BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

ADJUDICATION ORDER NO. Order/VV/NK/AK/2021-22/15753

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:

Santosh Kumar Daga

PAN: ADRPD5596J

In the matter of *Dealings in Illiquid Stock Options at the BSE*

BACKGROUND OF THE CASE

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

2. The investigation revealed that during the Investigation Period, a total of 2,91,744 trades comprising 81.40% of all the trades executed in the BSE stock options segment were trades which involved reversal of buy and sell positions by the clients and counterparties in a contract. It was observed that Santosh Kumar Daga (hereinafter referred to as the "**Noticee**") was one such entity whose reversal trades involved squaring off open positions with a significant price difference without any basis for such change in the contract price. Such trades were observed to be non-genuine in nature creating false or misleading appearance of trading in terms of artificial volumes in stock options and therefore were alleged to be manipulative and deceptive in

nature. In view of the same, SEBI initiated adjudication proceedings against the Noticee for violation of the provisions of regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003 (hereinafter referred to as the "**PFUTP Regulations**").

APPOINTMENT OF ADJUDICATING OFFICER

3. The undersigned was appointed as the Adjudicating Officer (hereinafter referred as **"AO"**) by a communication order dated April 26, 2021 under section 19 read with section 15-I (1) of the SEBI Act, 1992 and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as **"Adjudication Rules"**) to conduct adjudication proceedings in the manner specified under Rule 4 of Adjudication Rules read with section 15I (1) and (2) of SEBI Act, and if satisfied that the Noticee is liable, impose such penalty deemed fit in terms of Rule 5 of Adjudication Rules read with Section 15HA of SEBI Act.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. The Show Cause Notice (Hereinafter referred to as "**SCN"**) bearing reference no. SEBI/HO/EAD-9/EAD/VKV/NK/2022/3601/1 dated January 28, 2022 was duly served upon the Noticee under rule 4(1) of the SEBI Adjudication Rules to show cause as to why an inquiry should not be held and penalty not be imposed against him under section 15HA of the SEBI Act for the alleged violation of the provisions of regulations 3(a),(b),(c),(d) and 4(1), 4(2)(a) of the PFUTP Regulations along with the SCN relevant trade logs and summary of the concerned transactions were pro*vide*d as annexures to the Noticee.

5. The allegations levelled against Noticee in the SCN are summarized below as follows:
   a) Noticee was one of the entities which had indulged in reversal trades which allegedly created false and misleading appearance of trading, Adjudication Order in respect of generating artificial volumes in stock options segment of the BSE during the Investigation Period.

b) Noticee has traded in 2 unique contracts, from which the Noticee has allegedly executed 5 non genuine trades in 2 Stock Options contracts which resulted in artificial volume of total 3,52,000 units. Summary of dealings of the Noticee in a Stock Option contract, in which Noticee allegedly executed non genuine trades during the I.P., is as follows:

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**
ALLD15JAN54.00PE	1.28	168000	0.1	168000	100	30	100	31.34
PTCI15JUL40.00CEW2	30.8	8000	18.3	8000	100	100	100	100

c) From the above table, following is noted as regard to dealings of the Noticee:

i. Substantial 100% trades executed by the Noticee in above contracts were non genuine trades.

ii. No. of non-genuine trades of Noticee was significantly high i.e. 100% of total trades executed by the Noticee in the above contracts. Moreover, the said non genuine trade executed by Noticee contributed 30% to 100%

respectively to the total trades that have taken place in the contracts.

iii. Substantial 100% of the volume generated by Noticee in each of the above contracts, was artificial volume. Further, said artificial volume generated by Noticee also contributed significant 31.34% to 100% of the total volume from the market in above contracts.

iv. Alleged non genuine trades executed by the Noticee had significant differential in sell rates and buy rates considering that the trades were reversed within five minutes of the same day.

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

vi. The aforesaid alleged violations, if established, make the Noticee liable for monetary penalty under section 15HA of the SEBI Act.

6. In response to the SCN, Noticee submitted a reply by *vide* letter dated February 07, 2022. In the interest of principles of natural justice and considering the cause as mentioned in the present matter before me, an opportunity of hearing *vide* hearing notice dated February 18, 2022 was granted to Noticee on March 23, 2022 in terms of Rule 4(3) of the Adjudicating Rules. Subsequently, Noticee filled additional reply by *vide* letter dated March 14, 2022. Accordingly, hearing was concluded.

