BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/PB/AS/2021-22/14008]

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

Nilu Chopra

(PAN: ACOPC2270J)

In the matter of Trading in Illiquid Stock Options on BSE

BACKGROUND OF THE CASE

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

2. Pursuant to investigation, it was observed that total 2,91,643 trades comprising substantial 81.38% of all the trades executed in stock options segment of BSE during the IP were non genuine trades. The aforesaid non-genuine trades resulted into creation of artificial volume to the tune of 826.21 crore units or 54.68% of the total market volume in stock options segment of BSE during the IP. It was observed that Nilu Chopra (PAN-ACOPC2270J) (hereinafter referred to as the "**Noticee**") was one of the various entities who indulged in execution of reversal trades in stock options segment of BSE during the IP. Such trades were observed to be non-genuine in nature and created false or misleading appearance of trading in terms of artificial volumes in stock options and therefore, were alleged to be manipulative and deceptive in nature. In view of the same, SEBI initiated adjudication proceedings against the Noticee for violation of the provisions of regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003 (hereinafter referred to as "**PFUTP Regulations, 2003**").

APPOINTMENT OF ADJUDICATING OFFICER

3. Shri K Saravanan was appointed as Adjudicating Officer in the matter, conveyed vide communique dated April 26, 2021, under section 19 read with section 15-I(1) of the SEBI 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 ref no SEBI/HO/A&E/EAD/PB/AS/16745/2021 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 the Noticee.

5. It was *inter alia* alleged in the SCN that the Noticee had executed 4 non genuine trades in 1 Stock Options contract which resulted in artificial volume of total 3,20,000 units. Summary of dealings of the Noticee in 1 Stock Options contract, 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	IIBK15MAR860.00PE	0.2	160000	7.7	160000	100	25	100	31.13

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

   (a) The Noticee had executed non genuine trades in 1 contract, wherein all trades of Noticee in the said contract were non genuine trades.

   (b) No. of non-genuine trades of the Noticee had significantly contributed to total no. of trades from the market in the above contract, as 25% of the trades that happened in the aforesaid contract were due to non-genuine trades executed by the Noticee.

   (c) The entire 100% of volume generated by Noticee in the above contract was artificial volume, and further, the percentage of artificial volume generated by the Noticee in the above contract to the total volume from the market in the said contract was 31.13%. Therefore, substantial volume generated by the Noticee in the above contract was artificial volume.

   (d) Non genuine trades executed by the Noticee in above contract had significant difference in buy rate and sell rate considering that the trades were reversed on same day.

7. The SCN was served on the Noticee via Speed Post Acknowledgement Due (SPAD) and via email dated July 29, 2021. Vide email dated August 16, 2021, Noticee submitted Authority letter in favor of Dr S.K. Jain as regards the matter, and requested for inspection of original documents relied upon in the Show Cause Notice. Vide email dated September 30, 2021, Noticee was *interalia* conveyed the following:

……….

In this regard, your request has been perused and it is conveyed to you that following are the relied upon documents in the instant proceedings and same have been provided to you along with the SCN issued in the matter:

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*

It is noted that the aforementioned documents are the only documents relied upon in the matter.

It may be noted that all relevant material relied upon in the instant proceedings have been provided to you. Therefore, I am of the opinion that your request for inspection of documents is not reasonable and therefore, the same is being declined.

……….

Further, vide aforesaid email, Noticee was granted time till October 11, 2021 to submit reply to the SCN, and was also granted opportunity of personal hearing on October 11, 2021.

8. Vide email dated October 08, 2021, Noticee reiterated her request for inspection of all original documents referred to and enclosed along with the SCN. In this regard, Noticee relied upon the judgements of the Hon’ble SAT in the matters of Smitaben N Shah vs SEBI and Price Waterhouse vs SEBI, and requested for adjournment of personal hearing in the matter. Vide email dated October 08, 2021, Noticee was conveyed that her request for

adjournment of personal hearing was acceded to, and was granted another opportunity of personal hearing on October 21, 2021.

