BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/NS/SM/2023-24/29574]

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:

DEEPA AGARWAL

(PAN: BMLPA3431M)

In the matter of dealings in Illiquid Stock Options at BSE Limited

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A. BACKGROUND OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") observed large scale reversal of trades in Stock Options segment of BSE Limited (formerly known as Bombay Stock Exchange Limited-hereinafter referred to as "**BSE)** leading 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 "**Investigation period** ").

2. Pursuant to a preliminary examination conducted in the Illiquid Stock Options, an Interim order was passed by SEBI on August 20, 2015 against 59 entities which were confirmed vide Orders dated July 30, 2016 and August 22, 2016. Meanwhile, SEBI initiated a detailed investigation relating to trading in stock options segment of BSE which was completed in the year 2018. The investigation findings revealed that of all trades executed in the stock options segment of BSE during the Investigation Period, 81.38% of the trades, that is 2,91,643 trades, were trades which involved a 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 the first set of 59 entities, vide the aforementioned Interim Order 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 SEBI Act, 1992 (hereinafter referred to as the **"SEBI Act"**) and SEBI (Procedure for Holding Inquiry 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 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 SEBI (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 **Deepa Agarwal** (hereinafter referred to as the "**Noticee**") was one of the various entities which indulged in execution of reversal trades in stock options segment of BSE during the Investigation Period. 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 SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as "**PFUTP** Regulations").

5. It was observed that 13,186 entities did not avail the opportunity of settlement and therefore Adjudication proceedings were initiated against the entities in a phased manner. In order to duly expedite the Adjudication proceedings against the entities, SEBI had appointed additional Adjudicating officers to adjudicate against the said entities. However, owing to the huge number of alleged entities, the adjudication proceedings were being conducted in a phased manner that

required adequate time to complete the proceedings against all entities. The Adjudicating officers had passed Orders with respect to certain Noticees in a phased manner.

6. It was observed, that some of the entities against whom Orders were passed in the adjudication proceedings appealed before the Hon'ble SAT. 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"*.

7. Accordingly, SEBI introduced a Settlement Scheme i.e. SEBI Settlement Scheme, 2022 (hereinafter referred to as "Scheme 2022") in terms of Regulation 26 of the SEBI (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.

8. I note that SEBI framed the Scheme in accordance with the provisions of the Settlement Regulations and issued a Public Notice dated August 19, 2022 about the Scheme and the modalities for availing the benefit of the Scheme. The Notice was also made available on the website of the BSE. The Scheme was initially kept open for a period of three months commencing from August 22, 2022 to November 21, 2022 (both days inclusive). Considering the interest of a large number of entities to avail the Scheme, SEBI extended the period of the Scheme till January 21,2023 vide public notice dated November 22, 2022. A total of 10,980 Noticees availed the benefit of the Scheme and remitted the

specified settlement amount respectively. Accordingly, a settlement order was passed on March 08, 2023, settling the matter with respect to 10,980 Noticees.

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. The undersigned has been appointed as the Adjudicating Officer in the matter, vide order dated July 02, 2021, under section 19 read with section 15 I(1) of the SEBI Act and Rule 3 of Adjudication Rules to conduct adjudication proceedings in the manner specified under Rule 4 of Adjudication Rules read with section 15 I(1) and (2) of SEBI Act, 1992, and if satisfied that penalty is liable, impose such penalty deemed fit in terms of Rule 5 of Adjudication Rules and section 15HA of SEBI Act, 1992.

C. SHOW CAUSE NOTICE, REPLY AND HEARING

11. A Show Cause Notice (hereinafter referred to as 'SCN') bearing reference no. SEBI/HO/CDMRD/DMP/P/OW/2021/26166/1 dated September 28, 2021 was issued to the Noticee under Rule 4(1) of the Adjudication Rules to show-cause as to why an inquiry should not be held against the noticee and penalty should not be imposed under section 15HA of the SEBI Act, 1992 for the violations alleged to have been committed by the Noticee.

12. The SCN dated September 28, 2021 was served to the Noticee via Speed Post Acknowledgement Due (SPAD). The Noticee has not given any reply to the SCN.

13. It was, inter-alia, alleged in the SCN that the Noticee had executed one non-genuine reversal trade in one Stock Option contract which resulted in artificial volume of total 1,36,000 units. The summary of dealings of the Noticee in the

Stock Option contract, in which the Noticee allegedly executed trades that were not genuine during the Investigation Period 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 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	KARB15MAR135.00CE	0.50	68,000	4.20	68,000	100	2.61

14. During the pendency of the adjudication proceedings, a supplementary Show Cause Notice (hereinafter referred to as 'SSCN') bearing reference no. SEBI/HO/MRD-PoD-1/P/OW/2022/35734/1 dated August 5, 2022 was issued to the Noticee drawing attention to SEBI Settlement Scheme, 2022 framed in terms of Regulation 26 of the Settlement Regulations, 2018.

