BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

(ADJUDICATION ORDER NO. : Order/BM/LD/2021-22/15501)

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

Ashu Garg

(**PAN: AKPPG1694M**)

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

<u>BACKGROUND OF THE CASE</u> :

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

2. Pursuant to investigation it was observed that a total of 2,91,744 trades comprising 81.40 % of all the trades executed in the stock options on BSE segment during the investigation period were non genuine trades. It was observed that Ashu Garg (hereinafter referred to as the "**Noticee**") was one such entity who indulged in execution of reversal trades in stock options segment of BSE during the Investigation period. 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, SEBI initiated adjudication

proceedings against the Noticee for alleged violation of the provisions of Regulation 3(a),(b),(c),(d) and Regulation 4(1) & 4(2)(a) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003 (hereinafter referred to as "PFUTP Regulations, 2003").

APPOINTMENT OF ADJUDICATING OFFICER :

3. The undersigned has been appointed as the adjudicating officer *vide* order dated September 23, 2021, under Section 19 read with sub-section (1) of Section 15-I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the "**SEBI Act, 1992"**) and Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as the "**Adjudication Rules, 1995**") to inquire into and adjudge the alleged violation committed by the Noticee, under Section 15HA of the SEBI Act, 1992.

SHOW CAUSE NOTICE, REPLYAND HEARING :

4. A show cause notice ref. EAD-3/BM/LD /ISO-II/29500/2021 dated October 21, 2021 (hereinafter referred to as "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 not be imposed against the Noticee under Section 15HA of the SEBI Act.

   The SCN issued to the Noticee, inter alia , mentioned / alleged the following :

   (i) The Noticee was one of the entities which had 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.

   (ii) The Noticee had engaged in 2 instances in 1 unique contract which led to generation of artificial volume in the aforesaid unique contracts.

   (iii) In the 1 unique contract, the trades entered by the Noticee were reversed with the same counterparty at a substantial price difference without any basis for significant change in the contract price, which indicates that these trades were artificial and non-genuine in nature.

(iv) For the purpose of illustration of non-genuine trades and creation of artificial volume by the Noticee, details of trading done by the Noticee in the contract viz. "NMDC15JUL135.00PEW4" on 23/07/2015 is given below :

Sl. no	Contract name	Avg. buy rate (Rs.)	Total buy volume (no. of units)	Avg. sell rate (Rs.)	Total sell volume (no. of units)	Total Volume in the Contract	% of Non-genuine 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	NMDC15JUL135.00PEW4	12.35	62000	20.4	62000	124000	100	100

(v) It is observed from the table that the trades entered by the Noticee in the contract of "NMDC15JUL135.00PEW4" on 23/07/2015 with its counterparty viz. Prompt Commodities Ltd. were reversed between the Noticee and the same counterparty on the same day resulting in reversal of trades which are, prima facie, considered to be as non-genuine. Therefore in the process, artificial volume in the stock option contract at BSE has been generated by the Noticee through such non-genuine trades.

(vi) In view of the above, it is alleged that the Noticee, by indulging in execution of reversal trades in Stock Options with same counterparty on the same day, which were non-genuine in nature, has created false or misleading appearance of trading in stock options and therefore allegedly violated Regulation 3(a), (b), (c), (d) and Regulation 4(1) & 4(2)(a) of the PFUTP Regulations, 2003.

5. The Noticee replied to the SCN vide letter dated November 12, 2021 and submitted as below :

- *"I, the undersigned, aged 49 years, am a person and a responsible citizen of India. Of late, I got involved in the stock market activities for sometime and invested some amount towards my old age savings in the Stock Market to trade* *with an objective to earn the profits in long term. Someone known to me suggested the name of M/s. R K Stock holding Private Limited with complete SEBI registered nos. (PAN AACCR0011K; bearing CIN:U65993UP1995PTC017366) and having its registered address situated at Neel Kanth Marg Civil Lines Moraddabad Uttar Pradesh 244001 India who helped me to open the Demat cum Trading Account to invest for a long term perspective.*

