**BEFORE THE ADJUDICATING OFFICER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**

**ADJUDICATION ORDER NO. Order/GG/VV/2021-22/ 15669**

**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:

**SANJAY GARG**

**(PAN: ACHPG3334J)**

In the matter of Dealings in Illiquid Stock Options at BSE

## A. BACKGROUND OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") conducted an investigation into the trading activity in illiquid stock options on Bombay Stock Exchange Limited (hereinafter referred to as "**BSE**") for the period from 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. Pursuant to a preliminary examination conducted in the Illiquid Stock Options matter an Interim order was passed by SEBI on August 20, 2015 against 59 entities which were confirmed vide Orders dated July 30, 2016 and August 22, 2016. Meanwhile, SEBI initiated a detailed investigation relating to trading in stock options segment of

BSE which was completed in the year 2018. The investigation findings revealed that of all trades executed in the stock options segment of BSE during the Investigation Period, 81.38% of the trades, that is 2,91,643 trades, were trades which involved a reversal of buy and sell positions by the clients and counterparties in a contract. The investigation revealed that 14,720 entities were involved in executing non-genuine trades in BSE's stock options segment during the investigation period.

3. The proceedings initiated against the first set of 59 entities, vide the aforementioned Interim Order were disposed of vide final Order dated April 05, 2018, without any further directions, observing that the Adjudicating Officer shall continue the proceedings in accordance with the SEBI Act, 1992 and SEBI (Procedure for Holding and Imposing Penalties by Adjudicating Officer) Rules, 1995 and pass appropriate order on merits. It was also recorded therein that SEBI has decided to take appropriate action against all 14720 entities in phases. The captioned proceedings initiated against the Noticee is part of the aforesaid mass action initiated by SEBI against the large number of entities.

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

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

6. It was observed that 13,186 entities had not availed of the opportunity of settlement and therefore Adjudication proceedings were initiated against the entities in a phased manner. In order, to duly expedite the Adjudication proceedings against the entities, SEBI had appointed additional Adjudicating officers to adjudicate against the said entities. However, owing to the huge number of alleged entities, the adjudication proceedings are being conducted in a phased manner that would require adequate time to complete the proceedings against all entities.

7. It was observed that, Sanjay Garg (PAN: ACHPG3334J) (hereinafter referred to as the "**Noticee")** was one of the entities, who did not seek settlement under the Settlement Scheme in 2020 and whose reversal trades allegedly involved squaring off of open positions with a significant price difference without any basis. The aforesaid reversal trades allegedly contributed to the generation of artificial volumes, leading to allegations that the Noticee had violated the provisions of Regulations 3(a), (b), (c), (d) and Regulation 4(1) and 4(2) (a) of the SEBI (Prohibition of Fraudulent and Unfair Trading Practices relating to Securities Markets) Regulations, 2003 (hereinafter referred to as the "**PFUTP Regulations**").

## B. APPOINTMENT OF ADJUDICATING OFFICER

8. SEBI initiated adjudication proceedings and appointed me, as the Adjudicating Officer under section 15-I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the "**SEBI Act**") read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as the "**SEBI Adjudication Rules**") *vide* communication dated November 12, 2021 to

inquire into and adjudge under section 15HA of the SEBI Act, with respect to the allegations against the Noticee.)

## C. SHOW CAUSE NOTICE, REPLY AND HEARING

9. A Show Cause Notice dated December 27, 2021 (hereinafter referred to as "**SCN**") was served upon the Noticee, vide Speed post with acknowledgement due (hereinafter referred to as '**SPAD**') and by email, under Rule 4(1) of the SEBI Adjudication Rules to show cause as to why an inquiry should not be initiated against the Noticee and thereafter penalty imposed against him under section 15HA of the SEBI Act for the alleged violation of the provisions of Regulations 3((a),(b),(c),(d)), 4(1) and 4(2)(a) of the PFUTP Regulations.

