BEFORE THE ADJUDICATION OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. ORDER/JJ/MG/2022-2023/15814]

UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995.

In respect of-

Anjana Goenka (PAN: AEMPG8580M) having address at Block -4, Flat No. 22, 251/1 Nagendra Nath Road, Shrachi Garden, Dum Dum, North 24 Parganas, Kolkata, West Bengal- 700028.

In the matter of **dealing in Illiquid Stock Options on the BSE**

BACKGROUND

1. Securities and Exchange Board of India (hereinafter be referred to as, **"SEBI"**) conducted an investigation into the trading activity in Illiquid Stock Options at BSE for the period between April 1, 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 Bombay Stock Exchange Ltd. (hereinafter referred to as **"BSE"**).

2. Investigation revealed that during the Investigation Period, a total of 2,91,643 trades comprising 81.38% of all the trades executed in BSE Stock Options Segment were trades which involved reversal of buy and sell positions by the clients and counterparties in a contract. Anjana Goenka (**"hereinafter referred to as Noticee"**) was one such client whose reversal trades involved squaring off transactions with significant difference in the sell value and buy

value of the transactions. The aforesaid reversal trade allegedly resulted into generation of artificial volumes by the aforesaid clients and counterparties, leading to allegations that the Noticee had violated Regulation 3 (a), (b), (c), (d) and Regulation 4 (1), 4(2) (a) of SEBI (Prohibition of Fraudulent and Unfair Trading Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as **"PFUTP Regulations"**).

APPOINTMENT OF ADJUDICATING OFFICER

3. SEBI initiated Adjudication Proceedings and appointed the undersigned as Adjudicating Officer (hereinafter referred to as **"AO"**) under section 15-I of the SEBI Act, 1992 (hereinafter referred to as, **"SEBI Act")** read with Rule 3 of the SEBI (Procedure for Holing Inquiry and Imposing Penalties) Rules, 1995 (hereinafter be referred to as, **"Adjudication Rules"**) vide order dated September 20, 2021, to inquire into, and adjudge under Section 15HA of the SEBI Act, the alleged violations of the aforesaid provisions of the PFUTP Regulations, by the Noticee. The appointment of the AO was communicated vide Order dated September 27, 2021.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. Show Cause Notice No. OIAE/IAD/JJ/PBR/30323/2021 dated October 27, 2021(hereinafter referred to as, the **"SCN"**) was served upon the Noticee under Rule 4 (1) of the 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 SEBI Act, 1992 for the aforesaid alleged violations of PFUTP Regulations, 2003.

5. The allegations levelled against the Noticee in the SCN are summarized below:

   a) The Noticee was one of the entities who indulged in reversal trades which allegedly created false and misleading appearance of trading in the market, generating artificial volumes in the Stock Options Segment of BSE during the Investigation Period.

b) The Noticee is alleged to have engaged in 1 such reversal trade in 1 unique contract, which led to generation of alleged artificial volume of 20,000 units on July 28, 2015.

c) The trade entered by the Noticee was reversed on the same day with the same counterparty at a substantial price difference without any basis for significant change in the contract price which indicates that this trade was artificial and is non-genuine in nature.

d) A summary of dealings of the Noticee in the Stock Option contracts in which the Noticee allegedly executed non-genuine reversal trade during the Investigation Period, provided in the SCN is reproduced below:

S. No.	**Contract Name**	**Avg. Buy Rate (Rs.)**	**Total Buy Volume (no. of units)**	**Avg. Sell Rate (Rs.)**	**Total Sell Volume (No. of Units)**	**%of Artificial Volume generated by Noticee in the contract to Noticee's Total Volume in the Contract**	**%of Artificial Volume generated by Noticee in the contract to Total volume in the contract**
1	BHRT15JUL460.00PE	27.00	10,000	46.90	10,000	100%	4.20%

Note: "Unit" refers to lot size in contract multiplied by number of contracts traded.

6. From the trades executed by the Noticee in the contract of "BHRT15JUL460.00PE", it is observed that:

   a) While dealing in the said contract on 28/07/2015, at 13:06:18:27 hrs. the Noticee entered into a buy trade with counterparty N M Impex Private Limited for 10,000 units at Rs. 27.00 per unit, which was reversed by a sell trade at 13:17:05:94 hrs with the same counterparty for 10,000 units at Rs. 46.90 per unit.

   b) The Noticee's trades in the Stock Options contracts to total trades in the said contract in the market was 4.20% (4,76,000 being total market volume in the contract) during this period. Hence, it is alleged that by two trades Noticee executed a total volume of 20000 units which was artificial and non-genuine in nature.