7. The hearing was conducted on March 23, 2022. In view of the prevailing circumstances owing to COVID-19, the hearing was scheduled through video conferencing on WebEx platform. On the scheduled date of hearing, Noticee appeared before me through video conference and made submissions on the lines of the *vide* letter dated February 07, 2022 and March 14, 2022.

8. Relevant submission of Noticee summarised below:-

   a) Noticee submitted that all my trades are genuine trades.

b) Noticee submitted that he has no knowledge about the counterparty and all the trade executed by stock broker in his behalf.
c) Noticee submitted that he is a small investor and not aware of SEBI rules, and has done his trades through SEBI registered broker.
d) Noticee contended he is no way responsible for the trade in illiquid stock option and that appropriate action would be taken against BSE since they allow the trade to happen on their platform and Stock Broker who traded on the behalf of Noticee.
e) It's a broker who executed the trade to earn its commission and also to get incentive from BSE which was giving its member to increasing volume in BSE.

CONSIDERATION OF ISSUES AND FINDINGS

9. The issues that arise for consideration in the instant matter are:
   a) Issue No. I: Whether the trading in illiquid stock options done by the Noticee during the Investigation Period were in violation of regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of the PFUTP Regulations?
   b) Issue No. II: If yes, whether the violation, on the part of the Noticee would attract monetary penalty under section 15HA of the SEBI Act?
   c) Issue No. III: If the answer to Issue No. II is in affirmative, what would be the monetary penalty that can be imposed upon the Noticee?

Issue No. I: Whether the trading in illiquid stock options done by the Noticee during the Investigation Period were in violation of regulations 3(a), (b), (c), (d) , 4(1) and 4(2)(a) of the PFUTP Regulations?

10. Before moving forward, it is pertinent to refer to the relevant provision of the PFUTP Regulations which are alleged to have been violated. The said provisions are reproduced hereunder:

    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 thereunder;*

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 *******[manipulative], fraudulent or an unfair trade practice in securities* *******[markets].*

********[Explanation.– For the removal of doubts, it is clarified that any act of diversion, misutilisation or siphoning off of assets or earnings of a company whose securities are listed or any concealment of such act or any device, scheme or artifice to manipulate the books of accounts or financial statement of such a company that would directly or indirectly manipulate the price of securities of that company shall be and shall always be deemed to have been considered as manipulative, fraudulent and an unfair trade practice in the securities market.]*

(2) Dealing in securities shall be deemed to be a ********[manipulative] fraudulent or an unfair trade practice if it involves* *********[any of the following]:*

a) *******[knowingly] indulging in an act which creates false or misleading appearance of trading in the securities market;*

***** *Inserted vide Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) (Amendment) Regulations, 2018 w.e.f. February 01, 2019*

****** *Inserted vide Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) (Second Amendment) Regulations, 2020 w.e.f. October 19, 2020.*

******* *Substituted vide Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) (Amendment) Regulations, 2018 w.e.f. February 01, 2019. Before the substitution the words read as "fraud and may include all or any of the following, namely"*

11. I note that in the instant matter, SEBI has investigated large scale reversal of trades in stock options which were entered into by large number of entities. 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 Order dated July 30, 2016 and August 22, 2016. Meanwhile, SEBI initiated a detailed investigation relating to stock options segment of BSE which was 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. The proceedings initiated vide the aforementioned Interim Order were disposed of vide Final Order dated April 05, 2018 also considering that appropriate action was initiated against the said 14,720 entities in a phased manner.

12. During the course of hearing in the case of **R. S. Ispat Ltd vs SEBI**, the Hon'ble Securities Appellate Tribunal (Hereinafter referred to as "**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*".

13. 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.As can be seen from the narration of facts in the foregoing paragraphs, pursuant to appointment of AO on April 26, 2021, SCN was issued on February 18, 2022.

