, 2019. I find that a Scheme of Amalgamation has been approved by the Regional Director, Eastern Region, MCA in respect of the Noticee along with three other transferor companies, which were amalgamated into the transferor company, Saraf and thus, the Noticee company has been dissolved without being wound up w.e.f. October 29, 2019 pursuant to NCLT order. Therefore, in view of the above observation, Noticee has ceased to exist as a separate legal entity w.e.f. October 29, 2019 and was not in existence at the time when the instant Adjudication Proceedings were initiated against the Noticee i.e., on December 29, 2021 (date of issuance of SCN to the Noticee).

9. In this context, it is pertinent to note that the Hon'ble Supreme Court in the matter of Saraswati *Industrial Syndicate Ltd vs. C.I.T, Haryana, Himachal Pradesh, Delhi*, 1990 (Supp) SCC 675 has held the following: -

> *"The High Court was in error in holding that even after the amalgamation of two companies, the transferor company did not become non-existent instead it continued its entity in a blended form with the appellant company. The High Court's view that on amalgamation there is no complete destruction of corporate personality of the transferor company instead there is a blending of the corporate personality of one with another corporate body and it continues as such with the other is not sustainable in law. The true effect and character of the amalgamation largely depends on the terms of the scheme of the merger.* ***But there cannot be any doubt that when two companies amalgamate and merge into one the transferor company loses its entity as it ceases to have its business. However, their respective rights of liabilities are determined under the scheme of amalgamation but the corporate entity of the transferor company ceases to exist with effect from the date the amalgamation is made effective.*** *" (Emphasis supplied).*

10. Therefore, in view of the above observations, I am of opinion that the Noticee was not in existence as on the date of initiation of the adjudication proceedings against it, vide SCN dated December 29, 2021 and therefore, I am of the view that the present proceedings are not maintainable *qua* Noticee and thus, I proceed to dispose of the SCN dated December 29, 2021 issued against the Noticee, accordingly the proceedings *qua* the Noticee is disposed of.

11. In terms of Rule 6 of the SEBI Adjudication Rules copy of this order is sent to the Noticee's last known address and also to SEBI.

Date: March 31, 2022
Place: Mumbai

Vijayant Kumar Verma
Adjudicating Officer