9. Vide email dated October 09, 2021, Noticee confirmed her appearance for hearing scheduled on October 21, 2021. Vide email dated October 11, 2021, Noticee submitted reply to the SCN. The main contentions made therein are summarized below:

- There has been delay of more than 6 years in initiation of instant adjudication proceedings from the date of execution of impugned trades, so that SCN must be quashed on this ground alone. In this regard, Noticee relied on judgements of the 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.
- By not providing inspection of relevant documents, as requested vide emails dated August 16, 2021 and October 08, 2021, grave prejudice has been caused to the Noticee. In this regard, Noticee relied 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.
- Noticee had executed 16 trades in the impugned contract viz. IIBK15MAR860.00PE. If Noticee had intended to execute non-genuine

trades, she would have done so for all the 16 trades, and not just 4 impugned trades.

- Noticee was not aware of the counterparty to the impugned trades. She executed the trades based on trend in the market, orders available in the system etc. Further, to establish charges of violation of PFUTP Regulations, collusion between the parties must be proved. In this regard, Noticee placed reliance of 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.
- Noticee had executed 2 buy and 2 sell trades, which have been alleged to be 4 non-genuine reversal trades. However, the aforesaid trades must be counted as 2 reversal trades only. Therefore, there are apparent glaring discrepancies in the SCN.
- No justification has been provided for choosing the impugned IP. Further, in the IP Noticee executed trades in only one stock options contract, which created alleged artificial volume of only 31.13%, which is insufficient to warrant any creation of artificial volume.
- Noticee traded in stock options on anonymous electronic trading platform of stock exchange, which is approved by SEBI. Therefore, the allegation that trades matched with same entity by design is illogical, arbitrary and goes against the principles on which electronic trading was started.
- 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.

- No alert/ warning etc was issued by BSE/ SEBI as regards impugned trades.
- The trades have all traits of being genuine, viz. they were executed on anonymous platform, without knowledge of counterparty, at price ranges permitted by the exchange and SEBI, and also, the obligations arising out of it were settled through clearing mechanism of the exchange.
- There is no evidence to allege that there was market manipulation.
- 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, Noticee has not made any unfair gain.
- The allegations made in the SCN are bald and devoid of any material detail as Noticee has not been provided with vital documents *interalia* including Copy of Investigation Report, Date on which findings of the investigation were put up for knowledge of the Whole Time Member (WTM), Copy of material placed before the WTM to decide that there were sufficient grounds to enquire into the alleged violations etc..
- There is no material on record to uphold the definition of artificial volume.

- The SCN alleges that the trades with counterparty, which were reversal trades, essentially involve synchronization of trades. Synchronization is not illegal *ipso facto* under SEBI Act and SEBI Regulations.
- Noticee had traded in the option contract of a well-known company, so that there was no reason to doubt credibility of the platform provided by Exchange.
- The allegation that trades were non-genuine has no basis, as no evidence to provide misleading appearance created by trading has been provided. In this regard, 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.
- Without prejudice to submissions hitherto, discretion must be exercised by AO in deciding the penalty and minimum penalty must be levied. In this regard, Noticee relied upon judgement of the Hon'ble SC in the matter of Bhavesh Pabari vs SEBI.

10. Personal Hearing in the matter was held via video conferencing platform on October 21, 2021. During the course of hearing, AR reiterated submissions made vide email dated October 11, 2021. Further, AR requested for additional time for making post hearing submissions. Acceding to the request, time till October 28, 2021 was granted to make post hearing submissions, if any. Vide email dated October 26, 2021, Noticee made post hearing submissions in the matter. The main contentions made in the aforesaid post hearing submissions are summarized below:

- The Surveillance system of BSE did not raise any alert about the four allegedly non-genuine trades.
- As the stock broker, who is a SEBI registered intermediary, executed the impugned trades, the trades were genuine.
- No investor had suffered any loss, and there had been no impact on price and volume of the options due to impugned trades. In this regard, Noticee placed reliance on the judgement of the Hon'ble SAT in the matter of Ketan Parekh vs SEBI.
- In case of options segment, there is no effect of creation of distorted impression on the minds of investors. Further, in options segment there is no question of transfer of beneficial ownership since at the end of settlement cycle, only net loss/profit is adjusted.
- While trading in stock options contract, one party will make profit while the other will make loss, so that mere trading in options segment cannot be a ground to initiate adjudication proceedings against the Noticee.

