BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/PB/S./2021-22/14520]

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 Rara

(PAN: ALQPR0853D)

In the matter of Trading in Illiquid Stock Options on BSE

BACKGROUND OF THE CASE

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

2. Pursuant to investigation, it was observed that total 2,91,643 trades comprising substantial 81.38% of all the trades executed in stock options segment of BSE during the IP were non genuine trades. The aforesaid non-genuine trades resulted into creation of artificial volume to the tune of 826.21 crore units or 54.68% of the total market volume in stock options segment of BSE during the IP. It was observed that Nidhi Rara (PAN: ALQPR0853D) (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 27, 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 11 non genuine trades in 4 Stock Options contracts which resulted in artificial volume of total 436000 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	DLFL15MAR160.00PE	6.18	84000	14.85	104000	80	30.77	73.08	20.99
2	EXID15MAR200.00PE	3.95	72000	11.75	72000	100	8.33	100	6.09
3	HXTL15MAR290.00PE	13.25	32000	29	32000	100	11.11	100	5.96
4	IDEA15MAR165.00PE	8.95	38000	17.07	38000	100	50	100	66.67

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

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

   (b) Percentage of non-genuine trades of the Noticee in the 4 stock options contracts to total trades in the said contracts were in the range of 8.33% to 50%. 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 5.96% to 66.67%. 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/16552/2021 dated July 27, 2021 was served on the Noticee via Speed Post Acknowledgement Due (SPAD) and via email dated July 28, 2021. Thereafter, no reply was received from the Noticee within the stipulated time. Thus, a final opportunity was granted for submitting reply to the SCN by November 7, 2021 vide email dated October 26, 2021. The Noticee was granted an opportunity of hearing on November 11, 2021 vide email dated October 26, 2021. Subsequently, the Noticee submitted her reply to the SCN vide email dated November 01, 2021. The hearing scheduled on November 11, 2021 was attended by Mr. Samyak Gangwal, the Authorized Representative (AR) of the Noticee. During the course of the hearing the Noticee reiterated the submissions made in her reply to the SCN vide letter dated November 01, 2021. The AR also made a request for making additional written submissions and the Noticee was granted time till November 18, 2021 for the same. Thus, the Noticee made additional written submissions vide enclosing email dated November 19, 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 has caused grave prejudice to the Noticee, and she is unable to file a proper reply to SCN. It was further submitted that the fact that the said transactions took place was well within the regulator's knowledge in the year 2015 itself. In this regard the Noticee placed reliance on the rulings of Hon'ble SAT in Ashok Shivlal Rupani vs SEBI, ICICI Bank Limited v. SEBI and Libord Finance Limited vs. SEBI.

- The Noticee submitted that it is not possible for her to recall the exact circumstances as more than 6 years have passed. It was submitted that the trades in question were genuine and bona fide, without any intent to manipulate the market. It was further submitted that when trading takes place on the screen, there is a possibility of a match between trades and/or shares or commodities purchased by an individual and the shares/ commodities sold by another. This should not necessarily be construed fraudulent or non-genuine.

- The Noticee submitted that the trades in question were screen based and the Noticee had no connection with the alleged counter-parties. Thus, it is submitted by no stretch of imagination can it be said that the Noticee entered into a reversal trade or non-genuine transactions as the trades could not have been pre- arranged as the Noticee did not know the counter party and counter broker and the trades took place on the anonymous electric trading platform open to all trading participants. Therefore, it cannot be said that the said transactions are non-genuine or fraudulent trades executed as a part of a larger conspiracy to generate artificial volume in the Stock Options segment of BSE.

- The Noticee submitted that the trades in question were entered into with the sole intention of earning profits or for avoiding loss. The Noticee's position has been reversed with a view to earn profit or to avoid loss. It is the case of the Noticee that merely because she reversed her position in order to earn profit or to avoid loss, it did not mean that she has committed fraud or non-genuine trade.

- The Noticee submitted that there was a mismatch in the buy and sell quantity of the trades executed in the contract viz. DLFL15MAR160.00PE.

- The Noticee submitted that the stock options referred to in the SCN were traded within the available regulatory framework for trading on its anonymous electronic trading platform and was open to all trading participants, and the same was subject to surveillance and other regulatory supervision of BSE at the first level and SEBI at the next level.

- The Noticee submitted that BSE never issued any warning about the contracts traded by the Noticee, and the trades were cleared by the Clearing Corporation, which was empowered not to clear any trades which were not genuine and not in accordance with law, rules, and Regulations, without any hitch as these were considered genuine, normal and usual transactions. It was submitted that the Noticee had bona fide traded within the regulatory framework available to traders and investors. It was denied that there were any non-genuine reversal trades in alleged illiquid Option contracts. It was denied that the Noticee created false or misleading appearances of trading or created artificial volumes of trade in the Stock Market.

