BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/PB/S./2021-22/14891]

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 Umang Shah

(PAN: BLEPS5314M)

In the matter of Trading in Illiquid Stock Options on BSE

BACKGROUND OF THE CASE

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

2. Pursuant to investigation, it was observed that total 2,91,643 trades comprising substantial 81.38% of all the trades executed in stock options segment of BSE during the IP were non genuine trades. It was observed that Nidhi Umang Shah (PAN: BLEPS5314M) (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 relating to Securities Market) 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 36 non genuine trades in 9 Stock Options contracts which resulted in artificial volume of total 3300000 units. Summary of dealings of the Noticee in 9 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	IFCI15APR26.00CEW2	7.48	344000	10.7	344000	100	25	100	42.16
2	NHPC15APR12.00CEW2	6.2	300000	10.35	300000	100	9.09	100	13.89
3	NHPC15APR12.00CEW3	6.33	150000	10.55	150000	100	5.48	100	5.15
4	NHPC15APR14.00CEW3	3.3	70000	7.8	70000	100	10	100	15.91
5	NHPC15MAR12.00CE	7.4	210000	10.25	210000	100	5.88	100	9.95
6	UNIT15APR10.00CEW2	4.83	261000	8.37	261000	100	100	100	100
7	UNIT15APR8.00CEW3	5	72000	9	72000	100	10	100	9.3
8	UNIT15MAR10.00CE	6.05	27000	9.55	27000	100	16.67	100	12.5
9	UNIT15MAR8.00CE	7.88	216000	12.35	216000	100	25	100	34.29

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

   (a) The Noticee has executed non genuine trades in 9 contracts, wherein all the trades of the Noticee in the said 9 contracts were non genuine trades.

   (b) Percentage of non-genuine trades of the Noticee in the 9 stock options contracts to total trades in the said contracts were in the range of 5.48% to 100%. 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 5.15% to 100%. 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/16811/2021 dated July 28, 2021 was served on the Noticee via Speed Post Acknowledgement Due (SPAD) and via email dated July 29, 2021. Thereafter, the Noticee submitted a request for inspection of following documents and furnishing copies of the same vide letter dated August 17, 2021:

S. No.	**Document**
1.	Full and complete report of investigation along-with all the Annexures (Named hereafter) appended *thereto.*
2.	Complete market order log file executed in the said contracts.
3.	Correspondences exchanged by SEBI with Noticee's broker.
4.	Persons/entities who have been induced to sell/ purchase the alleged illiquid stock options at BSE as a result of Noticee's dealing in said stock options.
5.	Alerts/triggers generated by stock exchange/SEBI w.r.t Noticee's dealings in said stock options.
6.	Information on all investors alleged to have executed non-genuine trades.

7.	Correspondences with BSE.
8.	Details of the Counterparty to the trades of Noticee.
9.	Total details of all reversal trades.
10.	Statements made by persons if any who have been called upon by SEBI in the course of Investigation.

8. In view of the above, vide letter dated October 25, 2021 the Noticee was informed that the only documents upon which reliance has been placed in the instant proceeding had been provided to the Noticee as Annexures to the SCN dated July 28, 2021. In the same letter, an opportunity of hearing was granted to the Noticee on November 03, 2021. In view of the Noticee's request vide letter dated October 28, 2021, the hearing was postponed to November 09, 2021, vide email dated November 03, 2021. The Noticee submitted her reply to the SCN vide letter dated November 01, 2021. The hearing scheduled on November 09, 2021 was attended by Mr. Prashant Naik, 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 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, 2003.

- 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. In this regard the Noticee placed reliance on the rulings of Hon'ble SC in the matter of Anil Rai vs State of Bihar, and of the Hon'ble SAT in the matters of Anilkumar Nandkumar Harchandani & Ors. vs SEBI, Rakesh Kathotia & Ors. vs SEBI, Ashok Shivlal Rupani & Ors. vs SEBI, HB Stockholdings Ltd vs SEBI, Khandwala Securities vs SEBI and Subhkam Securities Pvt Ltd vs SEBI.

- The Noticee submitted that the rejection of her request for inspection of documents has caused grave prejudice to the Noticee by not providing the investigation report to the Noticee. Thus, it was contended that the rejection of request for inspection of documents constitutes violation of principles of natural justice. In this regard the Noticee placed reliance upon the judgement of Hon'ble SAT in the matter of Smitaben N Shah vs SEBI and of the Hon'ble SC in the matter of Price Waterhouse vs SEBI.

- The Noticee contended that in order to establish charges of violation of PFUTP Regulations, 2003, collusion between the parties must be proved. In this regard, the Noticee placed reliance upon the judgements of the Hon'ble SAT in the matter of M/s Nishith M Shah HUF vs SEBI, Jagruti Securities vs SEBI and Vintel Securities Pvt Ltd vs SEBI.

