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BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
ADJUDICATION ORDER NO.: Order/RM/RV/2021-22/14894

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:
Manohari Devi Dhandharia
PAN: AFXPD1048R

BH 58, Sector 2, Salt lake City,
Near Tank No, 7, Kolkata, PIN- 700096

In the matter of
Dealings in Illiquid Stock Options at BSE

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") observed large scale reversal of trades in the Stock Options segment of the Bombay Stock Exchange (hereinafter referred to as "**BSE**") leading to the 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 the 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 at the 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

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day. It was observed that Smt. Manohari Devi Dhandharia (hereinafter referred to as "**Noticee**") was one such client whose reversal trades involved squaring off open positions with a significant difference without any basis for such change in the contract price. The aforesaid reversal trades allegedly resulted into generation of artificial volumes, leading to allegations that the Noticee had violated the provisions of regulations 3(a),(b),(c),(d) and regulations 4(1),4(2)(a) of the SEBI (Prohibition of Fraudulent and Unfair Trading Practices related to Securities Markets) Regulations, 2003 (hereinafter referred to as "**PFUTP Regulations, 2003**").

APPOINTMENT OF ADJUDICATING OFFICER

3. SEBI initiated adjudication proceedings and appointed the undersigned as Adjudicating Officer under section 15-I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act**") read with rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as "**Adjudication Rules**") vide order dated April 30, 2021 to inquire into and adjudge under section 15HA of the SEBI Act against the Noticee for the alleged violation of the aforesaid provisions of PFUTP Regulations, 2003.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. A Show Cause Notice bearing reference no. ***PTA/RRM/RV/OW/2021/0000017061/1*** dated July 30, 2021 (hereinafter referred to as "**SCN**") was issued via Speed Post Acknowledgement Due (SPAD) on August 4, 2021, to the Noticee under Rule 4(1) of the Adjudication Rules to show cause as to why an inquiry should not be initiated against the Noticee and why penalty should not be imposed on the Noticee under Section 15HA of the SEBI Act for the

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violations alleged to have been committed by the Noticee. The said SCN was also sent via e-mail to the Noticee on August 13, 2021 and was duly delivered.

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

"….

5. The Noticee was one of the entities which indulged in reversal trades which allegedly created false and misleading appearance of trading, generating artificial volumes in the Stock Options Segment of BSE during the investigation period. The Noticee is alleged to have engaged in reversal trades through 2 trades in 1 unique contract, which led to generation of alleged artificial volume of 410000 units. These trades of the Noticee involved reversal with the same counterparty on the same day, but at different prices.

…."

7. A summary of dealings of Noticee in 1 Stock Options contract in which the said Noticee allegedly executed reversal trades during the investigation period, is as follows:-

S. No.	Contract Name	Avg. Buy Rate (in Rs.)	Total Buy Volume (no. of units)	Avg. Sell Rate (in 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	MFSL15MAR265.00CEW2	0.05	205000	2.00	205000	100%	28.28%

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*8. The abovementioned reversal trades and volumes are illustrated through the dealings of Noticee in the one contract viz, "*MFSL15MAR265.00CEW2*" during the investigation period, as follows:-*

(a) During the investigation it was found that Noticee executed 1 trade reversal through 2 non-genuine transactions on 12/03/2015 and with same counter party i.e. CLIF TREXIM PRIVATE LIMITED.

(b) While dealing in the said contract on 12/03/2015, at 12:41:06:10 hrs the Noticee entered into a sell trade with the counterparty CLIF TREXIM PRIVATE LIMITED, for 205000 units at Rs.2. At 13:16:29.10 hrs the Noticee entered into a buy trade with same counterparty CLIF TREXIM PRIVATE LIMITED for 205000 units at Rs. 0.05 per unit.

(c) It was also found that during investigation period, Noticee had only traded in one contract i.e., MFSL15MAR265.00CEW2 therefore 100% of trade of the Noticee was in the contract of MFSL15MAR265.00CEW2 itself.

(d) The Noticee's trades while dealing in the above said contract during the investigation period allegedly generated artificial volume of 410000 units, which made up 28.28 % of total market volume in the said contract during this period.

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

…"

6. The SCN sent via Speed Post Acknowledgement Due ("**SPAD**") was returned undelivered on August 20, 2021 stating "left". Thereafter, the SCN (***PTA/RRM/RV/OW/2021/0000033433/1 dated November 22, 2021)*** was re-sent

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to the other address of the Noticee (as obtained through phone), via SPAD, which was duly served to the Noticee on December 3, 2021. An email was also sent to the Noticee on November 22, 2021 in respect of re-sending of SCN to the new address, duly delivered.

