BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO.: Order/EB/PB/2022-23/15816]

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

In respect of:

NAYANABEN DEVENDRAKUMAR SHAH

(PAN: ACKPS9445F)

In the matter of dealings in Illiquid Stock Options at the Bombay Stock Exchange

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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 "**Investigation period**").

2. Pursuant to investigation, it was observed that a total of 2,91,744 trades comprising 81.41% of all the trades executed in stock options segment of BSE during the investigation period were alleged to be non-genuine trades. The aforesaid non-genuine trades resulted in the creation of artificial volume in stock options segment of BSE during the investigation period. It was observed that **Nayanaben Devendrakumar Shah** (PAN- ACKPS9445F) (hereinafter referred to as the "**Noticee**") was one among the various entities who indulged in execution of reversal trades in stock options segment of BSE during the investigation period. 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, 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. The undersigned was appointed as the Adjudicating Officer in the matter, conveyed *vide* communique dated July 06 , 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 leviable, impose such penalty as deemed fit in terms of rule 5 of Adjudication Rules and section 15HA of SEBI Act, 1992.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. A Show Cause Notice bearing reference no. **SEBI/HO/ESTB2/P/OW/2021/32975 dated November 17, 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 inquiry should not be initiated against it and penalty be imposed under section 15HA of the SEBI Act, 1992 for the violations alleged to have been committed by it.

5. The SCN was served on the Noticee's address (2A- Rekhapark Sociey, Vijaynagar Road, Ahmedabad, Gujarat - 380001) *via* Speed Post Acknowledgement Due (SPAD). The same was delivered to Noticee's aforementioned address on November 23, 2021. The acknowledgement receipt and tracking details from www.indiapost.gov.in is on record.

CONSIDERATION OF ISSUES AND FINDINGS

6. Mr. Manish Shah, the son of the Noticee, *vide* letter dated February 15, 2022 and March 04, 2022, intimated that his mother, the Noticee, had expired on October 13, 2016. Notarized copy of death certificate issued by Amdavad Municipal Corporation under Government of Gujarat bearing registration no. 2016-DW-0012-0000504 was also annexed along with the reply dated March 04, 2022. It was observed that the address given in the SCN corresponds to the address of the deceased at the time of death as recorded in the death certificate.

7. In view of the above, the proceedings are against the acts of omission and commission of a person who is no more to face the charges. In this regard, it is worth mentioning that in ***Girijanandini vs Bijendra Narain (AIR 1967 SC2110)***, the Hon'ble Supreme Court held that in case of personal actions, i.e. the actions where the relief sought is personal to the deceased, the right to sue will not survive to or against the representatives and in such cases the maxim *actio personalis moritur cum persona* (personal action dies with the death of the person) would apply.

8. It is also relevant to refer to the decision of Hon'ble Securities Appellate Tribunal, in ***Chandravadan J.Dalal vs. SEBI (Appeal No.35/2004*** decided on June 15, 2005) wherein it was held that:

   "The appeal abates since the appellant during the pendency of the appeal died on 29th November 2004. The appeal accordingly abates. The penalty imposed on the original appellant being personal in nature also abates."

9. In this regard, it is relevant to note that section 15-I (1) of the Securities and Exchange Board of India Act, 1992 states as under:"For the purpose of adjudging under sections 15A, 15B, 15C, 15D, 15E, 15EA, 15EB, 15F, 15G, 15H, 15HA and 15HB, the Board may appoint any officer not below the rank of a Division Chief to be an adjudicating officer for holding an inquiry in the

prescribed manner after giving any person concerned a reasonable opportunity of being heard for the purpose of imposing any penalty"'

10. In the matter under consideration, the Noticee expired before the issuance of SCN and therefore, an opportunity of personal hearing cannot be provided to the person concerned. Since the Noticee is non-est and opportunity of being heard could not be provided for the purpose of imposing penalty, I am of the view that the adjudication proceedings initiated against the Noticee do not survive.

ORDER

11. In view of the foregoing, I am of the view that the instant adjudication proceedings against the Noticee are liable to be abated without going into the merits of the case qua her. Consequently, no penalty is imposed on the Noticee who is deceased and the Adjudication Proceedings against the Noticee stands abated. Therefore, the SCN bearing reference number SEBI/HO/ESTB2/P/OW/2021/32975 dated November 17, 2021 issued against her is disposed of accordingly.

12. In terms of rule 6 of the Adjudication Rules, 1995, copy of this order is sent to the Noticee's last known address and also to SEBI.

Date: April 07, 2022 **E BALASUBRAMANIAN**

Place: Mumbai **ADJUDICATING OFFICER**