BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/SM/KH/2022-23/24954]

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 –

SWEETY MIKHIL LOTWALA (PAN: ACAPL5410H) having address at 256, Gurudwara Road, Behind Civil, Jalgaon, Maharashtra - 425001

In the matter of Illiquid Stock Options at BSE.

BACKGROUND

1. The Securities and Exchange Board of India (hereinafter referred to as "***SEBI***"), conducted an investigation into the trading activity in illiquid Stock Options at Bombay Stock exchange (hereinafter referred to as "**BSE**") for the period between April 1, 2014 to September 30, 2015 (hereinafter referred to as, "**Investigation Period** after observing large scale reversal of trades in Stock Options segment of the BSE.

2. Pursuant to investigation, it was observed that during the investigation period, a total of 2,91,744 trades comprising 81.40% 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. The reversal trades involved squaring off transactions, but with significant difference in the sell value and buy value of the transactions. The aforesaid reversal trades allegedly led to generation of artificial volumes.

3. Sweety Mikhil Lotwala ("**the 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 trades allegedly resulted into generation of artificial volumes, leading to allegations that the Noticee had violated Regulation 3(a),(b),(c),(d) and Regulation 4(1), 4(2)(a) 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

4. SEBI initiated adjudication proceedings and appointed the undersigned as Adjudicating Officer (hereinafter referred to as "**AO**") under section 15-I(1) of the SEBI Act read with rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter be referred to as the "**Adjudication Rules**") vide order dated June 21, 2021 to inquire into and adjudge under Section 15HA of the SEBI Act, the alleged violations of the aforesaid provisions of the PFUTP Regulations, 2003, by the Noticee. The appointment of the AO was communicated to undersigned vide *communique* dated July 27, 2021.

SHOW CAUSE NOTICE, REPLY AND HEARING

5. Show Cause Notice No. EAD-10/SM/AE/38046/1/2022 dated August 8, 2022 (hereinafter be referred to as, the "**SCN**") was issued to the Noticee under Rule 4 of the Adjudication Rules read with section 15I of the SEBI Act, to show cause as to why an inquiry should not be held and penalty be not imposed against the Noticee under Section 15HA of the SEBI Act for the alleged violations of Regulations 3(a), (b), (c), (d), 4(1), and 4(2)(a) of the PFUTP Regulations.

6. In the aforesaid SCN, it was alleged that Noticee, by indulging in execution of aforesaid non-genuine reversal trades, had violated Regulation 3(a),(b),(c),(d), 4(1), 4(2)(a) of PFUTP Regulations, which are reproduced as follows:

*“**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”

7. Vide hearing notice dated March 09, 2023, the Noticee was granted an opportunity of hearing on March 21, 2023. Authorised Representative attended the hearing which was held via video conferencing over Webex platform. During the course of hearing, Authorised Representative stated that they had not received the SCN along with its annexures. Accordingly, SCN as well as annexures to SCN was served to the Noticee through email dated March 17, 2023. On March 24, 2023 Noticee submitted reply to the SCN. In the said reply, the Noticee submitted the following:

"*I am a retail trader. I have started my trading/ investing from FY 2014-15 only and may be this was my first year of trading in stock market. Trading in stock market is out of my business its only for saving for future. As a retail Investor, I don't know rules and regulations of SEBI and also my broker doesn't warn me about this trade. Please treat me as a small trader and forgive me*"

CONSIDERATION OF ISSUES AND FINDINGS

8. The issues arising for consideration in the instant proceedings are:-

    I. Whether reversal trades in illiquid Stock options carried out by the Noticee during the Investigation Period were in violation of regulations 3(a), (b), (c), (d), 4(1), 4(2)(a) of the PFUTP Regulations, 2003?

    II. If yes, whether Noticee is liable for imposition of monetary penalty under Section 15HA of SEBI Act?

    III. If yes, what would be the monetary penalty that can be 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?

ISSUE I Whether reversal trades in illiquid Stock options carried out by the Noticee during the Investigation Period were in violation of regulations 3(a), (b), (c), (d), 4(1), 4(2)(a) of the PFUTP Regulations, 2003?

