BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

ADJUDICATION ORDER NO. Order/GG/VV/2021-22 /14897

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

In respect of:

SANGITA NILESH KOTHARI

(PAN: AEPPK5549F)

In the matter of Dealings in Illiquid Stock Options at BSE

A. BACKGROUND OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") conducted an investigation into the trading activity in illiquid stock options on Bombay Stock Exchange Limited (hereinafter referred to as "**BSE**") for the period from April 01, 2014 to September 30, 2015 (hereinafter referred to as the "**Investigation Period**") after observing large scale reversal of trades in the stock options segment of the BSE.

2. Pursuant to a preliminary examination conducted in the Illiquid Stock Options matter an Interim order was passed by SEBI on August 20, 2015 against 59 entities which were confirmed vide Orders dated July 30, 2016 and August 22, 2016. Meanwhile, SEBI initiated a detailed investigation relating to trading in stock options segment of

BSE which was completed in the year 2018. The investigation findings revealed that of all trades executed in the stock options segment of BSE during the Investigation Period, 81.38% of the trades, that is 2,91,643 trades, were trades which involved a reversal of buy and sell positions by the clients and counterparties in a contract. The investigation revealed that 14,720 entities were involved in executing non-genuine trades in BSE's stock options segment during the investigation period. The proceedings initiated against the first set of 59 entities, vide the aforementioned Interim Order were disposed of vide final Order dated April 05, 2018, without any further directions, observing that the Adjudicating Officer shall continue the proceedings in accordance with the SEBI Act, 1992 and SEBI (Procedure for Holding and Imposing Penalties by Adjudicating Officer) Rules, 1995 and pass appropriate order on merits. It was also recorded therein that SEBI has decided to take appropriate action against all 14720 entities in phases. The captioned proceedings initiated against the Noticee is part of the aforesaid mass action initiated by SEBI against the large number of entities.

3. In the meantime, the Hon'ble Securities Appellate Tribunal (SAT), vide its Order dated October 14, 2019, in the case of *R. S. Ispat Ltd Vs SEBI*, *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".*

4. Thereafter, a Settlement Scheme was framed under the SEBI (Settlement Proceedings) Regulations, 2018, which provided a 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. Finally, adjudication proceedings were initiated against those entities who had not availed of the opportunity of settlement.

5. It was observed that 13,186 entities had not availed of the opportunity of settlement and therefore Adjudication proceedings were initiated against the entities in a phased manner. In order, to duly expedite the Adjudication proceedings against the entities, SEBI had appointed additional Adjudicating officers to adjudicate against the said entities. However, owing to the huge number of alleged entities, the adjudication proceedings are being conducted in a phased manner that would require adequate time to complete the proceedings against all entities.

6. It was observed that, Sangita Nilesh Kothari (PAN: AEPPK5549F) (hereinafter referred to as the "**Noticee")** was one of the entities, who did not seek settlement under the Settlement Scheme in 2020 and whose reversal trades allegedly involved squaring off of open positions with a significant price difference without any basis. The aforesaid reversal trades allegedly contributed to the generation of artificial volumes, leading to allegations that the Noticee had violated the provisions of Regulations 3(a), (b), (c), (d) and Regulation 4(1) and 4(2) (a) of the SEBI (Prohibition of Fraudulent and Unfair Trading Practices relating to Securities Markets) Regulations, 2003 (hereinafter referred to as the "**PFUTP Regulations**").

B. APPOINTMENT OF ADJUDICATING OFFICER

7. SEBI initiated adjudication proceedings and appointed me, as the Adjudicating Officer under section 15-I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the "**SEBI Act**") read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as the "**SEBI Adjudication Rules**") *vide* communication dated November 12, 2021 to inquire into and adjudge under section 15HA of the SEBI Act, with respect to the allegations against the Noticee.)

C. SHOW CAUSE NOTICE, REPLY AND HEARING

8. A show cause notice dated December 01, 2021 (hereinafter referred to as "**SCN**") was served upon the Noticee under Rule 4(1) of the SEBI Adjudication Rules to show cause as to why an inquiry should not be initiated against the Noticee and thereafter penalty imposed against him under section 15HA of the SEBI Act for the alleged violation of the provisions of Regulations 3((a),(b),(c),(d)), 4(1) and 4(2)(a) of the PFUTP Regulations.

