BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/PB/AS/2021-22/14221]

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

Nimisha Saraf

(PAN: FXMPS7005F)

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 led 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 Nimisha Saraf (PAN-FXMPS7005F) (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 Securities and Exchange Board of India 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 ref no SEBI/HO/A&E/EAD/PB/AS/18171/2021 dated August 05, 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 the Noticee.

5. It was *inter alia* alleged in the SCN that Noticee had executed 11 non genuine trades in 4 Stock Options contracts which resulted in artificial volume of total 29,92,000 units. Summary of dealings of the Noticee in 4 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	IDBI15APR70.00PE	0.2	96000	2.2	96000	100	8.33	100	12.97
2	IOBL15MAY50.00CEW3	0.05	268000	0.8	268000	100	37.5	100	28.63
3	JAIA15APR20.00PE	0.1	528000	1.44	528000	100	30	100	75.43
4	LNTF15FEB80.00CEW2	0.1	604000	2.1	604000	100	8.57	100	19.64

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

   (a) The Noticee had executed non genuine trades in 4 contracts, wherein all trades of Noticee in the said 4 contracts were non genuine trades.

   (b) No. of non-genuine trades of the Noticee had significantly contributed to total no. of trades from the market in the above contracts, as 8.33% to 37.5% of the trades that happened in the four contracts were due to non-genuine trades executed by the Noticee.

   (c) The entire 100% of volume generated by Noticee in all of the above contracts was artificial volume, and further, the percentage of artificial volume generated by the Noticee in the above contracts to the total volume from the market in said contracts was in the range of 12.97% to 75.43%. 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 above contracts had significant difference in buy rates and sell rates considering that the trades were reversed on same day.

7. The SCN was served on the Noticee via Speed Post Acknowledgement Due (SPAD) and via email dated August 06, 2021. Vide email dated August 21, 2021 enclosing letter dated August 20, 2021, Noticee made submissions which have been summarized below:

   - The trades alleged to be reversal trades in the instant SCN, have already been adjudicated in three orders viz. Adjudication Orders in the matters of Capseal Vyapass Pvt Ltd (dated October 04, 2019), Inter Globe Finance Ltd (dated August 26, 2019) and Mudrika Goods Pvt Ltd (dated January 31, 2020).
   - As the impugned trades have already been adjudicated, AO had become *functus officio*, so any successor in the office of AO cannot seek to re-adjudicate the same trades and issue a SCN therefor.

8. Vide email dated September 01, 2021, Noticee was granted opportunity of personal hearing on September 13, 2021. Vide email dated September 07, 2021, Noticee submitted Authority Letter in favor of Mr. Deepak Gupta (Advocate) and Mr. Omansh Gupta (Advocate) as regards the matter. Vide email dated September 08, 2021, Noticee was *interalia* conveyed that the instant adjudication proceedings were independent of adjudication proceedings referred by Noticee in the letter dated August 20, 2021. Further, vide aforesaid email, Noticee was advised to submit any further reply to the SCN on merits, if any, before the scheduled date of hearing.

9. Vide email dated September 10, 2021, AR reiterated the submissions made in letter dated August 20, 2021, and further submitted the following unique contentions:

    - As the predecessor AOs referred to in letter dated August 20, 2021 did not issue SCN against counterparties *interalia* including the Noticee, to such trades despite being aware of the matter, and imposed penalty only on other entities, the matter attained finality.
    - Any successor in the office of AO does not have the power to reinitiate adjudication proceedings as regards same trades, as that would amount to review of own order. The law has not conferred any power on the AO to review the orders already pronounced. Therefore, the SCN must be withdrawn accordingly.

10. Personal hearing in the matter was held via video conferencing platform on September 13, 2021. During the course of hearing, AR reiterated the submissions made by him vide letter dated August 20, 2021 and email dated September 10, 2021. During the course of hearing, AR contended that the trades carried out by Noticee, alleged to be non-genuine in the present proceedings have been adjudicated upon already. Therefore, the instant adjudication proceedings must be dropped on this ground alone. In this regard, it was conveyed to the AR that the present proceedings initiated against the Noticee are independent of the proceedings referred by the AR. Further, acceding to the request of AR, time till September 16, 2021 was granted to make post hearing submissions, if any.