7. In the interest of natural justice and in terms of the Adjudication Rules, the Noticee was provided with an opportunity of personal hearing in the matter on January 5, 2022 at 11.00 am through the online Webex platform. Notice of hearing (***PTA/RRM/RV/OW/2021/0000038019/1 dated December 20, 2021)*** was sent via SPAD on December 22, 2021. An email to this effect was also sent on December 20, 2021, duly delivered. The Notice of Hearing, via SPAD, was served to the Noticee on January 3, 2022. Vide email dated January 3, 2022, it was confirmed by the Authorized Representative of the Noticee i.e. Mr. Manish Raj Dhandharia, to appear for the hearing.

8. Mr. Manish Raj Dhandharia, appeared as the Authorised Representative ("**AR**") on behalf of the Noticee on the stipulated date of hearing. During the course of the hearing, the AR apprised the inability of the Noticee to appear on account of her age (90 yrs). The AR was given time till January 12, 2022, to submission of reply to the SCN/document, if any, in defense of the Noticee. Vide reply dated January 7, 2022 (received in SEBI on January 15, 2022) the AR submitted the a) Medical Certificate of Noticee, b) Submissions, c) Power of Attorney in favour of the AR, to act, deal and appear on behalf of the Noticee d) Copy of PAN Card of Noticee and e) Medical Reports of Noticee. Submissions made by the AR, in her reply, on behalf of the Noticee, i.e. subsequent to hearing date, consisted the following information :

   I) The AR liked to bring the following facts on record regarding the health condition of the noticee:
      a. Smt Manohari Devi Dhandharia is aged about 89 years and is in a completely bed-ridden state.

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b. She is suffering from Advanced Dementia with Advanced Parkinson Disease with recent Cerebrovascular accident.
c. She is not in a position to move, speak or recall past incidents after facing a brain-stroke on 07.10.2020.
d. She is unable to move out of bed and is entirely dependent for her basic needs and activities.
e. A copy of the Doctor's Certificate dated 06.01.2022, certifying her present condition is attached hereto and marked as 'Annexure-A'.
f. A complete set of documents containing her medical reports and prescriptions are attached hereto and marked as 'Annexure-B'.

II) In response to the allegations and facts mentioned in the notice, AR **submitted** as under:

a. AR submitted that there is an inordinate delay in the issuance of notice (i.e., 22.11.2021) and the date of alleged transactions (i.e., 12.03.2015) i.e., there is a delay of more than six years in the initiation of the proceedings under the SEBI Act.

b. AR submitted that Rule 4(1) does not stipulate a limitation period within which a show cause notice in terms of the said Rule may be issued. However, it is a settled principle of law that in case where a specific statute does not provide a period of limitation, then the Limitation Act, 1963 shall apply. The general period of limitation being 3 years, he submitted that the show cause notice is time-barred and liable to be quashed.

c. For that the case of **Ashok Shivlal Rupani, Naresh Shivlal Rupani, Uttam Ravji Gada Versus Securities and Exchange Board of India 2019 (8) TMI 1474 - Securities Appellate Tribunal, Mumbai** is relied upon by the AR,

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wherein it was held that where the SCN was issued after a long delay, penalty under the SEBI Act was not sustainable in law.

d. For that the case of Mr. Rakesh Kathotia & Ors. Versus **Securities and Exchange Board of India 2019 (5) TMI 1762 - Securities Appellate Tribunal, Mumbai** is relied upon by the AR, wherein the proceedings were quashed on account of inordinate delay. Relevant extract of the judgment is reproduced as under:

"23. It is no doubt true that no period of limitation is prescribed in the Act or the Regulations for issuance of a show cause notice or for completion of the adjudication proceedings. The Supreme Court in Government of India vs, Citedal Fine Pharmaceuticals, Madras and Others, [AIR (1989) SC 1771] held that in the absence of any period of limitation, the authority is required to exercise its powers within a reasonable period. What would be the reasonable period would depend on the facts of each case and that no hard and fast rule can be laid down in this regard as the determination of this question would depend on the facts of each case. This proposition of law has been consistently reiterated by the Supreme Court in Bhavnagar University v. Palitana Sugar Mill (2004) Vol.12 SCC 670, State of Punjab vs. Bhatinda District Coop. Milk P. Union Ltd (2007) Vol.11 SCC 363 and Joint Collector Ranga Reddy Dist. & Anr. vs. D. Narsing Rao & Ors. (2015) Vol. 3 SCC 695. The Supreme Court recently in the case of Adjudicating Officer, SEBI vs. Bhavesh Pabari (2019) SCC Online SC 294 held:

"There are judgments which hold that when the period of limitation is not prescribed, such power must be exercised within a reasonable time. What would be reasonable time, would depend upon the facts and circumstances of the case, nature of the default/statute, prejudice caused, whether the third-party rights had been created etc.""