9. The SCN issued to the Noticee, *inter alia* alleged, that the Noticee had engaged in 4 such reversal trades through 2 unique contracts, which led to generation of artificial volume of 232000 units. The Noticee had entered into 4 reversal trades on 1 day viz.31/03/2015, through 2 unique contracts with 1 counterparty viz. Ashok N Shah HUF. The 4 trades entered into by the Noticee were reversed on the same day with the same counterparties at a substantial price difference without there being any rationale. The summary of the dealings of the Noticee in the two stock option contracts, in which the Noticee allegedly executed non-genuine trades during the investigation period is as follows:

Table -1 Summary of dealings of Noticee in 2 stock option contracts

S. No.	Date	Contract Name	Avg. Buy Rate (Rs.)	Total Buy Volume (no. of units)	Avg. Sell Rate (Rs.)	Total Sell Volume (no. of units)	Total Vol 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.	31/03/2015	AMBC15APR255.00CEW2	7.9	83000	1.9	83000	190000	100	87.37
2.	31/03/2015	MSSL15APR500.00CEW4	22.75	33000	7.55	33000	192000	100	34.38

10. The allegation is that the above trades were non-genuine trades executed by the Noticee in the stock options contracts, through two unique contracts, involving reversal of trades in one day with the same counterparty at a substantial price difference, as shown above in Table- 1.

11. The abovementioned contracts which resulted in 4 reversal trades creating artificial volumes is elaborated through an illustration of one of the contracts viz. "AMBC15APR255.00CEW2" (*Serial.no.1 of the above table)*, which is as follows:

a) During the investigation period, in the said contract viz. "AMBC15APR255.00CEW2", the Noticee on 31/03/2015 has executed 2 trades for a total volume of 166000 units with counterparty, viz. Ashok N Shah HUF.

b) While dealing in the said contract on 31/03/2015, the Noticee at 11:51:08.51 hrs executed one sell trade for 83000 units at the rate of Rs.1.9 per unit with counterparty, Ashok N Shah HUF. In 17 seconds after the aforementioned sell trade, the Noticee reversed the trade by executing one buy trade at 11:51:25.00 hrs for 83000 units at the rate of Rs.7.9 per unit with the same counterparty.

c) From the above, it is noted that while dealing in aforesaid contract (i.e AMBC15APR255.00CEW2) during the investigation period, the Noticee executed a total of 2 trades (1 buy trade and 1 sell trade). This made up to 87.37% of the total market volume for this contract during the investigation period. Likewise, in the contract shown at S.no.2 of Table.1 of para 6, the Noticee has executed 2 reversal trades, which constituted 34.38% of market volume.

12. Based on the above, it was alleged that the Noticee by indulging in execution of the aforesaid non-genuine reversal trades, has violated the provisions of Regulations 3(a), (b), (c), (d) and 4(1), 4(2)(a) of the PFUTP Regulations, text of which is 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; ………

13. The Noticee had not submitted his reply to the aforesaid SCN, despite grant of sufficient time. The Noticee was further granted two opportunities of personal hearing on December 23, 2021 and on January 06, 2022 vide Hearing Notices dated December 16, 2021 and December 29, 2021 respectively.

14. The Noticee had not appeared for the two hearings granted. I observe that the SCN and two Hearing Notices were delivered to the Noticee, in physical form vide speed post with acknowledgment due (SPAD) and in soft form vide email for the SCN and the 2nd Hearing Noticee. I observe that the delivery receipts of the SCN and two Hearing Notices are available on record, as shown below in the table:

Date of SCN/Hearing Notice	**Date of delivery through SPAD**	**Document on record as proof of delivery**	**Date of delivery through email**	**Document on record as proof of delivery**
SCN dated December 01, 2021	December 06, 2021	India Post - Track Consignment - delivery confirmed status	December 02, 2021	Email sent report
1st Hearing Notice dated December 16, 2021	December 27, 2021	India Post - Track Consignment - delivery confirmed status and acknowledgment card signed by the addressee	Not Sent	-
2nd Hearing Notice dated December 29, 2021	January 10, 2022	India Post - Track Consignment -delivery confirmed status and acknowledgment card signed by the addressee	December 29, 2021	Email delivery notification

15. From the above, I note that despite proper service of SCN and Hearing Notice, the Noticee has not responded. Hence, I am compelled to proceed ex-parte in the matter. As laid down by the Hon'ble SAT in its order dated May 12, 2017 in the matter of **Shri. B.Ramalinga Raju vs. SEBI (Appeal no. 286 of 2014)**, "*even though the Noticees remained ex-parte, I find it relevant that I should be guided by the documents available on record*". I hereby proceed with the matter, based on the material available on record.