11. Vide email dated September 16, 2021, Noticee made post hearing submissions. The AR reiterated contentions made in letter dated August 20, 2021 and email dated September 10, 2021, and further, made certain unique submissions which have been summarized below:

- If any inquiry is held by an AO, it is necessary that the alleged trades and all persons alleged to be involved in the trades are considered.
- The use of singular word "person" in the impugned sections of the SEBI Act, 1992 and rule 4 of the Adjudication Rules, does not imply that separate inquiries can be held of persons associated with impugned trades.
- Section 13 of the General Clauses Act, 1897 provides that in all Central acts and regulations, words in singular shall include the plural and vice-versa.
- When alleged contravention is the same, but it is committed by more than one persons, then all such persons must be inquired into together when the alleged contravention is being inquired into.
- AR further submitted the following as regards the legal position in support of his submissions:
    - A quasi-judicial authority cannot review its own order, unless such power is expressly conferred on it by the statute under which it derives its jurisdiction. In this regard, AR relied upon the judgement of the Hon'ble SC in the matter of Kuntesh Gupta vs Management of Hindu Kanya Mahavidyala, Sitapur and Ors..

- There is no inherent power of review vested in a body exercising judicial function. In this regard, AR relied upon the judgement of the Hon'ble HC of Chattisgarh in the matter of Mr. Ram Prasad Rao and Ors. Vs State of Chattisgarh and Ors..
- Even if power of review is conferred by a statute, the pre-conditions for exercise of such power of review are very strict. In this regard, AR relied upon the judgement of the Hon'ble SC in the matter of Aribam Tuleshwar Sharma vs Aribam Pishak Sharma and Ors..
- The quasi-judicial authority becomes *functus officio*, once its order is pronounced. In this regard, AR relied upon the judgement of the Hon'ble SC in the matter of Harbhajan Singh vs Karam Singh and State Bank of India vs S.N. Goyal.
- A successor in office of AO cannot review order of its predecessor. In this regard, AR relied upon the judgement of the Hon'ble SC in the matter of Mehar Singh Nanak Chand vs Naunihal Thakar Das and Ors..
- Once a quasi-judicial order has been passed basis a SCN, the authority cannot issue a second SCN. In this regard, AR relied upon the judgement of the Hon'ble SC in the matter of India Tourism Development Corporation Ltd vs Delhi Administration and Ors..
- No amended second order on same charges can be passed. In this regard, AR relied upon the judgement of the Hon'ble Madhya

Pradesh HC in the matter of N.S. Bhadauriya vs State of MP & Ors. and Rajendra Sharma vs State of Jharkhand and Ors..

  - No authority can review or revise on "self-same issue". In this regard, AR relied upon the judgement of the Hon'ble Calcutta HC in the matter of Debabrata Tripathy and Ors. Vs State of West Bengal and Ors..
  - Contention that any number of orders can be passed is fallacious and contrary to law. In this regard, AR relied upon the judgement of the Hon'ble Andhra Pradesh HC in the matter of L. Ramesh and Ors. Vs State of Andhra Pradesh and Ors..
  - First order must be set aside, otherwise the said order cannot be ignored or reviewed. In this regard, AR relied upon the judgement of the Hon'ble SC in the matters of State of Madhya Pradesh vs Haji Hasan Dada and Rajendra Kumar Dabriwala vs SEBI.

- Further, AR requested access to certain additional documents apart from that provided as Annexures to the SCN. The documents sought *interalia* included the following:
  - Documents wherein the grounds for inquiring into alleged violations have been recorded.
  - The original order as regards appointment of Adjudicating Officer in the matter.
  - Details of total trades in the four impugned contracts on the basis of which percentages referred in the SCN have been calculated
  - Details of total volume in the four impugned contracts on the basis of which percentages referred in the SCN have been calculated

- Buy and Sell rates, and the difference between them in respect of the four impugned contracts carried out between parties other than the Noticee
- Basis to show that difference in buy and sell rates was "significant" in the alleged trades
- Details of all reversal trades in which the four entities viz. Calcutta Stock Exchange (User name-Pawan Kumar Kayan), Kayan Securities Pvt Ltd (User name-Harshvardhan Kayan), Aryav Securities Pvt Ltd (User name- Nidhi Jhunjhunwala) and Harish Kumar Singhania (User name-Harish Kumar Singhania) were also members or parties/ counterparties.
- Information with regard to any SCN issued or adjudicating orders passed in respect of the aforesaid four entities
- Copy of trade logs and order books of the said members/ users in respect of the alleged trades in the SCN
- Transcripts of recordings done by the said members/ users in respect of alleged orders for the alleged trades in the SCN
- Any other general orders/ findings of SEBI or any AO with respect to the matter.