<u>CONSIDERATION OF ISSUES AND FINDINGS</u>

11. 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 the 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?

12. Before proceeding further, I would like to refer to the relevant provisions of the PFUTP Regulations, 2003 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;

13. I note that allegation against the Noticee is that, while dealing in the stock option contracts at BSE during the IP, she had executed reversal trades which were allegedly non-genuine and the same had resulted in generation of artificial volume in stock option contract 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.

14. Noticee has *interalia* contended that SCN in the matter was issued after an inordinate delay of more than 6 years, and that the SCN must be quashed on this ground alone. In this regard, Noticee relied upon judgements of the 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. I note that there are no timelines prescribed in the SEBI Act, 1992 for initiating the adjudication proceedings. Further, I note that the Hon’ble SAT in the matter of Pooja Vinay Jain vs SEBI (Appeal No. 152 of 2019) decided on March 17, 2020 held that,

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

I also note that the Hon’ble SAT in the matter of Bipin R Vora vs SEBI decided on March 22, 2006 held that,

> *“As regards the plea of delay and latches and submission that the show cause notice is barred by limitation, I do not find any merit in these contentions as the time and efforts involved in an investigation though may vary from case to case, generally investigations per-se is a time consuming process which invariably involve collection, scrutiny and careful examination of voluminous records/ order-trade details of all the concerned including the exchanges/recording of statements etc. and therefore no time limit can be fixed in this regard to enable a regulator to take appropriate disciplinary action for the safeguard and improvement of the system/market”.*

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

15. Noticee further contended that inspection of certain 'vital' documents were not provided to her, which included *interalia* copy of Investigation Report, date on which findings of the investigation were put up for knowledge of the Whole Time Member (WTM), copy of material placed before the WTM to decide that there were sufficient grounds to enquire into the alleged violations etc, causing her grave prejudice. In this regard, Noticee relied upon the judgements 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. I note that all the documents relied upon in the matter had been provided to Noticee as Annexures to the SCN. Further, vide email dated September 30, 2021, the following was conveyed *interalia* to AR:

Vide email dated August 16, 2021 you have requested for inspection of documents relied upon in the SCN. In this regard, your request has been perused and it is conveyed to you that following are the relied upon documents in the instant proceedings and same have been provided to you along with the SCN issued in the matter:

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*

It is noted that the aforementioned documents are the only documents relied upon in the matter.

It may be noted that all relevant material relied upon in the instant proceedings have been provided to you. Therefore, I am of the opinion that *your request for inspection of documents is not reasonable and therefore, the same is being declined.*

16. 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...."

17. Further, 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."

18. I also note that the Hon'ble SAT in the matter of Anant R Sathe Vs SEBI (Appeal No. 150 of 2020) vide Order dated July 17, 2020 reaffirmed the

principle elucidated in the judgment of Shruti Vora's case, which has been reproduced above and 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".

Therefore, I note that documents relied upon in the matter were duly provided to the Noticee along with SCN dated July 28, 2021 in the matter, so that principles of natural justice have been complied with and the contentions of Noticee in this regard are without merits.