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e. For that it is submitted by the AR that the Noticee is not in a position to convey the happenings of the period in which the impugned transactions were entered into. However, being an old lady who was aged about 83 years at the time of entering into the transaction, it is in no speck of imagination possible to hold that she may have indulged into fraudulent stock market transactions. Therefore, there is a possibility that the broker might have committed an error as far as the transaction in question is concerned. Further, the noticee cannot be held responsible for the mistake/fraud committed by the broker using the account of the noticee, if any.

f. For that it is submitted by the AR that as per the facts stated, there was a total of 2,91,744 trades during the period under investigation, which as per the show cause notice were non-genuine nature. It is submitted that the Noticee's one or two trade out of 2.92 lakh trades are a drop in the ocean. In the absence of multiple transactions and / or voluminous transactions, inference of fraud and / or undue trade practices cannot be drawn.

g. For that it is submitted by the AR that there is no question of the Noticee having created any artificial volume in the market and / or made any undue profit. Therefore, the Noticee has not violated Regulations 3(a), (b), (c), (d) and 4(1), 4(2)(a) of SEBI (Prohibition of Fraudulent and Unfair Trading Practices related to Securities Markets) Regulations, 2003.

h. For that it is submitted by the AR that noticee is not related to the counterparty in question and that it is impossible for any trader to know the identity of the buyer and seller while entering into any stock transaction through the broker.

i. For that it is submitted by the AR that SEBI (Procedure for holding enquiry and imposing penalties by adjudicating officer) Rules, 1995 has itself provided in

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Rule 5 (2) that while adjudging the quantum of penalty under section 15I, the adjudicating officer shall have due regard to the following factors, namely: —

i. the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
ii. the amount of loss caused to an investor or group of investors as a result of the default;
iii. the repetitive nature of the default.

It is submitted by the AR that none of the above factors are present in the Noticee's case. As such, the question of imposing penalty under the SEBI Act and rules framed thereunder does not arise.

j. For that it is submitted by the AR that one has to establish a connection between a buyer and with the seller in order to infer a manipulation in the price of the scrip. In the given case, there is no connection of the noticee with the counterparty and therefore, it can be established that there was no collusion or manipulation in the given case. Hence, levy of penalty on such a transaction is bad in law.

k. For that the case of **M/S Nishith M. Shah HUF Versus Securities and Exchange Board of India 2020 (1) TMI 1485 - Securities Appellate Tribunal Mumbai** is relied upon by AR wherein it was held that where the investigative reports nor the WTM or the AO found any connection between the buyer and the seller nor between the appellant and the promoters/directors of the Company, no causal connection has been established. Allegation that the appellant has contributed to the LTP cannot be upheld in the absence of any collusion with the buyer or promoter/director of the Company. One has to establish a connection between a buyer and with the seller in order to infer a manipulation in the price of the scrip. There must be evidence to show

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collusion between the buyer and the seller. In the instant case there is none. The principle of preponderance of probability cannot be exercised in the absence of any connection between the seller and the buyer.

l. For that the cases of **Jagruti Securities Ltd. Versus Securities and Exchange Board of India 2008 (10) TMI 705 - Securities Appellate Tribunal, Mumbai** and **Vikas Ganeshmal Bengani Versus Whole Time Member 2010 (2) TMI 1273 - Securities Appellate Tribunal, Mumbai,** are relied upon by AR wherein it was held that the charge of raising price artificially has to be established and the element of collusion between the buyer and the seller is a *sine quo non.*

m. For that the case of **Labhu Gohil Versus Securities and Exchange Board of India 2020 (7) TMI 167 - Securities Appellate Tribunal, Mumbai**, is relied upon by AR wherein it was held that where there is no evidence on any fund transfer between the appellants with any other entities in the absence of which motive for a collusive or manipulative effort becomes blunt. Moreover, when a group of entities themselves becomes parties to each other's trade in a circular fashion, though to a limited extent, the net amount of profits or losses also become negligible and only to the extent of their trades getting matched with entities outside the group. The tribunal finally held that that no penalty can be imposed on the appellants.

