

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER Ref. No. ORDER/NH/YK/2023-24/30244]

UNDER SECTION 15-I OF THE 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
Shail Agarwal
PAN: AETPA3063J

In the matter of dealing in Illiquid Stock Options at BSE

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 stock options segment of Bombay Stock Exchange (hereinafter referred to as '**BSE**'). SEBI observed that such large scale reversal of trades in stock options led to creation of artificial volume at BSE. In view of the same, SEBI conducted an investigation into the trading activities of certain entities in illiquid stock options at BSE for the period April 1, 2014 to September 30, 2015 (hereinafter referred to as '**IP**').
2. Pursuant to investigation, it was observed that a total of 2,91,744 trades were executed by 14,720 entities in the stock options segment of BSE during the investigation period. The aforesaid trades comprised 81.40% of all the trades executed in the BSE Stock Options Segment during the said period. These trades resulted in creation of artificial volume in stock options segment of BSE during the IP. It was observed that Shail Agarwal (PAN: AETPA3063J) (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 IP. Such trades were observed to be non-genuine in nature and created false or misleading appearance of trading in terms of artificial volumes in stock options

and therefore were alleged to be manipulative, deceptive in nature. In view of the same, it is alleged that the Noticee violated the provisions of Regulations 3(a), (b), (c), (d), 4(1) and 4 (2) (a) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003 (hereinafter referred to as '**PFUTP Regulations**'). Therefore, SEBI initiated adjudication proceedings against the Noticee.

APPOINTMENT OF ADJUDICATING OFFICER

3. Shri Suresh Menon was appointed as the Adjudicating Officer (hereinafter referred to as "**AO**") in the matter vide communique dated July 27, 2021 under Section 19 of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act**') read with Section 15-I of the SEBI Act and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as "**Adjudication Rules**"), to inquire into and adjudge under the provisions of 15HA of SEBI Act, the aforesaid alleged violations by Noticee. Pursuant to the superannuation of Shri Suresh B Menon, the undersigned was appointed as AO in the instant matter vide communique dated July 27, 2022.

SHOW CAUSE NOTICE AND REPLY

4. A Show Cause Notice bearing reference no. EAD-1/SBM/VS/4205/2022 dated January 27, 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 for the alleged violation of Regulations 3(a),(b),(c),(d) and 4(1), 4(2)(a) of PFUTP Regulations and why penalty should not be imposed under Section 15HA of the SEBI Act for the violations alleged to have been committed by the Noticee.
5. Thereafter, vide letter dated August 10, 2022, Noticee was informed about the SEBI Settlement Scheme, 2022, commenced in terms of Regulation 26 of the Securities and Exchange Board of India (Settlement Proceedings) Regulations, 2018 and in case, the Noticee did not wish to avail the facility under the SEBI

Settlement Scheme, 2022, the Noticee was advised to file a reply to the SCN within 30 days of the receipt of the letter.

6. As the Noticee did not avail the facility of settlement under the SEBI Settlement Scheme, 2022, an opportunity of hearing was provided to the Noticee on June 20, 2023. In this regard, the service of the Hearing Noticee was undertaken through newspaper publications as well. However, Noticee did not avail the opportunity of hearing on June 20, 2023.
7. Thereafter, vide letter dated March 06, 2024, Noticee was informed about the ISO Settlement Scheme, 2024, commenced in terms of Regulation 26 of the Securities and Exchange Board of India (Settlement Proceedings) Regulations, 2018 and in case, the Noticee did not wish to avail the facility under the ISO Settlement Scheme, 2024, the Noticee was advised to file a reply to the SCN within 14 days of the receipt of the letter.
8. In response, Mr. Rahul Agarwal (Son of the Noticee) vide undated letter received by SEBI on March 28, 2024, *inter alia*, informed the undersigned that the Noticee had expired on September 26, 2015 and requested to drop the proceedings qua the Noticee. In this regard, Mr. Rahul Agarwal enclosed copy of death certificate of the Noticee notarized in original along with his letter. Registration No. of the said death certificate is 5398/15.
9. In this context, based on the material on record, I note that the Noticee expired on September 26, 2015. Before proceeding further in the matter on merit, it would be in the fitness of things to first decide as to whether on the death of the Noticee, the present adjudication proceedings against the Noticee would continue or abate.
10. In this context, I note that in the matter of **Girijanandini Devi v. Bijendra Narain Choudhary** (AIR 1967 SC 1124), 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 v. 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."*

11. In view of the foregoing, I am of the view that the instant adjudication proceedings against the Noticee, Shail Agarwal are liable to be abated without going into the merits of the case qua her and the SCN dated January 27, 2022 issued against her is disposed of accordingly.
12. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to SEBI and to Mr. Rahul Agarwal.

Place: Mumbai

Date: March 28, 2024

**N HARIHARAN
ADJUDICATING OFFICER**