7. The Noticee vide email dated November 12, 2021 acknowledged the receipt of the aforesaid SCN and requested that she wished to avail of settlement proceedings and requested the AO to let her know about the settlement procedures. The undersigned vide email dated November 15, 2021 advised the Noticee to refer to SEBI(Settlement Proceedings) Regulations, 2018 available on SEBI website under the head Regulations at www.sebi.gov.in.

8. Vide letter reference number OIAE/IAD/JJ/33420/2021 dated November 23, 2021 a reminder was sent to the Noticee to reply to the SCN by December 8, 2021. The Noticee vide e-mail from her e-mail id goenka_vinod@yahoo.com dated November 24, 2021 requested to refer to her e-mail reply dated November 12, 2021. The Noticee failed to produce any proof with respect to having made an application for settling the proceedings. On November 23, 2021 a reminder letter was sent to the Noticee clearly informing her to file a reply to the SCN. The SCN and reminder letter were sent to SEBI Eastern Regional Office to be pasted on her address given in SCN. She received the letter personally on November 18, 2021. On January 31, 2022 the Noticee vide e-mail from e-mail id goenka_vinod@yahoo.com informed that she did not have any further submissions to make and to continue with the

proceedings and to consider only the profit made while finalizing the penalty amount since the profit was low as compared to minimum penalty amount.

9. However, since no point-wise reply to allegations made in the SCN were received from Noticee, following the principles of natural justice, the Noticee was accorded an opportunity for personal hearing on February 11, 2022 via video conferencing. However, the Noticee did not appear. As she did not appear or send any representative, she was contacted on mobile number 9831104126 to enable her to represent herself. On phone Noticee stated that she did not want to appear for hearing and to take into consideration the submissions she had already made.

10. After some time had elapsed vide email dated February 24, 2022 she forwarded a letter dated February 23, 2022, this time making point-wise reply to the allegations made in the SCN. The hard copy of the said letter was received on March 1, 2022.

11. Following the principles of natural justice a second opportunity for personal hearing on March 7, 2022 at 11:00 am via video conferencing was given to the Noticee. This time the Noticee sent her CA Mr. Mohit Agarwal as the authorized representative to present her case. The authorized representative acknowledged the points made in the SCN and reiterated the submissions made in reply of the Noticee dated February 23, 2022.

12. By indulging in execution of the aforesaid non-genuine reversal trades, the Noticee is alleged to have violated Regulations 3(a),(b),(c),(d), 4(1), 4(2)(a) of the PFUTP Regulations, 2003 the text of which has been reproduced below:-

"*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"

REPLY OF THE NOTICEE TO ALLEGATIONS RAISED IN SCN

13. The Noticee vide letter dated February 23, 2022 forwarded her submissions. The points raised in her submissions are as follows –

(i) She had done only 2 trades on BSE which earned her a profit of Rs. 2 lakh. She purchased 10000 quantity contract BHRT15JUL460.00PE of stock option on BSE and sold the same quantity at a profit the same day.

(ii) The trade reversal was done after a time gap of 10 minutes from first trade. The time gap showed trade was not intentional.

(iii) She executed the trade on exchange platform and did not know the counterparty as trading system of the exchange is anonymous.

(iv) Allegations of creating artificial volume and non-genuineness of trades are baseless.

(v) There is a six year delay in issuance of SCN.

(vi) As given in judgment in the case of Govindji Gupta and others MC/DS/2019-20/6209-6214 wherein the AO had considered the time gap ranging from 10 second to 5 minutes for execution of orders to be such that *'structured trades could not have been said to be intentional.'* The Hon'ble SAT accepted the findings of the AO and quoted the same in case of Amondz Entertainment Pvt. Ltd. vs SEBI (Appeal No. 198 of 2020 dated 21.1.2021) and exonerated the appellant. SEBI and AO cannot abandon its own yardstick as stated in instant case.

(vii) The Noticee only contributed to 20000 to the volume created and SEBI has contended that 81.41% of trades were completed showing contract was highly liquid. So she cannot be penalized for creating artificial volume.