15. It was also advised in the said SSCN that, in case noticee prefers not to avail the benefit of the said Scheme, the adjudication proceedings initiated vide SCN shall stand automatically revived and the proceedings shall continue, from the stage at which the said proceedings were kept pending. The noticee was advised to reply within 30 days of receipt of SSCN, if not filed earlier.

16. Further, vide hearing notice no. SEBI/HO/MRD/MRD-PoD-1/P/OW/2023/8527 dated February 28, 2023, it was communicated to the Noticee that an opportunity of personal hearing is granted to the Noticee, in accordance with Rule 4(3) of the Adjudication Rules, on March 16, 2023.

17. A personal hearing was conducted through virtual mode on March 16, 2023 wherein, the authorized representative (referred to as AR) of the Noticee made the following submissions.

    a. The noticee or her husband do not have any knowledge of trading in securities and the transaction which resulted in the instant adjudication proceedings was done with the help of one broker named Mr. R K Gupta. The AR also stated that the broker guided the transaction with an assurance that the instant transaction would not result into any adverse consequences on the part of the noticee.

b. The AR further stated that the noticee has neither made any reply to any of the captioned SCNs nor availed the SEBI Settlement Scheme, 2022 on the basis of assurances made by the said broker. The AR also stated that the noticee has transferred certain amount of profit made in the instant transaction to the said broker in cash.

c. In response to the advice of AO to submit the reply to SCNs and any further relevant details in writing by the noticee, AR requested a week time to for submitting the reply.

18. The Noticee further vide email dated March 20, 2023 further submitted as follows.

a. I'm not responsible for any trade done in my trading account at R.K. Stock Holding Pvt. Ltd, during the financial year of 2014-2015. These trades were not done by me all trades were done by R.K.Gupta, owner of R.K.Stock holding pvt ltd.

b. The Bank statement for the financial year 2014-15 has not been given by the bank because of statement is very old.

D. CONSIDERATION OF ISSUES

19. I have taken into consideration the facts of the case and the material on record and I now proceed to consider the issues that arise in this case.

20. The core issue that arises for consideration in the instant matter is whether the trading in illiquid stock options done by the Noticee during the Investigation Period was in violation of Regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of the PFUTP Regulations? If yes, whether the Noticee is liable for a levy of monetary penalty under Section 15HA of the SEBI Act and if yes, how much should be the penalty?

21. Before proceeding further, I would like to refer to the relevant provisions of the PFUTP Regulations, 2003 as below:

Regulation 3. Prohibition of certain dealings in securities

3. 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 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 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.

Regulation 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.

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."*

22. The allegation against the Noticee is that, while dealing in the Stock Option contracts at BSE during the Investigation Period, the Noticee had executed reversal trades on the same day within one minute, which were allegedly non-genuine trades and the same had resulted in generation of artificial volume in stock option contracts at BSE. Reversal trades are those trades in which an entity places its buy or sell positions in a contract with subsequent sell or buy positions with the same counterparty during the same day. These reversal trades are alleged to be non-genuine trades as they are not executed in the normal course of trading, lack basic trading rationale, lead to false or misleading appearance of trading in terms of generation of artificial volumes and hence are deceptive and manipulative.

23. I note from the trade log that the Noticee had executed two non-genuine trades traded in one contract in the Stock Options segment of BSE during the Investigation Period. I further note that the above mentioned trades of the Noticee had resulted in the creation of artificial volume of a total of 1,36,000 units in the said contract. A summary of the non-genuine trades of the Noticee is as follows:

Table A

Trade Date	**Scrip Name**	**Buy Client name**	**Sell client name**	**Buy Order Time**	**Sell Order Time**	**Trade Time**	**Buy Order Rate**	**Sell Order Rate**	**Trade Rate**	**Buy Order Qty**	**Sell Order Qty**	**Traded Qty**
26/02/15	KARB15MAR135.00CE	**Deepa Agarwal**	**Mahakaleshwar Mines & Metals Pvt. Ltd.**	**14:42:11.921850**	**14:42:11.923082**	**14:42:11.923082**	**0.5**	**0.5**	**0.5**	**68,000**	**68,000**	**68,000**
26/02/15	KARB15MAR135.00CE	**Mahakaleshwar Mines & Metals Pvt. Ltd.**	**Deepa Agarwal**	**14:42:16.247895**	**14:42:16.122487**	**14:42:16.247895**	**4.2**	**4.2**	**4.2**	**68,000**	**68,000**	**68,000**