- The Noticee submitted that parties settled the trades executed by the Noticee to their respective brokers, who cleared the same through the clearing corporation of BSE, and the same was collected/paid to respective clients by BSE through respective brokers. BSE had collected transaction charges on these transactions, the State government collected stamp duty through BSE, SEBI had collected turnover fees, and the Broker had collected its brokerage. This was done for both ends of the transaction. The volume was recorded by BSE and is part of historical data. Thus, the trading did not have the character of being non-genuine or of creating a false or misleading appearance of trading, as the trades were acted upon by all the entities involved, including the regulatory bodies. Judged on this important touchstone of settlement of accounts, the trades executed by the Noticee cannot be called a non-genuine trade. Also, it is within the powers of BSE and the Clearing Corporation to cancel non-genuine trades, but the same was not done in the Noticee's case. Thus, admittedly, BSE and the Clearing Corporation have a preliminary finding in favour of the Noticee, that the trades were genuine.

- The Noticee submitted that only when the dealer and the broker in question are summoned, the circumstances of the trade can be clarified. It is submitted that if direct evidence of the dealer and broker were taken the Noticee would be able to demonstrate that her trades were genuine. It is submitted that she is unable to prove her innocence because her request to summon and record the evidence of the counterparty was not allowed. In this regard, the Noticee relied upon the ruling of Hon'ble SAT in Bharat Jayantilal Patel vs. SEBI and judgement of the Hon'ble Supreme Court in State of Kerala vs. K.T. Shaduly Grocery Dealer Etc. Thus, the Noticee submits that no finding can be arrived against her as she has suffered grave prejudice due to the denial of her request for cross-examination.

CONSIDERATION OF ISSUES AND FINDINGS

8. 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?

9. 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;

10. 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.

11. The Noticee has *interalia* contended that it is not proper to initiate the instant proceedings in relation to the impugned trades after a period of 6 years because such inordinate delay has caused grave prejudice to the Noticee. I note that the Noticee placed reliance on the rulings of Hon’ble SAT in Ashok Shivlal Rupani vs SEBI, ICICI Bank Limited v. SEBI and Libord Finance Limited vs. SEBI in support of her contentions in relation to delay in initiating proceedings. In this regard it is noted that 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 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.

12. The Noticee contended that cross-examination of counterparties and relevant officials of the dealer and broker in question 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. The Noticee has placed reliance on the Hon'ble Supreme Court's judgement in the case of State of Kerala vs. K.T. Shaduly Grocery Dealer and Hon'ble SAT's ruling in Bharat Jayantilal Patel vs. SEBI in support of her contentions in relation to cross-examination. In this regard it is stated that the question of cross-examining anyone may arise only if a proceeding is based on reliance upon recorded statements of persons. Thus, the right of cross-examination cannot be

claimed in the instant proceeding because no statement of any party or counter-party or broker/dealer has either been recorded or relied upon in the captioned proceeding. It is also noted that 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. Thus, cross-examination cannot be granted as a matter of right in the instant proceeding. I also 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 27, 2021, and the same are as follows:

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*

Therefore, the contentions of the Noticee in this regard are without merits.

13. 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 4 unique contracts in the stock options segment of BSE during the IP. It is observed that the Noticee has allegedly executed 11 non genuine trades in 4 Stock Options contracts. I further note that the above mentioned trades

of the Noticee had resulted in the creation of artificial volume of total 4,36,000 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	DLFL15MAR160.00PE	6.18	84000	14.85	104000	80	30.77	73.08	20.99
2	EXID15MAR200.00PE	3.95	72000	11.75	72000	100	8.33	100	6.09
3	HXTL15MAR290.00PE	13.25	32000	29	32000	100	11.11	100	5.96
4	IDEA15MAR165.00PE	8.95	38000	17.07	38000	100	50	100	66.67

14. 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 50% in the aforesaid contracts. Further, artificial volume generated by Noticee in the contracts was in the range of 73.08% to 100% of the total volume generated by her in 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 5.96% to 66.67%. 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.

15. 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 March 24, 2015 at 14:33:48 hrs entered into 1 sell trade with counter party viz, Leela News Network Private Limited for 32000 units at the rate of ₹ 29 per unit in the contract "HXTL15MAR290.00PE". Thereafter, on the same day, Noticee at 14:34:16 hrs entered into 1 buy trade with same counterparty for 32000 units at the rate of ₹ 13.25 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, Leela News Network 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. "HXTL15MAR290.00PE" during the I.P., executed non genuine trades which was 11.11% of the total trades from the market in the said contract during the I.P. and thereby, generated artificial volume of 64000 units which was 5.96% of the volume traded in the said contract from the market during the I.P.

