BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO: Order/SD/KS/2021-22/14089]

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

In respect of:

SHRUTI K SHAH
(PAN: AZYPS0168C)

BLOCK B FT 9E 28B
SARAT BOSE ROAD KOLKATA
WEST BENGAL 700020

In the matter of
Dealings in illiquid stock options at BSE

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') observed large scale reversal of trades in the Stock Options segment of Bombay Stock Exchange (hereinafter referred to as '**BSE**') leading to alleged creation of artificial volume in the stock options segment. In this regard, SEBI conducted an investigation into the trading activity in the illiquid Stock Options Segment at BSE for the period April 01, 2014 to September 30, 2015 (hereinafter referred to as "**Investigation Period**").

2. It was observed during the course of investigation that a total of 2,91,643 trades comprising 81.38% of all the trades executed in the Stock Options Segment by various entities at BSE during the investigation period were trades which involved reversal of buy and sell positions by the clients and counterparties in a contract on the same day.

It was also observed that the aforesaid trades resulted into alleged creation of artificial volume to the tune of 826.21 crore units in the Stock Options segment of BSE during the investigation period. In view of the large scale reversal of trades that were observed in the illiquid Stock Options segment at BSE, it is alleged that these trades were non-genuine in nature.

3. It was observed that Ms. Shruti K Shah (hereinafter referred to as "**Noticee**") was one of the various entities who indulged in the execution of alleged non-genuine trades in the Stock Options Segment at BSE during the above referred investigation period. It was observed that Noticee had entered into reversal trades with her counterparty which involved squaring off transaction with significant difference in sell value and buy value of the transaction. Therefore, it is alleged that Noticee had executed the reversal trades which were non-genuine in nature and have created false or misleading appearance of trading in terms of creation of artificial volume in the Stock Options segment at BSE and therefore, it is alleged that the Noticee has violated the provisions of Regulations 3 (a), (b), (c), (d) and Regulation 4(1), 4(2) (a) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Markets) Regulations, 2003 (hereinafter referred to as "**PFUTP Regulations**"). In view of the above reasons, adjudication proceedings have been initiated against the Noticee under the provisions of section 15HA of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act'**).

APPOINTMENT OF ADJUDICATING OFFICER

4. The undersigned was appointed as the Adjudicating Officer, vide communique dated July 06, 2021 under Section 19 read with Section 15-I of the SEBI Act read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as '**Adjudication Rules**') to inquire into and adjudge under the provisions of section 15HA of the SEBI Act for the aforementioned alleged violation of the provisions of law by the Noticee.

SHOW CAUSE NOTICE, HEARING AND REPLY

5. Show Cause Notice ref. SEBI/HO/EFD1/EFD1_DRA5/P/OW/16698/1/2021 dated July 28, 2021 (hereinafter referred to as '**SCN'**) was issued to the Noticee in terms of Rule 4 of the Adjudication Rules requiring the Noticee to show cause as to why an inquiry should not be held against it and why penalty, if any, should not be imposed on the Noticee under the provisions of section 15HA of the SEBI Act. The SCN was sent to the Noticee vide Registered Post AD and was duly served on the Noticee as per the Tracking details obtained from the India Post website. The SCN issued to the Noticee, *inter alia*, mentioned the following-:

i. *It is noted that Noticee was one of the various entities which were indulged in execution of such alleged non-genuine trades in Stock Options Segment of BSE during the Investigation period. Following points deal with the dealings of Noticee during the Investigation period and allegations against it for execution of non-genuine trades.*

Date	Buyer	Seller	Buy Order Time	Sell Order Time	Trade Time	Trade Rate (Rs.)	Trade Quantity
18/03/2015	SHAKUNTALA DEVI AGARWAL	SHRUTI K SHAH	13:24:26.354614	13:24:26.957720	13:24:26.957720	30.7	62000
18/03/2015	SHRUTI K SHAH	SHAKUNTALA DEVI AGARWAL	14:13:38.353283	14:13:39.051540	14:13:39.051540	22.6	62000

ii. *It is observed from the table above that the trades entered by the Noticee in the contract of ""*VOLT15MAR260.00CE*" on March 18, 2015, with his counterparty viz. SHAKUNTALA DEVI AGARWAL were reversed between the Noticee and the same counterparty on the same day resulting in reversal of trades which are, prima facie, considered to be non-genuine. Therefore, in the process artificial volume in the stock option contract at BSE has been generated by the Noticee through such non-genuine trades. From the table above, it is observed that the artificial volume created as no. of units reversed in non-genuine trades is 1,24,000 shares comprising both volume of initial trade and volume of reversal trade, while not considering the volume which is not reversed.*