10. The SCN issued to the Noticee, *inter alia* alleged, that the Noticee engaged in executing into 6 non-genuine trades through 2 unique contracts with 2 counterparties viz. Bharat Bhushan Mittal HUF and N M Impex Private Limited on 2 days viz. 03/08/2015 and 13/08/2015, which led to the generation of artificial volume of 110000 units. The 6 trades each entered into by the Noticee were reversed on the same day with the same counterparties at a substantial price difference, without there being any rationale.

11. The summary of the dealings of the Noticee in 2 stock option contracts, in which the Noticee allegedly executed the 6 trades during the investigation period is given as Table No.1.

***Table No.1 - Summary of the dealings of the Noticee in 2 stock option contracts***

| S. No. | Date | Contract Name | Avg. Buy Rate (Rs.) | Total Buy Volume (no. of units) | Avg. Sell Rate (Rs.) | Total Sell Volume (no. of units) | Total Vol 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. | 03/08/2015 | INCM15AUG120.00PEW1 | 17 | 24000 | 27.67 | 24000 | 48000 | 100 | 100 |
| 2. | 13/08/2015 | DABU15AUG310.00PEW2 | 7.5 | 31000 | 15.7 | 31000 | 1628000 | 100 | 3.81 |

*Source: Trade log provided by BSE*

12. The abovementioned contracts which resulted in 6 trades creating artificial volumes may be understood through an illustration of one of the contract viz. "INCM15AUG120.00PEW1" (Serial.no. 1 of the above table) (Annexure- 2 may be referred for the details of the contract given below in the illustration), which is as follows :-

a) During the investigation period, in the said contract viz. "INCM15AUG120.00PEW1", the Noticee on 03/08/2015 has executed 3 trades for a total volume of 48000 units with counterparty, viz. Bharat Bhushan Mittal HUF.

b) While dealing in the said contract on 03/08/2015, the Noticee at 13:07:37.815370 hrs executed one buy trade for 24000 units at the rate of Rs.17 per unit with counterparty, Bharat Bhushan Mittal HUF. In 0:06:33.314578 hrs after the aforementioned buy trade, the Noticee reversed the trade by executing two buy trades at 13:14:11.129948 hrs and

13:14:52.536283 hrs for a total of 24000 units at an average rate of the rate of Rs. 27.67 per unit with the same counterparty.

c) From the above, it is noted that while dealing in aforesaid contract (i.e INCM15AUG120.00PEW1) during the investigation period, the Noticee executed a total of 3 trades (1 buy trade and 2 sell trades). This made up to 100% of the total market volume for this contract during the investigation period. Likewise, in the contract shown at S.no. 2 of Table.1 of para 6, the Noticee has executed 3 trades, which constituted to 3.81% of market volume as provided in the table above.

13. Based on the above, it was alleged that the Noticee by indulging in execution of the aforesaid non-genuine reversal trades, had violated the provisions of Regulations 3(a), (b), (c), (d) and 4(1), 4(2)(a) of the PFUTP Regulations, text of which is reproduced below:

***PFUTP Regulations***

***3. Prohibition of certain dealings in securities***

*No person shall directly or indirectly—*
*(a) buy, sell or otherwise deal in securities in a fraudulent manner;*
*(b)use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;*
*(c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;*
*(d)engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.*

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

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

*(2) Dealing in securities shall be deemed to be a 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; ………*

14. The Noticee had replied to the SCN, vide letter dated January 11, 2022, interalia making the following relevant submissions:

a. *I vehemently and strongly deny each and every allegation made against me in the Show Cause Notice.*
b. *I respectfully submit that the conduct of proceedings after a long and inordinate delay of around six (6) years is arbitrary.*
c. *I had executed transactions in the F&O segment of BSE as a normal investor after keeping the required margin with the stockbroker, a SEBI registered intermediary.*
d. *From public domain, I understand that BSE itself was promoting the equity derivatives segment of the exchange and introduced schemes in order to create liquidity in the BSE's Derivatives segment.*
e. *All my transactions in the F&O segment of BSE are normal trades without any manipulation whatsoever from my part and I have strictly adhered to the rules, regulations and byelaws of SEBI. In fact, BSE has the power to 'annul' trades if they are fraudulent. Since no such action has been taken by BSE, it is evident that the trades were genuine in nature.*
f. *The pre-trade, trade and post-trade process was in due compliance of the byelaws of BSE and hence the trades were settled by the exchange /clearing corporation and proper contract notes were issued to me.*
g. *It is unfathomable and unfair to allege that an entity can create artificial volume in mere few trades in the option segment of BSE.*
h. *I have not indulged in any fraudulent or unfair trade practice, as alleged or otherwise.*
i. *I was totally unaware of the identity of the counterparty of the impugned trades. I state and assert that I have no 'connection' or 'relationship' or 'meeting of mind' with the counterparty to the impugned trade(s) viz., N M Impex Pvt. Ltd and Bharat Bhushan Mittal.*

