BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO: Order/SD/KS/2021-22/14197]

UNDER SECTION 15I 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:

SHRUTI DAGA
PAN: AFKPK1010P

W/O KISHOR DAGA, 6 CD CHIRAKOOT
230 AJC BOSE ROAD, L R SARANI,
KOLKATA WEST BENGAL -700020

In the matter of
Dealings in illiquid stock options at BSE

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') observed large scale reversal of trades in the Stock Options segment of Bombay Stock Exchange (hereinafter referred to as '**BSE**') leading to alleged creation of artificial volume in the stock options segment. In this regard, SEBI conducted an investigation into the trading activity in the illiquid Stock Options Segment at BSE for the period April 01, 2014 to September 30, 2015 (hereinafter referred to as "**Investigation Period**").

2. It was observed during the course of investigation that a total of 2,91,643 trades comprising 81.38% of all the trades executed in the Stock Options Segment by various entities at BSE during the investigation period were trades which involved reversal of buy and sell positions by the clients and counterparties in a contract on the same day.

It was also observed that the aforesaid trades resulted into alleged creation of artificial volume to the tune of 826.21 crore units in the Stock Options segment of BSE during the investigation period. 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. Shruti Daga (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 above referred investigation period. It was observed that Noticee had entered into reversal trades with her counterparty which involved squaring off transaction with significant difference in sell value and buy value of the transaction. Therefore, it is alleged that Noticee had executed the reversal trades which were non-genuine in nature and have created false or misleading appearance of trading in terms of creation of artificial volume in the Stock Options segment at BSE and therefore, it is alleged that the Noticee has violated the provisions of Regulations 3 (a), (b), (c), (d) and Regulation 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 the above reasons, 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'**).

<u>APPOINTMENT OF ADJUDICATING OFFICER</u>

4. The undersigned was appointed as the Adjudicating Officer, vide communique dated June 28, 2021 under Section 19 read with Section 15-I of the SEBI Act read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as '**Adjudication Rules**') to inquire into and adjudge under the provisions of section 15HA of the SEBI Act for the aforementioned alleged violation of the provisions of law by the Noticee.

SHOW CAUSE NOTICE, HEARING AND REPLY

5. Show Cause Notice ref. SEBI/HO/EFD1/EFD1_DRA5/P/OW/16230/1/2021 dated July 23, 2021 (hereinafter referred to as '**SCN'**) was issued to the Noticee in terms of Rule 4 of the Adjudication Rules requiring the Noticee to show cause as to why an inquiry should not be held against it and why penalty, if any, should not be imposed on the Noticee under the provisions of section 15HA of the SEBI Act. The SCN was sent to the Noticee vide Registered Post AD and was duly served on the Noticee as per the Tracking details obtained from the India Post website. The SCN issued to the Noticee, *inter alia*, mentioned the following-:

i. *It is noted that Noticee was one of the various entities which were indulged in execution of such alleged non-genuine trades in Stock Options Segment of BSE during the Investigation period. Following points deal with the dealings of Noticee during the Investigation period and allegations against it for execution of non-genuine trades.*

Date	Buyer	Seller	Buy Order Time	Sell Order Time	Trade Time	Trade Rate (Rs.)	Trade Quantity
20/03/2015	SHRUTI DAGA	ADARSH CREDIT CO OP SOCIETY LIMITED	10:22:38.111839	10:22:53.595913	10:22:53.595913	21.6	39000
20/03/2015	ADARSH CREDIT CO OP SOCIETY LIMITED	SHRUTI DAGA	11:16:58.586602	11:16:58.018633	11:16:58.675991	31.05	39000

ii. *It is observed from the table above that the trades entered by the Noticee in the contract of "BHEL15APR220.00CEW1" on March 20, 2015, with her counterparty viz. ADARSH CREDIT CO OP SOCIETY LIMITED 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 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. From the table above, it is observed that the artificial volume created as no. of units reversed in non-genuine trades is 78000 shares comprising both volume of initial trade and volume of reversal trade, while not considering the volume which is not reversed.*

