BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/BS/YK/2023-24/29092]

UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995

In respect of:

Aryavish Properties Private Limited

PAN: AAFCA5616C

In the matter of dealing in Illiquid Stocks Options at BSE

A. FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**"), observed large scale reversal of trades in the Illiquid Stock Options (hereinafter referred to as "**ISO**") segment of Bombay Stock Exchange (hereinafter referred to as "**BSE**") leading to creation of artificial volume. Reversal trades are those trades in which an entity reverse its buy or sell positions in a contract with subsequent sell or buy position with the same counter party. The said reversal trades are alleged to be non-genuine trades as they lack basic trading rationale and allegedly lead to false or misleading appearance of trading leading to generation of artificial volume. In view of the same, such reversal trades are alleged to be deceptive and manipulative. On account of the same, SEBI conducted an investigation into the trading activities of certain entities in the Illiquid Stock Options at BSE for the period April 1, 2014 to September 30, 2015 (hereinafter referred to as "**Investigation Period/IP**")

2. Pursuant to investigation by SEBI, it was observed that during the IP, a total of 2,91,744 trades comprising substantial volume of 81.38% of all the trades executed in Stock Options of BSE were trades which involved 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. The proceedings initiated against a first set of 59 entities, 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 Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the "**SEBI Act**") and SEBI (Procedure for Holding and Imposing Penalties) Rules, 1995 (hereinafter referred to as the "**Adjudication Rules**") and pass appropriate order on merits.

3. 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*".

4. Accordingly, a Settlement Scheme was framed under the Securities and Exchange Board of India (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 did not avail the opportunity of settlement. It was observed that Aryavish Properties Pvt. Ltd. (hereinafter referred to as the "**Noticee**") was one of the various entities who indulged in execution of reversal trades in Stock Options segment of BSE during the Investigation Period. As the Noticee did not avail the opportunity for settlement, 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 SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as "**PFUTP Regulations**").

5. It was alleged that the Noticee was one of the entities that indulged in creating artificial volume of 48,000 units through 2 non-genuine trades in 1 Stock Option contract. The aforesaid reversal trade is illustrated through the dealings of the Noticee in one contract viz. “DLFL15APR130.00CEW2” during the investigation period as follows:

    a. During the investigation period, 2 trades for 48,000 units were executed by the Noticee in the said contract on March 27, 2015.
    b. While dealing in the said contract on March 27, 2015, at 10:56:31 hours, the Noticee entered into a buy trade with the counterparty Jai Annanya Investments Pvt. Ltd. for 24,000 units at Rs. 41.35/- per unit. The Noticee entered into 1 sell trade with the same counterparty at 11:28:56 hours for 24,000 units at Rs. 22.65 per unit.
    c. The Noticee’s 2 trades while dealing in the abovementioned contract during the investigation period generated artificial volume of 48,000 units, which made up 5.31% of total market volume in the said contract during this period.

6. In view of the foregoing, it was alleged that the Noticee had entered into a reversal trade in ISO at BSE and this reversal trade was non-genuine in nature. Such trade created false and misleading appearance of trading in terms of artificial volume in Stock Options and therefore were manipulative and deceptive in nature. The Noticee is alleged to have violated the provisions of Regulations 3(a), (b), (c) and (d), 4(1), 4(2)(a) of PFUTP Regulations.

7. During the course of the hearing in a group of appeals, the Hon’ble SAT, vide its Order dated May 13, 2022, inter alia held that “*SEBI should reconsider and seriously give a thought in coming out with a fresh Scheme under Clause 26 of the Settlement Regulations, 2018. Such scheme can be a onetime scheme for this class of person. The terms of settlement should be attractive so that it could attract the noticees/entities to come forward and settle the matter which will ameliorate*

the harassment of penalty proceedings to the noticees and at the same time would help to clear the backlog of these pending matters before various AOs".