(viii) The Noticee quoted Hon'ble SC judgement in case of SEBI vs Rakhi Trading Pvt. Ltd. wherein the court stated that *'Inferior supervision might distort the path of securities market development.*' She blamed SEBI for having failed to have done its duty in supervising the transactions and now SEBI was blaming the investors.

(ix) The trades were executed in the limits provided by the exchange. She reiterated that she did not know the counterparty to the trade and had no relationship with them. Hence the allegation of knowing the counterparty to the trade seems to be far fetched.

(x) She quoted two case laws of Neha Sethi **(Order No. Order/PB/2021-22/14749) wherein** the Learned Adjudicating Officer had considered that it was possible in existing exchange trading platform at that point in time that the counterparty to trades could be the same entity without the knowledge of the concerned entities. She reiterated that there is no connection between the buyer and seller, nor has any evidence been brought, direct or otherwise, on record to suggest collusion between the Noticee and the counterparty.

(xi) Reliance was also made on the judgment of the Hon'ble Supreme Court in the matter of **SEBI vs Kishore Ajmera [(2016) 56 SCC 368]** wherein, the Apex Court held in para 26 of the judgment 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 conclusion on the said basis which overlooks a meeting of minds elsewhere."*

(xii) The brokers/ trading member have to be qualified before they are permitted to do stock/ derivatives trading on behalf of the clients/investors. Therefore, in normal course of business an investor who trades in stocks/ derivatives, is not aware of the alleged trades to be non-genuine or reversal trades. SEBI is blaming all the investors for the wrongdoings, for mistakes or fault of their own officials and it failed to perform its own work of being a watchdog to exchange.

(xiii) SEBI, without initiating any proceeding against the broker or the exchange concerned, tried to charge penalty against an investor after the lapse of more than five years. The alleged trades are of the year 2015; for which the Noticee got a notice in the year 2022. Such proceedings are ex-facie vitiated in law, and is a complete abuse of process. Such a long delay in initiation of the proceedings by itself poses grave difficulties and hardship for the Noticee's defense and she was highly prejudiced by such inordinate delay on the part of SEBI. She may not be in a position to locate or lay hands on relevant material / information. In this regard, reference has been made to the judgment of Hon'ble SAT in the matter of **Libord Finance Limited vs SEBI [Appeal No. 37/2008, SAT order dated 31.03.2018],** wherein Hon'ble SAT has made the following observation- *"Before concluding, we cannot resist observing that there has been an inordinate delay in initiating action against the appellant. It is alleged to have committed the irregularities in the earlier part of the year 1996 and the show-cause notice was admittedly issued in June 2004. How could anyone file a proper reply after a lapse of more than eight years. This long delay itself causes grave injustice to the delinquent and results in the violation of the principles of natural justice. Such delays defeat* *the very purpose of the proceedings."* Hon'ble Supreme Court of India in **Government of India vs Citedal Fine Pharmaceuticals, Madras & others [AIR (1989) SC 1771],** wherein it was held that in the absence of any period of limitation, the authority is requested to exercise its powers within reasonable period.

(xiv) BSE Officials must be and should be held responsible as they did not raise any objections at the relevant period of the transactions. The alleged trades were carried out on the platform of BSE. If the alleged trades were not allowed, then BSE should have prevented / cancelled the alleged trades at the relevant time itself. Therefore, it seems absolutely clear that BSE believed that such trades were permitted.

(xv) SEBI has allowed such trades and wanted to increase the traded volume in that duration as there was hardly any trading done. To increase the volume during that time, the Liquidity Enhancement Scheme for illiquid securities in F&O segment was introduced. There is every possibility that in thinly traded contracts, trades get reversed with the same party and there was no ban in doing that.

(xvi) Noticee stated that her trades do not fit into the definition of fraud since SEBI failed to provide any factual evidence to prove that her trades led to artificial increase in traded volume, or manner adopted was fraudulent, hence, such allegations were refuted by her.