*j. In the interest of natural justice and fair play, I request that I be provided with an opportunity of inspection of documents in the possession of SEBI referred to and relied upon while issuing the Show Cause Notice and I request you to grant me cross-examination of the alleged counterparty to the impugned trades.*

15. Subsequently, vide Hearing Notice dated February 09, 2022 issued through SPAD and email, the Noticee was granted an opportunity of personal hearing on February 24, 2022. The Noticee replied vide letter dated February 16, 2022, subsequent to the issuance of Hearing Notice, interalia making the following relevant submissions:

*a. I submit that if we observe the underlying scrip in which I traded it can be established that said scrip was quiet liquid in nature. Thus to allege that I deliberately traded in only those options which were illiquid in nature is unfair.*

*b. I submit that BSE and SEBI have themselves allowed and permitted trading in options for far months' with a strike price which are at large variance to current market price.*

*c. The said trade could have had no effect on other investors or market at large and hence the allegation of creating 'misleading appearance' must fail.*

*d. It is pertinent to mention that stock exchanges regularly come out with list of illiquid scrip (s) in cash segment. However, no such list is issued by exchanges or regulator for dealing in stock options contracts.*

*e. BSE wanted to increase trading volume in F&O segment, to sustain competitive pressures and therefore paid incentives in cash to its brokers to do trading in F&O Segment. Brokers marketed this product (trading in options) to the lay investors like me.*

*f. I submit that merely because on-line preventive measure and check & balance did not exist at relevant point of time to avoid inadvertent reversal trades no adverse inference be drawn against me in this regard.*

*g. The onus of such structural flaw cannot be saddled upon lay investors, like me, and we may not be subject quasi-judicial proceedings for no fault of ours.*

*h. I submit that the impugned trade (s) constituted around 0.001% of the total alleged artificial trades during the investigation period thereby constituting only a minuscule percentage of overall trades in the stock market.*

*i. I humbly submit that my trade (s) neither distorted the equilibrium in the market nor caused any loss or prejudice to the investors at large.*

*j. In case of option segment there is no such effect since each contract expires at end of contract period and for every party who makes profit there is counter party who makes a loss. Thus, profit and loss is concomitant to trading in derivative segment.*

*k. It is a settled position that SEBI ought to demonstrate that there was indeed some synchronization between parties.*

*l. The price movement of the underlying scrip in cash segment on August 3, 2015, was that the scrip touched a low of Rs. 288.5 and closed at Rs. 290.5. In my case, I bought the impugned contract first and thereafter sold the same.*

*m. The analysis of my buy order show that there is difference in the quantity.*

*n. The aforesaid analysis demonstrates that orders were not placed in exact sync with the counterparty orders. There is clear time difference of more than 7 minutes and 25 minutes between the impugned reversal trade (buy and sell trade).*

*o. Trading in 48,000 units and 62,000 units cannot by any means be considered as creating of artificial volume on the whole market.*

*p. I submit that the impugned three 3 trades constituted around 0.001% of the total alleged artificial trades during the investigation period thereby constituting only a minuscule percentage of overall trades in the stock market.*

*q. It has been recognized by SEBI and Hon'ble SAT that a trade involving a time gap of seconds to 5 minutes could not have been a structured trade.*

*r. There is every possibility in the thinly traded contracts to get reversed with the same party and there was no ban in doing that.*

