

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
ADJUDICATION ORDER NO. Order/PM/GD/2021-22/14746**

**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:
Basanti Devi Patni

PAN: ABWPP0678C

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

BACKGROUND

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

1. The investigation revealed that during the Investigation Period, a total of 2,91,643 trades comprising 81.38% 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 Basanti Devi Patni, (hereinafter be referred to as, the “**Noticee**”) was one such client whose reversal trades involved squaring off open positions with a significant difference without any basis for such change in the contract price. The aforesaid reversal trades allegedly resulted into generation of artificial volumes, leading to allegations that the Noticee had violated the provisions of Regulation 3(a), (b), (c), (d) and Regulation 4(1), 4(2) (a) of the SEBI (Prohibition of Fraudulent and Unfair Trading Practices related to Securities Markets) Regulations, 2003 (hereinafter be referred to as, the “**SEBI PFUTP Regulations**”).

APPOINTMENT OF ADJUDICATING OFFICER

2. SEBI initiated adjudication proceedings and appointed the undersigned as Adjudicating Officer under Section 15-I of the Securities and Exchange Board of India Act, 1992 (hereinafter be referred to as, the “**SEBI Act**”) read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter be referred to as, the “**SEBI Adjudication Rules**”) *vide* order dated April 20, 2021, to inquire into and adjudge under Section 15HA of the SEBI Act, against the Noticee for the alleged violation of aforesaid provisions of SEBI (PFUTP) Regulations. The appointment of the AO was communicated *vide* order dated April 26, 2021.

SHOW CAUSE NOTICE, REPLY AND HEARING

3. A Show Cause Notice dated July 23, 2021 (hereinafter be referred to as, the “**SCN**”) was 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 be not imposed against it 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.
4. The allegations levelled against the Noticee in the SCN are summarized as below:
 - a) That the Noticee was one of the entities which indulged in reversal trades which allegedly created false and misleading appearance of trading, generating artificial volumes in Stock Options segment of the BSE during the Investigation Period.
 - b) The Noticee engaged in 6 instances in 3 unique contracts which led to generation of artificial volume in these unique contracts.
 - c) The trades entered by the Noticee were reversed on the same day with the same counterparties at a substantial price difference without any basis for significant change in the contract price, which indicates that these trades are artificial and are non-genuine in nature.
 - d) A summary of dealings of the Noticee in the 3 Stock Options contracts in which the Noticee executed non-genuine reversal trades during the Investigation Period are as under:

Table 1: Summary of trading of the Noticee in Illiquid Stock Options on BSE

Sl. No.	Contract Name	Avg. Buy Rate (₹)	Total Buy Volume (no. of units)	Avg. Sell Rate (₹)	Total Sell Volume (no. of units)	% of Artificial trades of the Noticee in the contract to Total trades in the contract	% of Artificial Volume generated by Noticee in the contract to Total Volume in the Contract
1	INCM15MAY100.00CE	0.05	250000	1.05	250000	100	100
2	IOBL15APR40.00CEW1	2	300000	3	300000	5.56	7.44
3	SAIL15MAR80.00CE	0.05	752000	0.45	752000	5	5.79

e) 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 SEBI (PFUTP) Regulations, text of which is reproduced as under:

“SEBI (Prohibition of Fraudulent and Unfair Trading Practices Related to Securities Markets) Regulations, 2003

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 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 or 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;

.....”

5. The Noticee vide e-mail sent on August 23, 2021 submitted its reply to the charges alleged in the SCN, which are summarized hereunder:

- a) *There was no bar on trading in the said scrips. Therefore it would be too far-fetched to assume that these shares are so called "ill-liquid".*
- b) *The mere fact that BSE allowed trading, in absence of any warnings, estoppels from BSE, renders trading in these shares bona-fide.*
- c) *The trades were executed in the normal course of business*
- d) *That the noticee was in no way related to the alleged counter party SANJAY JAIN HUF. Also, the said SCN has failed to establish any connection between us and the alleged counter party except for matching of 2 trades which could also be a chance without any intent and much less malafide*
- e) *There were no investor complaints have been received for trading in the said illiquid scrips.*
- f) *All trades of the noticee have been backed up with appropriate pay in pay outs which establishes bonafides in carrying out genuine trades on the floor of the Exchange.*
- g) *The impugned trades were executed on the floor of exchange through a registered share broker who has the requisite software as approved by the Exchange. The entire trading process is like blind mechanism as far as buying and/or selling of shares by a client through a broker is concerned. The system does not even display details of all pending orders; rather it only displays the 5 best pending orders. Therefore, at*

any given point of time, it is impossible to even verify the party & counter party of these transactions.