iii. It is further observed from the trade data of the Noticee that it has allegedly entered into non-genuine trades in 1 contract wherein she executed a total of 2 trades all of which were, prima *facie, non-genuine trades. In view of this, it is alleged that such fraudulent trades of the Noticee had resulted into creation of artificial volume of total 60750 units.*

iv. From the perusal of the trade data of the alleged non-genuine trades of the Noticee, it is observed that Noticee has allegedly executed non-genuine trades in 1 contract. The total volume of 78000 units generated by the Noticee in this 1 contract. Due to its alleged non-genuine trades, an Artificial Volume was generated by the Noticee in the Stock Option Segment of BSE. These alleged non-genuine trades, executed by Noticee in above contract, had significant differential in buy rates and sell rates considering that the trades were reversed on same day

v. In view of the foregoing, it is alleged that the Noticee, by indulging in execution of reversal trades in Stock Options with same entities on the same day, which were non-genuine in nature, has created false or misleading appearance of trading in the aforementioned contracts traded in the option segment of BSE. In view of the fact that these options contracts were illiquid in nature, having very small volume in trading, the Noticee allegedly created artificial volumes in stock options which was manipulative and deceptive in nature. Therefore, in view of above, it is alleged that the Noticee has violated Regulation 3(a), (b), (c), (d), 4(1) and 4(2)(a) of PFUTP Regulations, 2003

6. The Noticee vide her reply dated September 30, 2021, inter alia submitted the following:

Reply dated September 30, 2021

i. I (the Noticee herein) have received the Show Cause Notice dated 23-07-2021 (hereinafter referred to as the "SCN") in the captioned matter. In response to the SCN, the Noticee vide letter dated 12-08-2021 denied the allegation made in the SCN against the Noticee and further requested for inspection of the documents and data and to provide the copies of requisite documents. However, vide Email dated 30-09-2021, the Noticee's request for inspection of the documents/data and to provide copies of certain documents/data has been denied. In this way the principle of Natural Justice has not been followed in the present proceeding. In the said letter, the Noticee is asked to submit her reply on or before 04-10-2021. The Noticee is submitting her reply on the basis of available documents and data. The reply of the Noticee to the captioned SCN is as follows:

1. At the outset, the Noticee denies and refutes each and every allegation contained in the captioned SCN against the Noticee unless it is specifically admitted by the Noticee in her Reply. Nothing should be deemed as admitted by the Noticee for reason of any non-specific traverse of any allegation contained in the SCN.

2. *In the captioned SCN, it is alleged that the Noticee had executed only 1 buy and 1 sell trades in 1 Unique Contact in the Option segment of the BSE and therefore generated artificial volume of 78,000 shares / units during the period of 01-04-2014 to 30-09-2015.*
3. *In the captioned SCN, the Noticee has been called upon to show cause as to why an inquiry should not be held against the Noticee in terms of Rule 4 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 read with Section 15-1 of the SEBI Act and why penalty should not be imposed under section 15HA of the SEBI Act, 1992 for the alleged violation of Regulation 3 (a), (b), (c), (d) and 4(1), 4 (2) (a) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices related to Securities Market) Regulations, 2003 (hereinafter referred to as "**PFUTP Regulations**").*
4. *The Noticee submitted that the Trades of the Noticee in the Option Segment of BSE during the Investigation Period comprising of 18 months was restricted to 1 day only.*
5. *The Noticee submitted that the Noticee has not been provided any material/ data of total market volume in Stock Option Segment of BSE during the Investigation Period. The Noticee has also not been provided Trade and Order Log for total 2,91,643 Trades comprising 81.38% of all trades executed in Stock Market Segment of BSE during the Investigation Period which The Noticee's 2 trades (1 buy and 1 sell trades) allegedly found to be non- genuine trades. The Noticee, however, refutes that the Noticee had executed any non-genuine trades which resulted into creation of artificial volume*
6. *Noticee also submitted that that Trades of the Noticee in option segment of BSE were only in well-known Company. The alleged 2 Trades (1 buy and 1 sell trades) in option segment of BSE were executed by the Noticee on the anonymous screen based trading platform provided by BSE wherein identity of the counter party remain undisclosed. Hence, the question of any non-genuine trade does not arise at all unless it is proved that such Trades executed by the Noticee in connivance with any counter party. However, the counter party whose name has been disclosed now in the captioned SCN is completely unknown to the Noticee.*
7. *Noticee submitted that the trades executed by the Noticee in the BSE has a sophisticated surveillance system and if there had been any reversal of trade, the system could have alarmed BSE to take corrective measures to restrain any non- genuine trades happening in its trading platform. However, the Noticee has not received any warning or caution letter from BSE for any of the trades executed by the Noticee in its option segment during the period of investigation. Thus, the allegation of execution of non-genuine trades by the Noticee in option segment of BSE which purportedly resulted into creation of artificial volume is totally farfetched and is based on presumptions assumptions, surmises and conjectures .*
8. *The Noticee submitted that the Noticee had meticulous track record of trading in the securities market and except the captioned SCN the Noticee has not received even a warning letter prior to the issue of the captioned SCN.*