CONSIDERATION OF ISSUES AND FINDINGS

14. The following issues arise for consideration in the instant matter for adjudicating under Section 15HA of SEBI Act, 1992:

Issue No. I *Whether the Noticee is in violation of Regulation 3(a),(b),(c),(d) and Regulation 4(1) and 4(2)(a) of PFUTP Regulations, 2003?*

Issue No. II *If yes, whether the failure, on the part of the Noticee would attract monetary penalty under Section 15HA of the SEBI Act, 1992?*

Issue No. III *If yes, what would be the quantum of monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act, 1992 read with Rule 5(2) of the Adjudication Rules, 1995?*

Issue No. I ***Whether the Noticee is in violation of Regulation 3(a), (b), (c), (d) and Regulation 4(1) and 4(2)(a) of PFUTP Regulations, 2003 as alleged in the SCN?***

Examination of the facts of the case

15. With regard to the preliminary contention of the Noticee on the matter being 6 years old, I note that the initial action in the matter of illiquid stock options was taken as early as 20.08.2015 when SEBI passed interim order against 59 entities. This was followed by final order on 05.04.2018 after completion of investigation, which revealed that 14,720 entities were involved in executing non-genuine trades. Pursuant to observation by the Hon'ble SAT in its Order dated 14.10.2019, an opportunity of settlement was given to all entities by way of Settlement Scheme, 2020 ("Scheme") vide Public Notice dated 27.07.2020. Owing to the actions taken as detailed and the large number of entities involved, the time period taken for issuing SCN is reasonable. I further note that the proceedings under SEBI Act are not barred by limitation. Further, all relevant and relied upon material for the purpose of crystallization of allegations in respect of the Noticee were served on the Noticee and it is not her case that her ability to defend herself has suffered due to lack of any specific information material to the charges. Also there is no period of limitation prescribed in the SEBI Act, 1992 with respect to exercising powers or adjudicating under Section J of the SEBI Act, 1992 or for the purpose of identifying trades as non-genuine. Therefore, I note that contentions of Noticee in this regard are without merits. The facts of the case differs from that of Bhavesh Pabari (2019) 5 SCC90. In view of the regulatory actions taken by SEBI as brought out above the case judgements of Libord Finance Ltd. vs SEBI of Honble SAT and Government of India vs Citedal Fine Pharmaceuticals, Madras and others (AIR 1989 SC 1771) of Hon'ble SC quoted by the Noticee are not applicable to the present case.

16. On July 28, 2015, the Noticee bought 10000 units in the contract named "BHRT15JUL460.00PE" from N M Impex Private Limited at Rs.27 per unit. Within 11 minutes, the Noticee had sold the said 10000 units of the contract to the same counterparty in 1 trade at average sell price of Rs. 46.90 per unit. The said reversal trade was executed within 11 minutes of generating artificial volumes to the extent of 20000 units in the aforesaid contract and there was substantial price difference of Rs.19.90 between the buy trades (at Rs.27) and sell trades (at Rs. 46.90) executed within minutes of each other.

17. Further, I find all of the Noticee's orders were placed within a second of the counterparty's order. The Noticee's order time was 13:06:17 and counterparty's order time was within 1 second at 13:06:18. Similarly in the reverse leg of the trade both the Noticee and the counterparty placed sell and buy orders at the same time i.e. 13:17:05 with a difference of only micro-seconds.

18. I also note from order placement rates that in both the transactions the order rate placed by the Noticee and the counterparty was exactly the same. In the first leg of the trade the order rate was Rs.27 placed by both Noticee and counterparty and in the reverse leg of the trade the order rate was Rs. 46.9 by both Noticee and counterparty.

19. In the instance of reversal trade, the counterparty with respect to the reverse leg of the trade entered into by the Noticee was the same as the first leg. I find that the trade was reversed by executing opposite trade on the same day with the same counterparty. I also find that the trade entered into by the Noticee were reversed at a substantial price difference from the first leg without any basis for the significant change in the contract price within such a short period of time of 11 minutes.

20. Further, the Hon'ble Securities Appellate Tribunal, in its judgement dated September 14, 2020 in the matter of Global Earth Properties and Developers Pvt. Ltd. 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*."

21. Though the Noticee replied that trade reversal was done after almost 10 minutes of first trade and in a screen based trading system it was impossible to know the counterparty, but I find that the trade was timed so as the order placement was within 1 second or same time as the counterparty. Also the price at which buy and sell orders were placed was exactly the same as the counterparty. This cannot be mere co-incidence. The facts of the case point to pre-ponderance of probability of meeting of minds of the counterparties. I also rely on the judgement of Hon'ble Supreme Court in SEBI v Kishore R Ajmera (AIR 2016 SC 1079), wherein it was 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 the trade effected; the period of persistence in trading in the particular script; the particulars of the buy and sell orders, namely, the volume thereof; the proximity of time between the two and such other relevant factors. The illustrations are not exhaustive…"*

22. I further note that the Noticee's orders were synchronized with those of the counterparty. While synchronized trades may occur by accident in a liquid stock, I find that execution of such synchronized trades in an illiquid market with anonymous trading can only happen if there is prior meeting of minds with a view to execute trades. The placement of orders at a time difference of 1 second and with same time with difference in placement of orders in micro-seconds all goes on to show by the yardstick of pre-ponderence of probability that there was a prior meeting of minds to execute the trades.