- h) There was no alert from the broker or the Exchange which would prompt me to take any caution or create an alarm in me to estop trading. Under these circumstances, it is erroneous to come to a conclusion that i had executed non-genuine trades which resulted in artificial volume.*
- i) It is pertinent to note that there is a time difference between the buy and sell trades. Therefore any price variation in the meantime, is a market phenomenon on which I do not have any control.*
- j) The allegation in the SCN about 100% of total trades being non genuine has been interpreted in an erroneous manner. It is imperative to note that 3 contracts are miniscule and insignificant in comparison to the total trades executed in the same stock on the exchange. Hence when the entire volume traded on that day in the scrips is considered, the noticee is only a fraction of the whole volume and that too is purely incidental.*
- k) That the noticee denies having violated the provisions of Regulation 3(a), {b), (c), {d), and 4(1), 4(2) (a) of PFUTP Regulations, 2003. Therefore, humbly requests that the present proceedings against the noticee may not be continued and may be exonerated from all the charges and no penalty be imposed under section 15HA of SEBI ACT, 1992.*

6. After considering the facts and circumstances of the case, the undersigned granted an opportunity of personal hearing to the Noticee on September 15, 2021 vide Notice of Hearing dated September 08, 2021. In view of the prevailing circumstances owing to Covid-19 pandemic, the hearing was scheduled through video conferencing on Webex platform. On the scheduled date of hearing, the Authorized Representative of the Noticee appeared before me through video conference and requested to take into account the submissions made by the Noticee vide its Email sent on August 23, 2021, as his oral submissions.

CONSIDERATION OF ISSUES AND FINDINGS

7. The issues that arise for consideration in the instant matter are:

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) and 4(1) & 4(2)(a) of the PFUTP Regulations?

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?

Issue No. III If yes, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5 (2) of the SEBI Adjudication Rules?

8. As stated in preceding paragraphs, the position /trades entered into by the Noticee were squared up within a short span. The striking feature of the trades of the Noticee was that all the positions/trades were squared with the same counterparty with whom Noticee had originally traded/created position. The squaring up of the position/trade was at the substantial variation of price from the original position/trade. Thus, it was alleged that the Noticee had indulged in reversal trades. The said allegation was supported with evidence from the trade log containing records of all trades and reversal trades carried out by the Noticee in the Stock Options segment of the BSE during the Investigation Period and was also provided to the Noticee along with the SCN. On perusal of the details of trades carried out by the Noticee, it is observed that the Noticee took positions and then squared it up in 6 instances in 03 unique option contracts during the Investigation Period.
9. To illustrate, on May 25, 2015, Noticee bought 250000 units of the contract INCM15MAY100.00CE at 14:46:54 from Sanjay Jain HUF at a price of ₹0.05. Thereafter, the Noticee reversed its position by selling 250000 units from the same counterparty on the same day at 14:15:00 at a price of ₹1.05. Thus, the position of the Noticee was squared up at an average difference of ₹1.00. The entire volume of 5,00,000 units in the said option contract was arising out of the trades done by the Noticee.
10. A similar *modus operandi* is seen to be adopted by the Noticee in its trades in the other 2 unique option contracts shows that there is a substantial variation in price in both the legs.