12. Vide email dated September 30, 2021, following was conveyed to the Noticee:

    Vide emails dated September 16, 2021 you have interalia requested for certain additional documents, other than the documents provided to you as annexures to the SCN. In this regard, your request has been perused and *it is conveyed to you that following are the relied upon documents in the instant proceedings and same have been provided to you along with the SCN issued in the matter:*

S. No.	***Particular***	***Annexures to SCN***
1	*Details of all the trades of Noticee in Stock Option Segment of BSE during relevant period.*	*B*
2	*Details of all the alleged non-genuine trades of Noticee in Stock Option Segment of BSE during relevant period.*	*C*
3	*Summary of dealings of the Noticee in contracts wherein Noticee executed non genuine trades.*	*D*

It is noted that the aforementioned documents are the only documents relied upon in the matter.

Further, as regards the above, judgements of the Hon'ble SC in the matters of Kanwar Natwar Singh vs Directorate of Enforcement and Chandrama Tewari vs Union of India were relied upon. Therefore, it was conveyed to the AR that all relied upon documents had been provided to him, and that the request for non-relied upon documents was not reasonable and thus, denied. Vide aforesaid email, AR was granted time till October 11, 2021 to submit reply to the SCN and was granted opportunity of another personal hearing on October 11, 2021.

13. Vide email dated October 07, 2021, AR requested for additional time for submitting reply to the SCN, and also, requested for adjournment of personal hearing scheduled in the matter. Vide email dated October 08, 2021, Noticee's request was acceded to and he was granted final opportunity of personal hearing on October 25, 2021. Vide email dated October 11, 2021, AR confirmed his appearance for hearing scheduled on

October 25, 2021 via video conferencing. Vide email dated October 23, 2021, AR submitted reply to the SCN. The main contentions made therein are summarized below. The contentions already made in the preceding submissions have not been repeated for the sake of brevity:

- No primary or secondary documents as evidence have been brought on record to support the allegations.
- The present proceedings suffer from inordinate delay, as they have been initiated after 6-7 years from initial investigation. Such a belated inquiry causes prejudice to the Noticee. In this regard, AR relied upon the judgement of the Hon'ble SAT in the matter of HB Stockholdings Ltd vs SEBI.
- The issuance of notice by AO to the Noticee is only for the purpose of deciding whether an inquiry should be held against her, and not for the purpose of adjudication proceedings. Based on the response to the notice, AO is required to form an opinion and only thereafter, substantial inquiry into allegations of contraventions begin.
- Noticee carried out the trades on advice of her broker, as broker had good profits. The broker provided proper legal contract notes after the trades and all accounts were settled between broker and Noticee through proper banking channels.
- All applicable service tax, securities transaction tax etc were levied by broker and paid by the Noticee. Noticee declared all the said transactions in her records and duly reported the earned profits and paid taxes therefor.

- Any contract may be liquid or illiquid depending upon the actions of parties other than the trading parties, and no parties can be alleged in the hindsight to have traded in illiquid options merely because other third parties eventually either choose to trade or not to trade in such contracts after the parties had traded.
- Noticee had no intention to generate artificial volume or indulge in non-genuine trades.
- As a retail participant, Noticee had to rely on contract notes provided by the broker and had no means of verifying the veracity of the same. A retail participant cannot be aware of all intricate nuances that operate at exchanges, and it is for the broker to comply and for the regulator to enforce either by system controls or otherwise. Therefore, if the broker indulged in any violation as alleged the same is an independent activity of the broker beyond the control of Noticee.
- The fact that reversal trades in themselves have been asserted to be non-genuine is misconceived.
- Similarly, the proposition made in the SCN as regards "artificial volume" is also fallacious, as it has been made as a self-fulfilling legal proposition, leaving no room for defense.
- The fact that profits and losses suffered by counterparties are equal cannot be a ground for alleging non-genuineness of trades.
- Whole host of other factors must be considered and established by evidence, before any finding of non-genuine trade or artificial volume is established. In this regard, AR cited judgement of the Hon'ble Supreme

Court in the matters of SEBI vs Kishore R. Ajmera, SEBI vs Ketan Parekh and SEBI vs Rakhi Trading Pvt Ltd.