19. I note from trade log of the Noticee that she had traded in 1 unique contract in the stock options segment of BSE during the IP. It is observed that the Noticee had executed 4 non-genuine trades in the said contract. I further note that the above mentioned trades of the Noticee had resulted in the creation of alleged artificial volume of 3,20,000 units in the said contract. Summary of non-genuine trades of the Noticee is as follows:

S. No.	Contract Name	Avg. Buy Rate (₹s)	Total Buy Volume (No. of units)	Avg. Sell Rate (₹s)	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	IIBK15MAR860.00PE	0.2	160000	7.7	160000	100	25	100	31.13

20. It is noted that the Noticee had executed non-genuine trades in one contract, wherein the percentage of non-genuine trades of the Noticee in stock options contract to total trades in the contract was 25% in the aforesaid contract. Further, artificial volume generated by Noticee in the contract amounted to the entire 100% of total volume generated by her in the contract. It is also noted that artificial volume generated by the Noticee contributed significantly viz. 31.13% of the total volume from the market in the said contract. Non-genuine trades executed by the Noticee in the above contract had significant difference in buy rates and sell rates considering that the trades were reversed on the same day.

21. I note from the trade log that the trades executed by Noticee in a contract were squared up within a short span of time with her counterparties. To illustrate, the Noticee on March 13, 2015 at 12:10:35.73 hrs entered into 1 buy trade with counterparty viz. Anand Mining Corporation for 80,000 units at the rate of ₹0.2 per unit in the contract IIBK15MAR860.00PE. Thereafter, on the same day, Noticee at 12:10:44.30 hrs entered into 1 sell trade with same counterparty for 80,000 units at the rate of ₹7.7 per unit in the same contract. Similarly, the Noticee on the same date viz. March 13, 2015 at 12:10:35.90 hrs entered into 1 buy trade with counterparty viz. Clan Laboratories Private Limited for 80,000 units at the rate of ₹0.2 per unit in the aforesaid contract viz. IIBK15MAR860.00PE. Thereafter, on the same day, Noticee at 12:10:44.30 hrs entered into 1 sell trade with same counterparty for 80,000 units at the rate of ₹7.7 per unit in the same contract.

22. It is noted that while dealing in the said contract during the I.P., Noticee executed reversal trades with same counterparties on the same day and with significant price differences in buy and sell rates. Thus, the Noticee, through her dealing in the contract viz. “IIBK15MAR860.00PE” during the I.P., executed non genuine trades which were 25% of the total trades from the market in the said contract during the I.P., and thereby, Noticee generated artificial volume of 3,20,000 units which was 31.13% of the volume traded in the said contract from the market during the I.P.

23. The non-genuineness of these transactions executed by the Noticee is evident from the fact that there was no commercial basis as to why, within a short span of time, the Noticee reversed the position with her counterparties with significant price difference. I note from the trade log of the Noticee that the time taken by her for reversing the non-genuine trades was 08 seconds and 09 seconds, on the same day. Such a short span of time taken for reversing the trades in an illiquid stock option contract suggests the non-genuineness of these trades executed by the Noticee. The fact that the transactions in a particular contract were reversed with the same counterparties indicates a prior meeting of minds with a view to execute the reversal trades at a pre-determined price. Since these trades were done in illiquid option contract, there was no trading in the said contract and hence, there was no price discovery in the strictest terms. There was wide variation in prices of the said contract, within a short span of time, without substantial variation in the price of the underlying scrip to

justify the aforesaid variation. It 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.

24. Noticee has contended that she traded in stock options contract on anonymous electronic trading platform of stock exchange, which is approved by SEBI. Therefore, the allegation that trades matched with same entity by design is illogical, arbitrary and goes against the principles on which electronic trading was started. Noticee has also contended that she was not aware of the counterparties to the impugned trades, and that she executed the trades based on factors *interalia* including trend in the market, orders available in the system etc.. She further contended that to establish charges of violation of PFUTP Regulations, collusion between the parties must be proved. In this regard, Noticee placed reliance on 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. I note that it is not mere coincidence that Noticee could match her trades with the same counterparties with whom she had undertaken first leg of the respective trades. This is the outcome of meeting of minds elsewhere and it was a deliberate attempt to deal in such a fashion. Here I would like to rely on the judgment of the Hon'ble Supreme Court in SEBI v Kishore R Ajmera (AIR 2016 SC 1079) decided on February 23, 2016, wherein it was 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 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..."*