III) In view of the foregoing submissions and with due consideration to the health condition of the noticee, it is humbly prayed by the AR to consider the case sympathetically and drop the proceedings with respect to imposition of penalty under Section 15HA of the SEBI Act, initiated in the Show Cause Notice vide reference No: PTA/RRM/RV/OW/2021/0000033433/1 dated 22nd November, 2021.

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CONSIDERATION OF ISSUES AND FINDINGS

9. I have taken into consideration the facts and circumstances of the case, the material/documents made available on record and the submissions of the Noticee. The issues that arise for consideration in the instant case are :

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

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

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

10. Before advancing into the merits of the case, I would like to deal with the issue pertaining to the delay, as alleged by the Noticee/AR, in her reply.

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

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

A Settlement Scheme was framed under the SEBI (Settlement Proceedings) Regulations, 2018, which provided one-time opportunity for settlement of proceedings in the Illiquid Stock Options matter. The said scheme was kept open from August 01, 2020 till December 31, 2020. Adjudication proceedings were initiated against those entities who had not availed of the opportunity of settlement.

As can be seen from the narration of facts in the foregoing paragraphs, pursuant to appointment of AO, SCN was issued on July 30, 2021. In compliance with principles of natural justice, an opportunity of personal hearing was scheduled on January 5, 2022 and upon conclusion of hearing, written submissions *(if any)* were received from Noticee/AR on January 15, 2022.

11. I further note that there is no provision under SEBI Act which prescribes a time limit for taking cognizance of a breach of the provision of SEBI Act and Rules and Regulations made thereunder. Further, as per Section 11C of SEBI Act, SEBI can initiate investigation at any point of time, for any period of alleged violation or any period of alleged transactions. I also note that the investigations relating to the PFUTP Regulations, 2003 are complex (considering the volume of transactions, connections and examination of trading of shares, etc.) and time consuming. In this regard, I feel it is pertinent to note that, in the matter of SEBI Vs Bhavesh Pabari (2019) SCC Online SC 294, the Hon'ble Supreme Court of India has, *inter alia*, observed as follows:

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"*There are judgments which hold that when the period of limitation is not prescribed, such power must be exercised within a reasonable time. What would be reasonable time, would depend upon the facts and circumstances of the case, nature of the default/statute, prejudice caused, whether the third party rights had been created etc*."

12. Further, I note that the Hon'ble SAT in the matter of Pooja Vinay Jain vs SEBI (Appeal No. 152 of 2019, Date of Decision – 17.03.2020) held that, "*The record would show that all the documents concerning the defense of the appellant were filed by her before the AO. Therefore, for want of any prejudice the proceedings cannot be quashed simply on the ground of delay in launching the same*"

13. I also note that the Hon'ble SAT in the matter of Bipin R Vora vs SEBI held that, "*As regards the plea of delay and latches and submission that the show cause notice is barred by limitation, I do not find any merit in these contentions as the time and efforts involved in an investigation though may vary from case to case, generally investigations per-se is a time consuming process which invariably involve collection, scrutiny and careful examination of voluminous records/ order-trade details of all the concerned including the exchanges/recording of statements etc. and therefore no time limit can be fixed in this regard to enable a regulator to take appropriate disciplinary action for the safeguard and improvement of the system/market*".

14. In view of the aforesaid and considering the facts of the aforesaid matter, I do not find any merit in the contentions of the Noticee.

15. With respect to the alleged violations in the instant matter, I note that it is pertinent to refer to the relevant provisions of the PFUTP Regulations, 2003, which are reproduced as follows:

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PFUTP Regulations, 2003

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 6[manipulative] 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;

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

17. I note from the trade log of the Noticee that the Noticee had traded in 1 unique contract in stock options segment of BSE during the Investigation Period. It is observed that the Noticee had executed 2 non-genuine trades in 1 contract. I further note that the above mentioned trades of the Noticee had resulted in the creation of artificial volume of a total of 410000 units in the said 1 contract. The summary of the non-genuine trades of the Noticee are as follows:

