BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/MS/NS/2021-22/15465]

UNDER SECTION 15-I OF 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
Ms. Santosh Bihani [PAN: AFKPB0519G]
691, Nimtola Ghat Street
Kolkata, West Bengal - 700006
In the matter of trading in Illiquid Stock Options at BSE Ltd

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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 Bombay Stock Exchange Ltd (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 "Investigation Period").

2. Pursuant to investigation, it was observed that during the investigation period, total 2,91,744 trades comprising 81.4% of all the trades executed in Stock Options Segment of BSE were found to be non-genuine trades. In

view of the large scale reversal of trades that were observed in the illiquid Stock Options segment at BSE, it is alleged that these trades were non-genuine in nature.

3. It was observed that Ms. Santosh Bihani (PAN- AFKPB0519G) (hereinafter referred to as "Noticee") was one of the various entities who indulged in the execution of alleged non-genuine trades in the Stock Options Segment at BSE during the Investigation Period. It was observed that the Noticee had entered into reversal trades with her counterparty which involved squaring off transactions with significant difference in the value of buy order and sell order. Therefore, it is alleged that Noticee had executed the reversal trades which were non-genuine in nature and has created false and misleading appearance of trading in terms of creation of artificial volume in the Stock Options segment at BSE and therefore, the Noticee has violated the provisions of Regulations 3(a), (b), (c), (d) and Regulations 4(1) & 4(2)(a) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Markets) Regulations, 2003 (hereinafter referred to as "PFUTP Regulations"). In view of this, adjudication proceedings have been initiated against the Noticee under the provisions of Section 15HA of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as 'SEBI Act')

APPOINTMENT OF ADJUDICATING OFFICER

4. Pursuant to investigation, SEBI, was of the view that there are grounds to adjudicate upon the alleged violations as mentioned above, *inter alia*, in respect of the Noticee and had therefore appointed the undersigned as the Adjudicating Officer vide Order dated July 06, 2021 under Section 19 read with Section 15I(1) of the SEBI Act 1992 (hereinafter referred to as "SEBI Act, 1992") and Rule 3 of the Securities and Exchange Board of India

(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 the Adjudication Rules read with Section 15I (1) and (2) of SEBI Act, and if satisfied that the entity is liable for penalty, may impose such penalty as deemed fit in terms of Rule 5 of Adjudication Rules and provisions of Section 15HA of the SEBI Act.

SHOW CAUSE NOTICE, REPLY AND HEARING

5. A Show Cause Notice (hereinafter referred to as 'SCN') bearing Reference No. SEBI/IVD-5/SCN/AO-MS/NS/18963/1/2021 dated August 11, 2021 was issued to the Noticee under Rule 4(1) of the Adjudication Rules to show cause as to why an inquiry be not held against her and why penalty should not be imposed under Section 15HA of the SEBI Act, 1992 for the violations alleged to have been committed by her. The SCN was sent to the Noticee vide Speed Post AD and was duly served upon the Noticee. The SCN issued to the Noticee, *inter alia* mentioned the following:

6. During the Investigation Period, in the Stock Options segment, it was observed that the Noticee had traded in 1 (one) unique contract, wherein, she had allegedly executed 2 (two) non-genuine trades each for 1,36,000 units on June 22, 2015 which resulted in artificial volume of total 2,72,000 units.

7. Summary of dealings of the Noticee in the Stock Options contract in which she allegedly executed non-genuine trades during the Investigation Period is as follows:

CLIENT NAME	CP CLIENT NAME	SCRIP NAME	TRADE DATE	TRADE TIME	BUY/ SELL ORDER	TRADE RATE	TRADED QTY
SANTOSH BIHANI	J B OVERSEAS	JAIA15JUN10.00CE	22/06/2015	13:57:02. 768038	BUY	1.75	1,36,000
J B OVERSEAS	SANTOSH BIHANI	JAIA15JUN10.00CE	22/06/2015	13:57:36. 174543	SELL	3.25	1,36,000

* Note: *“Traded Quantity” or “unit” refers to lot size in contract multiplied by number of contracts traded.*

(i) From the above table, the following is observed as regards the dealings of the Noticee:

(a) While dealing in the said contract on June 22, 2015 at 13:57:02 hrs the Noticee entered into a buy trade with counterparty J B Overseas for 1,36,000 units at Rs. 1.75 per unit. At 13:57:36 hrs the Noticee entered into a sell trade with the same counterparty, for the same quantity i.e. 1,36,000 units at Rs. 3.25 per unit.

(b) The Noticee’s 2 (two) trades while dealing in the aforesaid contract during the Investigation Period allegedly generated artificial volume of 2,72,000 units, which made up to 40% of total market volume in the said contract during this period.

(c) Such trades were observed to be non-genuine in nature and also created false and misleading appearance of trading 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 PFUTP Regulations.