iii. *It is further observed from the trade data of the Noticee that it has allegedly entered into non-genuine trades in 1 contract wherein she executed a total of 2 trades all of which were, prima facie, non-genuine trades. In view of this, it is alleged that such fraudulent trades of the Noticee had resulted into creation of artificial volume of total 124000 units.*

iv. From the perusal of the trade data of the alleged non-genuine trades of the Noticee, it is observed that Noticee has allegedly executed non-genuine trades in 1 contract. The total volume of 124000 units generated by the Noticee in this 1 contract. Due to its alleged non-genuine trades, an Artificial Volume was generated by the Noticee in the Stock Option Segment of BSE. These alleged non-genuine trades, executed by Noticee in above contract, had significant differential in buy rates and sell rates considering that the trades were reversed on same day

v. In view of the foregoing, it is alleged that the Noticee, by indulging in execution of reversal trades in Stock Options with same entities on the same day, which were non-genuine in nature, has created false or misleading appearance of trading in the aforementioned contracts traded in the option segment of BSE. In view of the fact that these options contracts were illiquid in nature, having very small volume in trading, the Noticee allegedly created artificial volumes in stock options which was manipulative and deceptive in nature. Therefore, in view of above, it is alleged that the Noticee has violated Regulation 3(a), (b), (c), (d), 4(1) and 4(2)(a) of PFUTP Regulations, 2003

6. The Noticee vide her reply dated August 12, 2021, inter alia submitted the following:

<u>Reply dated August 12, 2021</u>

i. .

ii. The trades executed by the Noticee in the stock options segment of the BSE Ltd. were genuine and were executed on the platform provided by the stock exchange.

iii. It is untenable to suddenly label these transactions as artificial and non-genuine after a period of 6 to 7 years from the date of the transactions on completely untenable grounds and unjustified reasons. Therefore the SCN is liable to be set aside on this reason alone, leave apart other valid reasons and explanation herein below

iv. The Noticee understood that BSE has launched Weekly Expiry Options Contracts which are short term contracts and one can invest and get good returns.

v. So to try and see how it operates, the Noticee for the first time placed an order in BSE Options segment to sell 62000 units of VOLTAS - 15 MAR 260 PE at 13:24:36 at Rs. 30.7/-. This order immediately got traded. This being the first time the Noticee thought it would be better to square off the trade and therefore executed a buy trade which got traded at Rs. 22.6/- and in the process the Noticee made a profit of Rs. 5.02 Lakhs in few moments.

vi. The Noticee was surprised at the speed with which the profit had come but was equally scared that if profits can come with such a speed, losses can also happen for similar quantum in a very short time.

vii. As a result the Noticee decided to never transact again.

viii. It is only from SEBI that the Noticee has understood that the trades matched with the same counter party which the Noticee was oblivious at the relevant time of trade.

ix. It can be treated as a one off case of sheer luck and co-incidence and was no way manipulative.

x. One possible reason of the trade matching with the same counter party could be the lack of liquidity and the same has been appreciated by SEBI through issuance of its Risk Disclosure Document, which is discussed at length hereinafter.

xi. The Noticee humbly submits that it neither knows the counterparty viz., Ms. Shakuntala Devi Agarwal nor had any relationship, financial or otherwise, with Ms. Shakuntala Devi Agarwal.

xii. Further the settlement of the transaction has taken place through the Exchange approved by SEBI and there is absolutely no reason why Ms. Shakuntala Devi Agarwal will allow unknown and unrelated Noticee to make profits at her cost and consequences.

xiii. Noticee had submitted that the transaction is merely a co-incidence and was not intentional, non-genuine or manipulative as alleged in the SCN.

xiv. The alleged trades have all traits of being genuine and therefore cannot be categorised as non-genuine. These trades were executed on the anonymous platform of the Exchange, without any knowledge of counter party, at price ranges that were permitted by the Exchange and SEBI and the obligations arising out of it have been settled through the clearing mechanism of the Exchange.