- *I was busy in my other works and invested as per the professional suggestion and advise of the said Broker. I was mainly concerned about my capital protection and some safe returns on the same.*
- *As mentioned above, after perusing the subject letter, I was shocked and immediately contacted & mailed my concern to the concerned broker at Moradabad through which this trade transactions were materialised. His reply of that mail was : that "Your trading was lawful…"*
- *It is pertinent to mention that whatever the trades I have executed with R.K Stock holding Private Limited was upon the instructions and professional guidance of the broker. In city like Moradabad, one may not find the big broker firms in this area & therefore had to reply on someone to maximise my capital and return. Truly speaking, I am a retail non-professional investor and intended to buy and sell securities, SIPs, mutual funds, or exchange traded funds (ETFs) through traditional or online brokerage firms.*
- *Through primarily its not my competency but worth to mention that all the transactions that were executed on the BSE limited (recognised stock exchange) and any trade which was done in any segment was not restricted or debarred or disallowed by the exchange.*
- *I wish to inform your good office that I am a law abiding person and a responsible citizen who pays the taxes and file my returns regularly and never been indulged into any sort of illegal practices to have any unlawful or unjust monetary gains against any law.*
- *It has been more than six years since those transactions were executed and carried out under the guidance of the broker and all the trades were executed through this stock broker and to the best of my understanding not involved or engaged in any illegal transaction (either in form of buy or sell) at any point of time."*

6. In the interest of natural justice and in terms of the Adjudication Rules, the Noticee was provided with an opportunity of personal hearing in the matter on December 22, 2021, through the online webex platform. Authorized Representative ('AR') appeared on behalf of the Noticee on the stipulated date of hearing. During the course of hearing, the AR reiterated the submissions made by the Noticee in her letter dated November 12, 2021. The personal hearing in the matter was concluded and minutes are on record.

CONSIDERATION OF ISSUES AND FINDINGS :

7. I have carefully perused the charges levelled against the Noticee, her reply and the documents / material available on record. The issues that arise for consideration in the present case are :

   (a) Whether the Noticee has violated provisions of Regulation 3(a), (b), (c), (d) and Regulation 4(1) & 4(2)(a) of PFUTP Regulations, 2003?

   (b) Does the violation, if any, attract monetary penalty under Section 15HA of the SEBI Act, 1992 ?

   (c) If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in Section 15J of the SEBI Act, 1992 ?

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

   PFUTP Regulations :

   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 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.

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;

Issue No 1 : *Whether the Noticee has violated provisions of Regulations 3(a), (b), (c), (d) and Regulation 4(1) & 4(2)(a) of PFUTP Regulations, 2003?*

9. I note that allegation against the Noticee is that, while dealing in the stock option contract at BSE during the IP, she had executed reversal trades which were allegedly non-genuine and the same had resulted in generation of artificial volume in stock option contracts at BSE. Reversal trades are considered as those trades in which an entity reverse its buy or sell positions in a contract with subsequent sell or buy positions with the same counterparty during the same day. The said reversal trades are alleged to be non-genuine trades as they are not executed in the normal course of trading, lack basic trading rationale, and allegedly lead to false or misleading appearance of trading in terms of generation of artificial volumes, hence, these trades are deceptive and manipulative. From the facts/material made available on record, I find that the reversal trades executed

by the Noticee, which were observed in the present case, were undertaken by the Noticee with its counterparty allegedly with a predetermined arrangement to book profit or losses respectively, and therefore, the parties to the trades were not trading in the ordinary course of business. Therefore, it is alleged that the Noticee by indulging in such reversal trades with her counterparty in the illiquid stock option segment at BSE has managed to generate artificial volume in the Stock Options segment at BSE during the IP.

10. I shall now proceed to deal with the transactions executed by the Noticee in the alleged non-genuine trades :

10.1 I note that pursuant to a preliminary examination conducted in the Illiquid stock Options matter, interim order was passed by SEBI on August 20, 2015 which was confirmed vide Orders dated July 30, 2016 and August 22, 2016. Meanwhile, SEBI initiated a detailed investigation relating to stock options segment of BSE which was completed in the year 2018. The investigation revealed that 14,720 entities were involved in executing non-genuine trades in BSE's stock option segment during the investigation period. The proceedings initiated vide the aforementioned Interim Order were disposed of vide Final Order dated April 05, 2018 also considering that appropriate action was initiated against the said 14, 720 entities in a phased manner.

