BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

(ADJUDICATION ORDER NO: Order/SV/RM/2023-24/29089)

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

Kusum Traders [PAN: ATJPG2443H] / Mr. Sudeb Ghosh
35, Sonar Bangla, D P,
Nagarkamarhati, 27 Belgharia,
North 24 Parganas,
West Bengal – 700113

In the matter of dealings in Illiquid Stock Options at BSE

BACKGROUND OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') initiated adjudication proceedings under Section 15HA of SEBI Act,1992 (hereinafter referred to as, 'SEBI Act') against Kusum Traders ("Noticee") for alleged violation of the Regulation 3(a),(b),(c),(d) & 4(1) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to the Securities Market) Regulations, 2003 (hereinafter referred as 'PFUTP Regulations').

2. Ms. Maninder Cheema was appointed as the Adjudicating Officer (hereinafter referred as AO), vide communique dated June 04, 2018, under Section 15-I of the SEBI Act read with Rule 3 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as 'Adjudication Rules') to inquire into and adjudge under the provisions of Section 15 HA of the SEBI Act, the aforesaid alleged violations by the Noticee.

3. Securities and Exchange Board of India ('SEBI') observed large scale reversal of trades in the Stock Options Segment of the BSE Limited (hereinafter be referred

to as ‘BSE’) and, pursuant to this, it conducted investigation into the trading activities of certain entities in illiquid Stock Options at the BSE for the period April 01, 2014 to September 30, 2015 (hereinafter be referred to as ‘Investigation Period’). Investigation revealed that during the Investigation Period, a total of 2,91,643 trades (comprising 81.38% of all the trades executed in the Stock Options Segment of BSE) involved reversal of buy and sell positions by the clients and counterparties in a contract. The reversal trades are considered as non-genuine trades, if it involves an entity reversing its buy or sell positions in a contract with subsequent sell or buy positions with the same counterparty during the same day. In this regard, artificial volume is considered as the volume (no. of units) reversed in non-genuine trades, comprising both original volume and reversed volume while keeping out the volume which is not reversed. Noticee was allegedly one of the various entities which were indulged in execution of such alleged non-genuine trades.

4. Show Cause Notice No. EAD5/MC/VC/26258/1/2018 dated September 21, 2018 (hereinafter be referred to as, the “SCN”) was served upon the Noticee under Rule 4 of the Adjudication Rules and read with Section 15I of the SEBI Act to show cause as to why an inquiry should not be held and penalty not be imposed against Noticee under aforesaid Sections for the aforesaid alleged violations. Noticee neither filed any reply to the SCN nor appeared before the erstwhile AO for personal Hearing, and the matter was proceeded on the basis of documents and material available on records.

5. It was observed by the erstwhile AO from the trade log that the Noticee, during the Investigation Period traded in 36 unique contracts in stock options of BSE, out of which Noticee allegedly executed 84 non genuine trades in 36 contracts, resulting in artificial volume of total 2,55,25,750 units. Subsequently, Order dated July 23, 2019 was passed in the matter imposing penalty of Rs.5 lakhs on the Noticee for violating Regulations 3 (a), 4(1) and 4(2)(a) of the PFUTP Regulations. This order was appealed before the Hon’ble Securities Appellate Tribunal (SAT) by one Mr. Sudeb Ghosh in Misc. Application No. 152 of 2023 and SAT Appeal No. 120 of 2023.

6. Hon’ble Securities Appellate Tribunal vide its order dated February 21, 2023, set aside the aforesaid adjudication order dated July 23, 2019, and inter-alia directed as follows:

> *“3. Considering the fact that there is a statement of Mr. Devesh Upadhyaya who has made a statement before the Income Tax Authorities that he was trading exclusively on behalf of M/s. Kusum Traders coupled with the fact that there is a serious allegation of misuse of the PAN of the appellant and coupled with the fact that an ex parte order has been passed, we set aside the impugned order and remit the matter to the Adjudicating Officer (‘AO’ for short) to decide the matter afresh in the light of the observation made above. The AO will consider the fact as to whether the appellant is the sole proprietor in M/s. Kusum Traders or not.*
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> *4. The appeal is allowed. The appellant shall appear before the AO on March 13, 2023 and from there onwards the matter will proceed in accordance with law* ”.