xv. Since the trades do not fall under the definition of non-genuine transactions, they cannot be categorised to be creating artificial volume and effectively cannot be said to be creating false and misleading appearance of trading or cannot be categorised as manipulative or deceptive trades.

xvi. If the intention was to carry out artificial volume and create a false and misleading appearance of trading or execute manipulative and deceptive trades, the frequency of such trades *would have been much higher. No one can achieve the alleged manipulative goals with such infrequent non-genuine trades, which is a one off case of 1 buy trade and 1 sell trade.*

xvii. In the current case the Noticee executed only one sell trade which it squared off on the same day. The Noticee understood that it's a very risky segment and therefore has not traded ever again on BSE Stock Options Segment. Further as aforesaid the counter party Ms. Shakuntala Devi Agarwal has absolutely no relationship with the Noticee and therefore can have never executed non-genuine transitions that have financial impact.

Noticee also made following submissions:

a) *SCN fails to highlight any possible reason for executing the alleged non-genuine trades and what has been achieved by executing such trades*.
b) *It categorises trades of the Noticee as non-genuine in spite of the fact that these transactions were carried out on the platform providea by the BSE Ltd. and have been settled through the clearing corporation by way of movement of funds.*
c) *The volume in stock options was extremely negligible when compared with the total volume of the underlying and all the derivatives contract in the underlying and such small quantity of trading is completely incapacitated to create any kind of artificial volume.*
d) *Noticee also referred to the Risk Disclosure Document issued by SEBI that records risks of trading on the stock options segment of the Exchange.*
e) *The SCN fails to appreciate that pricing of options is a complex arithmetical calculation based on several variables most of which are subjective and presumptive thus making a huge range of price to be completely valid and genuine. The price of an option is derived based on complex formulas dealing with price of the underlying, time to expiry, expected volatility, rate of interest etc., all of which are dynamic thus resulting in exponential increase in the lower and upper valid prices of options as a result of which SEBI and Exchanges in their wisdom did not stipulate any price band for options. After having failed to put in place such a mechanism due to complexity of such a product in spite of having infinite wherewithal with SEBI and Exchanges, it cannot be expected of common investors and traders to know the correct range of option prices.*
f) *SCN not even alleged that third parties suffered any loss due to the transactions carried out by the Noticee. So no other party has been affected by these trades as it got reversed with same party (which the Noticee understand only through SEBI) and no impact what so ever has been caused to anyone because of these trades.*
g) *there is no charge of price manipulation in the SCN and without manipulating price of a security or contract no person can gain anything from artificial trades.*
h) *The SCN does not allege that the Noticee colluded with the counter parties.*

i) *There is nothing on record to substantiate that the Noticee knowingly misrepresented the truth or concealed material fact, suggested a fact that the Noticee believed is untrue, concealed any fact required to be disclosed. Further the Noticee never made any promise or representation, and has not omitted any obligation under other law. Even further the Noticee's behaviour was no way deceptive, nor has the Noticee made any false statement. Lastly the Noticee has not issued any securities and the question of giving misinformation in relation thereto does not arise.*

Sr. **No.**	Reg./ Sec. **No.**	Regulation	Explanation
1.	3	No person shall directly or indirectly-	
2.	3(a)	buy, sell or otherwise deal in securities in a fraudulent manner;	None of the Noticee's acts can be categorized as fraud under Reg. 2(1)(c) The Noticee transacted on the anonymous trading system of the Exchange without the knowledge of who the counter party was. The trades are validly settled on the Exchange Platform. The trades were within the price range permitted by the Exchange. There is no charge of meeting of mind or collusion with the counter party.
3.	Reg. 3(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;	None of the Noticee's acts can be said to have been in the form of a manipulative or deceptive device or in contravention to the provisions of the Act, rules or regulations of SEBI. The trades were validly executed on the platform of the Exchange and fully settled. No one has been alleged to have been affected by the trades which are allegedly manipulative.

			The alleged trades have taken place only once during the IP of 1.5 years and with such infrequent trades, it is impossible to form a manipulative or deceptive device or contrivance in contravention to the provisions of Act and Rules of SEBI
4.	Reg. 3(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;	The SCN fails to establish that The Noticee employed any device, scheme or artifice to defraud anyone. Further when the allegation pertains to carrying out a fraud, there has to be a defrauded party or someone has to be induced to trade. No person has claimed to be defrauded or have been induced to trade because of the Noticee's trades.
5.	Reg. 3(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. Already responded in explanations above.	
6.	4(1)	Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.	Already responded in explanations above.
7.	4(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:—	

8.	4{2) (a)	indulging in an act which creates false or misleading appearance of trading in the securities market;	The trades were in normal course and the settlement has been made by the Exchange and the transactions have been correctly reflected in the books of accounts and therefore the trades are perfectly genuine. No false or misleading appearance of trading has been created by alleged trades.

