**BEFORE THE ADJUDICATING OFFICER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**

**[ADJUDICATION ORDER NO. Order/PB/S./2021-22/14178]**

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**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 N Ghelani**

**(PAN: ATVPG9138M)**

In the matter of Trading in Illiquid Stock Options on BSE

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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 "**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 N Ghelani (PAN: ATVPG9138M) (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 dated July 28, 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 5,70,000 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 | JPPW15JUN2.00CEW2 | 2.55 | 135000 | 4 | 135000 | 100 | 25 | 100 | 20.93 |
| 2 | NHPC15JUN16.00CE | 2 | 150000 | 3.3 | 150000 | 100 | 12.5 | 100 | 16.48 |

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 12.5% to 25%. 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 16.48% to 20.93%. 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/16809/2021 dated July 28, 2021 was served on the Noticee via Speed Post Acknowledgement Due (SPAD) and via email dated July 29, 2021. Thereafter, vide email dated October 26, 2021, the Noticee was granted an opportunity of hearing on November 08, 2021. Subsequently, the Noticee submitted her reply to the SCN vide letter dated November 06, 2021. The hearing scheduled on November 08, 2021 was attended by Mr. Bharat Redij, the Authorized Representative (AR) of the Noticee. During the course of the hearing the Noticee prayed that the reply to the SCN vide letter dated November 06, 2021, may be taken on record and all the submissions made therein be treated as submission made in the hearing. Thus, the Noticee reiterated the submissions made in her reply to the SCN vide letter dated November 06, 2021. The submissions made by the Noticee are as follows:

- The Noticee denied all allegations made in the SCN. The Noticee stated that she has not violated the PFUTP Regulations.
- The Noticee submitted that the conduct of proceedings after a long and inordinate delay of around 6 years is arbitrary. The Rule 14 and 15 of SCRR, mandates every member of the exchange to maintain records for period ranging from 2 to 5 years. Similarly, Regulation 18 of Stock

Broker Regulations mandates a broker to preserve books of accounts/records for five years. In the present case, the Noticee, being a lay investor has been called upon to defend herself in respect of transaction executed in 2015 i.e. way back before 6 years. Such an approach is against the settled principles of law as laid down by various Courts of the country. In this regard the Noticee has placed reliance on the Hon'ble Bombay High Court's judgement in the case of Sambhaji Shripati Bankar vs Keshav Rangnath Ekbote, Hon'ble Securities Appellate Tribunal's judgement in the case of Ashlesh Shah vs SEBI and judgement of Hon'ble Supreme Court of India in the case of State of Punjab vs Bhatinda District Co-op Milk P. Union Ltd.

- The Noticee submitted that the instant proceedings are not sustainable as per law as the Investigation Report has not been furnished along with the Show Cause Notice.
- The Noticee submitted that no adverse inference could be drawn against her on the basis of untested assumptions and without giving an opportunity to cross examine the counterparty with whom the trades allegedly got 'reversed', and officials of relevant department of BSE Ltd. The Noticee contended that cross-examination would enable her to demonstrate that there was nothing amiss in her trade as they were settled in the normal course of business by the BSE. In this regard, the Noticee relied upon the judgement of the Hon'ble Supreme Court in

Andaman Timber Industries vs. Commissioner of Central Excise, Kolkata and ruling of Hon’ble SAT in Ramalinga Raju vs SEBI.

- The Noticee submitted that her trades in stock options segment were executed in scrips which were not illiquid if one were to observe the trade volume in the underlying scrip in which the Noticee had traded. The Noticee contended that those stocks which consists of companies which make up index of BSE or have some fundamental attributes are allowed to be traded in derivative segment by the regulators. Thus, as per the Noticee, it is unfair to allege that she deliberately traded in only those options which were illiquid in nature.
- The Noticee submitted that BSE and SEBI have themselves allowed and permitted trading in options for far months' with a strike price which are at large variance to current market price.
- The Noticee submitted that as per the SCN she had transacted in 'illiquid option' as her buy and sell trades were allegedly reversed with same counterparty. However, in that case, it may also be concluded that the said trade could have had no effect on other investors or market at large and hence the allegation of creating 'misleading appearance' must fail.
- The Noticee submitted that stock exchanges regularly come out with a list of illiquid scrip(s) in cash segment. However, no such list is issued by exchanges or regulator for dealing in stock options contracts. Thus,

to fasten the responsibility or allege a single individual investor that she traded in illiquid option is unwarranted and unfair.