9. *Noticee submitted that it is a matter of common knowledge that the option trading platform of the BSE has not been as vibrant as NSE. In such a situation it is just coincidence that the Orders placed by the Noticee might have been matched. However, nowhere in the entire SCN it is alleged that the Noticee had any connection / association / relationship with the counter party. The Noticee has heard the name of the counterparty for the first time after receipt of captioned SCN. In absence of any such connection/ association/ relationship with the counter party to trades of the Noticee (whose name the Noticee has come to know only after receipt of the captioned SCN), it is totally illogical and irrational to allege that trades of the Noticee with the said counter party are non-genuine trades which resulted into creation of any artificial volume.*
10. *The Noticee further submitted that complete material documents in support of the allegation contained in the captioned SCN have not been made available to the Noticee. Hence, the Noticee is not in position to file a proper Reply effectively answering the charges levelled against the Noticee in the Captioned SCN. Moreover, not providing complete materials/ documents to the Noticee is in violation of Principles of Natural Justice.*
11. *Noticee submitted that in Para 2 of the Captioned SCN it is alleged that SEBI had observed large scale of reversal of trades in Stock Options segment of BSE leading to creation of artificial volume. However, it is not made clear as to what constitutes a reversal trade or what the definition of reversal trade is. No document or information has been provided in this regard.*
12. *Noticee submitted that the trades executed by the Noticee in the BSE Stock Option Segment were in the normal course of business devoid of any fraudulent intentions. In the derivative segment, only those stock and indices are permitted which are very liquid and there is a robust risk mitigation mechanism is in place. Since the Noticee had traded in the Options of very well-known Company which has tradeable position in the market, there was no reason to doubt credibility of the platform provided by the Exchange as approved by SEBI. The allegation of trades being non-genuine has no basis as your goodself has failed to provide any evidence to prove that there was a misleading appearance created in the market by the trades executed by the Noticee.*
13. *Noticee submitted that it is beyond the comprehension of the Noticee that how an allegation of fraud can be alleged against the Noticee for execution of mere 1 buy and 1 sell trades. It is very pertinent to state that the said trades were matched with one entity only. In this connection I would like to place reliance on the Adjudication Order dated 24-12-2019 in the matter of Richa Industries Limited wherein Ld. Adjudicating Officer.*
14. *Noticee submitted that the Noticee had no connection of whatsoever nature with the counterparty to the alleged 1 buy and 1 sell trades of the Noticee. According the SCN, total artificial volume generated due to alleged 1 buy and 1 sell trades were 78,000 shares/units*

only. Thus, the ratio laid down by Ld. AO in the aforesaid Order squarely applies in the case of the Noticee.

