BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

ADJUDICATION ORDER NO. Order/AK/AJ/2023-24/29275

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:

Kanchan Agarwal

PAN: AFMPA8305D

in the matter of dealings in Illiquid Stock Options at BSE

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 Bombay Stock Exchange (hereinafter referred to as "**BSE**"). SEBI observed that such large scale reversal of trades in stock options lead 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 matter 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 and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the "**Adjudication Rules**") and pass appropriate order on merits. It was also recorded therein that SEBI has decided to take appropriate action against all 14,720 entities in phases.

3. In the meantime, the Hon'ble Securities Appellate Tribunal (SAT), vide its 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 **Kanchan 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 SAT. During the course of the hearing in a group of appeals, SAT, vide its Order dated May 13, 2022, *inter alia* observed 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/or 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. SEBI initiated adjudication proceedings and appointed Mr. Ashok Kumar J as the Adjudicating Officer (AO) under section 15-I of the SEBI Act read with Rule 3 of the Adjudication Rules. Subsequently, the undersigned was appointed as the AO, vide communique dated March 17, 2023, to conduct adjudication proceedings in the manner specified under Rule 4 of Adjudication Rules read with section 15I of SEBI Act, and if satisfied that Noticee is liable for penalty, impose such penalty as deemed fit in terms of Rule 5 of Adjudication Rules and Section 15HA of SEBI Act.

C. SHOW CAUSE NOTICE, REPLY AND HEARING

11. A show cause notice dated September 27, 2021 (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 it and thereafter penalty imposed on it u/s 15HA of the SEBI Act for the alleged violation of the provisions of Regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of the PFUTP Regulations. I note that, vide the said SCN, the Noticee was informed of the option of Settlement Scheme 2022. SCN was sent through Speed Post Acknowledgement Due (SPAD) was duly served on the Noticee as per the duly signed SPAD card available on record.

12. Noticee, vide letter dated nil, filed its reply to the SCN. Summary of the reply is given below:

    12.1 Noticee raised preliminary objections to the proceedings citing delay in initiating proceedings and stated that:

    12.1.1 SEBI has not provided any evidence or proof to show that her trades were fraudulent.

    12.1.2 Trades were executed on the floor of the exchange with due compliance with all the rules and regulations of the exchange

12.1.3 At no point of time was there any warning or any observation about the scripts / stocks / options or any contracts which were executed by the Noticee

12.1.4 The observations regarding the stocks being illiquid is incorrect.

12.1.5 Assuming the stocks were illiquid, then any small quantity or volumes would look significant as there are no active traders in the stock

12.1.6 The trades in question was in the normal course of business and there was nothing amiss in the trades executed.

12.1.7 SEBI has not alleged inducement as per definition of fraud.

12.1.8 None of the trades were deceptive in nature or had any impact on the investors or their investment decision which is a sine qua non of 'fraud'

12.1.9 There is no nexus, directly or indirectly with the counter party brokers or the clients.

12.1.10 The SCN does not specity and consider facts matrix of the dealing of the Noticee in the stock options segment of BSE and is arbitrary.

12.1.11 SEBI has not discharged its obligations of quick investigation.

12.1.12 Investigation report not provided by SEBI

12.2 Noticee further stated*:*

12.2.1 The trades had no effect on other investors or market at large

12.2.2 No list of illiquid scrips was issued by the exchanges or the regulator

12.2.3 It had 2 trades which did not depress the price volume of the underlying shares in cash segment and the trades had no impact on the market.

12.2.4 There was no relationship with counterparty or its broking entities.

12.2.5 All transactions were carried out on the floor of the stock exchange.

12.2.6 It had dealt in the stock option segment through a SEBI registered intermediary

12.2.7 All trades in the option segment was within prudential norms of the exchange as and per procedure and guidelines prescribed by BSE.

12.2.8 No cautionary warning advisory, communication or alarm was raised by BSE at any time.

12.2.9 It had no idea of any profit or loss in the said transactions and traded in option segment taking into account its risks and reward parameters.

12.2.10 There has been no grievance by any investor, broker, stock exchange or any other agency.

12.2.11 No action has ever been taken against it in the past in resepct of dealing in securities market.

12.3 Noticee therefore prayed:

12.3.1 Since SEBI had discontinued proceedings against the brokers and intermediaries against whom similar allegations of dealing in illiquid stock options the same recourse ought to be adopted on and individual entity.

12.3.2 SCN qua the Company be dropped without imposing any monetary penalty

12.3.3 A lenient view be taken in the matter

12.3.4 Noticee be discharged from the captioned proceedings.

13. Delay in proceedings, as contended by Noticee has squarely been addressed in paragraph nos. 2 to 8 above.

14. In the interest of natural justice, vide hearing notice dated September 11, 2023, the Noticee was granted an opportunity of personal hearing on September 18, 2023. The digitally signed hearing notice was sent by email to the Noticee, which constitutes valid service under the Rule 7 of the Adjudication Rules. The Hearing Notice was delivered to the email id of the Noticee, as per the proof available on record. However, the Noticee neither appeared personally nor through video conferencing, and did not avail the opportunity of hearing.