APPOINTMENT OF ADJUDICATING OFFICER

7. Subsequent to the aforesaid SAT order, Ms. Asha Shetty was appointed as Adjudicating Officer under Section 15-I of the SEBI Act read with Rule 3 of the Adjudication Rules vide order dated March 01, 2023 to inquire into and adjudge under section 15HA of the SEBI Act, the aforesaid alleged violations against the Noticee. Subsequently, pursuant to transfer of Ms. Asha Shetty, undersigned was appointed as Adjudicating Officer vide order and communique dated April 18, 2023.

SHOW CAUSE NOTICE, REPLY AND HEARING

8. Pursuant to the aforesaid Hon’ble SAT order dated February 21, 2023, Kusum Traders/Mr. Sudeb Ghosh was granted an opportunity of hearing in the matter as per Rule 4 (3) of the Adjudication Rules before the erstwhile AO on March 13, 2023.

9. Mr. Sudeb Ghosh vide his letter dated March 02, 2023 *inter alia* submitted that following:

a. SEBI issued SCN in the name of Kusum Traders wherein his PAN number is mentioned, and the SCN was never served to him.
b. The AO order dated July 23, 2019 was passed against Kusum Traders and imposed penalty of Rs. 5 lakh.
c. Since his PAN number was mentioned in the order, SEBI Recovery Department recovered Rs.22000/- from his account.
d. Hon'ble SAT remanded the matter back to SEBI for passing fresh order.
e. His name and documents have been misused, signature has been forged by someone in connivance with the Broker etc. to open proprietorship trading account in the name of Kusum traders, demat account and bank account in his name.
f. He has no connection with Kusum traders.

10. Mr. Vikas Benghani, Advocate, Authorised Representative (AR) of Mr. Sudeb Ghosh appeared before the erstwhile AO for the personal hearing held on March 13, 2023, and requested for certain documents, and undertook that upon receipt of the documents, Noticee would file the reply. Accordingly, the erstwhile AO acceded to the request of the Noticee, and accordingly SCN (along with its annexures), Account Opening form, KYC related documents, and the relevant portion of Investigation Report in the matter were provided to Noticee on March 14, 2023.

11. Further, Sudeb Ghosh vide letter dated April 03, 2023, *inter alia* mainly submitted the following contentions (other than the reiteration of earlier submissions) :
    a. He has never traded in the Securities Market, in any name including Kusum Traders.
    b. He is neither connected nor proprietor of Kusum Traders and never gave his consent to open any trading/demat/bank account in the name of Kusum Traders.
    c. The misuse of his name and documents and forging of his signature require investigation.

d. His signature is totally different from the signatures made out in the purported KYC documents, and he is willing to provide his sample signature for obtaining verification report.

e. On perusal of the trade logs data, it is revealed that by execution of 84 reversal trades in the trading account of Kusum Traders, a profit of Rs. 1,18,19,773/- has been generated. It is submitted that the he has not received a single enny from the profit generated in the trading account of Kusum Traders.

f. He placed reliance on the statement given by Mr. Devesh Upadhyaya on oath on September 22, 2017 before the Income Tax Authorities and also relied upon in two adjudication orders passed by SEBI in identical cases. Mr. Devesh Upadhyaya in his statement has explicitly accepted that he is used names and details of various entities/persons including his name/documents for the purposes of Jamakharchi/accommodation entries of bogus LTCG and for trading in the shares of various companies. In the statement Mr. Devesh Upadhyaya admitted that he used various entities/persons (including Mr. Sudeb Ghosh) as dummy directors and proprietors, and misused Mr. Sudeb Ghosh name and PAN details for opening accounts in the name of Kusum Traders. Further, Income Tax department has not taken any action against such entities including Mr. Sudeb Ghosh.

g. SEBI has passed orders in two identical cases in respect of two entities namely MR. Rajib Rajbangshi and Mr. Avijit Saha (whose name were misused like him and are mentioned in the statement of Mr. Devesh Upadhyaya), exonerating them.

h. He has never made any application before Municipal Corporation for license for commencement of business/certificate of establishment.

12. Vide email dated April 03, 2023 Mr. Sudeb Ghosh was advised to submit legible copy of his bank account statement, along with 'Bank Signature Verification Certificate' for his signature from bank. The same was submitted by Mr. Sudeb Ghosh vide letter dated April 18, 2023.

CONSIDERATION OF ISSUES AND FINDINGS

13. The issues arising for consideration in the instant proceedings are:-

    I. Whether reversal trades in illiquid Stock options carried out by the Noticee during the Investigation Period were in violation of regulations 3(a),(b),(c),(d), 4(1), 4(2)(a) of the PFUTP Regulations, 2003?

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

    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?