15. *Noticee further submitted that a Reversal Trade is a trade wherein both buy and sell trade are matched with the same counterparty. Further, for completion of one reversal trade both buy trade and sell trade are required to be executed. Buy Trade alone or Sell Trade alone cannot be construed as one reversal trade. In the case in hand one sell trade and one buy trade had been executed. Thus, the same cannot be termed as two reversal trade.*
16. *Noticee also submitted the various case laws viz.,SAT orders of DhvaniDarshan Kothari & Anr. vs Securities and Exchange Board of India (Appeal No. 276 of 2020 decided on January 21, 2021) Subhkam Securities Private Limited vs Securities and Exchange Board of India (Appeal No. 73 of 2012 decided on July 25, 2012) Mr. Narendra VallabhjiBahuva v/s SEBI(Order dated 14-07-2021. Appeal No. 516 of 2019) for allegations about relationship with counter party and reversal of trades.*
17. *Noticee also submitted that in the SCN, no details of volume in the alleged unique contract of BHEL15APR220.00CEW1 has been provided, therefore, the Noticee is not in a position to make any submissions on the same*
18. *Furthermore, SCN is bad in law as the same has been issued after a period of more than 6 years from the date of execution of trades by the Noticee. BSE is a first stage Regulator and claims that it has most scicntific and surveillance mechanisms. Similarly, SEBI as Regulator of Regulators of all Stock Exchanges, of all intermediaries and of all the entities who deal in securities market has also a sophisticated Surveillance System. I had not received a single Caution Letter either from BSE and/or SEBI in this matter. Hence, the issue of SCN after a period of more than 6 years from the date of execution of trades has caused extreme mental agony and highly prejudices the case of the Noticee as justice delayed is justice denied. Recently, the Hon'ble Supreme Court of India and the Hon'ble Tribunal took a tough stand against inordinate delay and latches in quasi-judicial proceedings.*
19. *Noticee submitted that, as none of the acts or trades executed by the Noticee fall under the definition of fraud as provided in regulation 2(1) (c) of PFUTP Regulation, the genuineness of the trades executed by the Noticee cannot be questioned and therefore, the Noticee cannot be alleged to have violated any PFUTP Regulations.*

7. Noticee had also quoted various case laws in her reply viz., Orders of Hon’ble Tribunal in following matters (a) KSL & Industries Ltd. vs. SEBI (Appeal No. 9 of 2003, Date of decision 30th September, 2003) for allegation of fraud. (b) Vintel Securities Pvt. Ltd. vs. SEBI (Appeal No. 219 of 2009, Date of decision 23rd November, 2009) (c) Dhvani Darshan Kothari & Anr. (Appeal No. 276 of 2020, Tribunal Order dated 21-

01-2021), and Noticee also submitted that the ratio laid down in these cases squarely applies to the case of the Noticee. In light of these Orders, the Noticee requested to drop the proceeding against the Noticee without passing any adverse order.

8. Noticee submitted that it is the discretion of the Adjudicating Officer to decide the quantum of penalty which is need to be imposed in a case where charges are proved. and she also placed the reliance upon the the Judgement of Hon'ble Apex Court dated 28- 02-2019 in Civil Appeal No. 11311 of 2013 in the matter of Adjudicating Officer, SEBI v/s Bhavesh Pabari for power of Adjudicating Officer Power of Adjudicating Officer to take into account other factors also in addition to those enumerated under section 15 J of SEBI Act as well as Discretionary Power to impose Penalty under sections 15A to Sections 15-HA of the said SEBI Act.

9. Noticee also submitted that the trades/volume of the Noticee herein are too miniscule and placed reliance upon the the Tribunal Order dated 22-06-2016 in Appeal No. 390 of 2015 (Dhvani Darshan Kothari v/s SEBI) and requested that for the sake of proportionality, no penalty or a token penalty should be imposed in the case of the Noticee

10. In terms of adjudication rules, the Noticee was provided with an opportunity of personal hearing in the matter on October 05, 2021, through the online Cisco webex platform. Further, Mr. Vikas Bengani (Advocate) appeared as the Authorized Representative ('**AR**') 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 reply dated September 30, 2021.