Contract Name	Avg Buy Rate (in ₹)	Buy Qty (No. of units)	Avg Sell Rate (in ₹)	Sell Qty (No. of units)	% of non-genuine trades of noticee in the contract to noticee's total trades in the contract	% of non-genuine trades of noticee in the contract to total trades in the contract	% 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
KARB15JUN120.00 CEW2	0.05	205000	2.00	205000	100%	50%	100%	28.28%

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18. It is noted that the Noticee had executed non-genuine trades in 1 contract, wherein the percentage of non-genuine trades of the Noticee to the total trades in the contract was 50%. Further, the artificial volume generated by the Noticee in the contract amounted to a substantial 100% of total volume generated by him in the contract. It is also noted that artificial volume generated by the Noticee contributed 28.28% to the total volume from the market in the said contract. The non-genuine trades executed by the Noticee in the above contract had significant difference between buy and sell rates considering that the trades were reversed on the same day.

    Upon perusing the trade log, I note that the trades executed by the Noticee in the contract were squared up within a short span of time with the same counterparty. To illustrate, on March 12, 2015, at 12:36:17, the Noticee placed a sell limit order for 205000 units at a price of ₹2 per unit and the said order was matched with the buy limit order (which was also for 205000 units at a price of ₹2 per unit) of counterparty client CLIF TREXIM PRIVATE LIMITED. I note that the said buy limit order was placed at 12:41:06, i.e. after the entry of the sell limit order by the Noticee. I also note that there was no modification of either price or quantity by either the Noticee or the counterparty and the sell limit order of the Noticee got executed into trade immediately upon the entry of the buy limit order by the counterparty. Subsequently, at 13:16:29, the Noticee placed a buy limit order for 205000 units at a price of ₹0.05 per unit and the said order was matched with the same counterparty (i.e. CLIF TREXIM PRIVATE LIMITED), who placed a sell limit order for the same quantity (i.e. 205000) and price (i.e. ₹0.05). I note that the said sell limit order was placed by the counterparty at 13:16:28, i.e. after the entry of the buy order by the Noticee. I also note that there was no modification of either price or quantity by either the Noticee or the counterparty and the buy limit order

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of the Noticee got executed into trade immediately upon the entry of the sell limit order by the counterparty.

19. The non-genuineness of these transactions executed by the Noticee is evident from the fact that there was no commercial basis as to why, within a short span of time (viz. approx. 35 minutes), the Noticee reversed the position with the same counterparty client with a significant price difference. Such a short span of time taken for reversing the trades in an illiquid stock option contract suggests the non-genuineness of these trades executed by the Noticee. The fact that the orders of the Noticee and her counterparty matched with such precision (considering that there was a perfect match of price and quantity as well as a short time difference between placing of the orders by the Noticee and counterparty) indicates a prior meeting of minds with a view to execute the reversal trades at a predetermined price. Since these trades were done in illiquid option contracts, there was very little trading in the said contract and hence, there was no price discovery in the strictest terms. The wide variation in prices of the said contracts, within a short span of time, is a clear indication that there was pre-determination in the prices by the counterparties while executing the trades. Therefore, it is observed that the Noticee had indulged in reversal trades with her counterparty in the stock options segment of BSE and the same were non-genuine trades.

20. The Notice has *inter alia* contended about the awareness of SEBI regarding the possibility of trades being executed at substantial price difference and possible loss due to lower liquidity and wider spreads in illiquid stock options and the contracts the Noticee traded in being illiquid. However, I note that the allegation in the instant matter is not whether the Noticee has traded in an illiquid contract or not but whether the trades executed by the Noticee in the concerned Illiquid

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contract were non-genuine or not. Therefore, I dismiss the contentions of the Noticee in this regard.

21. I note that it is not a mere coincidence that Noticee could match her trades (with the corresponding price and quantity entered by both the Noticee and counterparty being equal) with the same counterparty with whom she had undertaken first leg of the respective trades. It indicates meeting of minds. In this context, I would like to rely on the judgment of the Hon'ble Supreme Court of India in SEBI Vs 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 scrip; 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. The Hon'ble Supreme Court of India further held in the same matter 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*

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

23. In the instant matter, I note that though direct evidence regarding meeting of minds or collusion of the Noticee with the counterparty is not forthcoming, the trading behavior of the Noticee makes it clear that the aforesaid non-genuine trades could not have been possible without meeting of minds at some level. In this context, I find it pertinent to refer to the Hon'ble SAT Order dated July 14, 2006 in the matter of Ketan Parekh Vs SEBI (Appeal No. 2 of 2004), wherein the Hon'ble SAT has held 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."*