- Allegations made in the SCN, reflect premeditated, pre-judged and predetermined approach to penalize Noticee.
- The Noticee has no relation or connection with counterparties to the impugned trades, as the trades were carried on the platform of the stock exchange by the broker. So, the trades were anonymous and the names of counterparties were not known.
- Para 11 of the SCN mentions that '*The Noticee has executed non genuine trades in 4 contract*' and thus, concludes even before the completion of adjudication proceedings that Noticee executed non-genuine trades in 4 contracts. Such an observation reflects that mind of the AO already stands made up. In this regard, AR relied upon judgement of the Hon'ble SC in the matter of Oryx Fisheries Pvt ltd vs Union of India and Ors..
- High variation in prices of impugned trades is a fallacious basis for alleging non-genuine trades. Trades and prices between unconnected parties is the yardstick of market price, howsoever high or low it may seem to a third party. Further, in case of illiquid contracts, prices are likely to vary more.
- In stock exchanges, prices swing abnormally without any commercial basis. Further, in percentage terms the prices may vary significantly, especially when a low base is present. For instance, on some dates prices of options can go to zero and then again rise by more than 100%

if the base value is low. Also, even though the price might be fluctuating on the exchange, a trade may not materialize on the exchange due to lack of buyers/sellers. Therefore, SEBI must not question rationale of pricing on some notional commercial basis or question the genuineness of trades on such basis.

- If in a trade, party executes trades such that a party makes loss, then only the loss making party must be asked for explanation and not the profit making party.
- In the instant SCN, preconceived approach has been taken. Instead, test of "logical reasoning and preponderance of probabilities" must be applied. Such tests require analysis of various probable scenarios, and evaluate by applying logical reasoning which scenario is more probable or rational. Following alternative scenarios were pointed out:
    1) Alleged trades were in the normal course of trading on exchange.
    2) The party which made profits singularly/ in collusion with broker/ in collusion with its broker and the broker of the counterparty did reversal trades for some ulterior reasons, so that the trades were non genuine and volume generated was artificial.
    3) The party which made losses singularly/ in collusion with broker/ in collusion with its broker and the broker of the counterparty did reversal trades for some ulterior reasons, so that the trades were non genuine and volume generated was artificial.

4) Either of the two brokers or the two brokers in collusion did reversal trades for some ulterior reasons, so that the trades were non genuine and volume generated was artificial.
5) Both the party, counterparty and their respective brokers all colluded with each other and did reversal trades for some ulterior reasons, so that the trades were non genuine and volume generated was artificial.
6) Both the party and the counterparty colluded with each other and did reversal trades for some ulterior reasons, so that the trades were non genuine and volume generated was artificial.
7) Some large player(s) decide on taking losses and indulge in reversal trades, colluding with one or more brokers for ulterior reasons, for instance, to lure retail investors into trading in such contracts.

Further, AR contended that only scenarios 1), 3) and 7) above are probable, in which case, violations by Noticee are not established.

- Noticee has valid contract notes for the impugned transactions, and the transactions were undertaken through proper banking channels and the profits earned were duly declared in compliance with law.
- Penalty is a punitive action and will require establishment of some *mens-rea* or deliberate actions amounting to contravention. In provisions wherein minimum penalty is prescribed, same must not be levied in all cases without direct establishment of evidence of guilt on basis of technicalities or conjectures.

14. Personal hearing in the matter was held via video conferencing mode on October 25, 2021. During the course of hearing, AR reiterated submissions made vide email dated October 23, 2021. Hearing minutes are on record.

CONSIDERATION OF ISSUES AND FINDINGS

15. 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?