SUBMISSION BY THE NOTICEE

8. Noticee vide letter dated August 28, 2021 replied to the above SCN and *inter alia* submitted as under:

   a. The reversal trade mentioned in SCN is not a trade effected by Noticee. In this regard Noticee has attached a duly notarized and self-certified copy of securities statement issued by her depository participants namely, Shree Bahubali Stock Broking Limited for the period April 1, 2015 to March 31, 2016.
   b. This transaction has not been undertaken by either Noticee or by the authorized nominees of Noticee.
   c. Noticee submitted the bank account statement of Union Bank of India and Indian Bank pertaining to the Noticee and submitted that that there is no debit on June 22, 2015 in these bank accounts for a sum of Rs 2,38,000 (Rs 1.75 * 1,36,000) on account of any purchase of securities. Similarly, there is no credit on June 22, 2015 in these bank accounts for a sum of Rs 4,42,000 (Rs 3.25 * 1,36,000) for sale of securities.
   d. Noticee also attached a duly notarized and self-certified copy of her balance sheet together with the profit and loss account statement for the financial year 2015- 2016 which does not record or otherwise reflect the transaction alleged to have taken place.
   e. Annexure 2 of the SCN mentions the names of Giriraj Stock Broking Pvt Ltd and Geometry Vanijya Pvt Ltd. Noticee in this regard submitted that Giriraj Stock Broking Pvt Ltd is the member who has executed the debit of 1,36,000 securities of JB Overseas at the rate of Rs. 1.75/- per security and bought the same from Geometry Vanijya Pvt Ltd on the behalf of Noticee, without any authority. Geometry Vanijya Pvt Ltd is the member who has executed the credit of 1,36,000 securities of JB Overseas at the rates of Rs 3.25 per security and sold the same to

Giriraj Stock Broking Pvt Ltd on the behalf of Noticee, without any authority.

f. In light of such illegal, fraudulent and unauthorized acts of Giriraj Stock Broking Pvt Ltd and Geometry Vanijya Pvt Ltd, she has caused a legal notice to be issued to each on them through her advocate calling upon them to clarify the above transaction and prove, by way of a written instrument, document etc. that she had authorized either of them to trade in any security or stock options on her behalf.

g. She has no information about, or nexus with, or any dealings with the said Giriraj Stock Broking Pvt. Ltd. and Geometry Vanijya Pvt. Ltd. and neither of these entities are related to her in any manner. Therefore, there is no fraudulent intention to create artificial volumes of securities on her part and fraudulent intention, if any, must be solely attributed to Giriraj Stock Broking Pvt Ltd and Geometry Vanijya Pvt Ltd.

h. In view of the above, the Noticee denied to have violated Regulations 3 (a), 3(b), 3(c), 3 (d), 4 (1) and 4 (2) (a) of the PFUTP Regulations and requested to drop the proceedings against her.

9. Thereafter, in the interest of natural justice and in terms of Rule 4 (3) of Adjudication Rules, a hearing notice dated September 08, 2021 was issued to the Noticee granting her an opportunity of personal hearing on September 21, 2021 through the online CISCO WebEx platform. The said hearing notice was delivered to her, as per the records.

10. Subsequently, vide email dated September 14, 2021, the Noticee forwarded an Authority Letter in favour of Mr. Pulkit Chandak, Advocate to be Authorized Representative of Noticee in the instant proceedings.

11. During the hearing scheduled on September 21, 2021, the Authorized Representative attended the said hearing and reiterated the submissions made in the aforesaid reply dated August 28, 2021.

CONSIDERATION OF ISSUES

12. After perusal of the material available on record, the issues that arise for consideration are as under:

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

II. If yes, whether the Noticee is liable for monetary penalty under Section 15HA of the SEBI Act?

III. If so, what quantum of monetary penalty should be imposed on the Noticee?

FINDINGS

13. The relevant provisions of PFUTP Regulations which are alleged to have been violated are as under:

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;

It has been alleged that the Noticee had indulged in execution of reversal of trades in Stock Options with same entity on the same day. Such trades were non-genuine in nature and had created false and misleading appearance of trading in terms of artificial volume in Stock Options and therefore are alleged to be manipulative and deceptive in nature.

I note that the Noticee has contended that she has not dealt in the scrip mentioned in the SCN, as same is not appearing in the duly notarized and self-certified copy of securities statement issued by her depository participants namely, Shree Bahubali Stock Broking Limited ("DP") for the period of 1st April 2015 to 31st March 2016. In this regard, it needs to be emphasized that the scope of the present proceedings is confined to the reversal trades of the Noticee referred to in the SCN. I note that the impugned trades in the said contract were reversed on the same day by squaring off the buy trade placed by her with the sell trade and therefore, same was not appearing in her aforesaid statement issued by her DP.