23. The Hon'ble Supreme Court further held in the matter of SEBI vs Kishore R Ajmera that – "*It is a fundamental principle of law that proof of an allegation levelled against a person may be in the form of direct substantive evidence or, as in many cases, such proof may have to be inferred by a logical process of reasoning from the totality of the attending facts and circumstances surrounding the allegations/charges made and levelled. While direct evidence is a more certain basis to come to a conclusion, yet, in the absence thereof the Courts cannot be helpless. It is the judicial duty to take note of the immediate and proximate facts and circumstances surrounding the events on which the charges/allegations are founded and to reach what would appear to the*

Court to be a reasonable conclusion therefrom. The test would always be that what inferential process that a reasonable/prudent man would adopt to arrive at a conclusion."

24. Further, I place my reliance on the judgment of Hon'ble Supreme Court in respect of SEBI v Rakhi Trading Private Limited (Civil Appeal Nos. 1969, 3174-3177 and 3180 of 2011 decided on February 8, 2018), in which the Hon'ble Supreme Court observed that - *"the 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 PFUTP Regulations"*. The Apex Court also observed that - *"Considering the reversal transactions, quantity, price and time and sale, parties being persistent in number of such trade transactions with huge price variations, it will be too naive 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….." "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."*

25. The allegation that the Noticee carried out reversal trade is directly supported by evidence from the trade log records as detailed in above paras. On July 28, 2015, the Noticee is seen to have indulged in 1 such reversal trades in 1 unique contract, and generated artificial volume of 20,000 which was 100% of the Noticee's total volume in the contract and 4.2% of the Noticee's volume in total volume traded in the contract in that period.

26. The case of Govindji Gupta and others (MC/DS/2019-20/6209-6214) quoted by the Noticee is different from the facts and circumstances of the instant case as there

is no huge time gap or price gap between both legs of orders. Prior meeting of minds is evidenced due to the time gap and same time seen with respect to placement of orders by the Noticee and counterparty and the same buy and sell order rates placed by Noticee and the counterparty. Hence I find that the case of Almondz Entertainment Pvt. Ltd. vs SEBI does not apply in the facts and circumstances of this case.

27. The averment of the Noticee that the contract was highly liquid is misplaced as 81.41% of trades were in different contracts during time period mentioned in SCN and not for this single contract. Noticee herself admits that she made a profit of Rs.200000/- from this trade and the trade was executed in her full knowledge and consent. I note that it is not the Noticee's case that the orders were placed without her consent. I further find that the Noticee has erred in stating that she received the SCN in 2022 whereas the SCN was sent to her in October, 2021 and received by her on 18.11.2021.

28. I deem it appropriate to refer to the Hon'ble SAT order dated July 14, 2006, in the case of Ketan Parekh vs. SEBI (Appeal no. 2/2004), wherein the Hon'ble SAT has observed that - *"The nature of transactions executed, the frequency with which such transactions are undertaken, the value of the transactions, the conditions then prevailing in the market are some of the factors which go to show the intention of the parties. This list of factors, in the very nature of things, cannot be exhaustive. Any one factor may or may not be decisive and it is from the cumulative effect of these that an inference will have to be drawn."*

29. Reliance is also placed upon the observations of Hon'ble Supreme Court in the matter of SEBI vs. Rakhi Trading Private Ltd. (*supra*) where the Hon'ble Apex Court stated at Para 35 and Para 41 of that said Order that - "*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 loss and that too in pre-planned and rapid reverse trades, it is not genuine; it is an unfair trade practice"… "The stock market is not a platform for any fraudulent or unfair trade practice. The field is open to all the investors".*

30. The Hon'ble Supreme Court of India in the matter of SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC) 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…".*

31. I find that the Noticee has indulged in non-genuine 1 trade in 1 unique contract on July 28, 2015.

32. The manner of placing buy and sell orders in a synchronized manner within a second of each other, reversal of the trades within a short time of 11 minutes on the same day, and wide variation in prices of the trades in the same contract in a short time without any basis for such wide variation, no price differential between of order rates of Noticee and counterparty, manner of trading indicating meeting of minds of Noticee with counterparty, contribution to volume traded on that day, all indicate that the trades executed by the Noticee were not genuine trades and being non-genuine, created an appearance of artificial trading volume in the contracts. By engaging in such trade, the Noticee thereby violated provisions of Regulation 3(a), 3(b), 4(1), 4(2)(a), of PFUTP Regulations, 2003.