CONSIDERATION OF ISSUES AND FINDINGS:

11. I have taken into consideration the facts and circumstances of the case, the material available on record and the reply submitted by the Noticee. It is alleged that the Noticee had executed reversal trades, which were non-genuine trades and the same has resulted in the generation of artificial volume in the Stock Option contracts at BSE. In view of the same, it is alleged that Noticee has violated the provisions of

Regulations 3(a), (b), (c), (d) and Regulation 4(1), 4(2)(a) of PFUTP Regulations and, therefore, it is alleged that Noticee is liable for penalty under the provisions of Section 15HA of the SEBI Act.

12. Before proceeding with the matter on merits, I first deal with the preliminary issues raised by the Noticee regarding delay in proceedings., I have seen that Noticee was provided with all relevant and relied upon documents along with Show Cause Notice and the Noticee was provided enough time to file its detailed reply and submissions and therefore, no prejudice was caused due to delay. Notwithstanding the same, I also note that there is no provision with prescribed time limit in the SEBI Act which may have the effect of prohibiting SEBI from taking action by issuing Show Cause Notice or passing any order beyond a particular period of time in a given case.

13. Further, I note that in Ravi Mohan & Ors. v. SEBI and other connected appeals decided on August 08, 2013, Hon'ble SAT while referring to its own decision in HB Stockholdings Ltd. v. SEBI(Appeal no. 114 of 2012) decided on August 27, 2013 and decision of Hon'ble Supreme Court in Collector of Central Excise, New Delhi v. Bhagsons Paint Industry (India)reported in2003 (158) ELT 129 (S.C.),held as under :

14. *"....Based on decision of this Tribunal in case of HB Stockholdings Ltd. vs. SEBI (Appeal no. 114 of 2012 decided on 27.08.2013) it is contended on behalf of the appellants that in view of the delay of more than 8 years in issuing the show cause notice, the impugned order is liable to be quashed and set aside. There is no merit in this contention, because, this Tribunal while setting aside the decision of SEBI on merits has clearly held in para 20 of the order, that delay itself may not be fatal in each and every case. Moreover, the Apex Court in case of Collector of Central Excise, New Delhi vs. Bhagsons Paint Industry (India) reported in 2003 (158) ELT 129 (S.C) has held that if there no statutory bar for adjudicating the matter beyond a particular date, the Tribunal cannot set aside the adjudication order merely on the ground that the adjudication order is passed after a lapse of several years from the date of issuing notice...."*

15. The decision of Hon'ble SAT in the aforesaid case, were reiterated by it, in a subsequent order in the matter of Kunal Pradip Savla & Ors. v. SEBI (Appeal no. 231 of 2017) decided on April 13, 2018.Therefore, I conclude that there is no merit in the preliminary objections made by Noticee, regarding the delay in conculding the instant proceedings.

16. I note that Noticee in her reply contended that inspection of documents has not been provided to her and she also contended that the principle of Natural Justice has not been followed in the present proceeding. In this regard, I note that in Hon'ble SAT, in its order dated February 12, 2020, in the matter of Shruti Vora vs. SEBI has clearly mentioned that "*the AO is required to supply the documents relied upon while serving the show cause notice. This is essential for the person to file an efficacious reply in his defence*". Thus, I note that all documents relied upon for the present proceedings have been shared with the Noticees as per the ratio mentioned in the Shruti Vora matter in the backlight of principles of natural justice.

17. Further, the Hon'ble SAT in the matter of Anant R Sathe Vs SEBI (Appeal No. 150 of 2020) vide Order dated July 17, 2020 has reaffirmed the principle elucidated in the judgment of Shruti Vora's case, which was reproduced herein above and ruled that "*the Authority is required to supply the documents that they rely upon while serving the show cause notice which in the instant case has been done and which is sufficient for the purpose of filing an efficacious reply in his defence"*.

18. In view of the above, since all the documents which are relevant and relied upon in the instant proceedings have been provided to the Noticees, I am of the opinion that principles of natural justice have been duly complied with in the instant proceedings and no prejudice in filing reply has been caused to the Noticees

19. Before moving forward, the relevant provisions of law allegedly violated by the Noticee and as mentioned in the SCN are reproduced 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;

20. Reversal trades are considered as those trades in which an entity reverse her 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 reversal trades executed by the Noticee, which were observed in the present case, were undertaken by the Noticee with her counterparty with a predetermined arrangement to book profit or losses respectively, and therefore, the parties to the trades were not

trading in the normal sense and 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 investigation period.