11. From the reply of the Noticee, I note that the Noticee has not disputed execution and subsequent reversal of trades as alleged in the SCN. However, the Noticee, in its reply, has contended that the transactions were carried out by it at an anonymous platform provided by the BSE. The Noticee has also contended that there is nothing in SCN to show that she has violated any law and that intraday reversal was legal. I have considered the aforementioned contentions of the Noticee. In this regard, it may be noted that the Noticee was given details of its trades in the BSE options segment and the details of the trades, which are alleged to be reversed and manipulative. Further, I find it relevant to refer to the decision of the Hon'ble Supreme Court in the matter of **Securities and Exchange Board of India v. Kishore R. Ajmera** [(2016) 6 SCC 368: AIR 2016 SC 1079] wherein, the Supreme Court has held, *"...According to us, knowledge of who the 2nd party / client or the broker is, is not relevant at all. While the screen based trading system keeps the identity of the parties anonymous it will be too naïve to rest the conclusions on the said basis which overlooks a meeting of minds elsewhere. Direct proof of such meeting of minds elsewhere would rarely be forthcoming. The test, in our considered view, is one of preponderance of probabilities so far as adjudication of civil liability arising out of violation of the Act or the provisions of the Regulations framed thereunder is concerned...."*
12. The Hon'ble Supreme Court, has further 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 trade effected; the period of persistence in trading in a particular scrip; the particulars of buy and sell orders, namely the volume thereof; the proximity of time between the two and such relevant factors..."*. Placing reliance on the observation of the Hon'ble Supreme Court in the aforementioned matter, I cannot accept the submission of the Noticee that transactions were genuine on account of them being carried out on an anonymous platform of the exchange wherein, the Noticee had no knowledge of the counterparty. The manner of placement of the orders in both legs signifies that the orders were entered in a premeditated manner and were not genuine in any manner.

13. At this juncture, I also find it relevant to refer to the decision of the Supreme Court in the matter of **Securities and Exchange Board of India v. Rakhi Trading Private Limited** (Civil Appeal Nos. 1969, 3174-3177 and 3180 of 2011 dated February 08, 2018) wherein, the Hon'ble Supreme Court while cumulatively analyzing the reversal transactions 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"* The Court further stated 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 hand only misleading appearance of trading in the securities market....."*.

14. Applying the ratio of the Supreme Court in the matter of **Kishore R. Ajmera** (*supra*) and **Rakhi Trading** (*supra*), I am of the view that execution of trades in an illiquid market with such precision in order placement indicates a prior meeting of mind with a view to execute the reversal trades at a pre-determined price. The Noticee has failed in explaining the rationale for the trading as mentioned in Table 1 wherein it has taken a position at a particular price and squared it up at significant price difference without any substantial variation in the price of underlying. Since, the option contracts were done in illiquid contracts (as the strike price was far away from the market price of underlying), there was no trading in the said contract and hence no price discovery. The only reason for the wide variation in prices of the same contract, within minutes and some, even seconds, was pre-determination in the prices by both counterparties when executing the trades. Thus, the nature of trading as brought out above clearly indicates an element of prior meeting of minds and therefore, a collusion to carry out trades at pre-determined prices. It is not possible to comprehend the reason for which the Noticee would enter into an option contract with a strike price very far away from the current market price

of the underlying except for the fact that it wanted to execute non-genuine trades.

15. I further note that the Supreme Court in the matter of **Rakhi Trading** (*supra*), has held that, “*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 behaviour 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 a reverse dealing in securities, with predetermined arrangement to book loss or gain between pre-arranged parties, all these vices are attracted.*” I am of the considered view that the scheme, plan, device and artifice employed by the Noticee in this case of executing reversal trades in illiquid stock options contracts at irrational, unrealistic and unreasonable prices, tantamount to fraud on the securities market in as much as it involves non-genuine/ manipulative transactions in securities and misuse of the securities market. The non-genuine and deceptive transactions of the Noticee are, prima-facie, covered under the definition of 'fraud' and the dealings of the Noticee as discussed herein above were “fraudulent”, as defined under regulation 2(1)(c) of the SEBI (PFUTP) Regulations, 2003 and prohibited under the provisions of Regulations 3(a), (b), (c) and (d) and 4(1) and 4(2)(a) SEBI (PFUTP) Regulations, thereof.