D. CONSIDERATION OF ISSUES

15. I have taken into consideration facts of the case, reply of the Noticee and other material on record. I now proceed to consider the issues that arise in this case.

16. 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?

17. Before proceeding further, I would like to refer to the relevant provisions of the PFUTP Regulations 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; ………

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."*

18. I note that the Noticee have entered into 2 non-genuine trades on 1 day, in 1 contract with 1 counterparty, as shown below:

TRADE_DATE	CLNT_NAME	CP_NAME	TRADE_TIME	ORDER_LMTIME	CP_ORDER_LMTIME	TRADE_RATE	TRADED_QTY	SCRIPNAME
17/03/2015	KANCHAN AGARWAL	JAIDEEP HALWASIYA	10:47:40.230789	10:45:59.134530	10:47:40.230789	10.45	36000	UCOB15MAR50.00CE
17/03/2015	JAIDEEP HALWASIYA	KANCHAN AGARWAL	11:20:05.691066	11:20:05.691066	11:20:05.418701	18	36000	UCOB15MAR50.00CE

19. I note from the table above, that Noticee while trading in the contract of "UCOB15MAR50.00CE" on 17/03/2015, bought 36000 units at 10:47:40.230789 hrs. at the rate of Rs. 10.45/- per unit to counterparty, viz. JAIDEEP HALWASIYA. Thereafter, Noticee sold 36000 units at 11:20:05.691066 hrs. at the rate of Rs. 18/- per unit to same counterparty. The Noticee sold the units at a higher value and bought the units for a lower value, reversing the trade with a time difference of 32 minutes and 25 seconds. I also note that the Noticee's transactions took place on the same day and orders for the said trades were placed by the Noticee and the counterparty in split second's difference.

20. Furthermore, the exactness of the quantity that got reversed between the two parties on a single day, the proximity in the time of the reversal of trades and above all the absence of rationale to justify the variation in the sell and buy price, certainly shows that these are non- genuine trades. Other trades have also been executed by the Noticee in a similar manner.

21. I note that the quantity of the units bought and sold, with the counterparty, are the same and there is hardly any difference in the time of placement of order for the reversal trades which clearly shows that the Noticee did not intend to transfer beneficial ownership of units in the contracts and the trades were non-genuine, which created artificial volume in the said contracts.

22. I note that in the contracts mentioned below, the Noticee along with the counterparty contributed to the market volume of the day as given below:

Contract	**%age of volume generated by the Noticee in the contract vs total volume of the Noticee**	**% age of artificial volume generated vs total volume in the contract**
UCOB15MAR50.00CE	100	2.78

23. In the said contract, the Noticee had contributed to the artificial volume *vis a vis* the total market volume of 2.78 % in the contract as mentioned in the table above. I find that the Noticee by executing non-genuine trades, had contributed to the creation of artificial volumes in the said contract.

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

25. 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 judgment authored by His Lordship Mr. Justice Kurian Joseph).

"… *Nobody intentionally trades for loss. An intentional trading for loss per se, is not a genuine dealing in securities. The platform of the stock exchange has been used for a non-genuine trade. Trading is always with the aim to make profits. But if one party consistently make loss and that too in pre-planned and rapid reverse trades, it is not genuine; it is an unfair trade practice."* (**Paragraph No. 35** of the part of the judgment authored by His Lordship Mr. Justice Kurian Joseph).

Their Lordships have considered similar transactions in the same segment, *"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 judgment 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. Bhanumathi). 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. Bhanumathi).

26. 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." (His Lordship Mr.Justice Kurian Joseph's findings in paragraph Nos. 39&40).*

27. 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."*

28. 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."

29. From the above position in law and facts, it is clear that the Noticee's transactions, as mentioned above, were fraudulent/ manipulative, as contemplated in the PFUTP Regulations. Hence, I am inclined to impose monetary penalty on the Noticee.

30. As regards the quantum of penalty leviable, I take into consideration the manipulative nature of the trades placed by the Noticee that has led to creation of artificial volume in the contract.

31. 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.

32. 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 08/09/2014, the penalty shall not be less than five lakh rupees. In the instant case, it is observed that violation of the PFUTP Regulations, took place after the said amendment came into force, therefore, the penalty shall not be less than five lakh rupees.

E. ORDER

33. 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.,* **Kanchan Agarwal (PAN No:AFMPA8305D)** 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.

34. 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

35. 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.

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

DATE: SEPTEMBER 18, 2023 **AMIT KAPOOR**
PLACE: MUMBAI