*s. No disproportionate gain or unfair advantage occurred to me due to the alleged violation. None is even quantified or mentioned in the entire Show Cause Notice.*

*t. There is no impact or loss caused to any investors due to the alleged violation.*

*u. I was not involved in any 'modus operandi' or manipulation while dealing in the options segment of BSE.*

16. Further, with regard to the hearing scheduled, vide an email dated February 22, 2022, Mr. Bharat Redij, Advocate, engaged as the counsel and Authorised Representative (hereinafter referred to as the '**AR**') of the Noticee, attended the

hearing scheduled on February 24, 2022. The AR made submissions before the AO, referring to the replies submitted and interalia stating that, the device that prevents the reversal trades in the trading platform of BSE, was not present during the time of the alleged trades and therefore the Noticee should not be held for the alleged reversal trades. The AR stated that he is not aware of the counterparty and requested that the said case can be considered for relief as provided in the AO Order of Neha Sethi. The AR sought the Investigation Report and related documents for submitting his defense in the matter and requested that a lenient view may be taken in the matter.

17. The Noticee was provided with the relevant part of the Investigation report vide email dated March 11, 2022. However, in this regard, no further reply was received from the AR of the Noticee.

18. The submissions made in the matter by the Noticee and the AR of the Noticee, have been taken into consideration.

## D. CONSIDERATION OF ISSUES

19. I have taken into consideration the facts of the case, the material on record and the submissions made in the matter. I now proceed to consider the issues that arise in this case.

20. The Noticee has contended that the present proceedings have been initiated with a delay of more than 6 years. It may be noted, that the factors leading to the time taken for investigation and adjudication in the instant case, have been brought out in the introductory paragraphs of this order and is also a matter on record. I observe, that the period of alleged delay includes, the time taken for the investigation against

the initial set of 59 entities, the subsequent set of 22 entities and finally the time taken to identify the entire universe of 14270 entities who had done similar violations in the market, following the principle of parity in initiation of enforcement action.

21. The time taken to initiate the current proceedings was also due to the Board having framed a Settlement Scheme, keeping it open in the first instance from August 01, 2020 to October 31, 2020 and further extending it to December 31, 2020. In this connection, it is worth mentioning that since several entities did not go in for settlement. Finally, Adjudication proceedings were initiated against those 13,186 entities, who did not go in for settlement. Delay in these cases is merely owing to the huge number of entities involved in the matter. On merits of the contention of delay, I feel that the propensity for the violation exhibited by these many entities in the illiquid stock option segment of BSE at the relevant time, is such that, delay cannot by itself, be treated as a reason for vitiating the proceedings.

22. On merits, the core issue that arises for consideration in the instant matter is whether the trading in illiquid stock options done by the Noticee during the Investigation Period was in violation of Regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of the PFUTP Regulations? If yes, whether the Noticee is liable for Monetary penalty to be levied under section 15HA of the SEBI Act or not and what should be the quantum of penalty.

23. I have brought out the details of the Noticee's trades in the contracts in the tables shown hereunder, culling out the relevant figures from the Trade log of the Noticee provided by BSE, (that was enclosed as Annexure II to the SCN), for analysis.

***Table No.2 Summary of dealings of Noticee in the six contracts INCM15AUG120.00PEW1***

| S. No. | Date | Name of the client | Name of the counter party client | Trade Time (in hrs) | Order LM(Last traded) TIME | CP Order _LM TIME | Trade Rate (Rs.) | Order _LM rate | CP Order _LM rate | Trade quantity (qty) / Vol (no. of units) | Order _LM QTY | CP Order _LM OTY |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 1. | 03/08/2015 | BHARAT BHUSHAN MITTAL HUF | SANJAY GARG | 13:14:11.129948 | 13:14:11.129948 | 13:14:11.036178 | 27.5 | 27.5 | 27.5 | 4000 | 4000 | 4000 |
| 2. | 03/08/2015 | BHARAT BHUSHAN MITTAL HUF | SANJAY GARG | 13:14:52.536283 | 13:14:52.536283 | 13:14:52.442698 | 27.7 | 27.7 | 27.7 | 20000 | 20000 | 20000 |
| 3. | 03/08/2015 | SANJAY GARG | BHARAT BHUSHAN MITTAL HUF | 13:07:37.815370 | 13:07:37.518404 | 13:07:37.815370 | 17 | 17.0 | 17.0 | 24000 | 24000 | 24000 |

