

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/PB/S./2021-22/14062]

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

Nidhi Minni

(PAN: AIXPB1554D)

In the matter of Trading in Illiquid Stock Options on BSE

BACKGROUND OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) observed large scale reversal of trades in stock options segment of Bombay Stock Exchange (hereinafter referred to as “**BSE**”). SEBI observed that such large scale reversal of trades in stock options lead to creation of artificial volume at BSE. In view of the same, SEBI conducted an investigation into the trading activities of certain entities in illiquid stock options at BSE for the period April 1, 2014 to September 30, 2015 (hereinafter referred to as “**IP**”).

2. Pursuant to investigation, it was observed that total 2,91,643 trades comprising substantial 81.38% of all the trades executed in stock options segment of BSE during the IP were non genuine trades. The aforesaid non-genuine trades resulted into creation of artificial volume to the tune of 826.21 crore units or 54.68% of the total market volume in stock options segment of BSE during the IP. It was observed that Nidhi Minni (PAN: AIXPB1554D) (hereinafter referred to as the “**Noticee**”) was one of the various entities who indulged in execution of reversal trades in stock options segment of BSE during the IP. Such trades were observed to be non-genuine in nature and created false or misleading appearance of trading in terms of artificial volumes in stock options and therefore were alleged to be manipulative and deceptive in nature. In view of the same, SEBI initiated adjudication proceedings against the Noticee for violation of the provisions of regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003 (hereinafter referred to as “**PFUTP Regulations, 2003**”).

APPOINTMENT OF ADJUDICATING OFFICER

3. Shri K Saravanan was appointed as Adjudicating Officer in the matter, conveyed vide communique dated April 26, 2021, under section 19 read with section 15-I(1) of the SEBI Act, 1992 (hereinafter referred to as “**SEBI Act, 1992**”) and rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as “**Adjudication Rules**”) to conduct adjudication proceedings in the manner specified under rule 4 of Adjudication Rules read with section 15-I(1) and (2) of SEBI Act, 1992, and

if satisfied that penalty is liable, impose such penalty deemed fit in terms of rule 5 of Adjudication Rules and section 15HA of SEBI Act, 1992. Pursuant to transfer of Shri K Saravanan, the undersigned was appointed as Adjudicating Officer in the matter, conveyed vide communique dated July 14, 2021.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. A Show Cause Notice dated July 26, 2021 (hereinafter referred to as '**SCN**') was issued to the Noticee under rule 4(1) of the Adjudication Rules to show-cause as to why an inquiry should not be initiated against her and why penalty should not be imposed under section 15HA of the SEBI Act, 1992 for the violations alleged to have been committed by Noticee.

5. It was *inter alia* alleged in the SCN that the Noticee had executed 4 non genuine trades in 2 Stock Options contracts which resulted in artificial volume of total 212000 units. Summary of dealings of the Noticee in 2 Stock Options contracts, in which the Noticee allegedly executed non genuine trades during the I.P, is as follows:

S. No.	Contract Name	Avg. Buy Rate (₹)	Total Buy Volume (No. of units)	Avg. Sell Rate (₹)	Total Sell Volume (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
1	DABU15AUG320.00PE	7	32000	15.5	32000	100	100	100	100
2	DABU15JUL300.00PE	4	74000	8	74000	100	50	100	69.16

6. From the above table, following was noted as regard to dealings of the Noticee:

(a) The Noticee has executed non genuine trades in 2 contracts, wherein all the trades of the Noticee in the said 2 contracts were non genuine trades.

(b) Percentage of non-genuine trades of the Noticee in the 2 stock options contracts to total trades in the said contracts were in the range of 50% to 100%. The non-genuine trades of the Noticee have significantly contributed to total trades in the market in the above contracts.

(c) The percentage of artificial volume generated by the Noticee in the above contracts to the total volume from the market in the said contracts was in the range of 69.16% to 100%. Therefore, substantial volume generated by the Noticee in each of the above contracts were artificial volume.

(d) Non genuine trades executed by the Noticee in the above contracts had significant difference in buy rates and sell rates considering that the trades were reversed on same day.

7. The SCN ref no SEBI/HO/A&E/EAD/PB/PP/16455/2021 dated July 26, 2021 was served on the Noticee via Speed Post Acknowledgement Due (SPAD) and via email dated July 27, 2021. It is noted that no reply to the SCN was received from the Noticee within the time stipulated in the SCN. Thereafter, vide email dated August 30, 2021, the Noticee was granted an

opportunity of hearing and an opportunity to submit her reply on September 09, 2021. The said hearing was postponed to October 08, 2021 vide email dated September 13, 2021, based on a request made by the Noticee vide email dated September 08, 2021. The Noticee attended the hearing on the scheduled date and requested for an opportunity to make post-hearing written submissions. Thus, the Noticee was granted time till October 27, 2021 to make post-hearing written submissions. However the Noticee did not make any post-hearing written submissions by the given date. Therefore the oral submissions at the time of hearing made by Mrs. Ruchika Poddar, the Authorized Representative (AR) of the Noticee, are taken on record. The Noticee made the following submissions:

- Noticee submitted that she was a party to only a few transactions and a lenient view should be taken in view of the same.
- The Noticee submitted that she is a simple housewife who does not have any knowledge of share markets or stock options.
- The Noticee submitted that she relied on her broker for the purpose of her trades. Thus she did not commit any fraud or unfair trade practice and her broker was responsible for the impugned trades.

