BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/SM/DD/2022-23/18392]

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

SUMITRA DEVI AGARWAL
PAN: ADDPA0592R
5, Nityadhan Mukherjee Road,
Howrah, West Bengal – 711101
Email: **acctsganganpati@gmail.com**

In the matter of trading in Illiquid Stock Options on BSE

BACKGROUND OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') observed large scale reversal of trades in the stock options segment of the BSE Ltd (here in after referred to as '**BSE**') leading to creation of artificial volume at BSE. Pursuant to a preliminary examination conducted in the Illiquid Stock Options matter, Interim order was passed by SEBI on August 20, 2015 which was confirmed vide SEBI Orders dated July 30, 2016 and August 22, 2016. In this regard, SEBI conducted an investigation into the trading activity in the illiquid stock options Segment at BSE for the period April 01, 2014 to September 30, 2015 (hereinafter referred to as "Investigation Period/IP") and completed in the year 2018. The investigation revealed that 14,720 entities were involved in executing non-genuine trades in BSE's stock option segment during the investigation period.

2. It was observed during the course of investigation that a total of 2,91,643 trades comprising 81.38% of all the trades executed in the stock options segment at BSE during the investigation period were trades which involved reversal of buy and sell positions by the clients and counterparties in a contract on the same day. It was also observed that the aforesaid trades resulted into creation of artificial volume to the tune of 826.21 Crore units or 54.68% of the total market volume in stock options segment of BSE during the investigation period.

3. 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. It was observed that **Ms. SUMITRA DEVI AGARWAL (PAN No. ADDPA0592R)** (hereinafter referred to as "**Noticee**") was one of the various entities who had indulged in execution of the non-genuine trades in the stock options segment at BSE during the above referred investigation period. It was observed that Noticee had entered into reversal trades with her counterparties which involved squaring off transactions with significant difference in sell value and buy value of the transactions.

4. Therefore, it was alleged that Noticee had executed the reversal trades which were non-genuine in nature and created false or misleading appearance of trading in terms of creation of artificial volume in the stock options segment at BSE and therefore, 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 (here in after referred to as "PFUTP Regulations"). In view of the above, adjudication proceedings have been initiated against the Noticee under the provisions of section 15

HA of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as 'SEBI Act').

APPOINTMENT OF ADJUDICATING OFFICER

5. While disposing of the aforesaid interim order vide final order dated April 05, 2018, it was considered and decided that appropriate action would be initiated against the said 14,720 entities in a phased manner. Further, during the course of hearing in the case of **R. S. Ispat Ltd Vs SEBI**, the Hon'ble Securities Appellate Tribunal (SAT), vide its Order dated October 14, 2019, 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".*

6. Accordingly, a Settlement Scheme was framed under the SEBI (Settlement Proceedings) Regulations, 2018, which provided 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. Adjudication proceedings were initiated against those entities who had not availed of the opportunity of settlement, which also included Noticee.

7. In this regard, SEBI, after being satisfied that there are sufficient grounds to inquire into the affairs and adjudicate upon the alleged violations as mentioned above inter-alia in respect of Noticee, had appointed the undersigned as Adjudicating Officer ('**AO**') under section 19 read with section 15-I(1) of the SEBI Act, 1992 (hereinafter referred to as "**SEBI Act**") and rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter, referred to as "**Adjudication Rules, 1995**") to conduct adjudication proceedings in the manner specified under rule 4 of Adjudication Rules, 1995 read with section

15-I (1) and (2) of SEBI Act, and if satisfied that penalty is liable, impose such penalty as deemed fit in terms of rule 5 of Adjudication Rules, 1995 and under section 15HA of SEBI Act.

SHOW CAUSE NOTICE, REPLY AND HEARING

8. A Show Cause Notice with reference no. EAD-10/SM/DD/OW/8340/1/2022 dated February 25, 2022 (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 should not be initiated against her and why penalty, if any, should not be imposed under section 15HA of the SEBI Act, 1992 for the violations alleged to have been committed by the Noticee.