16. 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;

17. I note that 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 & manipulative.

18. Noticee has *interalia* contended that SCN in the matter was issued after an inordinate delay of 6-7 years, and that the SCN must be disposed of on this ground alone. In this regard, Noticee cited judgement of the Hon'ble SAT in the matter of HB Stockholdings vs SEBI. I note that there are no timelines prescribed in the SEBI Act, 1992 for initiating the adjudication proceedings. Further, I note that the Hon'ble SAT in the matter of Bipin R Vora vs SEBI decided on March 22, 2006 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*".

    Therefore, I note that contentions of Noticee in this regard are without merits.

19. Further, Noticee requested access to certain additional documents apart from the documents provided as Annexures to the SCN, and contended *interalia* that no primary or secondary evidences have been brought on record to support the instant allegations. I note that all the documents relied upon in the matter had been provided to Noticee as Annexures to the SCN. Further, vide email dated September 30, 2021, the following was conveyed *interalia* to AR:

Vide emails dated September 16, 2021 you have interalia requested for certain additional documents, other than the documents provided to you as annexures to the SCN. In this regard, your request has been perused and it is conveyed to you that following are the relied upon documents in the instant proceedings and same have been provided to you along with the SCN issued in the matter:

S. No.	***Particular***	***Annexures to SCN***
1	*Details of all the trades of Noticee in Stock Option Segment of BSE during relevant period.*	*B*
2	*Details of all the alleged non-genuine trades of Noticee in Stock Option Segment of BSE during relevant period.*	*C*
3	*Summary of dealings of the Noticee in contracts wherein Noticee executed non genuine trades.*	*D*

It is noted that the aforementioned documents are the only documents relied upon in the matter.

In this regard, I rely on the judgement of the Hon'ble SAT in the matter of Mayrose Capfin Private Limited Vs. SEBI (decided on 30.03.2012) wherein it was held that:

"....................the principles of natural justice require that the inquiry officer should make available such document and material to the

delinquent on which reliance is being placed in the inquiry. It is not necessary for the inquiry officer to make available all the material that might have been collected during the course of investigation but has not been relied upon for proving charge against the delinquent. No prejudice can, therefore, be said to have been caused to the appellant on this count...."

20. Further, the Hon'ble SAT, in its order dated February 12, 2020, in the matter of Shruti Vora vs. SEBI held that:

    "Reliance was also made of a decision of the Supreme Court in Union of India and Others vs E. Bashyan (1988) 2 SCC 196 which has no bearing to the controversy involved in the present context, in as much as, the said decision relates to a disciplinary proceedings wherein the Supreme Court observed that the inquiry report was required to be made available to the delinquent. An inquiry report is totally distinct and different from an investigation report. The inquiry report considers all the materials in the inquiry proceedings which form the basis of the final order and therefore the said report is required to be made available to the delinquent. In the instant case, the show cause notice relies upon certain documents which have been made available. Thus the investigation report is not required to be supplied".

    "The learned counsel has also placed reliance upon a minority view of this Tribunal in Price Waterhouse vs Securities and Exchange Board of India decided by this Tribunal in Appeal No. 8 of 2011 on June 1, 2011

wherein it was observed that fairness demands that the entire material collected during the course of investigation should be made available for inspection to the person whose conduct was in question and that said material should also be supplied. In our opinion, the said minority view is directly against the decision of the Supreme Court in Natwar Singh case (supra)".

"A bare reading of the provisions of the Act and the Rules as referred to above do not provide supply of documents upon which no reliance has been placed by the AO, nor even the principles of natural justice require supply of such documents which has not been relied upon by the AO. We are of the opinion that we cannot compel the AO to deviate from the prescribed procedure and supply of such documents, which is not warranted in law. In our view, on a reading of the Act and the Rules we find that there is no duty cast upon the AO to disclose or provide all the documents in his possession especially when such documents are not being relied upon."

21. I also note that the Hon'ble SAT in the matter of Anant R Sathe Vs SEBI (Appeal No. 150 of 2020) vide Order dated July 17, 2020 reaffirmed the principle elucidated in the judgment of Shruti Vora's case, which has been reproduced herein above and held that:

    "the Authority is required to supply the documents that they rely upon while serving the show cause notice which in the instant case has been done and which is sufficient for the purpose of filing an efficacious reply in his defence".