8. The oral submissions made by the Noticee's AR have been taken on record and considered as the Noticee did not file any reply to the SCN or post-hearing written submissions. Therefore, the Noticee has been granted sufficient opportunity to defend her case effectively and the requirements of principles of natural justice have been fulfilled in the instant proceeding.

In view of the same it is fit and proper to proceed with the consideration of issues and findings involved in the instant Adjudication proceeding.

CONSIDERATION OF ISSUES AND FINDINGS

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

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

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

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 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;

11. I note that the allegation against the Noticee is that, while dealing in the stock option contracts at BSE during the IP, she had executed reversal trades which were allegedly non-genuine trades and the same had resulted in generation of artificial volume in stock option contracts at BSE. Reversal trades are considered to be 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 trades 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.

12. The Noticee has contended that she did not commit any fraud or unfair trade practice. In this regard, I note from the trade log of the Noticee that she had traded in 2 unique contracts in the stock options segment of BSE during the IP. It is observed that the Noticee has allegedly executed 4 non genuine trades in 2 Stock Options contracts. I further note that the above mentioned trades of the Noticee had resulted in the creation of artificial volume of total 212000 units. Summary of non-genuine trades of the Noticee is as follows:

S. No.	Contract Name	Avg. Buy Rate (₹)	Total Buy Volume (No. of units)	Avg. Sell Rate (₹)	Total Sell Volume (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
1	DABU15AUG320.00PE	7	32000	15.5	32000	100	100	100	100
2	DABU15JUL300.00PE	4	74000	8	74000	100	50	100	69.16

13. It is noted that the Noticee had executed non-genuine trades in 2 contracts, wherein the percentage of non-genuine trades of the Noticee in stock options contracts to total trades of the Noticee in the contracts was in the range of 50% to 100% in the aforesaid contracts. Further, artificial volume generated by Noticee in the contracts amounted to the entire 100% of total volume generated by her in both the contracts. It is also noted that the percentage of artificial volume generated by the Noticee in the contracts to the total volume of the market in the said contracts was in the range of

69.16% to 100%. Therefore, substantial volume generated by the Noticee in each of the above contracts were artificial volume. Non-genuine trades executed by the Noticee in the above contracts had significant difference in buy rates and sell rates considering that the trades were reversed on the same day.

14. I note from the trade log that the trades executed by the Noticee in a contract were squared up within a short span of time with her counterparties. To illustrate, the Noticee on August 6, 2015 at 15:02:04 hrs entered into 1 buy trade with counter party viz, Overactive Merchants Private Limited for 32000 units at the rate of ₹ 7 per unit in the contract "DABU15AUG320.00PE". Thereafter, on the same day, Noticee at 15:04:04 hrs entered into 1 sell trade with same counterparty for 32000 units at the rate of ₹ 15.5 per unit in the same contract. It is noted that while dealing in the said contract during the I.P., the Noticee executed reversal trades with the same counterparty viz, Overactive Merchants Private Limited on the same day and with significant price difference in the buy and sell rate. Thus, the Noticee, through her dealing in the contract viz. "DABU15AUG320.00PE" during the I.P., executed non genuine trades which was 100% of the total trades from the market in the said contract during the I.P. and thereby, generated artificial volume of 64,000 units which was 100% of the volume traded in the said contract from the market during the I.P.

15. 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, the Noticee reversed the position with her counterparties with significant price difference. I note from the trade log of the Noticee that the time taken by the Noticee for reversing the non-genuine trades ranged from 6 seconds to 2 minutes on the same day. 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 transactions in a particular contract were reversed with the same counterparties indicates a prior meeting of minds with a view to execute the reversal trades at a pre-determined price. Since these trades were done in illiquid option contracts, there was no trading in the said contract and hence, there was no price discovery in the strictest terms. There was no significant change in the price of the underlying scrip to justify the wide variation in prices of the said contracts. The wide variation in prices of the said contracts, within such a short span of time, is a clear indication that there was pre-determination in the prices by the counterparties while executing the trades. Thus, it is observed that Noticee had indulged in reversal trades with her counterparties in the stock options segment of BSE and the same were non-genuine trades.

16. I note that the allegations against the Noticee pertain to the reversal trades executed by her, on the same day with same counterparty with substantial price difference between buy and sell rates. I note that Noticee's buy and sell trades were executed with a substantial price difference within a short

period of time, without any change in the price of underlying scrips, on the same day with the same counterparty. In the instant case, irrespective of the quantum of the Noticee's trades, the facts as regards reversal trades have been considered in totality to allege violation of provisions of PFUTP Regulations, 2003. Thus I reject the contention of the Noticee that a lenient view should be taken towards the Noticee as she was a party to only a few transactions.