8. Accordingly, SEBI introduced a Settlement Scheme i.e. SEBI Settlement Scheme, 2022 (hereinafter referred to as "**Settlement Scheme 2022**") in terms of Regulation 26 of the Securities and Exchange Board of India (Settlement Proceedings) Regulations, 2018 (hereinafter referred to as "**Settlement Regulations**"). The Scheme provided a onetime opportunity to the entities against whom proceedings had been initiated and appeals against the said proceedings are pending before any forum or authority.

9. I note that Noticee did not avail settlement under the Settlement Scheme in 2020 or 2022 and therefore Adjudication proceedings have been revived against the Noticee.

B. APPOINTMENT OF ADJUDICATING OFFICER

10. Vide an order of the Competent Authority, SEBI dated July 06, 2021, SEBI initiated adjudication under Section 15-I of SEBI Act read with Rule 3 of Adjudication Rules to inquire and adjudge under section 15HA of SEBI Act. Subsequently, the undersigned was appointed as Adjudicating Officer vide communique dated April 24, 2023.

C. SHOW CAUSE NOTICE, REPLY AND HEARING

11. Based on the findings by SEBI, Show Cause Notice dated August 11, 2022 (hereinafter referred to as "**SCN**") was issued to the Noticee under Rule 4(1) of Adjudication Rules to show cause as to why an inquiry should not be held and penalty should not be imposed on it for the alleged violations of the provisions of Regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of the PFUTP Regulations. The aforesaid SCN was sent to the Noticee through Speed Post with

Acknowledgement Due (hereinafter referred to as "**SPAD**") which returned undelivered.

12. The aforesaid SCN along with indicating the nature of offence alleged to have been committed by the Noticee, also intimated to the Noticee regarding the SEBI Settlement Scheme, 2022 in terms of Regulation 26 of the Securities and Exchange Board of India (Settlement Proceedings) Regulations, 2018 in the matter of Illiquid Stock Options and in case, Noticee do not wish to avail of the facility under the SEBI Settlement Scheme, 2022, Noticee was advised to file a reply to the SCN within 30 days of the receipt of the intimation. However, it was observed that Noticee did not avail the SEBI Settlement Scheme. In view of which, the adjudication proceeding against the Noticee was resumed.

13. In the interest of natural justice, the Noticee was provided an opportunity of Personal Hearing vide Hearing Notice dated May 04, 2023 via SPAD and the copy of aforesaid SCN was also enclosed with the Hearing Notice, which was duly delivered and the delivery of same is on record. The Noticee was advised to appear before the undersigned on May 17, 2023. However, the Noticee did not submit its reply to the SCN and also did not appear for the Personal Hearing. In the interest of natural justice, another opportunity of Personal Hearing was granted to the Noticee. Vide Hearing Notice dated June 20, 2023, via SPAD, delivery of which on record, the Noticee was advised to appear for hearing on June 30, 2023 and also to submit its reply. The Noticee was also informed that it was the last and final opportunity of Personal Hearing being provided. However, the Noticee neither appeared for Personal Hearing nor submitted its reply to the SCN.

14. I am of the view that the principles of natural justice have been adhered to, as the SCN and the Hearing Notice were duly served upon the Noticee and sufficient opportunities were granted to it to reply to the SCN and also to appear for the Personal Hearing. Considering the fact that the Noticee has neither filed any reply nor has availed the opportunity of personal hearing despite service of notices, the matter is being proceeded ex-parte on the basis of the material available on record.

D. CONSIDERATION OF ISSUES AND EVIDENCE

15. I have carefully perused the charges levelled against the Noticee in the SCN, its reply and the material / documents available on record. In the instant matter, the following issues arise for consideration and determination:-

I. Whether the Noticee has violated Regulations 3(a), (b), (c), (d) and 4(1) and 4(2)(a) of PFUTP Regulations?

II. Do the violations, if any, on the part of the Noticee attract monetary penalty under Section 15HA of SEBI Act?

III. If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in section 15J of the SEBI Act?

16. Before proceeding further, I would like to refer to the relevant provisions of the PFUTP Regulations:

Relevant provisions of 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 recognised 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 recognised 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 recognised stock

exchange in contravention of the provisions of the Act or the rules and the regulations made thereunder.