Therefore, I note that documents relied upon in the matter were duly provided to the Noticee along with SCN dated August 05, 2021 in the matter, so that principles of natural justice have been complied with and the contentions in this regard are without merits.

22. Noticee has further contended that the trades being adjudicated in the instant matter had already been adjudicated in three Adjudication Orders viz. Adjudication Orders in the matters of Capseal Vyapass Pvt Ltd (dated October 04, 2019), Inter Globe Finance Ltd (dated August 26, 2019) and Mudrika Goods Pvt Ltd (dated January 31, 2020). Further that, as the impugned trades had already been adjudicated and attained finality, AO had become *functus officio*, and that any successor in the office of AO does not have the power to reinitiate the adjudicating proceedings as that would amount to review of previous Adjudication Orders. In this regard, AR relied upon the judgements of the Hon'ble Supreme Court in the matters of Kuntesh Gupta vs Management of Hindu Kanya Mahavidyala, Sitapur and Ors.., Aribam Tuleshwar Sharma vs Aribam Pishak Sharma and Ors.., Harbhajan Singh vs Karam Singh, State Bank of India vs S.N. Goyal, Mehar Singh Nanak Chand vs Naunihal Thakar Das and Ors.., India Tourism Development Corporation Ltd vs Delhi Administration and Ors.., State of Madhya Pradesh vs Haji Hasan Dada, Rajendra Kumar Dabriwala vs SEBI, judgement of the Hon'ble HC of Chattisgarh in the matter of Mr Ram Prasad Rao and Ors. Vs State of Chattisgarh and Ors.., judgement of the Hon'ble Madhya Pradesh HC in the matter of N.S. Bhadauriya vs State of MP & Ors., Rajendra Sharma vs State of Jharkhand and Ors.., the judgement of

the Hon’ble Calcutta HC in the matter of Debabrata Tripathy and Ors. Vs State of West Bengal and Ors.. and the judgement of the Hon’ble Andhra Pradesh HC in the matter of L. Ramesh and Ors. Vs State of Andhra Pradesh and Ors..

23. As regards the above contention, I note that the undersigned was appointed as AO in the matter, conveyed vide communique dated July 14, 2021, and that as conveyed to Noticee/AR vide email dated September 08, 2021, the present proceedings are independent of the adjudication proceedings referred by the Noticee in her submissions. The present proceedings were initiated vide SCN dated August 05, 2021, and charge the Noticee as regards the trading pattern exhibited while executing impugned reversal trades. The referred AO orders adjudicated upon the role of certain entities, not including the Noticee. I note that the instant proceedings consider the role of Noticee as regards impugned trades along with the attending circumstances and alleged violations committed therefor by her. Therefore, the contention that the AO became *functus officio* as the order was passed considering impugned trade is devoid of logic and liable to be rejected.

24. Noticee has further contended that the issuance of instant notice by AO is only for the purpose of deciding whether an inquiry should be held against her, and not for the purpose of adjudication proceedings, and that based on the response to the notice, AO is required to form an opinion and only thereafter, substantial inquiry into allegations of contraventions begin. I note that in the instant matter, SCN dated August 05, 2021 was issued to

the Notice wherein all the allegations levelled against the Noticee along with the provisions of law alleged to be violated were explained. Noticee submitted its replies dated August 20, 2021, September 10, 2021, September 16, 2021 and October 23, 2021 to the aforesaid SCN. Thereafter, two personal hearings in the matter were held on September 13, 2021 and October 26, 2021. I note that the inquiry as per provisions of Adjudication Rules applicable in the matter is completed, so that penalty, if any, could be imposed on the Noticee. Therefore, I hold that Noticee's contentions in this regard are liable to be rejected, and I now proceed to consider the matter on merits.