21. In this regard, it is observed from the trade log of the Noticee that she had traded in 1 non-genuine contract in the Stock Options segment of BSE during the above mentioned investigation period. The examination of the Trade log of the Noticee during the relevant period revealed that she had executed 2 non-genuine trades in 1 contract in the Stock Options segment of BSE. I note that the abovementioned trades of the Noticee had resulted in the creation of artificial volume of a total of 78000 units in the given 1 contract. Further, it is observed that the trade executed by the Noticee was squared up within a short span of time with the same counterparty i.e. trade was reversed within few minutes on the same day. Thus, it is observed that Noticee had indulged in reversal trades with her counterparty in the stock option segment of BSE and the same were non-genuine trades.

22. Further, it is observed that these trades were squared up by the Noticee with her counterparty with a significant price difference. The non-genuineness of these transactions executed by the Noticee is evident from the fact that there was no commercial basis to suddenly, within a matter of few minutes, reverse the position with her counterparty with significant price difference when the value of the underlying had not undergone any significant change. The trade reversals in the said case points out to the fact that the parties 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. As already mentioned above, there was very little time gap between the buy and sell orders placed by the Noticee with her counterparty in different trades. The time gap between both the trades ranged from few seconds/ minutes, on the same day. 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 also generated artificial volume in the otherwise illiquid stock option contracts at BSE.

23. To illustrate, it is observed that the Noticee had executed a total of 2 trades during the Investigation period in the contract "BHEL15APR220.00CEW1". The aforesaid trades were done by the Noticee on March 20, 2015 wherein Noticee bought 39000 units from Adarsh Credit Co Op Society Limited at at 10:22:38 at the rate of Rs. 21.6 per unit. The Noticee then sold 39000 units to Adarsh Credit Co Op Society Limited at 11:16:58 at the rate of Rs. 31.05 per unit. This resulted in 2 trades with total trade quantity of 3000 units at a price of Rs. 21.6 and Rs.31.05. Thus, in the above manner, the Noticee executed a total of 2 trades in the contract "BHEL15APR220.00CEW1" and generated artificial volume of 78000 units through such non-genuine and reversal trades. It is also observed that, out of the 2 trades done through 1 unique contract, the Noticee was instrumental in contributing significantly towards the total volume recorded on BSE in the said contracts.

24. The Noticee has contended that in the screen based trading system, which is virtually anonymous, it is not possible for anyone to enter into such reversal trades. However, considering the precision at which the reversal transactions had taken place, the quantity, price and time and sale, party in a trade transaction with huge price variation, I am of the view that it will be too naïve to hold that these transactions are through platform of screen-based trading and hence anonymous. Such conclusion would be over-looking the prior meeting of minds involving synchronization of buy and sell order w.r.t the transactions entered into by the Noticee with her counterparty and such synchronized trading is clearly violative of the transparent norms of trading in the securities market. In view of the above observations, I hold that all the 2 transactions executed by the Noticee in the 1 Option Contract were synchronized trades, which were reversed within a small time gap with prior meeting of mind between the parties to the trade. Needless to mention the fact that these transactions were manipulative/deceptive device with a view to create a desired loss and/or profit in the

books of the party to the transactions and in the process, artificial volumes were also generated through such contracts. As per the material available, the Noticee made a profit of Rs. 3,68,550/- as result of these trades.