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;

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

17. I note that although sufficient opportunities were given to the Noticee, it has failed to respond to the SCN and Hearing Notice. As the Noticee did not file any reply to the SCN, it can be presumed that Noticee has admitted the charges levelled against it.

18. In this regard, I would like to rely upon the findings of the Hon'ble SAT in the matter of Sanjay Kumar Tayal vs. SEBI (Appeal No. 68 of 2013 order dated February 11, 2014, regarding the significance of filing the reply to the SCN, in which it stated that "*appellants have neither filed reply to show cause notices issued to them nor availed opportunity of personal hearing offered to them in the adjudication proceedings and, therefore, appellants are presumed to have admitted charges levelled against them in the show cause notice."*

19. I note from the documents on record that the Noticee was one of the entities who had indulged in creating artificial volume of 48,000 units through 2 non-genuine trades in 1 Stock Option contract during IP.

20. The summary of trades is given below:

Contract name	Avg. buy rate (₹)	Total buy volume (no. of units)	Avg. sell rate (₹)	Total sell volume (no. of units)	% of Artificial volume generated by the Noticee in the contract to Noticee's Total volume in the contract	% of Artificial volume generated by the Noticee in the contract to Total volume in the contract
A	**B**	**C**	**D**	**E**	**G**	**H**
DLFL15APR130.00CEW2	**41.35**	**24,000**	**22.65**	**24,000**	**100.00**	**5.31**

21. To illustrate, on March 27, 2015, the Noticee entered into 1 buy trade for 24,000 units at the rate of ₹ 41.35 per unit at 10:56:31 hours with the counterparty Jai Annanya Investments Pvt. Ltd., for the contract named DLFL15APR130.00CEW2. Thereafter, on the same day, Noticee, at 11:28:56 hours entered into 1 sell trade with same counterparty for 24,000 units at rate of ₹ 22.65 per unit. It is noted that while dealing in the said contract during the IP, the Noticee executed a total of 2 trades (1 buy trade and 1 sell trade) with same counterparty viz, Jai Annanya Investments Pvt. Ltd. on the same day and with significant price differential in buy and sell rate. Thus, Noticee, through its dealing in the contract viz, DLFL15APR130.00CEW2 during the IP, executed 2 non-genuine trades and thereby, the Noticee generated artificial volume of 48,000 units.

22. The non-genuineness of these transactions executed by the Noticee is evident from the fact that there was no commercial basis as to why, within a short span of time, the Noticee reversed the position with its counterparty with significant price difference on the same day. The fact that the transactions in a particular contract were reversed with the same counterparties indicates a prior meeting of minds with a view to execute the reversal trades at a pre-determined price. Since these trades were done in illiquid option contract, there was negligible trading in the said contract and hence, there was no price discovery in the strictest terms. The wide variation in prices of the said contract, within a short span of time, is a clear indication that there was pre-determination in the prices by the counterparties while executing the trades. Thus, it is observed that Noticee had indulged in reversal

trades with its counterparty in the stock options segment of BSE and the same were non-genuine trades.