Further, the Noticee has contended that impugned trades were placed by her broker Giriraj Stock Broking Pvt Ltd without obtaining any authorization. In this regard, she had issued a legal notice to both the brokers and raised the issue of execution of impugned trades by them. Accordingly, vide reply dated September7, 2021 and March 02, 2022, the advocate of Giriraj Stock Broking Private Limited stated that the impugned trade was on account of an inadvertent error by its dealer while placing order; generally termed as a "*fat finger error*". The order has to be placed in the account of one of its client, Ms. Saroj Devi Khemka (AFTPK0475K) having UCC: S232. However, due to order placing requirement for numerous clients, the dealer accidentally executed the order in Noticee's client's code i.e., UCC:S239, since the client code of Ms. Saroj Devi Khemka and Noticee are very similar. However, on observing the error it was rectified at the back office. Accordingly, the impugned trade was executed rightfully transferred in the account of Ms. Saroj Devi Khemka. Please be informed that the trade has been settled in Ms. Saroj Devi Khemka's account and the respective accounting entries have been passed in the account and even the pay-out has also been paid to Ms. Saroj Devi Khemka. Therefore, although the order was accidentally executed in Noticee's account, the resultant final trade was actually reflected in Ms. Saroj Devi Khemka's account only. In this regard, I note that Giriraj Stock Broking Private Limited has provided the contract note for the impugned trades which is in the name of Ms. Saroj Devi Khemka. As seen from trade log, the client code S232 was modified by broker Giriraj Stock Broking Private Limited. It has also provided extract of its bank statement in which square-off profit from above transaction was credited to Ms. Saroj Devi Khemaka bank account.

14. Based on the evidences on record, evidences produced before me during the instant proceedings and submissions made by the Noticee, I observe that:

(i) On June 22, 2015, total 2 (two) trades for 2,72,000 units were executed in the "JAIA15JUN10.00CE" contract wherein the Noticee was party to both the said trades by broker Giriraj Stock Broking Private Limited;

(ii) Broker Giriraj Stock Broking Private Limited placed the order without obtaining any authorization from Noticee;

(iii) Noticee had issued a legal notice to the broker and raised the issue of execution of impugned trades by broker;

(iv) Giriraj Stock Broking Private Limited stated that the impugned trade was on account of an inadvertent error by its dealer while placing order; generally termed as a "*fat finger error*". The order has to be placed in the account of one of its client, Ms. Saroj Devi Khemka having UCC: S232. However, due to order placing requirement for numerous clients, the dealer accidentally executed the order in Noticee's client's code i.e., UCC:S239;

(v) Client code was modified by broker to S232 and the same is appearing in trade log;

(vi) The contract note for the above trade is in the name of other entity i.e. Ms, Saroj Devi Khemka.

(vii) The square off profit from the above trade was transferred to other entity i.e. Ms. Saroj Devi Khemka and the same appeared in the client ledger and bank statement of broker;

15. Considering the aforesaid facts and circumstances in totality, I am of the view that no definitive conclusion can be made that the impugned trades were executed by the Noticee or by the broker of the Noticee on her behalf. Since the basic charge of trading in illiquid stock options of BSE remains un-established in the backdrop of disputed execution of impugned trades, therefore, I am inclined to give benefit of doubt to the Noticee with regard to the charge of violations of provisions of the PFUTP Regulations pursuant to impugned trades.

16. In view of the aforesaid facts and circumstances, I am of the view that in the instant case the evidence is not sufficient enough to pass the muster of the principle of preponderance of probabilities and to lead to a conclusion that the Noticee, Santosh Bihani had created false and misleading appearance of trading or generated artificial volume by means of reversal trades. Without prejudice to any of the parties, SEBI has preserve the right to investigate the trading of any other entity related to impugned trades.

17. Accordingly, I find that it is not established that the Noticee is in violation of the provisions of Regulation 3(a), (b), (c) & (d) and 4(1) & 4(2)(a) of PFUTP Regulations, 2003. Hence I find that this is not a fit case for imposition of penalty.

In view of the above, issues II and III do not merit consideration.

ORDER

18. In view of the findings noted in the preceding paragraphs, and the factors mentioned in the provisions of Section 15-I of the SEBI Act, 1992 read with Rule 5 of Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995, I hereby dispose of the Adjudication Proceedings initiated against the Noticee, **Santosh Bihani [PAN: AFKPB0519G],** vide the SCN bearing ref. no SEBI/IVD-5/SCN/AO-MS/NS/18963/1/2021 dated August 11, 2021, in the matter of dealings in Illiquid Stock Options at BSE.

19. In terms of the provisions of Rule 6 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995, a copy of this order is being sent to the Noticee and also to the Securities and Exchange Board of India, Mumbai.

Date: March 22, 2022 **MUKUL SHUKLA**
Place: Mumbai **ADJUDICATING OFFICER**