*Source: Trade log provided by BSE*

24. I note from Table No. 2 above, the following aspects of trading in the one contract viz: INCM15AUG120.00PEW1

a) The Noticee and the counterparty have placed their buy orders and sell orders within a minute, with a difference of a few seconds that show synchronization of time while placing the orders. The Noticee and the counterparty had placed identical buy and sell order rates and quantities, as given above.

b) The Noticee on 03/08/2015 executed one buy trade at 13:07:37.815370 hrs and reversed it by executing two sell trades at 13:14:11.129948 hrs and 13:14:52.536283 hrs, in 6.56 minutes, with the counterparty, Bharat Bhushan Mittal HUF.

c) The reverse trades executed between the Noticee and counterparty show that it did not intend to have a genuine change of rights of the 24000 units traded, as the Noticee bought and then sold the same quantity of units to the same counterparty.

d) The Noticee executed one buy trade for 24000 units at the rate of Rs. 17 and two sell trades for 4000 units and 20,000 units at the rate of Rs. 27.5 and Rs.

27.7 respectively, reversing the trades with a difference in rate of Rs.10.5 and 10.7 respectively. The Noticee had placed the buy and sell trade for 24000 units and by reversing the entire units through the buy and sell trades, made a profit to the extent of Rs.2,56,000 /-.

e) I observe that the counterparty has made an equivalent loss and that such loss incurred by the counterparty was due to the low sell order rate followed by a high buy order rate.

f) The trades executed between the Noticee and the counterparty do not have the requisites of a regular market trade. The trades executed by the Noticee in this contract are considered to be non-genuine and as such had led to the generation of artificial volumes to the tune of 48,000 units.

g) The trades of the Noticee in the contract had contributed to 100% of the market volume of the contract.

25. Likewise, I observe that there is a pattern of trading in the other contract entered by the Noticee, as given in the Table No. 3:

***Table No.3 Summary of dealings of Noticee in the contract viz. DABU15AUG310.00PEW2***

| S. No. | Date | Name of the client | Name of the counter party client | Trade Time (in hrs) | Order LM(Last traded) TIME | CP Order _LM TIME | Trade Rate (Rs.) | Order _LM rate | CP Order _LM rate | Trade quantity (qty) / Vol (no. of units) | Order _LM QTY | CP Order _LM OTY |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 1. | 13/08/2015 | N M Impex Private Limited | Sanjay Garg | 13:38:12.259031 | 13:38:12.055965 | 13:38:12.259031 | 15.75 | 15.75 | 15.75 | 16000 | 16000 | 16000 |
| 2. | 13/08/2015 | Sanjay Garg | N M Impex Private Limited | 13:21:38.597335 | 13:21:37.800503 | 13:21:38.597335 | 7.5 | 7.5 | 7.5 | 31000 | 31000 | 472000 |
| 3. | 13/08/2015 | N M Impex Private Limited | Sanjay Garg | 13:38:01.852483 | 13:38:01.555471 | 13:38:01.852483 | 15.65 | 15.65 | 15.65 | 15000 | 15000 | 15000 |

*Source: Trade log provided by BSE*

a) I note from Table No. 3 above, that the Noticee had traded with counterparty viz. N M Impex Private Limited, in the contract viz. DABU15AUG310.00PEW2 on 13/08/2015. The Noticee had adopted the strategy of buying at a lesser rate and selling at a higher rate, in the contract. The Noticee and the counterparty had placed their buy orders and sell orders within a difference of seconds (as given in the table above) that show synchronization of time in placing the orders. The Noticee and the counterparty had placed identical buy and sell order rates, with different order quantities in the contract. It is evident that there is a synchronization of order time and order rate between the Noticee and the counterparty.