During the course of hearing in the case of R. S. Ispat Ltd Vs SEBI, the Hon'ble Securities Appellate Tribunal (SAT), vide its Order dated October 14, 2019, *interalia* observed that:

"SEBI may consider holding a Lok Adalat or adopting any other alternative dispute resolution process with regard to the Illiquid Stock Options".

A Settlement Scheme was framed under the SEBI (Settlement Proceedings) Regulations, 2018, which provided 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. Subsequently adjudication proceedings were initiated against those entities who had not availed of the opportunity of settlement.

As can be seen from the narration of facts in the foregoing paragraphs, pursuant to appointment of AO in the matter, conveyed vide communique dated September 27, 2021, SCN was issued on October 21, 2021. In compliance with the principles of natural justice, after receipt of reply, an opportunity of personal hearing was scheduled on December 22, 2021.

10.2 I note from the trade log of the Noticee that she had traded in 1 unique contract in the Stock Options segment of BSE during the above mentioned IP. The examination of the Trade log of the Noticee during the relevant period revealed that the Noticee had executed 2 alleged non-genuine trades in respect of 1 contract on the Stock Options segment of BSE. I note that the above mentioned trades of the Noticee had allegedly resulted in creation of artificial volume of 1,24,000 units in the said 1 contract.

Summary of the alleged non-genuine trades of the Noticee are as follows :

10.3 The details of reversal trades done by the Noticee in the contract "NMDC15JUL135.00PEW4" are as given below :

Sl. no	Contract name	Avg. buy rate (Rs.)	Total buy volume (no. of units)	Avg. sell rate (Rs.)	Total sell volume (no. of units)	Total Volume in the Contract	% of Non-genuine 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	NMDC15JUL135.00PEW4	12.35	62000	20.4	62000	124000	100	100

10.4 It is observed from the above table that on 23/07/2015 at 13:08:09 hrs , the Noticee entered into 1 buy trade with counter party viz Prompt Commodities Ltd. for 62,000 units at the rate of Rs 12.35 per unit in the contract "NMDC15JUL135.00PEW4" . Thereafter, on the same day, the Noticee at 13:33:28 hrs entered into 1 sell trade with same counter party for 62,000 units at the rate of Rs. 20.4 per unit in the same contract. It is observed that while dealing in the said contract during the I.P., the Noticee executed reversal trades with the same counter party i.e. Prompt Commodities Ltd. on the same day and with significant price difference in buy and sell rate within a short span of time. Thus the Noticee, through its dealing in the above contract during the I.P., executed non genuine trades which was 100% of the total trades from the market in the said contract during the I.P., and thereby Noticee generated an artificial volume of 1,24,000 units which was 100% of the total volume traded in the said contract in the market during the I.P.

10.5 The non-genuineness of these transactions executed by the Noticee is evident from the fact that there was no commercial basis to suddenly reverse the position with its counterparty with significant price difference on the same day. The trade reversals in the said case points out to the fact that the party to the transactions, including the Noticee, did not intend to transfer the beneficial ownership and through these orchestrated transactions, the intention of which was not regular trading, other investors have been excluded from participating in these trades/ contracts.

10.6 Given the fact that the Stock Option contracts were illiquid in nature at BSE and also in view of the observations made above, I am convinced that Noticee has entered into reversal/non-genuine trades with her counterparty and in the process generated artificial volume in the otherwise illiquid stock option contracts at BSE.

11. Noticee has *interalia* contended she invested as per the professional suggestion and advise of the said Broker. She was mainly concerned about her capital protection and some safe returns on the same. She had *executed the trades with R.K Stock holding Private Limited was upon the instructions and professional guidance of the broker* and that she was not involved or engaged in any illegal transaction (either in form of buy or sell) at any point of time. I note that Noticee was owner of the trading account through which impugned trades were carried out. Therefore, the obligation to ensure genuineness of impugned trades lay with the Noticee, and thus the aforesaid contentions of Noticee are without merits.