14. I note that it is worth mentioning that reversal trades are considered non-genuine if they involve 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. From the reply of the Noticee, I note that the Noticee has not disputed the execution and subsequent reversal of trades as alleged in the SCN. Admittedly, the Noticee had indulged in 5 such reversal trades in 2 stock option during the Investigation Period involving reversal of trades with same entity with whom it had done buy/sell transaction, in short span of time, in a synchronized manner. It is noted from the trade log relied upon in the matter that the Noticee and counterparty (ies) both had placed their respective sell-buy and buy–sell orders in same time i.e. within few minutes. Further, each trade involved matching of time, price and quantity of units. For example, in respect of the following 2 trades in contract “PTCI15JUL40.00CEW2”, dated July 06, 2015 observations are provided in following paras:

   a) During the I.P., total 2 trades for 16000 units were executed in the said contract wherein Noticee was party to both the said 2 trades.
   b) While dealing in the said contract on 06/07/2015, Noticee at 10:51:50.84 hrs entered into 1 sell trade with counter party *viz*, Jyoti Rani Kanthal for 8000 units at rate of Rs. 18.3 per unit. Thereafter, on the same day, Noticee at 12:06:18.47 hrs entered into 1 buy trade with same counterparty for 8000 units at the rate of Rs. 30.8 per unit.

c) From the above, it is noted that while dealing in the said contract during the I.P., Noticee executed total 2 reversal trades (1 buy trade + 1 sell trade) with same counterparty viz, Jyoti Rani Kanthal on the same day.

15. In the view of the above, I note that while dealing in the said contract viz. PTCI15JUL40.00CEW2 during the I.P., Noticee executed total 2 reversal trade (1 buy trade + 1 sell trade) for 16,000 units with same counterparty viz, *Jyoti Rani Kanthal* within 15 minutes of the same day. Further, I note that, from the trade log available on the record, Noticee, through dealing in the contract viz, "PTCI15JUL40.00CEW2" during the I.P., executed 2 non genuine trades which is 100% of the total trades from the market in the said contract during the I.P., and thereby, Noticee generated artificial volume of 16,000 units which is 100% of the volume traded in the said contract from the market during the I.P.

16. Similar pattern on trading was observed in respect of other aforementioned illiquid Stock Options contracts, wherein trades were reversed in short span of time and buy-sell or sell-buy orders were placed within a time gap of few seconds/minutes. The buy orders placed by Noticee were matched with sell orders of counterparties and sell orders placed by the Noticee were matched with buy orders of counterparties in terms of number of units and price and time. Thus, the total volume generated through such non genuine trades was 3,52,000 units. Such reversal of trades in quick succession with substantial price difference indicate towards employing of a manipulative device in connection with its dealing in said illiquid Stock Options contracts.

17. Noticee submitted that he has no connection with the counterparty. In this context, I note that buy and sell orders of all the 5 reversal trades were synchronised on the same day, with time gap of 15 minutes to 45 minutes. While synchronised trades may occur by accident in a liquid stock, execution of synchronised trades in an illiquid market with anonymous trading indicates a prior meeting of minds with a view to execute the reversal trades at a pre-determined price.

18. I also note that, it was not mere coincidence that Noticee could match its trades with the same counterparty with whom it had undertaken first leg of the respective trades. Though, direct evidence was not available in the present matter as regards to meeting of minds or collusion of the Noticee with other entities. The genuineness of trading has to be determined based upon circumstantial evidence involving multiple factors such as trading pattern, liquidity and volatility in the scrip/contract, etc. In this regard reliance has been placed on, the Hon'ble SAT order- **Ketan Parekh vs. SEBI (Appeal no. 2/2004, dated July 14, 2006** 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.*"

19. Further, in **SEBI v Kishore R Ajmera (AIR 2016 SC 1079)**, Hon'ble Supreme Court held that -*"…in the absence of direct proof of meeting of minds elsewhere in synchronized transactions, the test should be one of preponderance of probabilities as far as adjudication of civil liability arising out of the violation of the Act or provision of the Regulations 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. The illustrations are not exhaustive...*". The Hon'ble Supreme Court further held that – "*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."

20. Furhter, Hon'ble SAT, in its order in the matter of **Global Earth Properties and Developers Pvt. Ltd. dated September 14, 2020** held that, "*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*."

21. With regard to reversal transactions, Hon'ble Supreme Court in **SEBI v Rakhi Trading Private Limited (Civil Appeal No. 1969 OF 2011**), held that - "*Considering the reversal transactions, quantity, price and time and sale, parties being persistent in number of such trade transactions with huge price variations, it will be too naive to hold that the transactions are through screen-based trading and hence anonymous. Such conclusion would be over-looking the prior meeting of minds involving synchronization of buy and sell order and not negotiated deals as per the board's circular. The impugned transactions are manipulative/deceptive device to create a desired loss and/or profit. Such synchronized trading is violative of transparent norms of trading in securities….."* Hon'ble Supreme Court further held that- *"….quantity, time and significant variation of prices, without major variation in the underlying price of the securities clearly indicate that Respondent's trades are not genuine and had only misleading appearance of trading in the securities market*".