D. CONSIDERATION OF ISSUES

16. I have taken into consideration the facts of the case and the material on record, and I now proceed to consider the issues that arise in this case.

17. The core issue that arises for consideration in the instant matter is whether the trading in illiquid stock options done by the Noticee during the Investigation Period was in violation of Regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of the PFUTP Regulations? If yes, whether the Noticee is liable for a levy of Monetary penalty under section 15HA of the SEBI Act or not and how much should be the quantum of penalty?

18. I have observed in detail, the trading of the Noticee, in the illiquid stock options segment during the Investigation Period. I see that the Noticee, is alleged to have entered into 4 non-genuine trades on one day viz. 31/03/2015, through 2 unique contracts viz. viz. "AMBC15APR255.00CEW2 and MSSL15APR500.00CEW4 with 1 counterparty viz. Ashok N Shah HUF.

19. I have brought out the details of the Noticee's trades for each contract in two tables shown hereunder, culling out the relevant fields from Annexure II to the SCN, for analysis.

Table No.2 Summary of dealings of Noticee in contract AMBC15APR255.00CEW2

S. No.	Date	Name of the client	Name of the counter party client	Trade Time (in hrs)	Order _LM TIME	CP Order _LM TIME	Trade Rate (Rs.)	Trade Volume (no. of units)
1.	31/03/2015	Ashok N Shah HUF	Sangita Nilesh Kothari (sell)	11:51:08.51	11:51:08.34	11:51:08.51	1.9	83000
2.	31/03/2015	Sangita Nilesh Kothari (buy)	Ashok N Shah HUF	11:51:25.10	11:51:25.00	11:51:25.10	7.9	83000

20. I note from Table- 2 above, that on 31/03/2015, the Noticee sold 83000 units at 11:51:08.51 hrs at the rate of Rs.1.9 per unit with counterparty, Ashok N Shah HUF. Thereafter, at 11:51:25.00 hrs, the Noticee had bought a quantum of 83000 units for a price of Rs.7.9. In effect, I note that the Noticee has enabled the counterparty, viz. Ashok N Shah HUF, to make a profit, consciously choosing to book losses. It is also relevant to note that the Noticee's transactions i.e.– one sell trade and one buy trade have taken place on the same day. Not only have the trades been placed on the same day, I note that the trades were matched in less than a second's time difference and the two trades have also been reversed within the same minute in the said contract as given in the table above (i.e the first sell trade executed by the Noticee was at 11:51:08.51 hrs and the buy trade executed by the Noticee was at 11:51:25.10 hrs, which means these trades were reversed within a time difference of around 17 seconds, i.e. less than a minute).

21. Furthermore, the exactness of the quantity that got reversed between the two parties on a single day, the proximity in the time of the reversal of trades and above all the absence of rationale to justify the variation in the sell and buy price, certainly go to show that these are non-genuine trades. Thus, the two trades/transactions would together go to constitute one reversal trade in that specific contract. However, I observe that the two trade transactions in contract "AMBC15APR255.00CEW2" entered on the market are considered as two non-genuine transactions.

22. Surprisingly, the Noticee is voluntarily incurring losses, as he bought 83000 units for Rs.7.9, and sold the same number of units at a substantially low price of Rs.1.9 to the very same party. In turn, the transaction has resulted in a co-equivalent profit to the counterparty. Moreover, the Noticee did not intend to transfer beneficial ownership of 83000 units in the contract, as he bought back the same quantum.