24. I note from the trade log that the trades executed by the Noticee in a contract were reversed within a short span of time with the same counter-party viz. Mahakaleshwar Mines & Metals Pvt. Ltd. The Noticee, at 14:42:11 hours on February 26, 2015, entered into a buy trade with the counter-party for 68,000 units at the rate of Rs.0.50 per unit in the contract KARB15MAR135.00CE. Thereafter, on the same day, the Noticee, at 14:42:16 hours entered into a sell trade with same counterparty for 68,000 units at the rate of Rs. 4.20 per unit in the same contract. Thus, while dealing in the said contract during the Investigation period, the Noticee executed the reversal trade with same counterparty viz. Mahakaleshwar Mines & Metals Pvt. Ltd on the same day and with noticeable price difference in buy and sell rate. Thus, the Noticee, through her dealing in the contract viz. "KARB15MAR135.00CE" during the Investigation period, executed reversal trades generating an artificial volume of 1,36,000 units which is 2.61% of the volume traded in the contract.

25. The fact that the transactions executed by the Noticee are not genuine is evident from the fact that, within a short span of time of 5 seconds, the Noticee reversed the position with the counterparty with a noticeable price difference. Such a short span of time taken for reversing the trades in an illiquid stock option contract advocates the fact that these trades executed by the Noticee were not genuine. The fact that there was a wide variation in prices of the said contracts and the transaction in a particular contract was reversed with the same counterparty within 5 seconds only indicates a prior meeting of minds with a mala fide intent to execute the reversal trades at a pre-determined price.

26. From the facts brought out in the matter, I am convinced that the trades between the Noticee and the counterparty were a consequence of pre-meditated decision of both the parties and hence are unfair trades as per PFUTP Regulations. It cannot be a matter of coincidence or lack of awareness, or without knowledge of the counterparties. Hence, the trades placed on the stock exchange platform by mutual understanding are non-genuine trades, which are prohibited under PFUTP Regulations.

27. In this context, it is relevant to quote the judgment of the Hon'ble Supreme Court in the matter of **Rakhi Trading (SEBI Vs. Rakhi Trading-CANo.1969/2011, Order dated February 8, 2018)**

"Fairness, integrity and transparency are the hallmarks of the stock market in India". (Paragraph No. 1 of the part of the judgement authored by His Lordship Mr.Justice Kurian Joseph).

"*The repeated reversals and predetermined arrangement to book profits and losses respectively, made it clear that the parties were not trading in the normal sense and ordinary course. Resultantly, there has clearly been a restriction on the free and fair operation of market forces in the instant case*." (**Paragraph No. 38** authored by His Lordship Mr. Justice Kurian Joseph)

".... The stock market is not a platform for any fraudulent or unfair trade practice. The field is open to all the investors. By synchronization and rapid reverse trade, as has been carried out by the traders in the instant case, the price discovery system itself is affected. Except the parties who have pre-fixed the price, nobody is in the position to participate in the trade. It also has an adverse impact on the fairness, integrity and transparency of the stock market." (**Paragraph No. 41** of the part of the judgement authored by His Lordship Mr. Justice Kurian Joseph).

"The smooth operation of the securities market and its healthy growth and development depends upon large extent on the quality and integrity of the market. Unfair trade practices affect the integrity and efficiency of the securities market and the confidence of the investors. Prevention of market abuse and preservation of market integrity are the hallmark of securities law ..." (**Paragraph No.38** of the part of the judgment authored by Her Ladyship Ms. Justice R. Banumathi). For this, the Hon'ble Judge also relied on the apex court observations in N.Narayanan Vs. Adjudicating Officer, Securities and Exchange Board of India (2013) 12 SCC 152 wherein it was inter alia observed: "Market abuse" impairs economic growth and erodes investor's confidence.

*"Where certain unscrupulous elements are trying to manipulate the market to serve their own interest, it becomes imperative on the part of SEBI to intervene and to curb further mischief and to take necessary action to maintain public confidence in the integrity of the securities market..."(***Paragraph No.42** of the part of the judgment authored by Her Ladyship Ms. Justice R. Banumathi).