ISSUE I Whether reversal trades in illiquid Stock options carried out by the Noticee during the Investigation Period were in violation of regulations 3(a),(b),(c),(d), 4(1), 4(2)(a) of the PFUTP Regulations, 2003?

14. From the material/records available, and from the reply and application of Noticee, I note that the Noticee has disputed the execution of trades as alleged in the SCN. For the same he has placed reliance upon the statement of Mr. Devesh made before the Deputy Commissioner of Income Tax on September 22, 2017 under oath, in the cases of Saraogi Group of Individuals for Assessment Years (A.Y.) 2010-11 to 2015-16. I further note that, Hon'ble SAT, while disposing the miscellaneous application 152 of 2023 and Appeal No. 120 of 2023 of Noticee, has allowed Noticee to file an application before Adjudicating Officer in terms of aforementioned statement of Mr. Devesh to consider the fact that whether Noticee is the sole proprietor in M/s. Kusum Traders or not.

15. I have considered the allegation levelled in the SCN, Hon'ble SAT order dated February 21, 2023, submissions of the Noticee and the relevant material/ documents brought on record. From the reply of the Noticee, I note that the Noticee has disputed the execution of trades as alleged in the SCN. Noticee further submitted that he had neither traded in the securities market nor he had opened any account with any broker and his signature was misused. He only

came to know of the proceedings initiated by SEBI when his bank accounts were attached by the SEBI Recovery department. Noticee also submitted that he is not related to firm Kusum Traders. Authorised Representative of the Noticee submitted that the Noticee has very limited financial resources and has no knowledge of the securities market. Moreover, police authorities of a remote village of West Bengal cannot be expected to investigate the matter properly without being biased.

16. I note from the copy of the statement placed before me of Mr. Devesh Upadhyay that his income consists of commission earned by providing accommodation entries to various beneficiaries in the form of bogus share capital including exorbitant premium, unsecured loans, pre-arranged accommodation entry for bogus LTCG/ STCL or business loss etc. from various companies running directly under his control. He further stated that Kusum (PAN: ATJPG2443H, proprietor: Mr. Sudeb Ghosh) was managed and controlled by him and Mr. Sudeb Ghosh worked as per his directions.

17. However, Mr. Sudeb Ghosh has claimed that he did not know Mr. Devesh. He further claimed that he has no knowledge of trading and he had not opened any demat or trading account till date, instead his signatures were forged in KYC documents, trading account, demat account etc., which require further investigation.

18. I have also perused the statement of bank account no. 31166664463 with SBI in the name of Mr. Sudeb Ghosh submitted by the Noticee. I find that credits in the account are in the range of Rs. 1000 to Rs. 20,000/- (except one deposit of Rs.1,91,271/- on account of STDR closure on December 09, 2014) during the IP. Further, the maximum balance in the account is 1,91,794 on the date of closure of the STDR. From the trade log it is observed, the credits and debits in the bank account no. 31166664463 doesn’t commensurate with the values for the impugned trades.

19. I also note that, in the terms of particular facts and circumstances of the instant case, until and unless: –
    a. the relationship between Mr. Devesh and Mr. Sudeb Ghosh;
    b. the fund movement/ payment from/ to the bank accounts of the Noticee, in which proceeds of alleged positive closeout of the impugned trades received; and
    c. the veracity of the KYC documents, Client Registration Form, Bank Account opening form, etc. w.r.t. the Noticee,

    is investigated in detail, the allegations made out in the SCN against the Noticee will remain doubtful.

20. In view of the new facts placed in the current proceedings, it cannot be established with certainty that Noticee placed the orders for impugned reversal trades in the stock options at BSE, and he is the sole proprietor of firm Kusum Traders. Since there is ambiguity regarding the execution of the trades by the Noticee, it cannot be established that there was a prior meeting of minds with the counterparty to execute the reversal trades at a pre-determined price.

21. Therefore, in view of facts of the matter, I find that the evidence is not sufficient enough to lead to a conclusion that the Noticee has employed any manipulative and deceptive device in contravention of the PFUTP Regulations and executed reversal trades.

22. As the violations alleged against the Noticee is not established, issues II and III do not merit consideration.

ORDER

23. In view of the findings noted in the preceding paragraphs, the adjudication proceedings initiated against the Noticee vide SCN dated September 21, 2018 are disposed of.

24. Copy of this Adjudication Order is being sent to the Noticee and also to SEBI in terms of Rule 6 of the Adjudication Rules.

Place: Mumbai **SHASHI KUMAR VALSAKUMAR**

Date: August 31, 2023 **ADJUDICATING OFFICER**