b) The Noticee in the contract reversed the trades with the counterparty within a time span of 16 minutes.

c) The Noticee reversed the buy trade with two sell trades with a difference in rate of Rs.8.15 and Rs.8.25. The Noticee reversed the trades by placing a buy trade for 31000 units and two sell trades for 15,000 units and 16,000 units with the counterparty. The Noticee by reversing the buy and sell trades at the rates and quantities as given above had booked profits to a total of Rs.2,54,250/-.

h) I observe that the counterparty has made an equivalent loss in the contract and that such loss incurred by the counterparty was due to the low sell order rate followed by a high buy order rate.

d) The reversal of trades between the Noticee and counterparty did not intend to have a genuine change of rights of the 31,000 units traded, as the Noticee bought and then sold the quantity of units to the same counterparty. The non-genuine trades of the Noticee in the contracts had led to the generation of artificial volume of 62,000 units, contributing to market volume of 3.81%.

26. From the facts brought out in Table Nos.1, 2 and 3 given above, I observe that by reversing the trades in the two contracts, the Noticee had booked profits to a total of Rs. 5,10,250/-. Furthermore, I observe that in the two contracts, even when the counterparty in each contract were different, there is a similar pattern of synchronization of the order time and order rate. Also, I observe that in the two contracts all the orders placed by the Noticee and counterparty were limit orders, as seen from columns 49 & 50 of Annexure- 2. This would imply that the orders were placed by both the parties at prefixed rates and that the parties are not willing to execute trades for any other rate. Therefore, it is inferred that the trades were pre-mediated and as alleged are non-genuine in nature.

27. Furthermore, I observe a pattern of similarity in the reversal trades executed in all the two contracts by the Noticee, such as; synchronised reversal of trades; trades placed with identical rate and quantity between the Noticee and counterparty, lack of intention or possibility of change of rights of the units traded as the counterparty to the sell and buy trades were the same in the two contracts and the absence of rationale to justify the variation in the sell and buy price within a short span of time. These factors go to show that these are non-genuine artificial trades. The nature of all the 6 trades are almost similar and synchronized that the matching of orders and the reversal of trades in these two contracts cannot be a mere market coincidence but is evidently due to a pre-mediated arrangement.

28. I observe that out of the two contracts, the market volume contribution of the Noticee's trades in the two contracts was to the extent of 100% and 3.81% as given above in Table No.1.

29. Before, I conclude, I see that the Noticee in his reply, had stated that he had executed transactions in the F&O segment of BSE as a normal investor after

keeping the required margin with the stockbroker; that he had not indulged in any fraudulent or unfair trade practice; that he had no 'connection' or 'relationship' or 'meeting of mind' with the counterparty to the impugned trade(s); that orders were not placed in exact sync with the counterparty orders; that there is clear time difference of more than 7 minutes and 25 minutes between the impugned reversal trade; that said scrip was quiet liquid in nature; that BSE permitted trading in options for far months' with a strike price which are at large variance to current market price; that on-line preventive measure and check & balance did not exist at relevant point of time to avoid inadvertent reversal trades; that a trade involving a time gap of seconds to 5 minutes could not have been a structured trade and that there is every possibility in the thinly traded contracts to get reversed with the same party and there was no ban in doing that.

30. In my view, the Noticee is not disputing the execution of trades. The Noticee is rather putting forth the defence that his trades do not partake the character of a fraudulent trade. These aspects have been elaborately considered in para Nos. 23 and 28 herein above and do not merit separate consideration.

31. On observing the facts of the case and the pattern of trading by the Noticee, I am convinced that the trades were a consequence of pre-meditated decision of both parties and hence are unfair trades for the purpose of SEBI (PFUTP) Regulations. The trades of the Noticee, fall in the category of non-genuine trades, as it has been entered by two parties on the stock exchange platform by mutual understanding, thereby attracting the prohibition against fraudulent or manipulative and unfair trade practices contained in SEBI (PFUTP) Regulations. The trades are ex facie pre-meditated to book profits for the Noticee and for the counterparty to bear losses in both the contracts. The trades executed by the Noticee, therefore is a manipulative

act of contributing to merely generating an artificial volume in the stock options segment of BSE.