24. In the matter of SEBI Vs Rakhi Trading Pvt Ltd (Civil Appeal no, 1969 of 2011, 3174-3177 of 2011 and 3180 of 2011, decided on February 08, 2018), the Hon'ble Supreme Court of India held 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...."*

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25. Additionally, the Hon'ble SAT in its judgment dated September 14, 2020 in the matter of Global Earth Properties and Developers Pvt Ltd Vs SEBI (Appeal No. 212 of 2020) and judgment dated November 24, 2021 in the matter of Radha Malani vs. SEBI (Appeal No.698 of 2021) relied upon the aforesaid judgment 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."*

26. The trading behavior of the Noticee which confirms that the trades executed by the Noticee were not normal, the wide variation in prices of the trades in the same contract in a short time without any basis for such wide variation, all indicate that the trades executed by the Noticee were not genuine trades and being non-genuine, created an appearance of artificial trading volumes in respective contracts. In view of the aforesaid, I find that the allegation of violation of regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of PFUTP Regulations, 2003 by the Noticee stands established. 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.."*

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27. In view of the aforesaid judgment of the Hon'ble Supreme Court, I am convinced that, in the instant matter, the Noticee is liable for monetary penalty under the provisions of section 15HA of the SEBI Act, which reads as follows:

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.*

28. While determining the quantum of penalty under section 15 HA of the SEBI Act, it is pertinent to consider the relevant factors stipulated in section 15J of the SEBI Act, which reads as under :

Factors to be taken into account while adjudging quantum of penalty

15J. *while adjudging quantum of penalty under 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.

Explanation.—For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 15A to 15E,clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall

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be and shall always be deemed to have been exercised under the provisions of this section.

29. I observe that the material / documents made available on record does not quantify any disproportionate gains or unfair advantage, if any, made by the Noticee and the losses, if any, suffered by the investors due to such violations on part of the said Noticee. However, Noticee has entered into 2 non-genuine trades in 1 stock option contract during the investigation period.

30. Therefore, I note that the Noticee indulged in execution of reversal trades in stock options on BSE in the Investigation Period which were non-genuine and created false and misleading appearance of trading in terms of artificial volumes in stock options, leading to violation of regulation 3(a), (b), (c), (d), 4(1) and 4(2)(a) of PFTUP Regulations, 2003.

31. I further note that the AR of the Noticee has requested for imposing only the minimum penalty as stipulated under the relevant Act considering the fact that the Noticee executed only 2 trades and that too in only 1 contract.

ORDER

32. After taking into consideration all the facts and circumstances of the case, the material / documents made available on record including the submissions of the Noticee, the factors mentioned in section 15J of the SEBI Act and in exercise of the power conferred upon me under section 15-I of the SEBI Act read with rule 5 of the Adjudication Rules, I hereby impose a penalty of ₹5,00,000/- (Rupees Five Lakh only) on the Noticee, viz. Smt. Manohari Devi Dhandharia, under section 15HA of the SEBI Act for the violation of regulation 3(a), (b), (c), (d), 4(1) and

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4(2)(a) of PFTUP Regulations, 2003. I am of the view that the said penalty is commensurate with the lapse / omission committed by the Noticee.

33. 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 or through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in, i.e.

ENFORCEMENT → Orders → Orders of AO → PAY NOW.

34. The Noticee shall forward the aforesaid DD / payment confirmation details to the Division Chief, Enforcement Department -I (EFD1), FDM2 Division [EFD1-FDM2] SEBI Bhavan, Plot No.C-7,' G' Block, Bandra Kurla Complex (BKC), Bandra (East), Mumbai –400 051 and also send an email to tad@sebi.gov.in with the following detail:

1.	Case Name	
2.	Name of the 'Payer / Noticee' along with PAN of Noticee	
3.	Date of Payment	
4.	Amount Paid	
5.	Transaction No.	
6.	Bank Name and Account No.	
7.	Purpose of payment	

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35. In the event of failure to pay the aforesaid amount of penalty within 45 days of receipt of this Order, recovery proceedings may be initiated under section 28A of the SEBI Act for realization of the said penalty amount 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, a copy of this order is sent to the Noticee and SEBI.

DATE: 03rd February, 2022 **RAM RUDRA MURARI**

PLACE: MUMBAI **ADJUDICATING OFFICER**