33. I find it relevant to note here that 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 decided on February 08, 2018), which was a similar case involving execution of reversal trades in index options, the Hon'ble Supreme Court held that *"… the traders thus 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 PFUTP Regulations…"*

34. In view of the above, I find that the Noticee, by engaging in synchronized non-genuine transactions which created a misleading appearance of trading in respective contract, dealt in the stock options contract in a fraudulent manner in violation of Regulation 3(a), 3(b) and 4(1), 4(2)(a) of the PFUTP Regulations, 2003.

Issue No. II If yes, whether the failure, on the part of the Noticee would attract monetary penalty under Section 15HA of the SEBI Act.

And

Issue No. III If yes, what would be the monetary penalty that Imposed upon the Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5(2) of the Adjudication Rules?

35. Since the violation of Regulation 3(a), (b), and 4(1), 4(2)(a) of PFUTP Regulations, 2003 has been established against the Noticee, as brought out in the foregoing paragraphs, the Noticee is liable for monetary penalty under Section 15HA of SEBI Act, 1992.

36. The text of Section 15HA of SEBI Act, 1992 is reproduced below:

37. *SEBI Act, 1992: 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."*

Factors to be taken into account by the adjudicating officer

38. While determining the quantum of penalty under Section 15HA of SEBI Act, 1992 the following factors stipulated in Section 15J of the SEBI Act, 1992 have to be given due regard:

"15J. *While adjudging quantum of penalty under Section 15-I, 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."

39. As established above, the trades by the Noticee were non-genuine in nature and created a misleading appearance of trading. I note that the trading was in illiquid stock option contracts where there was nil or negligible participation by the public. Investigation has not shown the amount of profit/loss of the counterparties to the trade as a result of the non-genuine trades. However, considering that the violation by the Noticee is creation of artificial trading volumes by trading between two counterparties and wider market is not involved in the trades, the trade is such that one of the counterparty books a profit while the other counterparty books a loss. Hence, it would be appropriate to consider the impact of these transactions between the two counterparties in totality. When the impact of artificial volumes created by the two counterparties is seen as a whole, the actual gain made by the Noticee from these transactions was to extent of Rs.200000/-. Since these transactions are only one reversal of trade the actual gain made by the Noticee cannot be stated to have caused loss to an group of investors and is not repetitive in nature.

40. The Noticee has contributed to artificial volumes in 1 contract on 1 day during the Investigation Period. Therefore, taking into account the facts and circumstances of this matter, and the proportion of trading by the Noticee as compared to the total volume of reversal trades in the market during the Investigation Period, I am of the view that a penalty of Rs.5,00,000/- (Rupees Five Lakh only) under Section 15HA of the SEBI Act will be commensurate with the violations committed by the Noticee.

ORDER

41. After taking into consideration all the facts and circumstances of the case, in exercise of powers conferred upon me under Section 15-I of SEBI Act, 1992 read with Rule 5 of the Adjudication Rules, I hereby impose a penalty of Rs.5,00,000/- (Rupees Five Lakh only) on the Noticee i.e. Anjana Goenka under Section 15HA of the SEBI Act, 1992 for violation of Regulation 3(a), 3 (b) and 4(1) 4(2)(a) of PFUTP Regulations, 2003.

42. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai, OR through online payment facility available on the SEBI website www.sebi.gov.in on the following path, by clicking on the payment link

ENFORCEMENT → Orders → Orders of AO → PAY NOW

43. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to the Enforcement Department – Division of Regulatory Action – I of SEBI. The Noticee shall provide the following details while forwarding DD/ payment information:

a) Name and PAN of the entity (Noticee)

b) Name of the case / matter

c) Purpose of Payment – Payment of penalty under AO proceedings

d) Bank Name and Account Number

e) Transaction Number

44. In terms of the provisions of Rule 6, a copy of this Adjudication Order is being sent to the Noticee and also to SEBI.

Date: April 6, 2022

Place: Mumbai **JENY JOHN**

AJUDICATING OFFICER