25. At this juncture, it is pertinent to refer to the decision of the Hon'ble Supreme Court of India in the matter of **Securities and Exchange Board of India v. Rakhi Trading Private Limited** (Civil Appeal Nos. 1969, 3174-3177 and 3180 of 2011 dated February 08, 2018) wherein, the Hon'ble Supreme Court while cumulatively analyzing the reversal transactions held that, price discovery system itself was affected by synchronization and rapid reverse trade, which also had the impact of excluding other investors from participating in the market. The Supreme Court, therefore found that the traders having engaged in a fraudulent and unfair trade practice while dealing in securities, are hence liable to be proceeded against for violation of Regulations 3(a), 4(1) and 4(2)(a) of the PFUTP Regulations. The Apex Court also held that *"considering the reversal transactions, quantity, price and time and sale, parties being persistent in the number of such trade transactions with huge price variations, it will be too naïve to hold that the transactions are through screen-based trading and hence anonymous. Such conclusion would be over-looking the prior meeting of minds involving synchronization of buy and sell order and not negotiated deals as per the Board's circular. The impugned transactions are manipulative/deceptive device to create a desired loss and/or profit. Such synchronized trading is violative of transparent norms of trading in securities."* The Hon'ble Apex Court has also held that in the absence of direct proof of meeting of minds, the test should be one of preponderance of probability and also stated that the conclusion has to be gathered from various circumstances like volume of trade, period of persistence of trading, particulars of buy and sell orders, proximity of time between the two and such other relevant factors.

26. In the same matter, Hon'ble Supreme Court had further stated that-

> "……..*quantity, time and significant variation of prices, without major variation in the underlying price of the securities clearly indicate that Respondent's trades are*

not genuine and had only misleading appearance of trading in the securities market………."

"*35…. Contextually and in simple words, it means a practice which does not conform to the fair and transparent principles of trades in the stock market. In the instant case, one party booked gains and the other party booked a loss. Nobody intentionally trades for a 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 makes losses and that too in a pre-planned manner and rapid trades, it is not genuine……"*

27. Additionally, the Hon'ble Securities Appellate Tribunal (hereinafter referred to as "SAT")in its Order dated September 14, 2020 in the matter of Global Earth Properties and Developers Pvt Ltd Vs SEBI(Appeal No. 212 of 2020) relied upon the aforesaid Order of the Hon'ble Supreme Court and held that *"…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."*

28. In this context, I also find it relevant to refer to the decision of Hon'ble Supreme Court in the matter of ***Securities and Exchange Board of India v. Kishore R Ajmera*** *{(2016)} 6 SCC 368 : AIR 2016 SC 1079}* wherein, the Hon'ble Supreme Court has held that , " ….. *According to us, knowledge of who the 2nd party/client or the broker is, is not relevant at all. While the screen based trading system keeps the identity of the parties anonymous it will be too naïve to rest the final conclusions on the said basis which overlooks a meeting of minds elsewhere. Direct proof of such meeting of minds elsewhere would rarely be forthcoming. The test, in our considered view, is one of preponderance of probabilities so far as adjudication of civil liability arising out of*

violation of the Act or the provisions of the Regulations framed thereunder is concerned…..”

29. In the same matter, the Hon’ble Supreme Court, has further held that, “……… *In the absence of direct proof of meeting of minds elsewhere in synchronized transactions, the test should be one of preponderance of probabilities as far as adjudication of civil liability arising out of the violation of the Act or provision of the Regulations is concerned. The conclusion has to be gathered from various circumstances like that volume of trade effected; the period of persistence in trading in a particular scrip; the particulars of buy and sell orders, namely the volume thereof; the proximity of time between the two and such relevant factors……..”*

30. The observations made in the aforesaid judgments of Hon’ble Supreme Court apply with full force to the facts and circumstances of the present case. Therefore, applying the ratio of the above judgments, I am convinced that the execution of trades by the Noticee in the illiquid options segment with such precision in terms of order placement, time, price, quantity etc. and also the fact that the transactions were reversed with the same counterparty clearly indicates a prior meeting of mind with a view to execute the reversal trade at a pre-determined price. It is observed that in respect of these trades executed in the illiquid stock options contract, the only reason for the wide variation in prices of the same contract and execution time within seconds/minutes was a clear indication that there was pre-determination in the prices by both the counterparties when executing the trades. Thus, the nature of trading, as brought out above, clearly indicates an element of prior meeting of minds and therefore, a collusion of the Noticee with her counterparty to carry out the trades at predetermined prices. It is not possible to comprehend the reason for which the Noticee would enter into an option contract with a strike price very far away from the current market price of the underlying except for the fact that Noticee wanted to execute non-genuine trades.