9. It has been alleged in the SCN that the Noticee had executed reversal trades which involved squaring off transactions with significant difference in the sell value and buy value in the illiquid Stock Options segment at Bombay Stock exchange. It has been alleged that the aforesaid reversal trades resulted into generation of artificial volumes in the illiquid stock options contracts traded by the Noticee.

10. In this regard, I note that the allegation that the Noticee carried out reversal trades is directly supported by evidence from the BSE trade log records which were provided to the Noticee along with the SCN. I note from the BSE trade log

and order log that on July 31, 2014, Noticee is seen to have indulged in 4 reversal trades in 2 unique contracts as illustrated 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)	Total vol in the contract	% of Artificial Volume generated by Noticee in the contract to Total Volume in the Contract
1	UNIT14NOV24.00 PE	2.7	68000	6.3	68000	578000	23.53
2	UNIT14NOV26. 00PE	5.1	17000	9.1	17000	204000	16.67

11. It is seen that, in Stock option contract “UNIT14NOV26.00PE” on July 31, 2014 Noticee at 13:17:17 hrs executed one sell trade for 17,000 units at the average sell rate of Rs. 9.1 per unit with counterparty viz. Vaibhav Pipes Private Limited. Thereafter, at 13:21:00 hrs executed one buy trade for 17,000 units at the average buy rate of Rs. 5.1 per unit, with the same counterparty. The aforesaid reversal trades were executed within 03 minutes 43 seconds of each other, thus generating artificial volumes to the extent of 34,000 units in the said contract which was 16.67% of the total market volume in the said contract.

12. I note that buy orders and sell order for 34,000 in the UNIT14NOV26.00PE contract were placed within a short time gap within 1 second from each other. I also note that there is wide variation in the buy and sell prices of the reversal trades i.e units were sold at average sell price of Rs. 9.1 per unit at 13:17:17 hrs; and then bought at an average buy price of Rs. 5.1 at 13:21:00 hrs within 03 minutes 43 seconds, without there being any significant movement in the price of the underlying scrip.

13. Similarly, on July 31, 2014 in UNIT14NOV24.00PE contract, buy and sell orders for 1,36,000 units were placed within a short time gap within 1 second. The said orders resulted in 1 sell trade and 1 buy trade for 1,36,000 units between the Noticee and Padma Kalani in the said contract. The average buy price was Rs.2.7 for 68,000 units and average sell price was Rs. 6.3 for 68,000 units. The aforesaid quantities traded by the Noticee made up 23.53% of the total market volume of 5,78,000 units in the said contract during the investigation period.

14. I note that the price of a particular option contract is known as the option premium. I also note that for a given strike price, the option premium could not have varied widely within a short period of time in the absence of significant movement in the price of the underlying scrip. I further note that the non-genuineness of the transactions executed by the Noticee in the aforesaid contracts is evident from the fact that there was no commercial basis as to why, within a short span of time i.e. 1 second to 3 minutes 43 seconds from each other, the Noticee reversed the position with his counterparties with significant price difference, in the absence of significant movement in the price of the underlying scrip. On perusal of trade log and order log, I note that on the July 31, 2014, the volume in the said contracts was very negligible. On the said date there were only 9 trades carried out in the aforesaid contracts out of which 4 were carried out by Noticee and since these trades were done in illiquid option contracts, there was minimal trading in the stock options contracts traded by the Noticee and hence, there was no price discovery w.r.t. the said contracts in the strictest terms. The wide variation in option premium of the said contracts in the trades executed by Noticee, without any significant movement in the price of the underlying scrip, within such a short span of time, is a clear indication that there was prior meeting of minds between the Noticee and the counterparties while executing such trades. I note that the fact that the transactions in a particular contract were reversed within a short period of time with the same counterparties indicates a prior meeting of minds with a view to execute the reversal trades at a pre-determined price. Thus, it is observed that Noticee had indulged in reversal trades with his counterparties in the stock options segment of BSE and the same

were non-genuine trades, and being non-genuine, Noticee's trades created misleading appearance of trading by generating artificial trading volumes in respective contracts.