17. Noticee has contended that she had no knowledge of share markets or stock options. Firstly, I note that the impugned trades were executed through the Noticee's Demat account. Therefore, it is an undeniable fact that the Noticee executed the impugned trades. Secondly, the Noticee is not justified in pleading ignorance of the law. It was mandatory for the Noticee to comply with PFUTP Regulations, 2003 at the time of execution of trades in the said Stock Options contracts. Thus, the contentions of the Noticee in this regard are without merits.

18. It is also noted that it is not mere coincidence that the Noticee could match her trades with the same counterparties with whom she had undertaken first leg of the respective trades. This is the outcome of meeting of minds elsewhere and it was a deliberate attempt to deal in such a manner. I note in matters dealing with violation of PFUTP Regulations, 2003, the reason as regards execution of non-genuine trades might not be immediately forthcoming. However, the correct test instead, is one of preponderance of probabilities. Here I would like to rely on the judgment of Hon'ble Supreme

Court in SEBI v Kishore R Ajmera (AIR 2016 SC 1079) decided on February 23, 2016, 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...”*

19. The Hon'ble Supreme Court 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 always be that what inferential process that a reasonable/prudent man would adopt to arrive at a conclusion.”*

20. I note that direct evidence is not forthcoming in the present matter as regards to meeting of minds or collusion of the Noticee with other entities.

However, I note that the trading behaviour of the Noticee makes it clear that aforesaid non-genuine trades could not have been possible without meeting of minds at some level. In this context, 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 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."*

21. I place my reliance on the judgment of Hon'ble Supreme Court in the matter 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 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....."*

22. Further, the Hon'ble SAT in its judgement dated September 14, 2020 in the matter of Global Earth Properties and Developers Pvt Ltd relied upon the aforesaid judgement of 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."

23. It is noted that the Noticee executed reversal trades which defy market rationality when looked along with attending circumstances *in toto*. Therefore, Noticee's trades, irrespective of the quantum of such trades, were manipulative and intended to create misleading appearance of trading, so the contentions of Noticee in this regard are liable to be rejected. I note that the impugned stock option contracts were illiquid, as stated in the SCN, and also that Noticee's trades in the contract viz. "DABU15AUG320.00PE" contributed 100% to the total market volume generated during the IP. Noticee's trades, irrespective of the quantum of such trades, contributed substantially to the volume generated in the contract. This points to the contribution of Noticee in the creation of misleading appearance of trading through her impugned trades.

24. The Noticee has stated that she relied on her broker for the purpose of her trades. I note that in the instant matter, the allegations pertain to the violation of impugned provisions of PFUTP Regulations, 2003. The obligation to comply with the same Regulations primarily lies on the Noticee as she had consented to the said trades which were executed by the broker on her behalf. Thus, the obligation to ensure genuineness of trades as regards instant considerations primarily lies on the Noticee. Therefore, I note that the contentions of Noticee in this regard are without merits.

25. Therefore, the trading behaviour of the Noticee confirms that such trades were not normal and 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 above, 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) decided on May 23, 2006 held that - *"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant..."*.

26. In view of the same, I am convinced that it is a fit case for imposition of monetary penalty on the Noticee under the provisions of section 15HA of the SEBI Act, 1992 which read as under:

¹***[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 ²[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].

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

Factors to be taken into account by the adjudicating officer.

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.

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

¹ Inserted by the SEBI (Amendment) Act, 2002, w.e.f.29-10-2002.

² Substituted for the words —twenty-five crore rupees or three times the amount of profits made out of such failure, whichever is higher || by the Securities Laws (Amendment) Act, 2014, w.e.f. 08-09-2014

15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.

28. I observe, that the material 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 4 non genuine trades in 2 Stock Options contracts which demonstrates the repetitive nature of default on her part.

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

ORDER

30. Having considered all the facts and circumstances of the case, the material available on record, the factors mentioned in section 15J of the SEBI Act, 1992 and in exercise of power conferred upon me under section 15-I of the SEBI Act, 1992 read with rule 5 of the Adjudication Rules, 1995, I hereby impose following penalty under section 15HA of the SEBI Act, 1992 on the Noticee:

Name of the Noticee	Violation provisions	Penalty
Nidhi Minni PAN: AIXPB1554D	regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of PFUTP Regulations, 2003	₹ 5,00,000/- (Rupees Five Lakh only)

I am of the view that the said penalty is commensurate with the lapse/omission on the part of the Noticee.

31. 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 website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link:

ENFORCEMENT > Orders > Orders of AO > PAY NOW

32. The aforesaid Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to “The Division Chief (Enforcement Department 1 DRA-2), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C – 4 A, “G” Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.”. The Noticee shall also provide the following details while forwarding DD / payment information:

- Name and PAN of the Noticee
- Name of the case / matter
- Purpose of Payment – Payment of penalty under AO proceedings
- Bank Name and Account Number
- Transaction Number

33. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, SEBI may initiate consequential actions including but not limited to recovery proceedings under section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties.

34. In terms of the provisions of rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticee viz. Nidhi Minni and also to the Securities and Exchange Board of India.

Date: October 29, 2021

Place: Mumbai

PARAG BASU

ADJUDICATING OFFICER