23. Likewise, I observe that in the second contract entered by the Noticee, a similar pattern of trading is observed as given in the table below:

Table No.3 Summary of dealings of Noticee in contract MSSL15APR500.00CEW4

S. No.	Date	Name of the client	Name of the counter party client	Trade time (in hrs)	Order _LM TIME	CP Order _LM TIME	Trade Rate (Rs.)	Trade Volume (no. of units)
1.	31/03/2015	Ashok N Shah HUF	Sangita Nilesh Kothari (sell)	11:52:00.53	11:52:00.53	11:52:00.43	7.55	33000
2.	31/03/2015	Sangita Nilesh Kothari (buy)	Ashok N Shah HUF	11:52:20.48	11:52:20.41	11:52:20.48	22.75	33000

24. I note from Table No. 3 above, that the Noticee had adopted the same strategy of buying at a high rate and selling at a negligibly low rate. In the second contract too, the trade is with the same counter party, as that of the first contract. The quantum of units bought and sold, i.e 33000 units, match. The Noticee's trades do not justify the difference in the sell price of Rs.7.55 and the buy price of Rs.22.75 which again shows that the trades were not genuine. It is also relevant to note that the Noticee's transactions i.e.– one sell trade and one buy trade in the second contract had taken place on the same day,i.e on 31/03/2015. Not only have the trades been placed on the same day, I note that the trades were matched in less than a second's time difference and the two trades have also been reversed within the same minute in the said contract as given in the table above, i.e the Noticee executed at first a sell trade at 11:52:00.53 hrs and then a buy trade at 11:52:20.48 hrs, which means that these two trades were reversed within a time difference of around 20 seconds).

25. I note that the second contract has been executed by the Noticee in the very next minute, after execution of the rapid reversal in the first contract at Table.2. Further, the counterparty to both the reversal trades in the two different contracts is the same. The trades are ex facie pre-meditated to book loss by one party and gains by the other and has no justification whatsoever for the huge variation in the buy price and sell price. The Noticee has made losses and the counterparty to the trades is enabled to make co-equivalent profits.

26. When I take a look at the role of the Noticee in the stock option segment of BSE during the investigation period, I find that in the first contract (Table -2), the Noticee along with the counterparty had contributed to 87.37 % of the market volume of the day. Similarly, in the case of the second contract (at Table -3), the Noticee had contributed to 34.38 % of the market volume. Thus, I find that the Noticee by executing non genuine trades, had substantially contributed to market abuse.

27. From the facts brought out in Tables Nos. 2 and 3, I am convinced that the trades were a consequence of pre-meditated decision of both parties and hence are unfair trades for the purpose of SEBI (PFUTP) Regulations. Hence, the trades fall into the category of non-genuine trades entered by two parties on the stock exchange platform by mutual understanding, thereby attracting the prohibition against fraudulent or manipulative and unfair trade practices contained in SEBI (PFUTP) Regulations.

28. In this context, it is relevant to quote the judgment of the Hon'ble Supreme Court in the matter of **Rakhi Trading (SEBI Vs. Rakhi Trading- CANo.1969/2011, Order dated February 8, 2018)**

"1. Fairness, integrity and transparency are the hallmarks of the stock market in India".

*"**35....** Nobody intentionally trades for 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 make loss and that too in pre-planned and rapid reverse trades, it is not genuine; it is an unfair trade practice."*

Their Lordships have considered similar transactions in the same segment,

*"**38.** ....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 market forces in the instant case."*

*"**41** ....The stock market is not a platform for any fraudulent or unfair trade practice. The field is open to all the investors. By synchronization and rapid reverse trade, as has been carried out by the traders in the instant case, the price discovery system itself is 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. " (***Paragraph Nos. 1, 35, 38 and 41** of the part of the judgement authored by His Lordship Mr.Justice Kurian Joseph*).*

*"**38.** The smooth operation of the securities market and its healthy growth and development depends upon large extent on the quality and integrity of the market. Unfair trade practices affect the integrity and efficiency of the securities market and the confidence of the investors. Prevention of market abuse and preservation of market integrity are the hallmark of securities law ..."(* **Paragraph No.38** of the part of the judgment authored by Her Ladyship Ms. Justice R. Bhanumathi). *For this, the Hon'ble Judge also relied on the apex court observations in N.Narayanan Vs. Adjudicating Officer, Securities and Exchange Board of India(2013) 12 SCC 152 wherein it was inter alia observed: "Market abuse" impairs economic growth and erodes investor's confidence."*

*"**42**. Where certain unscrupulous elements are trying to manipulate the market to serve their own interest, it becomes imperative on the part of SEBI to intervene and to curb further mischief and to take necessary action to maintain public confidence in the integrity of the securities market..."*

29. Finally, to answer the question as to whether these trades fall within the ambit of Regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of the PFUTP Regulations, I would like to rely on the following extract of the judgment of the Hon'ble Supreme Court in the matter of **Rakhi Trading:**