- The Noticee submitted that SEBI had permitted stock exchanges to introduce liquidity enhancement schemes for illiquid securities in the equity derivatives segment, BSE launched a series of liquidity enhancement incentive. Thus, the Noticee contended that the BSE had invited and incentivised trading members and their clients to execute trades in illiquid securities. In relation to the above contention, the Noticee has placed reliance on the SEBI order dated April 5, 2018, and the Noticee submitted that structural flaw of BSE cannot be saddled upon the Noticee who is a lay investor.
- The Noticee submitted that the 4 impugned trades constituted around 0.001% of the total alleged artificial trades during investigation period thereby constituting only a miniscule percentage of overall trades in the stock market. Thus, to allege that the same created misleading appearance is erroneous.
- The Noticee submitted that any kind of alleged fictitious/ manipulative trade in cash segment may create distorted impression in minds of investors that price of scrip is rising/falling who may invest/divest from said scrip. However, in case of option segment there is no such effect since each contract expires at end of contract period and for every party who makes profit there is counter party who makes a loss. There is no

question of transfer of beneficial ownership in option segment since at end of settlement cycle only net loss/profit is adjusted.

- The Noticee submitted that she did not act in concert or in collusion with anyone and nor was she part of any group or connected with anyone for the purpose of influencing price or for any manipulative activity as alleged or otherwise. The Noticee contended that transactions have been carried out on the floor of stock exchange. In case of screen-based trading, the automated system itself matches orders on a price-time priority basis and hence it is not possible for anybody to have access over identity of counter party. Since counter party identity is not displayed; one can never have any choice with whom it wants to deal or not to deal. In support of her contention the Noticee relies upon Hon’ble SAT’s ruling in Sanjay Agrawal vs SEBI (decided on May 18, 2011).
- The Noticee submitted that her trading in stock option segment through SEBI registered intermediary viz, MKB Securities Pvt Ltd was independent of any other entities dealing in the same and based on her limited understanding of securities market. In support of her contention, the Noticee relied upon the rulings of Hon'ble SAT in Smitaben N. Shah vs SEBI and Amaresh Pathak vs SEBI.
- The Noticee submitted that no cautionary warning, advisory, communication or alarm was raised by BSE at any point of time. There

was nothing in the public domain that there is anything amiss in the matter. The Noticee contended that BSE has the power to 'annul' trades if they are fraudulent. Since no such action has been taken by BSE, it was evident that the trades were genuine in nature.

- The Noticee submitted that the derivative market is a 'zero-sum game ' and thus in each and every case one party will inevitably make profit and counterparty will make loss. In capital market neither BSE nor SEBI can guarantee profit or loss to any individual/entity. In derivative trading, traders often make profit or loss over a period of time since the market does not always behave as per their prediction/expectation. Thus, profit and loss is concomitant to trading in derivative segment.
- The Noticee submitted that the impugned trades did not induce other investors to trade in any scrip. The Noticee relied upon the SCN to state that the options segment was illiquid and 81.38% of the trades were allegedly non-genuine. The Noticee relied upon the ruling of the Hon'ble SAT in the case of Almonds Entertainment v. SEBI to state that synchronisation cannot be said to be established in case of execution of miniscule trades.
- The Noticee submitted that, in view of the above contentions, the provisions of the PFUTP Regulations, 2003 are not attracted in the Noticee’s case. In this regard the Noticee placed reliance on the rulings

of the Hon'ble Securities Appellate Tribunal in S.P.J Stockbroker Pvt. Ltd vs SEBI and Jagruti Securities vs SEBI.

- The Noticee submitted that her trades in stock options segment of the BSE Ltd. were completely genuine and were executed on the platform provided by the stock exchange by fulfilling all obligations of the transactions.
- The Noticee submitted that there has been no grievance by any investor, broker, stock exchange or any other agency concerned with respect to her dealings in the option segment of BSE Ltd.
- The Noticee submitted that the SCN did not establish the specific role of the Noticee and therefore fails to establish that any violation of PFUTP Regulations, 2003 was committed by the Noticee.