- The Noticee contended that she had no connection with the alleged counter-parties. Thus, it was submitted that the Noticee executed the trades based on trend in the market, orders available in the system etc. It was contended that the trades could not have been pre-arranged as the Noticee did not know the counter party and the trades took place on the anonymous electric trading platform open to all trading participants, at price ranges permitted by the exchange and SEBI, and the obligations arising out of it were settled through clearing mechanism of the exchange. Therefore, it cannot be said that the said transactions are non-genuine trades executed to generate artificial volume in the Stock Options segment of BSE.

- The Noticee submitted that unlike the cash segment, there is no physical delivery of shares in Futures & Options segment. Therefore, the impugned trades cannot be alleged to have created misleading appearance of trading in stock options.

- The Noticee submitted that the alleged violations have not caused any loss to any investor, and have not affected the investors or securities market in any manner. There have been no investor complaints as regards the matter. Further, due to the alleged violations, she had not made any unfair gain.

- The Noticee submitted that BSE never issued any warning about the contracts traded by the Noticee. Thus, the Noticee denied that there were any non-genuine reversal trades in alleged illiquid Option contracts. It was also denied that the Noticee created false or misleading appearances of trading or created artificial volumes of trade in the Stock Market. In this regard, the Noticee placed reliance on the judgements of the Hon'ble SAT in the matters of KSL & Industries Ltd vs SEBI, Vintel Securities Pvt Ltd vs SEBI and Dhvani Darshan Kothari & Anr vs SEBI.

- The Noticee submitted that only minimum penalty should be levied in the instant case. In this regard the Noticee placed reliance upon judgement of the Hon'ble SC in the matter of Bhavesh Pabari vs SEBI.

9. Thus, 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

10. 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?

11. 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;

12. I note that the allegation against the Noticee is that, while dealing in the stock options 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 options 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.

13. The Noticee has *interalia* contended that the instant proceedings have been initiated after a period of 6 years since the trades in question and that such inordinate delay has caused grave prejudice to the Noticee. I note that the Noticee placed reliance on the rulings of Hon'ble SC in the matter of Anil Rai vs State of Bihar, and of the Hon'ble SAT in the matters of Anilkumar Nandkumar Harchandani & Ors. vs SEBI, Rakesh Kathotia & Ors. vs SEBI, Ashok Shivlal Rupani & Ors. vs SEBI, HB Stockholdings Ltd vs SEBI, Khandwala Securities vs SEBI and Subhkam Securities Pvt Ltd vs SEBI in support of her contentions in relation to delay in initiating proceedings. I note that pursuant to a preliminary examination conducted in the Illiquid Stock Options matter, Interim order was passed by SEBI on August 20, 2015 which was confirmed vide Orders dated July 30, 2016 and August 22, 2016. Meanwhile, SEBI initiated a detailed investigation relating to stock options segment of BSE which was completed in the year 2018. The investigation revealed that 14,720 entities were involved in executing non-genuine trades in BSE's stock option segment during the investigation period. The proceedings initiated vide the aforementioned Interim Order were disposed of vide Final Order dated April 05, 2018 also considering that appropriate action was initiated against the said 14,720 entities in a phased manner.

14. During the course of hearing in the case of *R. S. Ispat Ltd Vs SEBI*, the Hon'ble Securities Appellate Tribunal (SAT), vide its Order dated October

14, 2019, *inter alia* observed that "*SEBI may consider holding a Lok Adalat or adopting any other alternative dispute resolution process with regard to the Illiquid Stock Options".*

15. A Settlement Scheme was framed under the SEBI (Settlement Proceedings) Regulations, 2018, which provided one-time opportunity for settlement of proceedings in the Illiquid Stock Options matter. The said scheme was kept open from August 01, 2020 till December 31, 2020. Adjudication proceedings were initiated against those entities who had not availed of the opportunity of settlement.

16. As can be seen from the narration of facts in the foregoing paragraphs, pursuant to appointment of the undersigned as AO vide communique dated July 14, 2021, the SCN was issued on July 28, 2021. Thus, the Adjudication Proceeding was initiated after a series of legal and judicial developments. In compliance with principles of natural justice, after receipt of reply to the SCN on November 01, 2021, an opportunity of personal hearing was scheduled on November 09, 2021 which was attended by the AR of the Noticee as noted above. Thus, 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. Therefore, I note that contentions of Noticee in this regard are without merits.

17. Noticee contended that she has suffered grave prejudice in the instant proceedings as her request for inspection of documents was refused and the Investigation Report as well as other materials pertaining to the investigation have not been furnished to the Noticee. 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...*"

18. 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."

19. 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*".

20. 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, 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.