15. By engaging in such trades, the Noticee violated provisions of Regulation 4(2)(a) of PFUTP Regulations which states that dealing in securities will be deemed to be a fraudulent and unfair trade practice if it involves "indulging in an act which creates false or misleading appearance of trading in the securities market".

16. I find it relevant to note here that in the matter of Securities and Exchange Board of India vs. 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*..."

17. In this regard, I also place reliance on the aforesaid judgement of Hon'ble SAT in the matter of Global Earth Properties and Developers Pvt. Ltd. (SAT appeal no.212 of 2020), wherein Hon'ble SAT held that:

> *" From the aforesaid cumulative analysis of the reversed transactions with the counter party, quantity, time and significant variation of the price clearly indicates that the trades were non-genuine and had only misleading appearance of trading in the securities market without intending to transfer the beneficial ownership. One finds it to be naive to presume that the perception of the two counter parties to a trade changed within few seconds/minutes and positions were interchanged and the contracts were changed where one party made profit and the other party ended up making losses every time without prior meeting of mind. It is not a mere coincidence that the Appellants could match the trades with the counter party with whom he had undertaken the first leg of respective trade. ….."*

18. In view of the above, I find that the Noticee, by engaging in non-genuine transactions which created a misleading impression of trading in respective contracts, dealt in the stock options contracts in a fraudulent manner in violation of Regulation 3(a) and 4(1) and 4(2)(a) of the PFUTP Regulations, 2003. Therefore, I find that allegation levelled against Noticee that Noticee has violated the Regulation 3(a) and 4(1) and 4(2)(a) of the PFUTP Regulations, 2003, stands established.

Issue II If yes, whether the failure, on the part of the Noticees would attract monetary penalty under Section 15HA of the SEBI Act?

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Issue III If yes, what would be the monetary penalty that can be 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?

19. Since the violation of Regulation 3(a), 4(1) and 4(2)(a) of PFUTP Regulations 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 which is reproduced as follows:

SEBI Act: Penalty for fraudulent and unfair trade practices.

15HA. *If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher.*

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

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.

21. As established above, the trades by the Noticee were non-genuine in nature and created a misleading appearance of trading. I note 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, considering that the violation by the Noticee led to creation of artificial trading volumes which had the effect of distorting the market mechanism in the illiquid stock options segment of BSE, I find that the aforesaid violations were detrimental to the integrity of securities market and therefore, the quantum of penalty must be commensurate with the serious nature of the aforesaid violations.

22. Therefore, taking into account the facts and circumstances of this matter, I am of the view that a penalty of Rs. 5,00,000 (Rupees Five Lakhs only) under Section 15HA of the SEBI Act will be commensurate with the violations committed by the Noticee.

ORDER

23. 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 a penalty of Rs.5,00,000/-(Rupees Five Lakhs only) on Noticee i.e. Sweety Mikhil Lotwala under Section 15HA of the SEBI Act for violation of Regulation 3 (a), 4(1) and 4(2)(a) of PFUTP Regulations.

24. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order through online payment facility available on the SEBI website www.sebi.gov.in on the following path, by clicking on the payment link-

ENFORCEMENT → Orders → Orders of AO → PAY NOW

25. The Noticee shall forward the confirmation of penalty so paid to the Enforcement Department –Division of Regulatory Action –I of SEBI.

26. 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

27. 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.

28. Copy of this Adjudication Order is being sent to the Noticee and also to SEBI in terms of Rule 6 of the Adjudication Rules.

DATE: March 28, 2023 **SOMA MAJUMDER**
PLACE: MUMBAI **ADJUDICATING OFFICER**