25. The Hon'ble SC 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."

26. 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."*

27. I place my reliance on the judgment of Hon'ble Supreme Court in the matter 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 SC 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….."*

28. 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.*"

29. Noticee has contended that she had executed 16 trades in the impugned contract viz. IIBK15MAR860.00PE, and that if she intended to execute non-genuine trades, she would have done so for all the 16 trades and not just 4 impugned trades. Noticee has also contended that no justification has been provided for choosing the impugned IP, and that Noticee executed trades in only one stock options contract, which created alleged artificial volume of only 31.13% and is insufficient to warrant any creation of artificial volume. I note that the allegations against Noticee pertain to only the four impugned reversal trades executed during the IP which lead to creation of substantial artificial volume in the contract, and that the pattern exhibited in execution of only the impugned trades has been relied upon in establishing the violations against Noticee. Therefore, the contentions of Noticee are without merits in this regard. Noticee has also contended that she had

executed 2 buy and 2 sell trades, which have been alleged to be 4 non-genuine reversal trades, however, the aforesaid trades must be counted as 2 reversal trades only. I note that the aforesaid contention, which pertains to mere nomenclature of reversal trades, does not dispute the allegations and thus, are not relevant as regards instant considerations.

30. Noticee has further contended that unlike the cash segment, there is no physical delivery of shares, so that the impugned trades cannot be alleged to have created misleading appearance of trading in stock options. Noticee has also contended that in options segment there is no question of transfer of beneficial ownership since at the end of settlement cycle, only net loss/profit is adjusted. 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 and result in creation of misleading appearance of trading. 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.

31. Noticee has contended that no alert/ warning was issued by BSE or SEBI as regards the impugned trades. Noticee has also contended that alleged violations have not caused any loss to any investor, have not affected the investors or securities market in any manner, and there have been no investor complaints as regards the matter. Further that, due to the alleged violations, Noticee has not made any unfair gain. Noticee has contended that the impugned trades were also genuine, as they were carried out at price ranges permitted by the exchange and SEBI, and also, the obligations arising out of them were settled through clearing mechanism of the exchange. Noticee has also contended that as the trades were executed by a stock broker, who is a SEBI registered intermediary, the trades were genuine. In this regard, I note that while stock broker is mandated to act as per the advice of its client viz. Noticee, the obligation to ensure genuineness of trades lay with the Noticee herself. Further, I also note that such obligation was not contingent on the aforesaid factors stated by Noticee viz. warning issued, loss caused to investor, complaints received, etc. Noticee has also contended that there is no evidence to allege that there was market manipulation, misleading appearance of trading or to uphold definition of artificial volume. In this regard, 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. I note from the record that the material relied upon in the SCN was

duly provided to the Noticee, and that based on consideration of aforesaid evidence and replies received from the Noticee, non-genuineness of trades executed by Noticee has been established.

32. Noticee has also contended that the trade with counterparty was in the nature of reversal trade which essentially involves synchronization of trade, and that synchronization is not illegal ipso facto under SEBI Act and SEBI Regulations. I note that execution of synchronized trades has not been alleged against the Noticee in the instant considerations.

33. Therefore, the trading behaviour of 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 the contract. 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 SC 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…".*

34. 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].*

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

Factors to be taken into account by the adjudicating officer.

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

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

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

(c) the repetitive nature of the default.

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

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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

36. I observe, that the material available on record does not quantify any disproportionate gains or unfair advantage, if any, made by the Noticee and the losses, if any, suffered by the investors due to such violations on part of the said Noticee. However, Noticee has entered into 4 non-genuine trades in 1 stock option contract which demonstrates the repetitive nature of default on her part.

37. Therefore, I note that Noticee indulged in execution of reversal trades in stock options contract 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), 4(2)(a) of the PFUTP Regulations, 2003.

ORDER

38. 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**
Nilu Chopra PAN:ACOPC2270J	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 Noticee.

39. 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

40. The 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

41. 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.

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

Date: October 29, 2021 **PARAG BASU**

Place: Mumbai **ADJUDICATING OFFICER**