9. It was *inter alia* alleged in the SCN that the Noticee had executed non-genuine trades in 3 Stock Options contracts. Summary of dealings of the Noticee in 3 Stock Options contracts, in which the Noticee allegedly executed non-genuine trades during the I.P, is as follows:

S. No.	Contract Name	Avg. Buy Rate (Rs)	Total Buy Volume (No. of units)	Avg. Sell Rate (Rs)	Total Sell Volume (No. of units)	% of Non-Genuine trades of Noticee in the contract to Noticee's Total trades in the Contract	% of Non-Genuine trades of Noticee 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	IBRL15AUG70.00CEW1	0.05	144000	2.85	144000	100	33.33	100	33.33
2	MFSL15MAR265.00CEW2	0.05	133000	2	133000	100	33.33	100	18.34
3	PTCI15MAR100.00CEW1	0.5	256000	2.5	96000	50	6.45	37.5	7.89

10. From the above table, following was noted as regard to dealings of the Noticee:
   (a) The Noticee has executed non-genuine trades in 3 contracts, wherein in 6 trades of the Noticee were non-genuine trades.
   (b) Percentage of non-genuine trades of the Noticee in stock options contracts to total trades in the contracts was in the range of 6.45% to 33.33% for the three contracts. The non-genuine trades of the Noticee have significantly contributed to total trades in the market in the above contracts.
   (c) Percentage of artificial volume generated by the Noticee in the contract to the total volume in the contract was in the range of 7.89% to 33.33%. Therefore, substantial volume generated by the Noticee in each of the above contracts were artificial volume.
   (d) Non genuine trades executed by the Noticee in above contracts had significant difference in buy rates and sell rates considering that the trades were reversed on same day.

11. The aforesaid SCN was served on the Noticee via Speed Post Acknowledgement Due (SPAD) dated February 25, 2022 and via email dated February 28, 2022. The proof of service is on record.

12. Vide email dated March 22, 2022, the legal heir and husband of Noticee, Mr. Baijnath Agarwal, replied *"At the outset, it is submitted that the noticee had already expired (on 05.11.2017) at the time when the notice under consideration was issued. A copy of the death certificate of the noticee is attached herewith.*

    It is submitted that the pending proceedings has to be cancelled/ abated where the person, against whom proceedings are initiated, expires. In this regard, reference may be made to the decision of the Hon'ble Supreme

Court in the case of Girijandini vs. Bijendra Narain (AIR 1967 SC 2110), wherein Hon'ble Supreme Court has held that in case of personal action, i.e., the actions where the relief sought is personal to the deceased, the right to sue will not survive"

13. The Death Certificate provided by husband of the Noticee, issued by the Kolkata Municipal Corporation, Government of West Bengal, shows that the Noticee had passed away on November 05, 2017. The death certificate was verified from the website of Kolkata Municipal Corporation, Govt. of West Bengal. Thus, the proceedings are against the acts of omission and commission of a person who is no more to face the charges. In this regard, it is worth mentioning that in ***Girijanandini Vs Bijendra Narain*** *(AIR 1967 SC 2110), the Hon'ble Supreme Court held that in case of personal actions, i.e., the actions where the relief sought is personal to the deceased, the right to sue will not survive to or against the representatives and in such cases the maxim actio personalis moritur cum persona (personal action dies with the death of the person) would apply. It is also relevant to refer to the decision of Hon'ble Securities Appellate Tribunal in* ***Chandravadan J. Dalal vs. SEBI*** *(Appeal No. 35/2004 decided on June 15, 2005) wherein it was held that: "The appeal abates since the appellant during the pendency of the appeal died on 29th November 2004. The appeal accordingly abates. The penalty imposed on the original appellant being personal in nature also abates."*

<u>ORDER</u>

14. In view of the foregoing, I am of the view that the proceedings against the Noticee stands abated. Therefore, the SCN dated February 25, 2022

with respect to Noticee, i.e. Mrs. Sumitra Devi Agarwal, is disposed of accordingly without going into the merits of the case.

15. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to the legal heir and husband of Noticee, Mr. Baijnath Agarwal and also to Securities and Exchange Board of India.

Place: Mumbai **Soma Majumder**

Date: August 19, 2022 **Adjudicating Officer**