16. Considering the synchronized manner of placing buy and sell orders within seconds of each other, reversing of the trades within a short time with widely varying prices of the two legs of trade in the same contract without any basis for such wide variation, I find that the reversal trades executed by the Noticee were *non-genuine* in nature and created an impression of genuine trading volumes in respective contracts. I am of the view that by engaging in such trades, the Noticee has violated provisions of Regulation 4(2)(a) of the PFUTP Regulations, which states that dealing in securities will be deemed to be a fraudulent or unfair trade practice if it involves “*indulging in an act which creates false or misleading appearance of trading in the securities market*”.

17. I once again find it relevant to place reliance on the decision of the Supreme Court in **Rakhi Trading** (*supra*) wherein, the Supreme Court while decision

upon a case involving execution of reversal trades in index options, observed, *“the traders thus 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 the PFUTP Regulations.”*

18. I find that the submission made by the Noticee that it did not have any intention to create artificial volume in the market irrelevant for adjudging the violation in this matter. In this regard, it is pertinent to refer to the decision of the Apex 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 and therefore, the intention of the parties committing such violation becomes immaterial..”*. Therefore, I find that the Noticee by engaging in such non-genuine transactions created a misleading impression of trading while dealing in stock options contract in a fraudulent manner and hence the aforesaid act of the Noticee is in clear violation of regulations 3(a), (b), (c), (d), 4(1) and 4(2) (a) of the PFUTP Regulations.

19. In view of the aforesaid findings, I find that the Noticee, by engaging in such non-genuine transactions, created a misleading impression of trading in respective contracts while dealing in Stock Options contracts in a fraudulent manner I am of the considered view that the aforesaid act of the Noticee is in clear violation of Regulation 3(a), (b), (c), (d), 4(1) and 4(2) (a) of the SEBI (PFUTP) Regulations.

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 yes, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5 (2) of the Adjudication Rules?

20. Since violation of Regulation 3(a), (b), (c), (d), 4(1) and 4(2) (a) of the SEBI (PFUTP) Regulations by the Noticee is established, I am of the view that the

same warrants imposition of monetary penalty upon the Noticee under Section 15HA of the SEBI Act, text of which is produced as under :

SEBI Act

“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.”

21. While determining the quantum of penalty under Section 15HA of the SEBI Act, the following factors stipulated in Section 15J of the SEBI Act, have to be given due regard:
- 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.
22. As established in the preceding paragraphs, the trades carried out by the Noticee were non-genuine in nature and created a misleading appearance of trading. As brought out earlier, such trades were carried out by the Noticee in illiquid stock options contracts where there was negligible participation by the public. Investigation has shown amount of profit / loss of the counterparties to the trades as a result of such non-genuine trades. However, considering that the violation by the Noticee is creation of artificial trading volumes by trading between two counterparties and wider market is not involved in the trades, the trades are such that one of the counterparty books a profit while the other counterparty books a loss. Hence, it would be appropriate to consider the impact of these transactions between the two counterparties in totality. When the impact of artificial volumes created by the two counterparties is seen as a whole, it is not possible from the material available on record to quantify the amount of disproportionate gain or unfair advantage resulting from the artificial trades between the counterparties or the consequent loss caused to investors as a result of the default.

ORDER

23. After taking into consideration all the facts and circumstances of the case, in exercise of powers conferred upon me under Section 15I (2) of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose a penalty of ₹5,00,000/- (Rupees Five Lakhs only) upon the Noticee i.e., Basanti Devi Patni, under Section 15HA of the SEBI Act for violation of Regulation 3(a), (b), (c), (d), 4(1) and 4(2)(a) of the SEBI (PFUTP) Regulations.
24. The said penalty imposed on the Noticee, as mentioned above, is commensurate with the violation committed by the Noticee and acts as a deterrent factor for the Noticee and others in protecting the interest of investors.
25. The Noticee shall remit / pay the said amount of penalty within 45 days from the date of receipt of this Order, either by way of Demand Draft in favour 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

26. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the Division Chief, Enforcement Department-I, SEBI, in the format as 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

27. Copies of this Adjudication Order are being sent to the Noticee and to SEBI in terms of Rule 6 of the SEBI Adjudication Rules.

Date: January 20, 2022

Place: Mumbai

**PRASANTA MAHAPATRA
ADJUDICATING OFFICER**