*"**39.** Regulation 2(1)(c) defines fraud. Under Regulation 2(1)(c)(2) a suggestion as to a fact which is not true while he does not believe it to be true is fraud. Under Regulation 2(1)(c)(7), a deceptive behavior of one depriving another of informed consent or full participation is fraud. And under Regulation 2(1)(c)(8), a false statement without any reasonable ground for believing it to be true is also fraud. In synchronized and reverse dealing in securities, with predetermined arrangement to book loss or gain between pre-arranged parties, all these vices are attracted.*

***40.** Regulation 3(a)expressly prohibits buying, selling or otherwise dealing in securities in a fraudulent manner. Under Regulation 4(2) dealing in securities shall be deemed to be fraudulent if the trader indulges in an act which creates a false or misleading appearance of trading in the securities market. It is a deeming provision. 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 in securities entered into 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 of the contract." (per His Lordship Mr.Justice Kurian Joseph's findings in paragraph Nos. **39&40**).*

30. The Hon'ble Appellate Tribunal has summarised the circumstances identified by the Apex court in **Rakhi Trading Judgment** in the case of **Global Earth Properties and Developers Pvt. Ltd. Vs Securities and Exchange Board of India (Appeal No.212 of 2020 decided on September 14, 2020).** In para 14 of the said order, the Hon'ble SAT enlisted the following circumstances:

*"**14 d.** An intentional trading for loss per se, is not a genuine dealing in securiites. Trading is always with the aim to make profits. But if one party consistently makes*

loss and that too in preplanned and rapid reverse trades, it is not genuine and the same is an unfair trade practice.

e. *In synchronised and reverse trades, there is no genuine change of rights in the contract. "*

31. Further in paragraph No. 20 of the said order in **Global Earth (supra),** the Hon'ble Tribunal held as below:

> *"**20.** From the aforesaid cumulative analysis of the reversed transactions with the counter party, quantity, time and significant variation of the price clearly indicates that the trades were non-genuine and had only misleading appearance of trading in the securities market without intending to transfer the beneficial ownership. One finds it to be naïve to presume that the perception of the two counter parties to a trade changed within few seconds/minutes and positions were interchanged and the contracts were changed where one party made profit and the other party ended up making losses every time without prior meeting of mind. 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. From the above position in law and facts, it follows that the Noticee's transactions in question falls within the mischief of unfair and fraudulent or manipulative trade practice, as contemplated in the SEBI (PFUTP) Regulations. Hence, I am inclined to impose monetary penalty on the Noticee.

33. As regards the quantum of penalty to be levied, I have considered the contribution of the Noticee's non-genuine trades to the market volume and note that the same was to the extent of 87% and 34.9% respectively for the two contracts traded. It is pertinent to mention that though the Noticee had incurred loss, the execution of non-genuine trades cannot be disputed. Therefore, considering all the facts and circumstances in this matter and bearing in mind the parameters laid down in section 15J, I am inclined to impose a minimum penalty against the Noticee, as provided under section 15HA of the SEBI Act.

E. ORDER

34. Therefore, in exercise of powers conferred upon me under section 15-I (2) of the SEBI Act read with rule 5 of the Adjudication Rules, I hereby impose a penalty of Rs 5,00,000/- (Rupees Five Lakhs only) upon the Noticee *i.e.,*Sangita Nilesh Kothari (PAN No: AEPPK5549F) under section 15HA of the SEBI Act for violation of Regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of the PFUTP Regulations.

35. 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 favor of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, or through online payment facility available on the SEBI website **www.sebi.gov.in** on the following path by clicking on the payment link.

ENFORCEMENT → ORDERS → ORDERS OF AO → PAY NOW

In case further assistance would be required in payment of penalties, the Noticee may contact the support at portalhelp@sebi.gov.in.

36. The Noticee shall forward the said demand draft or the details / confirmation of penalty so paid through e-payment to the Division Chief, Enforcement Department-I, DRA-II, SEBI, in the format given in table below:

Case name	
Name of payee	
Date of payment	
Amount paid	
Transaction no	
Bank details in which payment is made	
Payment is made for	Penalty

37. In terms of rule 6 of the SEBI Adjudication Rules, copies of this order are sent to the Noticee and also to SEBI.

Date: February 10, 2022 **GEETHA G**

Place: Mumbai **ADJUDICATING OFFICER**