16. The Noticee submitted that the stock options referred to in the SCN were traded within the available regulatory framework for trading on its anonymous electronic screen based trading platform and was open to all

trading participants, and the same was subject to surveillance and other regulatory supervision of BSE at the first level and SEBI at the next level. Thus the Noticee submitted that when trading takes place on the screen, there is a possibility of a match between trades and/or shares or commodities purchased by an individual and the shares/ commodities sold by another. This should not necessarily be construed fraudulent or non-genuine. Thus, I note that the Noticee impliedly admits that indeed matching of trades had taken place between the Noticee and the respective counter-parties. In this regard, 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 28 seconds to 1 hour 45 minutes and 47 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. The contentions of the Noticee are devoid of merits.

17. The Noticee has contended that Noticee submitted that BSE never issued any warning about the contracts traded by the Noticee, and the trades were cleared by the Clearing Corporation, which was empowered not to clear any trades which were not genuine and not in accordance with law, rules, and Regulations, without any hitch as these were considered genuine, normal and usual transactions. It was submitted that the Noticee had bona fide traded within the regulatory framework available to traders and investors. I note that the 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. Therefore, I note that the contentions of the Noticee are fallacious and irrelevant to the instant proceeding.

18. The Noticee submitted that parties settled the trades executed by the Noticee to their respective brokers, who cleared the same through the clearing corporation of BSE, and the same was collected/paid to respective clients by BSE through respective brokers. BSE had collected transaction charges on these transactions, the State government collected stamp duty through BSE, SEBI had collected turnover fees, and the Broker had collected its brokerage. This was done for both ends of the transaction. Thus, as per the Noticee the trades executed by the Noticee cannot be called a non-genuine trade, on the basis of settlement of accounts. Thus, admittedly, BSE and the Clearing Corporation have a preliminary finding in favour of the Noticee, that the trades were genuine. 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 allegations do not pertain to stock exchange byelaws or settlement obligations of the Noticee. The obligation to comply with the PFUTP regulations primarily lies on the Noticee. Correspondingly, SEBI has jurisdiction to enforce the PFUTP regulations irrespective of any action which may or may not be taken by the stock exchange. Thus the allegation that the inaction of the stock exchange is tantamount to a finding in favour of the Noticee is devoid of merit. 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.

19. The Noticee submitted that the trades in question were entered into with the sole intention of earning profits or for avoiding loss. It was submitted that the Noticee's position has been reversed with a view to earn profit or to avoid loss. It is the case of the Noticee that merely because she reversed her position in order to earn profit or to avoid loss, it did not mean that she has committed fraud or non-genuine trade. 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."*

20. 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. It was submitted that the Noticee was not part of any conspiracy to generate artificial volume in illiquid stock options. 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...*"

21. 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."

22. 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."*

23. 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….."*

24. 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.*"

25. Therefore, the trading behaviour of the Noticee confirms that such trades were not normal and wide variation in prices of the trades in the same contract in a short time without any basis for such wide variation, all indicate that the trades executed by the Noticee were not genuine trades and being non-genuine, created an appearance of artificial trading volumes in respective contracts. In view of the above, I find that the allegation of violation of regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of PFUTP Regulations, 2003 by the Noticee stands established. The Hon'ble Supreme Court of India in the matter of SEBI vs. Shri Ram Mutual Fund [2006] 68 SCL 216 (SC) decided on May 23, 2006 held that - *"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant…".*

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

[1]*[**Penalty for fraudulent and unfair trade practices.***

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

15HA. If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty [2][which shall not be less than five lakh rupees but which may extend to twenty - five crore rupees or three times the amount of profits made out of such practices, whichever is higher].

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

Factors to be taken into account by the adjudicating officer.

15J. While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to an investor or group of investors as a result of the default;

(c) the repetitive nature of the default.

Explanation.—For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 15A to 15E,clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.

28. I observe, that the material available on record does not quantify any disproportionate gains or unfair advantage, if any, made by the Noticee and

[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

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 Options contracts which demonstrates the repetitive nature of default on her part.

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

ORDER

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

Name of the Noticee	**Violation provisions**	**Penalty**
Nidhi Rara PAN: ALQPR0853D	regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of PFUTP Regulations, 2003	₹ 5,00,000/- (Rupees Five Lakh only)

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

31. The Noticee shall remit/pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, OR through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link:

ENFORCEMENT → Orders → Orders of AO → PAY NOW

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

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

33. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, SEBI may initiate consequential actions including

but not limited to recovery proceedings under section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties.

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

Date: December 17, 2021 **PARAG BASU**

Place: Mumbai **ADJUDICATING OFFICER**