8. Thus, all submissions made by the Noticee in her reply to the SCN and during the course of the hearing have been taken on record. Therefore, sufficient opportunity was provided to the Noticee to defend her case effectively and 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 *interalia* contended that it is not proper to question the validity of the impugned trades after a period of 6 years because the same trades were cleared by the stock exchange which is the first level regulator. Firstly, I note that there are no timelines prescribed in the SEBI Act, 1992 for the purpose of identifying trades as non-genuine. Secondly, there are no timelines prescribed in the SEBI Act, 1992 for initiating the adjudication proceedings. I note that the Hon’ble SAT in the matter of Pooja Vinay Jain vs SEBI (decided on March 17, 2020) held that,

    "*The record would show that all the documents concerning the defense of the appellant were filed by her before the AO. Therefore, for want of any prejudice the proceedings cannot be quashed simply on the ground of delay in launching the same*"

    I also 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.

13. The Noticee submitted that the instant proceedings are not sustainable as per law as the Investigation Report has not been furnished along with the Show Cause Notice. 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...*"

14. I note that 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.*"

15. I place reliance upon the Hon'ble SAT's ruling in Anant R Sathe Vs SEBI (Appeal No. 150 of 2020) vide Order dated July 17, 2020 in which it was 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*".

I note that the only documents, the relevant trade logs, relied upon in the matter were duly provided to the Noticee along with SCN dated July 28, 2021 as Annexure 'B', Annexure 'C', and Annexure 'D'. Thus, the principles of natural justice have been complied with and the contentions of Noticee in this regard are without merits.

16. The Noticee contended that cross-examination of counterparties and relevant officials of the stock exchange would enable her to demonstrate that there was nothing amiss in her trade as they were settled in the normal course of business by the BSE. In this regard it is stated that right of cross-examination cannot be claimed in the instant proceeding because no statement of any party has either been recorded or relied upon in the captioned proceeding. In view of sub-rule (5) of Rule 4 of the Adjudication Rules, 1995, the Adjudication proceeding is not bound by the provisions of Indian Evidence Act, 1872. Therefore, cross-examination cannot be sought or granted as a matter of right in the instant proceeding.

17. The Noticee has denied all allegations made in the SCN. The Noticee stated that she has not violated the PFUTP Regulations, 2003. 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 5,70,000 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 | JPPW15JUN2.00CEW2 | 2.55 | 135000 | 4 | 135000 | 100 | 25 | 100 | 20.93 |
| 2 | NHPC15JUN16.00CE | 2 | 150000 | 3.3 | 150000 | 100 | 12.5 | 100 | 16.48 |

18. 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 in the contracts was in the range of 12.5% to 25% 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 the aforesaid 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 16.48% to 20.93%. 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.

19. 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 June 11, 2015 at 14:12:43 hrs entered into 1 buy trade with counter party viz, Yochana Vyapaar Private Limited for 135000 units at the rate of ₹ 2.25 per unit in the contract "JPPW15JUN2.00CEW2". Thereafter, on the same day, Noticee at 14:12:58 hrs entered into 1 sell trade with same counterparty for 135000 units at the rate of ₹ 4 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, Yochana Vyapaar 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. "JPPW15JUN2.00CEW2" during the I.P., executed non genuine trades which was 25% of the total trades from the market in the said contract during the I.P. and thereby, generated artificial volume of 270000 units which was 20.93% of the volume traded in the said contract from the market during the I.P.

20. The Noticee submitted that BSE and SEBI have themselves permitted trading in options for far months with a strike price which may be at large variance to current market price. The Noticee also submitted that her trades in stock options segment were executed on scrips which were not illiquid, if one were to observe the trade volume in the underlying scrip in which the Noticee had traded. Firstly, I note that the non-genuineness of the

impugned trades 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 8 seconds to 15 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. Secondly, 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.

21. The Noticee has contended that the Noticee should not be penalised for the structural flaws on the part of the stock exchange. However, the stock exchange is not a party to the instant proceedings. Therefore, I note that the contentions of the Noticee are fallacious and irrelevant to the instant proceeding. Firstly, the Noticee is bound to comply with PFUTP Regulations, 2003 notwithstanding the fact that similar violations may or may not have been committed by market intermediaries or other trading entities. Secondly, the instant proceeding against the Noticee does not depend upon the outcome of proceedings against any other entity. Thus, the contentions of the Noticee in this regard are liable to be rejected.