7. Noticee in her reply further relied upon decision of the Hon'ble Securities Appellate Tribunal in following orders

(i) Global Earth Properties Ltd. vs. SEBI (Appeal No. 212 of 2020, Date of decision 14th September, 2020) and Noticee also stated that cases disposed off by SAT as aforesaid or any other case, the Noticees had carried out multiple reversal trades. In the present case it is to be noted that only 1 buy and 1 sell trade was carried out and therefore it is only on instance of reversal. This is a case of sheer luck and co-incidence and cannot be said to be manipulative. Taking into account preponderance of probability also, it cannot be alleged that a one of case was intentional and non-genuine.

(ii) Dhvani Darshan Kothari & Anr. vs Securities and Exchange Board of India (Appeal No. 276 of 2020 decided on January 21, 2021).

Further, with regard to the consideration mitigating circumstances as a factor under Sec. 15-J while considering the imposition of penalty, the Noticee had relied upon various following orders/ judgement of the SAT, HCs, SC.

(iii) Yogi Sungwon (India) Ltd. v/s SEBI and National Highway Authority of India v/s SEBI - Appeal No. 232 of 2020

(iv) Judgment of Hon'ble Bombay High Court in the matter of Securities & Exchange Board of India v. Cabot International Capital Corporation, 2004 SCC Online Bom 180.

(v) The Hon'ble Supreme Court Judgment in the matter of Adjudicating Officer, Securities and Exchange Board of India v. Bhavesh Pabari.

Noticee further made following submissions:

a) Therefore, taking into accounts the facts and circumstances of the instant matter and presence of mitigating factors as discussed above, I am of the view that a penalty of 1,00,000/- will be commensurate with the violation of provisions of PFUTP Regulations by the Noticee."

b) In the present matter, it has been alleged that Noticee executed only one reversal transaction comprising of two (one buy and one sell) fraudulent and non-genuine trades in 1 unique contracts which created an artificial volume of 1,24,000 units, comparing the same with the other orders of Illiquid Options passed by SEBI and various orders cited above, it is submitted that a lesser penalty like warning etc. may at most be imposed taking into consideration the mitigating factors and circumstances as mentioned above”

8. In terms of adjudication rules, the Noticee was provided with an opportunity of personal hearing in the matter on September 22, 2021, through the online Cisco webex platform. Mr. Ravi Vijay Ramaiya(Chartered Accountant) appeared as the Authorized Representative (‘**AR**’) on behalf of the Noticee on the stipulated date of hearing. During the course of hearing, the AR reiterated the submissions made by the Noticee in her reply dated August 12, 2021.

CONSIDERATION OF ISSUES AND FINDINGS:

9. I have taken into consideration the facts and circumstances of the case, the material available on record and the reply submitted by the Noticee. It is alleged that the Noticee had executed reversal trades, which were non-genuine trades and the same has resulted in the generation of artificial volume in the Stock Option contracts at BSE. In view of the same, it is alleged that Noticee has violated the provisions of Regulations 3(a), (b), (c), (d) and Regulation 4(1), 4(2)(a) of PFUTP Regulations and, therefore, it is alleged that Noticee is liable for penalty under the provisions of Section 15HA of the SEBI Act.

10. Before moving forward, the relevant provisions of law allegedly violated by the Noticee and as mentioned in the SCN are reproduced below:--

PFUTP Regulations

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. Reversal trades are considered as those trades in which an entity reverse her 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, and allegedly lead to false or misleading appearance of trading in terms of generation of artificial volumes, hence these trades are deceptive and manipulative. From the facts/material made available on record, I find that reversal trades executed by the Noticee, which were observed in the present case, were

undertaken by the Noticee with her counterparty with a predetermined arrangement to book profit or losses respectively, and therefore, the parties to the trades were not trading in the normal sense and ordinary course of business. Therefore, it is alleged that the Noticee by indulging in such reversal trades with her counterparty in the illiquid stock option segment at BSE has managed to generate artificial volume in the Stock Options segment at BSE during the investigation period.