25. I note from trade log of the Noticee that she had traded in 4 unique contracts in the stock options segment of BSE during the IP. It is observed that the Noticee had executed 11 non-genuine trades in the said 4 contracts. I further note that the above mentioned trades of the Noticee had resulted in the creation of artificial volume of 29,92,000 units in the said 4 contracts. 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	IDBI15APR70.00PE	0.2	96000	2.2	96000	100	8.33	100	12.97
2	IOBL15MAY50.00CEW3	0.05	268000	0.8	268000	100	37.5	100	28.63
3	JAIA15APR20.00PE	0.1	528000	1.44	528000	100	30	100	75.43
4	LNTF15FEB80.00CEW2	0.1	604000	2.1	604000	100	8.57	100	19.64

26. It is noted that the Noticee had executed non-genuine trades in 4 contracts, wherein the percentage of non-genuine trades of the Noticee in stock options contracts to total trades in the contracts was in the range of 8.33% to 37.5% 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 all the contracts. It is also noted that artificial volume generated by the Noticee contributed significantly viz. 12.97% to 75.43% of the total volume from the market in the said contracts. 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.

27. 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 April 28, 2015 at 11:29:03.38 hrs entered into 1 sell trade with counterparty viz. Mudrika Goods Pvt Ltd for 96,000 units at the rate of ₹2.2 per unit in the contract IDBI15APR70.00PE. Thereafter, on the same day at 12:04:09.85 hrs, Noticee entered into 1 buy trade with same counterparty for 96,000 units at the rate of ₹0.2 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 same counterparty viz. Mudrika Goods Pvt Ltd on the same day and with significant price difference in buy and sell rate. Thus, the Noticee, through her dealing in the contract viz. “IDBI15APR70.00PE” during the

I.P., executed non genuine trades which was 8.33% of the total trades from the market in the said contract during the I.P., and thereby, Noticee generated artificial volume of 1,92,000 units which was 12.97% of the volume traded in the said contract from the market during the I.P.

28. Noticee has contended that as regards impugned trades, her sell orders were placed after the buy orders were placed by counterparties, so that, vide the impugned trades, sell order was matched with existing buy order at the prevalent market price available on exchange platform, and therefore, no allegation of price manipulation or synchronization can be made against Noticee. Also that, buy and sell orders were executed with significant time gap, which indicates that Noticee had no intention to reverse the trades. I note that 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 counterparty 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 35 minutes 6 seconds to 1 hour 20 minutes 24 seconds, 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 wide variation in prices of the said contract, within a short span of time, without substantial variation in the price of the underlying scrip to justify the aforesaid variation. It 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.

29. Noticee has contended that in stock exchanges, prices swing abnormally without any commercial basis. Further, in percentage terms the prices may vary significantly, especially when a low base is present. Noticee has also contended that even though the price might be fluctuating on the exchange, a trade may not materialize on the exchange due to lack of buyers/sellers, so that SEBI must not question rationale of pricing on some notional commercial basis or question the genuineness of trades on such basis. Noticee has also contended that high variation in prices of impugned trades is a fallacious basis for alleging non-genuine trades, and that trades and prices between unconnected parties is the yardstick of market price, howsoever high or low it may seem to a third party. In this regard, I note that all the trades executed by Noticee in the four impugned contracts were in the form of reversal trades executed on the same day, in which the buy and sell rates had substantial difference without any trading strategy or changes in price of underlying scrip to justify the same as per the records. I note that considering the nature of trades along with attending circumstances, it is discernible that the aforesaid reversal trades were non-genuine, and were executed without the intention of change in rights to

exercise the impugned contracts. Therefore, I note that aforesaid contentions are liable to be set aside on the above grounds.

30. Noticee has *interalia* contended that she had no relation or connection with counterparties to the impugned trades, as the trades were carried on the platform of the stock exchange by the broker. So, the trades were anonymous and the names of counterparties were not known. In this regard, I note that it is not mere coincidence that Noticee could match her trades with the same counterparty 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 fashion. I note in matters dealing with violation of PFUTP Regulations, 2003, the reason as regards execution of non-genuine trades might not be 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...*"

31. 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.”*

32. 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."*

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

34. 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.*"

35. Noticee has *interalia* contended that the applicable service tax, securities transaction tax etc were levied by broker and paid by the Noticee, and that Noticee declared all the said transactions in her records and duly reported the earned profits and paid the taxes therefor. Noticee has also contended that she has valid contract notes for the impugned transactions, the transactions were undertaken through proper banking channels and the profits earned were duly declared in compliance with law. I note that instant allegations pertain to the pattern exhibited by trades carried out by the Noticee on the F&O segment of BSE, and non-compliance of Noticee with provisions as stated by Noticee *interalia* including payment of taxes does not form part of the allegations.