12. Therefore, I find that the allegations of violation of Regulation 3(a), (b), (c) & (d) and Regulation 4(1) & 4(2)(a) of the PFUTP Regulations, 2003 by the Noticee stands established.

Issue No 2 : *Does the violation, if any, attract monetary penalty under Section 15HA of the SEBI Act, 1992* ?

13. Considering the findings that the Noticee as mentioned above has executed non-genuine trades resulting in the creation of artificial volume, thereby violating the provisions of Regulation 3(a), (b), (c) & (d) and Regulation 4(1) & 4(2)(a) of the PFUTP Regulations, 2003 and in terms of the judgement of Hon'ble Supreme Court of India in the matter of SEBI Vs. Shri RAM Mutual Fund[2006] 68 SCL 216(sc) decided on May 23, 2006 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 hence the intention of the parties committing such violation becomes wholly irrelevant..."* I am convinced that it is a fit case for imposition of monetary penalty under the provisions of Section 15 HA of SEBI Act which reads as under:

   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.*

Issue 3 : *If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in Section 15J of the SEBI Act, 1992* ?

14. While determining the quantum of penalty under Section 15HA of SEBI Act, it is important to consider the factors as stipulated in Section 15J of the SEBI Act which reads as under:

   15J. While adjudging quantum of penalty under [15-I or Section 11 or Section 11B, the Board or the adjudicating officer] shall have due regard to the following factors, namely :—

(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.

[Explanation.— *For the removal of doubts, it is clarified that the power to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section*.]

15. I observe that it is not possible from the material available on record to quantify the amount of loss caused to genuine investors as a result of the reversal trades/ non-genuine trades executed by the Noticee with its counterparty. However, the Noticee has entered into 2 non-genuine trades which demonstrates the violation of PFUTP Regulations, 2003.

16. Therefore, I note that Noticee indulged in execution of reversal trades in the stock options contract in the IP which were non-genuine and created false and misleading appearance of trading in terms of artificial volumes in stock options, leading to violation of Regulation 3(a), (b), (c) & (d) and Regulation 4(1) & 4(2) (a) of the PFUTP Regulations, 2003.

17. Having considered all the facts and circumstances of the case, the material available on record and the factors mentioned in the preceding paragraphs, I, in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, hereby impose a penalty of Rs. 5,00,000/- (Rupees Five Lakhs Only) on the Noticee viz. Ashu Garg under the provisions of Section 15HA of the SEBI Act for the violation of Regulation 3(a), (b), (c) & (d) and Regulation 4(1) & 4(2) (a) of the PFUTP Regulations, 2003. I am of the view that the said penalty is commensurate with the default committed by the Noticee.

18. The Noticee shall remit / pay the said amount of penalty within 45 (forty five) days of the receipt of this order either by way of Demand Draft (DD) in favour of "SEBI – Penalties Remittable to Government of India", payable at Mumbai and the said DD

should be forwarded to the Division Chief, Enforcement Department -I (EFD), Division of Regulatory Action -I [EFD1-DRA-2] SEBI Bhavan, Plot No.C4-A,‘ G’ Block, Bandra Kurla Complex (BKC), Bandra (East), Mumbai –400 051 and also send an email to tad@sebi.gov.in with the following details :

1	Case Name	
2	Name of the Payee	
3	Date of Payment	
4	Amount Paid	
5	Transaction No.	
6	Bank Details in which payment is made	
7	Payment is made for (like penalties/disgorgement / recovery/ settlement amount and legal charges along with order details)	

19. Payment can also be made online by following the below path at SEBI website www.sebi.gov.in ENFORCEMENT → Orders → Orders of AO → Click on PAY NOW or at https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html.

20. 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, 1992 for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

21. In terms of Rule 6 of the Adjudication Rules, a copy of this order is sent to the Noticee viz. Ashu Garg and also to Securities and Exchange Board of India.

Place: Mumbai
Date: March 22, 2022

BARNALI MUKHERJEE
ADJUDICATION OFFICER