12. In this regard, it is observed from the trade log of the Noticee that she had traded in 1 non-genuine contract in the Stock Options segment of BSE during the above mentioned investigation period. The examination of the Trade log of the Noticee during the relevant period revealed that she had executed 2 non-genuine trades in 1 contract in the Stock Options segment of BSE. I note that the abovementioned trades of the Noticee had resulted in the creation of artificial volume of a total of 1,24,000 units in the given 1 contract. Further, it is observed that the trade executed by the Noticee was squared up within a short span of time with the same counterparty i.e. trade was reversed within seconds/minutes on the same day. Thus, it is observed that Noticee had indulged in reversal trades with her counterparty in the stock option segment of BSE and the same were non-genuine trades.

13. Further, it is observed that these trades were squared up by the Noticee with her counterparty with a significant price difference. The non-genuineness of these transactions executed by the Noticee is evident from the fact that there was no commercial basis to suddenly, within a matter of few minutes, reverse the position with her counterparty with significant price difference when the value of the underlying had not undergone any significant change. The trade reversals in the said case points out to the fact that the parties to the transactions, including the Noticee, did not intend to transfer the beneficial ownership and through these orchestrated transactions, the intention of which was not regular trading, other investors have been excluded from participating in these trades/ contracts. As already mentioned above, there was very little time gap between the buy and sell orders placed by the Noticee with her counterparty in different trades. The time gap between both the trades ranged from few seconds/ minutes, on the same day. Given the fact that the Stock Option contracts

were illiquid in nature at BSE and also in view of the observations made above, I am convinced that Noticee has entered into reversal/non-genuine trades with her counterparty and in the process also generated artificial volume in the otherwise illiquid stock option contracts at BSE.

14. To illustrate, it is observed that the Noticee had executed a total of 2 trades during the Investigation period in the contract "VOLT15MAR260.00CE". The aforesaid trades were done by the Noticee on March 18, 2015 wherein Noticee sold 62,000 units to Shakuntala Devi Agarwal at at 13:24:26 at the rate of Rs. 30.7 per unit. The Noticee then brought 62,000 units from Shakuntala Devi Agarwal at 14:13:39 at the rate of Rs. 22.6 per unit This resulted in 2 trades with total trade quantity of 1,24,000 units at a price of Rs. 30.7, and Rs.22.6. Thus, in the above manner, the Noticee executed a total of 2 trades in the contract "VOLT15MAR260.00CE" and generated artificial volume of 1,24,000 units through such non-genuine and reversal trades. It is also observed that, out of the 2 trades done through 1 unique contract, the Noticee was instrumental in contributing significantly towards the total volume recorded on BSE in the said contracts.

15. The Noticee has contended that in the screen based trading system, which is virtually anonymous, it is not possible for anyone to enter into such reversal trades. However, considering the precision at which the reversal transactions had taken place, the quantity, price and time and sale, parties being persistent in a large number of such trade transactions with huge price variations, I am of the view that it will be too naïve to hold that these 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 w.r.t the transactions entered into by the Noticee with her counterparty and such synchronized trading is clearly violative of the transparent norms of trading in the securities market. In view of the above observations, I hold that all the 2 transactions executed by the Noticee in the 1 Option Contract were synchronized trades, which were reversed within a small time gap with prior meeting of mind between the parties to the trade. Needless to mention the fact that these transactions were manipulative/deceptive device with a view to create a

desired loss and/or profit in the books of the party to the transactions and in the process, artificial volumes were also generated through such contracts. As per the material available, the Noticee made a profit of Rs. 5,02,200 /- as result of these trades.

16. At this juncture, 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 analyzing the reversal transactions held that, price discovery system itself was affected by synchronization and rapid reverse trade, which also had the impact of excluding other investors from participating in the market. The Supreme Court, therefore found that the traders having engaged in a fraudulent and unfair trade practice while dealing in securities, are hence liable to be proceeded against for violation of Regulations 3(a), 4(1) and 4(2)(a) of the PFUTP Regulations. The Apex Court also held that *"considering the reversal transactions, quantity, price and time and sale, parties being persistent in the number of such trade transactions with huge price variations, it will be too naïve 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*." The Hon'ble Apex Court has also held that in the absence of direct proof of meeting of minds, the test should be one of preponderance of probability and also stated that the conclusion has to be gathered from various circumstances like volume of trade, period of persistence of trading, particulars of buy and sell orders, proximity of time between the two and such other relevant factors.