28. Finally, to answer the question as to whether these trades fall within the ambit of Regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a)of the PFUTP Regulations, I would like to rely on the following extract of the judgment of the Hon'ble Supreme Court in the matter of **Rakhi Trading**:

"39. 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 behavior 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 synchronized and reverse dealing in securities, with predetermined arrangement to book loss or gain between pre-arranged parties, all these vices are attracted.

40. Regulation 3(a) expressly prohibits buying, selling or otherwise dealing in securities in a fraudulent manner. Under Regulation 4(2) dealing in securities shall be deemed to be fraudulent if the trader indulges in an act which creates a false or misleading appearance of trading in the securities market. It is a deeming provision. Such trading also involves an act amounting to manipulation of the price of the security in the sense that the price has been artificially and apparently prefixed. The price does not at all reflect the value of the underlying asset. It is also a transaction in securities entered into without any intention of performing it and without any intention of effecting a change of ownership of such securities, ownership being understood in the limited sense of the rights of the contract." (per His Lordship Mr. Justice Kurian Joseph's findings in paragraph Nos. 39 & 40).

29. The Hon'ble Appellate Tribunal has summarized the circumstances identified by the Apex court in **Rakhi Trading Judgment** in the case of **Global Earth Properties and Developers Pvt. Ltd. Vs Securities and Exchange Board of India (Appeal No.212 of 2020 decided on September 14, 2020).** In para 14 of the said order, the Hon'ble SAT enlisted the following circumstances:

*"**14 d.** An intentional trading for loss per se, is not a genuine dealing in securities. Trading is always with the aim to make profits. But if one party consistently makes loss and that too in preplanned and rapid reverse trades, it is not genuine and the same is an unfair trade practice.*

***e**. In synchronised and reverse trades, there is no genuine change of rights in the contract".*

30. Further in paragraph No. 20 of the said order in Global Earth (supra), the Hon'ble Tribunal held as below:

"20. From the aforesaid cumulative analysis of the reversed transactions with the counter party, quantity, time and significant variation of the price clearly indicates that the trades were non-genuine and had only misleading appearance of trading in the securities market without intending to transfer the beneficial ownership. One finds it to be naïve to presume that the perception of the two counter parties to a trade changed within few seconds/minutes and positions were interchanged and the contracts were changed where one party made profit and the other party ended up making losses every time without prior meeting of mind. 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."

31. The Noticee has submitted that she is not responsible for any trade done in her trading account at R.K. Stock Holding Pvt Ltd and the trades were not done by her and the same were done by R.K.Gupta, owner of R.K.Stock Holding Pvt. Ltd.

    I am of the view that the trades in question have taken place in the trading account of the Noticee. Further, as submitted by the Noticee during the hearing, the trading has happened on verbal assurances of R.K.Gupta, the broker. The Noticee has not submitted any documentary evidence to establish that the said broker has carried out the trades on behalf of the Noticee. Therefore, considering the fact that the trades have been carried out in the trading account of the Noticee, the accountability, if any, on the consequences of trades in the said account lies with the Noticee.

32. As regards the quantum of penalty to be levied, I take into regard the manipulative nature of the trades placed by the Noticee that has led to creation of artificial volume in the contract.

33. I now proceed to determine the quantum of penalty to be imposed, bearing in mind the parameters laid down in Section 15J of the SEBI Act. I observe that in this matter, the amount of disproportionate gain or unfair advantage is not quantifiable. Therefore, considering all the facts and circumstances in this matter, I am inclined to impose a minimum penalty against the Noticee, as provided under Section 15HA of the SEBI Act.

34. I note that, as per the provisions of the Amendment of Section 15HA vide the Securities Laws (Amendment) Act, 2014, that came into force on September 08, 2014, the penalty shall not be less than five lakh rupees. In the instant case, it is observed that the violation of the PFUTP Regulations, took place after the aforesaid date, therefore, the penalty shall not be less than five lakh rupees.

E. ORDER

35. Therefore, in exercise of powers conferred upon me under Section 15-I(2) of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose a

penalty of Rs 5,00,000/-(Rupees Five Lakhs only) upon the Noticee i.e.,Deepa Agarwal (PAN No: BMLPA3431M) under Section 15HA of the SEBI Act for violation of Regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of the PFUTP Regulations.

36. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link:

ENFORCEMENT → ORDERS → ORDERS OF AO → PAY NOW

37. 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, inter alia, by attachment and sale of movable and immovable properties.

38. In terms of Rule 6 of the Adjudication Rules, copies of this order are sent to the Noticee and also to SEBI.

Date: October 10, 2023 | **Naveen Sharma**
Place: Mumbai | **Adjudicating Officer**