23. It is not mere coincidence that Noticee could match its trade with the same counterparty with whom it had undertaken first leg of the respective trade. This is the outcome of meeting of minds elsewhere and it was a deliberate attempt to deal in such a fashion. Here I would like to rely on the judgment of Hon'ble Supreme Court in SEBI v Kishore R Ajmera (AIR 2016 SC 1079), wherein it was 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."* It was 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.*"

24. It is noted that direct evidence is not forthcoming in the present matter as regards to meeting of minds or collusion with other entities inter-alia the counterparties or agents/fronts. However, trading behaviour as noted above make it clear that aforesaid non-genuine trades could not have been possible without meeting of

minds at some level. In this regard, reliance is placed on judgment of Hon'ble Supreme Court in the matter in respect of SEBI v Rakhi Trading Private Limited Civil Appeal Nos. 1969, 3174-3177 and 3180 of 2011 decided on February 8, 2018, which interalia states 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….."*

25. Thus, placing reliance on the aforesaid judgements and considering preponderance of probabilities, I find that the Noticee executed non-genuine trades in collusion with its counterparty in the aforesaid Illiquid Stock Options contracts and thereby abused the stock market platform by creating false and misleading appearance of trading.

26. In view of the above, I find that the allegation of violation of regulations 3(a), (b), (c) and (d), 4(1), 4(2)(a) of PFUTP Regulations by the Noticee stands established.

Issue No. 2: Do the violations, if any, on the part of the Noticee attract monetary penalty under section 15HA of SEBI Act?

27. Considering the findings that the Noticee as mentioned above has executed non-genuine trades resulting in the creation of artificial volume, thereby violating the provisions of Regulation 3(a), (b), (c) & (d) & Regulation 4(1) and 4(2)(a) of the PFUTP Regulations, 2003 and in terms of the judgement of Hon'ble Supreme Court of India in the matter of SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216 (SC) decided on May 23, 2006 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 and hence the intention of the parties committing such violation becomes wholly irrelevant..." I am convinced that it is a fit case for imposition of monetary penalty under the provisions of Section 15 HA of SEBI Act which reads as under:

Penalty for Fraudulent and Unfair trade practices.

15HA. If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher.

Issue No. 3: If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in section 15J of the SEBI Act?

28. While determining the quantum of penalty under Section 15HA of the SEBI Act, it is important to consider the factors as stipulated in Section 15J of the SEBI Act which read 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: —

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

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

    (c) the repetitive nature of the default.

29. As established above, the trades by the Noticee were non-genuine in nature and created a misleading appearance of trading in the aforesaid contract. 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. Further, the material available on record does not demonstrate any repetitive default on the part of the said Noticee. However, considering that the violation by the Noticee led to creation of artificial trading volumes which had the effect of distorting the market mechanism in the Illiquid Stock Options segment of BSE, I find that the aforesaid violations were detrimental to the integrity of securities market and therefore, the quantum of penalty must be commensurate with the serious nature of the aforesaid violations.

E. ORDER

30. In view of the above, after considering all the facts and circumstances of the case and the factors mentioned in the provisions of section 15J of the SEBI Act, I, in exercise of the powers conferred upon me under section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, conclude that the charges against the Noticee stand established. Hence, in view of the charges, I, hereby impose a monetary penalty of ₹ 5,00,000/- (Rupees Five Lakh only) on the Noticee-Aryavish Properties Private Limited under section 15HA of SEBI Act for the violation of the provisions of Regulations 3(a), (b), (c) and (d), 4(1), 4(2)(a) of the PFUTP Regulations. I am of the view that the said penalty is commensurate with the violations committed by Noticee.

31. The Noticee shall remit/pay the said amount of penalty within 45 days of receipt of this order in either of the way, such as by following the path at SEBI website www.sebi.gov.in, ENFORCEMENT >Orders >Orders of AO> PAYNOW; or by using the web link https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html. In case of any difficulties in payment of penalties, the Noticee may contact the support at portalhelp@sebi.gov.in.

32. The said confirmation of e-payment made in the format as given in table below should be sent to "The Division Chief, EFD1 – DRA6, Securities and Exchange

Board of India, SEBI Bhavan, Plot no.C-7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai-400051" and also to e-mail id:- tad@sebi.gov.in.

33. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under Section 28A of the SEBI Act for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties of Noticee.

34. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticee and also to SEBI.

Date: August 31, 2023
Place: Mumbai

BIJU S
ADJUDICATING OFFICER