31. 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 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 in the contract. By synchronization and reversal trade as has been carried out by the Noticee in the instant case, the price discovery system has been 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.

32. Therefore, from the foregoing paragraphs and the observations/findings contained therein, I hold that the Noticee has violated the provisions of Regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of PFUTP Regulations, 2003

33. In view of the above, I conclude that the Noticee is liable for monetary penalty under the provisions of Section 15HA of the 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.*

34. In this regard, the provisions of Section 15J of the SEBI Act and Rule 5 of the Adjudication Rules require that while adjudging the quantum of penalty, 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.

35. Clearly, from the above observations, the Noticee was instrumental in the creation of artificial volume in the illiquid stock option contracts at BSE during the investigation

period by executing reversal / non-genuine transactions in the illiquid stock options segment at BSE. 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 her counterparty. From the manner in which Noticee executed the above mentioned transactions, the Noticee has violated the statutory provisions of law. In this context, reliance is placed upon the order of the Hon'ble Supreme Court of India in the matter of Chairman, **SEBI Vs Shriram Mutual Fund** { [2006]5 SCC 361 } – wherein the Hon'ble Supreme Court of India 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…………....*"

36. I note that the during the personal hearing, AR had reiterated the Judgement of Hon'ble Apex Court dated 28- 02-2019 in Civil Appeal No. 11311 of 2013 in the matter of Adjudicating Officer, SEBI v/s Bhavesh Pabari. laying down the Power of Adjudicating Officer to take into account other factors also in addition to those enumerated under section 15 J of SEBI Act as well as Discretionary Power to impose Penalty under sections 15A to Sections 15-HA of the said SEBI Act. In this regard, not only I agree with the ratio of this Judgment but also used my discretion accordingly by considering the facts.

37. However, in view of the facts and available material on record, I am inclined to rely upon the order of Hon'ble Securities Appellate Tribunal (hereinafter referred to as "SAT") dated September 14, 2020 in the matter of ***Global Earth Properties and Developers Pvt Ltd Vs SEBI (Appeal No. 212 of 2020)*** since, the facts of the case are similar to the instant matter. In the matter of ***Global Earth Properties and Developers Pvt Ltd Vs SEBI***, hon'ble SAT held that "*It was urged by the learned counsel for the Appellants that the penalty awarded is excessive and harsh and, therefore, prayed that in the event the order is affirmed the Tribunal may consider reducing the penalty amount taking into*

consideration the financial status of the Appellants and the negligible transactions executed by the Appellants.

In this regard we have perused the orders passed by the AO. We find that the AO has taken into consideration not only the factors contained in Sec. 15J of the SEBI Act but has also taken into consideration the number of total trades, the artificial volume generated, the loss incurred, etc while imposing the penalty. It may be stated here that the minimum penalty under Sec. 15HA is Rs.5Lacs and maximum penalty is Rs. 25 crores or three times the profit made. We find that the AO has excercised its discretion which is neither harsh nor arbitrary. We do not find any error in the quantum of penalty imposed by the AO."

38. Therefore, by considering the profit and creation of artificial volume by the Noticee, I have no hesitation to impose the minimum penalty prescribed under the relevant provisions of the SEBI Act.

ORDER

39. 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 Lakh only) on the Noticee viz. Ms. Shruti Daga under the provisions of Section 15HA of the SEBI Act for the violation of Regulations 3(a), (b), (c), (d), 4(1) and 4(2) (a) of the PFUTP Regulations. I am of the view that the said penalty is commensurate with the default committed by the Noticee.

40. 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-3] 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 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)	

OR

41. 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.

42. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated 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.

43. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is sent to the Noticee viz. Shruti Daga and also to Securities and Exchange Board of India.

Place: Mumbai
Date: November 12, 2021

SANDEEP DEORE
ADJUDICATING OFFICER