32. In this context, it is relevant to quote the judgment of the Hon'ble Supreme Court in the matter of **Rakhi Trading (SEBI Vs. Rakhi Trading- CANo.1969/2011, Order dated February 8, 2018)** wherein similar transactions in the same segment were considered.

*"**1**. Fairness, integrity and transparency are the hallmarks of the stock market in India"*.

***"35. …*** *Nobody intentionally trades for loss. An intentional trading for loss per se, is not a genuine dealing in securities. The platform of the stock exchange has been used for a non-genuine trade. Trading is always with the aim to make profits. But if one party consistently make loss and that too in pre-planned and rapid reverse trades, it is not genuine; it is an unfair trade practice."*

**"37.** ... *even in the derivative segment there is a change of rights in a contract. In the instant case, through reverse trades, there was no genuine change of rights in the contract....*"

***"38.*** *...The repeated reversals and predetermined arrangement to book profits and losses respectively, made it clear that the parties were not trading in the normal sense and ordinary course. Resultantly, there has clearly been a restriction on the free and fair operation of market forces in the instant case."*

***"41.*** *... The stock market is not a platform for any fraudulent or unfair trade practice. The field is open to all the investors. By synchronization and rapid reverse trade, as has been carried out by the traders in the instant case, the price discovery system itself is affected. Except the parties who have pre-fixed the price, nobody is in the position to participate in the trade. It also has an adverse impact on the fairness, integrity and transparency of the stock market."*

(**Paragraph Nos. 1,35,37,38 and 41** of the part of the judgement authored by His Lordship Mr.Justice Kurian Joseph).

"***38.*** *The smooth operation of the securities market and its healthy growth and development depends upon large extent on the quality and integrity of the market. Unfair trade practices affect the integrity and efficiency of the securities market and the confidence of the investors. Prevention of market abuse and preservation of market integrity are the hallmark of securities law…"* (**Paragraph No.38** of the part of the judgment authored by Her Ladyship Ms. Justice R. Bhanumathi). *For this, the Hon'ble Judge also relied on the apex court observations in N.Narayanan Vs. Adjudicating Officer, Securities and Exchange Board of India(2013) 12 SCC 152 wherein it was inter alia observed: "Market abuse" impairs economic growth and erodes investor's confidence."*

"***42***. *Where certain unscrupulous elements are trying to manipulate the market to serve their own interest, it becomes imperative on the part of SEBI to intervene and to curb further mischief and to take necessary action to maintain public confidence in the integrity of the securities market…"* (**Paragraph No.42** of the part of the judgment authored by Her Ladyship Ms. Justice R. Bhanumathi).

33. Finally, to answer the question as to whether these trades fall within the ambit of Regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of the PFUTP Regulations, I would like to rely on the following extract of the judgment of the Hon'ble Supreme Court in the matter of **Rakhi Trading**:

"**39.** *Regulation 2(1)(c) defines fraud. Under Regulation 2(1)(c)(2) a suggestion as to a fact which is not true while he does not believe it to be true is fraud. Under Regulation 2(1)(c)(7), a deceptive behavior of one depriving another of informed consent or full participation is fraud. And under Regulation 2(1)(c)(8),* *a false statement without any reasonable ground for believing it to be true is also fraud. In synchronized and reverse dealing in securities, with predetermined arrangement to book loss or gain between pre-arranged parties, all these vices are attracted.*

***40.*** *Regulation 3(a)expressly prohibits buying, selling or otherwise dealing in securities in a fraudulent manner. Under Regulation 4(2) dealing in securities shall be deemed to be fraudulent if the trader indulges in an act which creates a false or misleading appearance of trading in the securities market. It is a deeming provision. Such trading also involves an act amounting to manipulation of the price of the security in the sense that the price has been artificially and apparently prefixed. The price does not at all reflect the value of the underlying asset. It is also a transaction in securities entered into without any intention of performing it and without any intention of effecting a change of ownership of such securities, ownership being understood in the limited sense of the rights of the contract." (per His Lordship Mr.Justice Kurian Joseph's findings in paragraph Nos.* ***39&40****).*