22. The Noticee submitted that the broker and the stock exchange had invited and incentivised trading members and their clients to execute trades in F&O segment of the stock exchange which had illiquid securities. The Noticee stated that as a result of such incentives, lay investors such as the Noticee were lured to invest in the scheme through SEBI registered intermediaries who at the relevant time convinced the clients to participate in such transactions. Noticee submitted that her trading in stock option segment through SEBI registered intermediary viz, MKB Securities Pvt Ltd was independent of any other entities dealing in the same and based on her limited understanding of securities market. I note that the Noticee's contentions imply that there is no dispute that the impugned trades were definitely executed by the Noticee. The Noticee's contention reveals that

she had executed the impugned trades, which generated artificial volume as demonstrated by the trade log. Thus, the Noticee's contentions do not establish any denial of the charges made in the SCN.

23. The Noticee submitted that any kind of alleged fictitious/ manipulative trade in cash segment may create distorted impression in minds of investors that price of scrip is rising/falling who may invest/divest from said scrip. However, in case of option segment there is no such effect since each contract expires at end of contract period and for every party who makes profit there is counter party who makes a loss. There is no question of transfer of beneficial ownership in option segment since at end of settlement cycle only net loss/profit is adjusted. In this regard I note that the contentions of the Noticee are not relevant as regards the charges made in the SCN which relate to generation of artificial volume in Illiquid Stock Options contracts and do not relate to any profit or loss. In this regard, it is pertinent to refer to the decision of the Hon'ble Supreme Court of India in the matter of *Securities and Exchange Board of India v. Rakhi Trading Private Limited* (Civil Appeal Nos. 1969, 3174-3177 and 3180 of 2011 dated February 08, 2018) wherein, the Hon'ble Supreme Court while cumulatively analysing reversal transactions held that,

"*From the facts before us, it is clear that the traders in question did not intend to transfer beneficial ownership and therefore these trades are non-*

*genuine. Rather than allowing the market forces to operate in their natural course, the traders repeatedly carried out the impugned transactions which deprived other market players from full participation. The repeated reversals and predetermined arrangement to book profits and losses respectively, made it clear that the parties were not trading in the normal sense and ordinary course. Resultantly, there has clearly been a restriction on the free and fair operation of the market forces in the instant case….quantity, time and significant variation of prices, without major variation in the underlying price of the securities clearly indicate that Respondent's trades are not genuine and had only misleading appearance of trading in the securities market… one does not have to labour much on the meaning of unfair trade practices in securities. Contextually and in simple words, it means a practice which does not conform to the fair and transparent principles of trades in the stock market."*

24. Noticee has *interalia* contended that if at all there was a fault on the part of the stock exchange in its failure to prevent trades which allegedly violated extant regulations, Noticee should not be penalised for the same. 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 and generation of artificial volume. Therefore, the aforesaid contentions made by Noticee are not relevant as regards instant allegations. The Noticee's contentions imply

that the Noticee executed the impugned trades which were in violation of PFUTP Regulations, 2003.

25. Noticee's contentions also imply that merely because other entities in the securities market may or may not have been involved in violating PFUTP Regulations, 2003, initiating a particular proceeding against the Noticee should necessarily be treated as unfair. I note that even if there are numerous violators in the securities market, it does not follow that SEBI must proceed against all entities in a single proceeding. Similarly, Adjudication proceedings are not vitiated merely because each violator is proceeded against in separate and distinct proceedings. In this regard, it is pertinent to refer to the following observations of the Hon'ble Supreme Court of India in the matter of *Securities and Exchange Board of India v. Rakhi Trading Private Limited* (Civil Appeal Nos. 1969, 3174-3177 and 3180 of 2011 dated February 08, 2018) wherein, the Hon'ble Supreme Court held,

"*Presumption plays a critical role in coming to a finding as to the involvement or otherwise of a market participant in any manipulation… Therefore, the hackneyed plea based on intentions in the market place cannot pass muster in all circumstances, more so when such intentions are in the special/peculiar knowledge of the parties to the transactions. Also any suggestion attributing innocence to the parties involved in such* *transactions would give rise to an untenable situation where certain other third persons/entities alone would be responsible for the manipulation and none else."*

Therefore, I find the contentions of Noticee to be devoid of any merits.