36. Noticee has contended that the allegation that reversal trades in themselves are non-genuine is misconceived and fact that profits and losses suffered by counterparties is equal cannot be a ground for alleging non-genuineness of trades. I note that aforesaid fact as regards profits and/ or losses suffered by counterparties to the impugned trades has not been relied upon in framing instant allegations. Noticee has also contended that whole host of other factors must be considered and established by evidence, before any finding of non-genuine trade or artificial volume is established. In this regard, Noticee cited judgements of the Hon'ble SC in the matter of SEBI vs Kishore R. Ajmera, SEBI vs Ketan Parekh and SEBI vs Rakhi Trading Pvt Ltd. Noticee has further contended that any contract may be liquid or illiquid depending upon the actions of parties other than

the trading parties, and no parties can be alleged in the hindsight to have traded in illiquid options merely because other third parties eventually either choose to trade or not to trade in such contracts after the parties had traded. I note that allegations against the Noticee is that she executed reversal trades in illiquid stocks options segment, and that she executed such trades with substantial price difference without any material change in fundamentals of the underlying scrip, so that when the attending circumstances were considered *in toto*, her trades were found to be non-genuine. Therefore, allegations of the Noticee are without merits.

37. Noticee has contended that in the SCN, preconceived approach has been taken, and test of “logical reasoning and preponderance of probabilities” must be followed. Further, such tests require analysis of various probable scenarios, and evaluation of such scenarios by applying logical reasoning. In this regard, Noticee suggested various alternate scenarios and concluded that it is most likely that allegations of execution of non-genuine trades against Noticee are not established. I note based on available records that SCN dated August 05, 2021 was issued to the Noticee. Thereafter, inquiry in the matter as per provisions of Adjudication Rules were held so that principles of natural justice were duly complied with. I note that after the due consideration of impugned trades along with the attending circumstances, it is established that impugned trades executed by the Noticee were non-genuine.

38. Noticee has *interalia* contended that she carried out the trades on advice of her broker, as broker had represented that good profits by trades on the stock exchanges can be assured to the Noticee. I note that Noticee was owner of the trading account(s) through which impugned trades were carried out. Therefore, the obligation to ensure genuineness of impugned trades lay with the Noticee, so that the aforesaid contentions of Noticee are without merits.

39. Noticee has contended that in para 11 of the SCN, it is mentioned that '*Noticee executed non-genuine trades in 4 contracts*', so it appears that mind of the AO is already made up as regards violations. In this regard, Noticee relied upon judgement of the Hon'ble Supreme Court in the matter of Oryx Fisheries Pvt ltd vs Union of India and Ors. I note that allegations levelled against Noticee are explained in the SCN and that the Noticee was given due opportunity to submit reply and to appear before the AO in personal hearing as part of the inquiry undertaken. Therefore, selective reading of portions of SCN may not be construed to indicate any preconceived bias.

40. Noticee has also contended that her trades created only miniscule volume which comprised low percentage of total market volume and were not sufficient to contribute artificial volume to the market. I note that Noticee's trades in the impugned contracts contributed to the total market volume generated during the IP in said contracts in the range of 12.97% to 75.43%,

so that Noticee contributed substantially to artificial volume in such contracts. Noticee has also contended that there was no significant price movement of the underlying scrip, which proves that Noticee's trades had no impact on the market. I note that allegations against Noticee pertain to her trades in stock options segment of BSE, so that aforesaid observations as regards price of the underlying scrip are not relevant as regards instant considerations. Noticee has also contended that no grievance has been made by any investor, broker, stock exchange or any other agency with regard to Noticee's trades. I note that the allegation levelled against the Noticee as regards alleged non-genuine trades are not contingent upon any grievance made by investors, so that contentions of Noticee in this regard are without merits.

41. 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…".

42. 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].*

43. 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;

[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

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

44. 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 11 non-genuine trades in 4 stock option contracts which demonstrates the repetitive nature of default on her part.

45. 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

46. 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
Nimisha Saraf PAN:FXMPS7005F	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.

47. 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

48. 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

49. 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.

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

Date: November 18, 2021 **PARAG BASU**

Place: Mumbai **ADJUDICATING OFFICER**