22. In view of said Hon'ble Supreme Court judgment, I see no reason to take a different view in the present case. In view of the foregoing, I note that the trading pattern as found in this case in illiquid Stock Options cannot occur just by accident or coincidence. The trading behavior of the Noticee in this case

makes it clear that aforesaid trades of the Noticee could not have been possible without prior meeting of minds. The synchronized trading by the Noticee with same counterparty at same time for same quantity at same price and reversal of transaction with wide variation in price of the reversed trades in the same contract in a short time without any basis, all indicate that the trades executed by the Noticee were not genuine trades and being non-genuine, created an appearance of artificial trading volumes in the contracts in question. Considering the aforesaid facts and circumstances, in view of the fact that these options contracts were illiquid in nature, having very small volume in trading, the Noticee created artificial volumes in Stock Options which was manipulative and deceptive in nature. Once the Noticee has been found to have indulged in such reversal transactions in illiquid Stock Options it is liable for its acts and omissions. Therefore, contention of the Noticee regarding the no connection with the counterparty bereft of any merits in the instant proceeding.

23. Noticee contended that trades were genuine and executed on the floor of the exchange by the authorised broker. In this context, I note that Noticee was obligated to ensure genuineness of the trades executed by him on the exchange platform. The aforesaid obligation was mandatory notwithstanding any warning or intimation issued by BSE or other. Further, I note that the trades by the Noticee generated large artificial volumes without any change of beneficial ownership. With regard to such reversal transactions, Hon'ble Supreme Court in the matter **Rakhi Trading case(Supra**) held that - "*From the facts before us, it is clear that the traders in question did not intend to transfer beneficial ownership and therefore these trades are non-genuine*". The Hon'ble Supreme Court further held that - "*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*". Thus, the Noticee's contention regarding non-receiving of any caution from BSE and bona-fide trading, is devoid of any merit and rejected hereby.

24. Further, with regard to the reversal trades carried out by the Noticee, I note that the Hon'ble Supreme Court in ***SEBI vs. Rakhi Trading Private Limited*** (Civil Appeal Nos. 1969 of 2011 with 3174-3177 of 2011 and 3180 of 2011), decided on February 8, 2018 had held that "*the price discovery system itself was affected by synchronization and rapid reverse trade, which also had the impact of excluding other investors from participating in the market. The Supreme Court, therefore found that the traders having engaged in a fraudulent and unfair trade practice while dealing in securities, are hence liable to be proceeded against for violation of Regulations 3(a), 4(1) and 4(2)(a) of PFUTP Regulations*".

25. Moreover, I note that the impugned reversal trades were carried out by Noticee in an illiquid Stock Options Contracts where there was no participation of public. Reversal trades were undertaken by the Noticee with its counterparty with a predetermined arrangement to book profit or losses respectively, and, therefore, the parties to the trades were not trading in the normal sense and ordinary course of business. Such transactions in illiquid Stock Options cannot be taken as genuine one. Such trading was apparently without any economic rationale. Thus, the Noticee claim of a bona fide or genuine trader without having any specific role in creating artificial volume through alleged trades is not acceptable.

26. Noticee contended that trades have been done by the stock broker who earns commission and traded on behalf of Noticee. In this context, I note that the limited purpose of the adjudication proceedings to adjudge the case against the Noticee. Further, in a regulatory setup, an individual can only place trade in securities market through a stock Broker. Generally, a client and a stock broker while dealing in securities market acts like a principal and agent, wherein, in normal course of business, client act as principal and a stock broker act as an agent, unless stated otherwise. Thus, a client places an order to a stock broker and a stock broker being an agent of client executes the said order and provides contract notes of executed order to a client. In the instant case, Noticee being a client has tried to place all of his responsibilities of placing alleged non genuine trades on stock broker, which, I found is an

afterthought by Noticee. I further note that Noticee has not brought on record anything to substantiate his submission with respect to stock broker. Therefore, I reject such contentions of Noticee.