21. 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 57 unique contracts in the stock options segment of BSE during the IP. It is observed that the Noticee has allegedly executed 36 non genuine trades in 9 Stock Options contracts. I further note that the above mentioned trades of the Noticee had resulted in the creation of artificial volume of total 3300000 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	IFCI15APR26.00CEW2	7.48	344000	10.7	344000	100	25	100	42.16
2	NHPC15APR12.00CEW2	6.2	300000	10.35	300000	100	9.09	100	13.89
3	NHPC15APR12.00CEW3	6.33	150000	10.55	150000	100	5.48	100	5.15
4	NHPC15APR14.00CEW3	3.3	70000	7.8	70000	100	10	100	15.91
5	NHPC15MAR12.00CE	7.4	210000	10.25	210000	100	5.88	100	9.95
6	UNIT15APR10.00CEW2	4.83	261000	8.37	261000	100	100	100	100
7	UNIT15APR8.00CEW3	5	72000	9	72000	100	10	100	9.3
8	UNIT15MAR10.00CE	6.05	27000	9.55	27000	100	16.67	100	12.5
9	UNIT15MAR8.00CE	7.88	216000	12.35	216000	100	25	100	34.29

22. It is noted that the Noticee had executed non-genuine trades in 9 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 5.48% to 100% in the aforesaid contracts. Further, artificial volume generated by

Noticee in the contracts amounted to the entire 100% of the 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 5.15% to 100%. 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.

23. 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 counterparty. To illustrate, the Noticee on March 27, 2015 at 15:27:37 hrs entered into 1 sell trade with counter party viz, Paras Shah for 70000 units at the rate of ₹ 7.8 per unit in the contract "NHPC15APR14.00CEW3". Thereafter, on the same day, Noticee at 15:27:50 hrs entered into 1 buy trade with same counterparty for 70000 units at the rate of ₹ 3.3 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, Paras Shah 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. "NHPC15APR14.00CEW3" during the I.P., executed non genuine trades

which was 10% of the total trades from the market in the said contract during the I.P. and thereby, generated artificial volume of 140000 units which was 15.91% of the volume traded in the said contract from the market during the I.P.

24. The Noticee submitted that she had no connection with the alleged counter-parties and that she did not engage in any collusion with the counterparties as alleged. Thus, it was submitted that the Noticee executed the trades based on trend in the market, orders available in the system etc. It was contended that the trades could not have been pre-arranged as the Noticee did not know the counter party and the trades took place on the anonymous electric trading platform open to all trading participants, at price ranges permitted by the exchange and SEBI, and the obligations arising out of it were settled through clearing mechanism of the exchange. Therefore, it was contended that it cannot be said that the said transactions are non-genuine trades executed to generate artificial volume in the Stock Options segment of BSE.

25. In regard to the aforesaid contentions, 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 counterparty with significant price difference. I also note from the trade log of the Noticee that the time taken

by the Noticee for reversing the non-genuine trades ranged from 13 seconds to 26 minutes and 27 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 counterparty indicates a prior meeting of minds with a view to execute the reversal trades at a pre-determined price. It is also noted that 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.

26. The Noticee has contended that BSE never issued any warning about the contracts traded by the Noticee. 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.

27. 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 concerning 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. The Noticee has contended that unlike the cash segment, there is no physical delivery of shares in Futures & Options segment. Therefore, the impugned trades cannot be alleged to have created misleading appearance of trading in stock options. I note that in the F&O segment, execution of a trade results in change of rights over the contract, so that the impugned reversal trades, which were executed without intention of actual change in rights over such contracts are non-genuine. I note that the Hon’ble SC in the matter of SEBI vs Rakhi Trading Pvt Ltd (supra) held that,

> “*No doubt, as in the case of trade in a scrip in the cash segment, there is no physical delivery of the asset. However, even in the derivative segment there is a change of rights in a contract. In the instant case,*

through reverse trades, there was no genuine change of rights in the contract… 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."

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

33. The Noticee has *interalia* contended that no person has been defrauded as a result of the aforesaid trades. I note that in the instant matter, the allegations pertaining to the violation of impugned provisions of PFUTP Regulations, 2003 do not necessarily depend upon any complaints made or losses incurred by investors. Therefore, I note that contentions of Noticee in this regard are without merits.

34. 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…".

35. 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].

36. 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;

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

[2] Substituted for the words ―twenty-five crore rupees or three times the amount of profits made out of such failure, whichever is higher‖ by the Securities Laws (Amendment) Act, 2014, w.e.f. 08-09-2014

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

(c) the repetitive nature of the default.

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

37. 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 36 non genuine trades in 9 Stock Options contracts which demonstrates the repetitive nature of default on her part.

38. 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

39. 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 Umang Shah PAN: BLEPS5314M	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.

40. 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

41. 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

42. 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.

43. 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 Umang Shah and also to the Securities and Exchange Board of India.

Date: January 31, 2022 **PARAG BASU**

Place: Mumbai **ADJUDICATING OFFICER**