17. In the same matter, Hon'ble Supreme Court had further stated that-

> "……..*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………."

"*35…. 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. In the instant case, one party booked gains and the other party booked a loss. Nobody intentionally trades for a loss. An intentional trading for loss per se, is not a genuine dealing in securities. The platform of the stock exchange has been used for a non-genuine trade. Trading is always with the aim to make profits. But if one party consistently makes losses and that too in a pre-planned manner and rapid trades, it is not genuine……"*

18. Additionally, the Hon'ble Securities Appellate Tribunal (hereinafter referred to as "SAT")in its Order dated September 14, 2020 in the matter of Global Earth Properties and Developers Pvt Ltd Vs SEBI(Appeal No. 212 of 2020) relied upon the aforesaid Order of the Hon'ble Supreme Court and held that *"…<u>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</u>."*

19. In this context, I also find it relevant to refer to the decision of Hon'ble Supreme Court in the matter of ***Securities and Exchange Board of India v. Kishore R Ajmera*** *{(2016)} 6 SCC 368 : AIR 2016 SC 1079}* wherein, the Hon'ble Supreme Court has 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. The test, in our considered view, is one*

of preponderance of probabilities so far as adjudication of civil liability arising out of violation of the Act or the provisions of the Regulations framed thereunder is concerned…..”

20. In the same matter, the Hon'ble Supreme Court, has further held that, "……… *In the absence of direct proof of meeting of minds elsewhere in synchronized transactions, the test should be one of preponderance of probabilities as far as adjudication of civil liability arising out of the violation of the Act or provision of the Regulations is concerned. The conclusion has to be gathered from various circumstances like that volume of trade effected; the period of persistence in trading in a particular scrip; the particulars of buy and sell orders, namely the volume thereof; the proximity of time between the two and such relevant factors……...”*

21. The observations made in the aforesaid judgments of Hon'ble Supreme Court apply with full force to the facts and circumstances of the present case. Therefore, applying the ratio of the above judgments, I am convinced that the execution of trades by the Noticee in the illiquid options segment with such precision in terms of order placement, time, price, quantity etc. and also the fact that the transactions were reversed consistently with the same counterparty clearly indicates a prior meeting of mind with a view to execute the reversal trade at a pre-determined price. It is observed that in respect of these trades executed in the illiquid stock options contract, the only reason for the wide variation in prices of the same contract and execution time within seconds/minutes was a clear indication that there was pre-determination in the prices by both the counterparties when executing the trades. Thus, the nature of trading, as brought out above, clearly indicates an element of prior meeting of minds and therefore, a collusion of the Noticee with her counterparty to carry out the trades at predetermined prices. It is not possible to comprehend the reason for which the Noticee would enter into an option contract with a strike price very far away from the current market price of the underlying except for the fact that Noticee wanted to execute non-genuine trades.

22. Such trading also involves an act amounting to manipulation of the price of the security in the sense that the price has been artificially and apparently prefixed. The price does not at all reflect the value of the underlying asset. It is also a transaction without any intention of performing it and without any intention of effecting a change of ownership of such securities, ownership being understood in the limited sense of the rights in the contract. By synchronization and reversal trade as has been carried out by the Noticee in the instant case, the price discovery system has been affected. Except the parties who have pre-fixed the price, nobody is in the position to participate in the trade. It also has an adverse impact on the fairness, integrity and transparency of the stock market.

23. Therefore, from the foregoing paragraphs and the observations/findings contained therein, I hold that the Noticee has violated the provisions of Regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of PFUTP Regulations, 2003

24. In view of the above, I conclude that the Noticee is liable for monetary penalty under the provisions of Section 15HA of the SEBI Act, which reads as under :

    Penalty for fraudulent and unfair trade practices.

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

25. In this regard, the provisions of Section 15J of the SEBI Act and Rule 5 of the Adjudication Rules require that while adjudging the quantum of penalty, 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.