27. Noticee submitted that he is a small investor and not aware of SEBI rules and all his trades done through SEBI registered broker. In this regard, I note that as per legal principle "*ignorantia juris non excusat*" which means ignorance of law is not an excuse. The legal principle is justified on the grounds of necessity because if there is relaxation in the application of this principle, every accused will take the plea that he did not know the law and it would become onerous for the adjudicating authority to prove knowledge. Further, in this regard reliance has been placed on the matter of **Madanchand Prasan Chand Chordia vs SEBI** (Appeal No. 134 of 2014), dated June 16, 2014, wherein SAT relied on the aforesaid principle for dismissing the contention of the appellant that he was not aware of the relevant regulations by stating the following: "*The main contention of the appellant, who has appeared in person before us, is that he was not aware about the requirement of law in making disclosure as a part of SAST Regulations, 2011 and PIT Regulations, 1992. We note that ignorance of law is not an excuse.*" Thus, I find that the aforesaid submission of the Noticee deserves to be rejected.

28. In the view of the above facts and circumstances, I am of the view that the trading behaviour of the Noticee confirms that such trades were not normal and wide variation in prices of the trades in the same contract in a short time without any basis for such wide variation, all indicate 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 view of the above, I find that the allegation of violation of regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of PFUTP Regulations, 2003 by the Noticee stands established.

Issue No. II: If yes, whether the violation, on the part of the Noticee would attract monetary penalty under section 15HA of the SEBI Act?

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Issue No. III: If the answer to Issue No. II is in affirmative, what would be the monetary penalty that can be imposed upon the Noticee?

29. I find it appropriate to deal with Issue No. II and III together in the following paragraphs. Since violation of regulations 3(a), (b), (c), (d), 4(1) and 4(2) (a) of the PFUTP Regulations by Noticee is established, I am of the view that the same warrants imposition of monetary penalty upon Noticee under Section 15HA of the SEBI Act, text of which is produced 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].*

***** Substituted for the words "twenty-five crore rupees or three times the amount of profits made out of such failure, whichever is higher" by the Securities Laws (Amendment) Act, 2014, w.e.f. 08-09-2014.*

30. Further, while determining the quantum of monetary penalty under section 15HA of the SEBI Act, I have considered the factors stipulated in Section 15-J of the SEBI Act, which reads as under:

Factors to be taken into account while adjudging quantum of penalty

15J. While adjudging quantum of penalty under 15-I or section 11 or section 11B, the Board or the adjudicating officer shall have due regard to the following factors, namely: —

the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

the amount of loss caused to an investor or group of investors as a result of the default;

the repetitive nature of the default.

[Explanation: For the removal of doubts, it is clarified that the power 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.]

31. I note that when the impact of artificial volume created by the two counterparties is seen as a whole, it is not possible from the material on record to quantify the amount of disproportionate gain or unfair advantage resulting from the artificial trades between the counter parties or the consequent loss caused to investors as a result of the default. The Noticee has indulged in creation of artificial volume of 352,000 units by entering into 5 non-genuine transactions in 2 stock option contracts which demonstrates the nature of the default on its part. In this regard, it is pertinent to refer to the decision of the Hon'ble Supreme Court in the matter of ***SEBI vs Shri Ram Mutual Fund (Appeal Civil 9523-9524 of 2003) dated May 23, 2006***, wherein it held that *"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.*

32. In the view of the above, I note that, in the present matter, the facts of the case clearly establish the violation committed by Noticee and I consider it is necessary to impose monetary penalty which would act as deterrent to the Noticee in future.

<u>ORDER</u>

33. After taking into consideration the nature and gravity of the violations established in the preceding paragraphs and in exercise of the powers conferred upon me under section 15-I of the SEBI Act read with rule 5 of the SEBI Adjudication Rules, I hereby impose a penalty of Rs 5,00,000/- (Rupees five lakhs only) on the Noticee *i.e., Santosh Kumar Daga* under section 15HA of the SEBI Act. I am of the view that the penalty is commensurate with the violation committed by the Noticee.

34. 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

35. 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, i*nter alia*, by attachment and sale of movable and immovable properties.

36. The aforesaid Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to "The Division Chief (Enforcement Department 1 DRA-2), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C –4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai –400 051.". The Noticee shall also provide the following details while forwarding DD / payment information
    - Name and PAN of the Noticee
    - Name of the case / matter
    - Purpose of Payment–Payment of penalty under AO proceedings
    - Bank Name and Account Number
    - Transaction Number

37. 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 30, 2022 **Vijayant Kumar Verma**
Place: Mumbai **Adjudicating Officer**