26. The Noticee submitted that she was a lay investor and did not have any information that the trades were non-genuine. The Noticee submitted that there were only 4 trades executed from her account and that the same is too miniscule to allege any charge of synchronised trades against her. I note that in the instant matter, the allegations pertain to the violation of impugned provisions of PFUTP Regulations, 2003 by the execution of impugned trades which led to generation of artificial volume in Illiquid Stock Options. The obligation to comply with the PFUTP regulations primarily lies on the Noticee. 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.

27. Noticee has further contended that she had no knowledge of counterparties to the trades and that she did not engage in any collusion with the counterparties as alleged. In regard to the aforesaid contentions I note 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. 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. 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 - "…*According to us, knowledge of who the 2nd party/client or the broker is, is not relevant at all. While the screen based trading system keeps the identity of the parties anonymous it will be too naïve to rest the final conclusions on the said basis which overlooks a meeting of minds elsewhere. Direct proof of such meeting of minds elsewhere would rarely be forthcoming…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...*"

28. 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."*

29. 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."*

30. 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….."*

31. 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.*"

32. Noticee submitted that as per the SCN she had transacted in "illiquid option" as her buy and sell trades were allegedly reversed with same counterparty. However, in that case, it may also be concluded that the said trade could have had no effect on other investors or market at large and hence the allegation of creating 'misleading appearance' must fail. Noticee also contended that the trades of the Noticee were too miniscule to generate any such misleading appearance because the impugned trades did not induce other investors to trade in the said stock options contracts. I note 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. "JPPW15JUN2.00CEW2" contributed 20.93% 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.

33. The Noticee has contended that her trades in stock options segment were completely genuine and were executed on the platform provided by the stock exchange by fulfilling all obligations of the transactions. The Noticee submitted that no cautionary warning, advisory, communication or alarm was raised by BSE at any point of time. There was nothing in the public domain that there was anything amiss in the matter. The Noticee contended that BSE has the power to 'annul' trades if they are fraudulent. Since no such action has been taken by BSE, it is evident that the trades were genuine in nature. I note that stock exchange merely provides a platform for carrying out the trades, while the obligation to ensure genuineness of trades as regards instant considerations lies primarily on the Noticee. The non-genuineness of the said trades have already been noted in the trade log of the Noticee. Therefore, I note that the contentions of Noticee in this regard are without merits.

34. The Noticee has placed reliance on a catena of judgements. I note that the Noticee placed reliance on Hon’ble Bombay High Court’s judgement in the case of Sambhaji Shripati Bankar vs Keshav Rangnath Ekbote and Hon’ble Supreme Court of India’s judgement in the case of State of Punjab vs Bhatinda District Co-op Milk P. Union Ltd. in support of her contentions in

relation to delay in initiating proceedings. However, I note that there are no timelines prescribed in the SEBI Act, 1992 for initiating the adjudication proceedings. The Noticee has placed reliance on the Hon'ble Supreme Court's judgement in the case of Andaman Timber Industries vs. Commissioner of Central Excise in support of her contentions in relation to cross-examination which is not relevant to the instant proceeding because the right of cross-examination cannot be claimed as a matter of right in the instant proceeding in view of sub-rule (5) of Rule 4 of the Adjudication Rules, 1995, which states that the Adjudication proceeding is not bound by the provisions of Indian Evidence Act, 1872. The Hon'ble SAT's rulings in Ashlesh Shah vs SEBI, Sanjay Agrawal vs SEBI, Smitaben N. Shah vs SEBI, Almonds Entertainment vs SEBI, S.P.J Stockbroker Pvt. Ltd vs SEBI, Jagruti Securities vs SEBI and Amaresh Pathak vs SEBI pertained to price manipulation of a scrip. Therefore, I note that the aforesaid judgements are not relevant to the instant proceeding which is concerned with the charge of creation of artificial volume in violation of PFUTP Regulations, 2003. Hence, the Noticee's reliance on the aforesaid judgements is misconceived and devoid of merits.

35. 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…".*

36. 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].*

[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

37. 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 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.*

38. 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.

39. 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**

40. 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 N Ghelani<br>PAN:ATVPG9138M | regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of PFUTP Regulations, 2003 | ₹ 5,00,000/-<br>(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.

41. 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**

42. 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

43. 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.

44. 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 N Ghelani and also to the Securities and Exchange Board of India.

| | |
|---|---|
| **Date: November 15, 2021** | **PARAG BASU** |
| **Place: Mumbai** | **ADJUDICATING OFFICER** |