26. Clearly, from the above observations, the Noticee was instrumental in the creation of artificial volume in the illiquid stock option contracts at BSE during the investigation period by executing reversal / non-genuine transactions in the illiquid stock options segment at BSE. The Noticee has entered into 2 non-genuine transactions in 1 option contract with her counterparty, which demonstrates the repetitive nature of the default on her part. It is not possible from the material available on record to quantify the amount of loss caused to genuine investors as a result of the reversal trades/ non-genuine trades executed by the Noticee with her counterparty. From the manner in which Noticee executed the above mentioned transactions, the Noticee has violated the statutory provisions of law. In this context, reliance is placed upon the order of the Hon'ble Supreme Court of India in the matter of Chairman, **SEBI Vs Shriram Mutual Fund** { [2006]5 SCC 361 } – wherein the Hon'ble Supreme Court of India 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…………....*"

27. I note that the during the personal hearing, AR had reiterated the Hon'ble Supreme Court Judgment in case of SEBI Vs Bhavesh Pabari reported in (2019) 5 Supreme Court Cases 90 laying down the Power of Adjudicating Officer to take into account other factors also in addition to those enumerated under section 15 J of SEBI Act as well as Discretionary Power to impose Penalty under sections 15A to Sections 15-HA of the said SEBI Act. In this regard, not only I agree with the ratio of this Judgment but also used my discretion accordingly by considering the facts.

28. However, in view of the facts and available material on record, I am inclined to rely upon the order of *Hon'ble Securities Appellate Tribunal (hereinafter referred to as "SAT") dated September 14, 2020 in the matter of* ***Global Earth Properties and Developers Pvt Ltd Vs SEBI (Appeal No. 212 of 2020)*** since, the facts of the case are similar to the instant matter. In the matter of ***Global Earth Properties and Developers Pvt Ltd Vs SEBI***, hon'ble SAT held that "*It was urged by the learned counsel for the Appellants that the penalty awarded is excessive and harsh and,*

therefore, prayed that in the event the order is affirmed the Tribunal may consider reducing the penalty amount taking into consideration the financial status of the Appellants and the negligible transactions executed by the Appellants.

In this regard we have perused the orders passed by the AO. We find that the AO has taken into consideration not only the factors contained in Sec. 15J of the SEBI Act but has also taken into consideration the number of total trades, the artificial volume generated, the loss incurred, etc while imposing the penalty. It may be stated here that the minimum penalty under Sec. 15HA is Rs.5Lacs and maximum penalty is Rs. 25 crores or three times the profit made. We find that the AO has excercised its discretion which is neither harsh nor arbitrary. We do not find any error in the quantum of penalty imposed by the AO."

29. Therefore, by considering the profit and creation of artificial volume by the Noticee, I have no hesitation to impose the minimum penalty prescribed under the relevant provisions of the SEBI Act.

<u>ORDER</u>

30. Having considered all the facts and circumstances of the case, the material available on record and the factors mentioned in the preceding paragraphs, I, in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, hereby impose a penalty of Rs.5,00,000/- (Rupees Five Lakh only) on the Noticee viz. Ms. Shruti K Shah under the provisions of Section 15HA of the SEBI Act for the violation of Regulations 3(a), (b), (c), (d), 4(1) and 4(2) (a) of the PFUTP Regulations. I am of the view that the said penalty is commensurate with the default committed by the Noticee.

31. The Noticee shall remit / pay the said amount of penalty within 45 (forty five) days of the receipt of this order either by way of Demand Draft (DD) in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai and the said DD should be forwarded to the Division Chief, Enforcement Department - I (EFD), Division of Regulatory Action - I [EFD1-DRA-3] SEBI Bhavan, Plot No.C4-A,' G' Block, Bandra

Kurla Complex (BKC), Bandra (East), Mumbai – 400 051 and also send an email to tad@sebi.gov.in with the following details:

1. Case Name:	
2. Name of Payee:	
3. Date of payment:	
4. Amount Paid:	
5.Transaction No:	
6. Bank Details in which payment is made:	
7. Payment is made for: (like penalties /disgorgement/recovery/Settlement amount and legal charges along with order details)	

OR

32. Payment can also be made online by following the below path at SEBI website www.sebi.gov.in ENFORCEMENT → Orders → Orders of AO → Click on PAY NOW or at https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html.

33. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated 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 sent to the Noticee viz. Shruti K Shah and also to Securities and Exchange Board of India.

Place: Mumbai
Date: November 02, 2021

SANDEEP P DEORE
ADJUDICATING OFFICER