34. The Hon'ble Appellate Tribunal has summarised the circumstances identified by the Apex court in **Rakhi Trading Judgment** in the case of **Global Earth Properties and Developers Pvt. Ltd. Vs Securities and Exchange Board of India (Appeal No.212 of 2020 decided on September 14, 2020).** In para 14 of the said order, the Hon'ble SAT enlisted the following circumstances:

*"**14…***

***a.*** *If the trades are synchronized and reversed with the same counterparty within a time span of seconds to minutes during the same day.*

- ***b.*** *The prices at which the trades are undertaken is such that one party is making profit and other making loss.*
- ***c.*** *The orders are placed at unattractive prices which does not reflect the value of the underlying asset.*
- ***d.*** *An intentional trading for loss per se, is not a genuine dealing in securities. Trading is always with the aim to make profits. But if one party consistently makes loss and that too in preplanned and rapid reverse trades, it is not genuine and the same is an unfair trade practice.*
- ***e.*** *In synchronised and reverse trades, there is no genuine change of rights in the contract."*

35. Further in paragraph No. 20 of the said order in **Global Earth (supra),** the Hon'ble Tribunal held as below:

*"**20.** From the aforesaid cumulative analysis of the reversed transactions with the counter party, quantity, time and significant variation of the price clearly indicates that the trades were non-genuine and had only misleading appearance of trading in the securities market without intending to transfer the beneficial ownership. One finds it to be naïve to presume that the perception of the two counter parties to a trade changed within few seconds/minutes and positions were interchanged and the contracts were changed where one party made profit and the other party ended up making losses every time without prior meeting of mind. It is not a mere coincidence that the Appellants could match the trades with the counter party with whom he had undertaken the first leg of respective trade. In our opinion, the trades were non-genuine trades and even though direct evidence is not available in the instant case but in the peculiar facts and circumstances of the present case there is an irresistible inference that can be drawn that there was meeting of minds between the*

*Appellants and the counter parties, and collusion with a view to trade at a predetermined price."*

36. From the above position in law and facts, it follows that the Noticee's transactions in question falls within the mischief of unfair and fraudulent or manipulative trade practice, as contemplated in the SEBI (PFUTP) Regulations. Hence, I am inclined to impose monetary penalty on the Noticee.

37. From the facts of the matter and the legal position laid down by the Hon'ble Supreme Court, I find that the subject trades are non-genuine and artificial. On being convinced of the generation of artificial volumes in the market by the Noticee, I am of the view that a penalty ought to be imposed on the Noticee which is commensurate to the violation. I find that a penalty of Rs.5,00,000/- (Rupees Five Lakhs only), being the statutory minimum penalty prescribed for PFUTP under section 15HA, is appropriate in the instant case.

## E. ORDER

38. Therefore, in exercise of powers conferred upon me under Section 15-I (2) of the SEBI Act read with rule 5 of the Adjudication Rules, I hereby impose a penalty of Rs.5,00,000/- (Rupees Five Lakhs only) upon the Noticee i.e., Sanjay Garg (PAN: ACHPG3334J) under Section 15HA of the SEBI Act for violation of Regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of the PFUTP Regulations.

39. 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 favor 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**

In case further assistance would be required in payment of penalties, the Noticee may contact the support at portalhelp@sebi.gov.in.

40. The Noticee shall forward the said demand draft or the details / confirmation of penalty so paid through e-payment to the Division Chief, Enforcement Department-I, DRA-I, SEBI, in the format given in table below:

| | |
|---|---|
| Case name | |
| Name of payee | |
| Date of payment | |
| Amount paid | |
| Transaction no | |
| Bank details in which payment is made | |
| Payment is made for | Penalty |

41. In terms of rule 6 of the SEBI Adjudication Rules, copies of this order are sent to the Noticee and also to SEBI.

**Date: March 31, 2022** **GEETHA G**

**Place: Mumbai** **ADJUDICATING OFFICER**