BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO.: Order/EB/PB/2022-23/15820]

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:

NAYANA MANOJ SHAH

(PAN: AMEPS1138B)

In the matter of dealings in Illiquid Stock Options at the Bombay Stock Exchange

---

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, 81.41% of the trades, that is 2,91,744 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.

3. 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) 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.

4. In the meantime, the Hon'ble Securities Appellate Tribunal (hereinafter referred to as "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".

5. 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.

6. 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 entities, the adjudication proceedings are being conducted in a phased manner that would require adequate time to complete the proceedings against all entities.
7. It was observed that **Nayana Manoj Shah** (PAN- AMEPS1138B) (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").

APPOINTMENT OF ADJUDICATING OFFICER

8. The undersigned was appointed as the Adjudicating Officer in the matter, conveyed *vide* communique dated July 06 , 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 leviable, impose such penalty as deemed fit in terms of rule 5 of Adjudication Rules and section 15HA of SEBI Act, 1992.

SHOW CAUSE NOTICE, REPLY AND HEARING

9. A Show Cause Notice bearing reference no. **SEBI/HO/ESTB2/P/OW/2021/32974 dated November 17, 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 inquiry should not be initiated against it and penalty be imposed under section 15HA of the SEBI Act, 1992 for the violations alleged to have been committed by it.

10. It was, *inter-alia,* alleged in the SCN that the Noticee had executed two non-genuine trades in one Stock Option contract which resulted in artificial volume of total 1,00,000 units. The summary of dealings of the Noticee in the Stock Option contract, in which the Noticee allegedly executed trades that were not genuine during the IP is as follows:

Contract Name	VOLT15MAR220.00CE
Average Buy rate (in Rs.)	38.2
Total Buy Volume (in no. of units)	50,000
Buy Value (in Rs.)	19,10,000
Average Sell rate (in Rs.)	57.35
Total Sell Volume (in no. of units)	50,000
Sell Value (in Rs.)	28,67,500
% of non-genuine trades of Noticee in the contract to Noticee's Total number of trades in the Contract	100.00%
% of non-genuine trades of Noticee in the contract to Total number of trades in the Contract	4.17%
% of Artificial Volume generated by Noticee in the contract to Noticee's Total Volume in the Contract	100.00%
% of Artificial Volume generated by Noticee in the contract to Total Volume in the Contract	6.01%

11. From the above table, the following is noted as regard to the dealings of the Noticee:
    a. The Noticee had executed non-genuine trades in one unique contract, wherein all the trades of Noticee in the said contract were non-genuine trades.
    b. The non-genuine trades executed by the Noticee in the aforementioned contract formed 4.17% of total trades executed in said contract. Further, the entire volume generated by the Noticee in the above contract was artificial volume.
    c. The trades executed by the Noticee in the above contract had significant difference in the buy and sell rates. Considering that the trades were reversed on same day, without any significant change in the price of the underlying, these trades are said to be non-genuine in nature.

12. The SCN vide reference no. SEBI/HO/ESTB2/P/OW/2021/32974 dated November 17, 2021 was served on the Noticee’s address (Flat No 8, Mount Unique CHSL, 62 A, Dr G D Marg, Behind Villa Teresa School, Pedder Road, Cumballa Hill, Mumbai - 400026)

via Speed Post Acknowledgement Due (SPAD). The same was delivered to Noticee's aforementioned address on November 23, 2021. The acknowledgement receipt and tracking details from www.indiapost.gov.in is on record.

13. The Noticee *vide* letter dated December 03, 2021, *inter-alia* submitted the following reply:
    a) The Noticee is a home maker and senior citizen of 72 years of age;
    b) The Noticee's husband used to look after her books of accounts and investments who had passed away in the month of January 2021;
    c) The Noticee is not educated enough to understand the facts & circumstances of the case and is suffering from medical issues like blood pressure and diabetes. The Noticee was also hospitalized in the month of October 2021 due to dengue.
    d) The Noticee pleaded that owing to her inadequacy to understand the nitty-gritties of case & her poor health, she doesn't want to enter into litigation;
    e) The Noticee also submitted that in order to buy peace she pleads for sympathetic and amicable solution; and
    f) The Noticee desired to prefer settlement scheme and get discharged of her liability towards SEBI after paying minimum amount of penalty.

14. Pursuant to above response from Noticee, *vide* letter dated February 28, 2022 bearing reference number SEBI/HO/ESTB2/P/OW/2022/8789 (hereinafter referred to as **'Hearing Notice'**), the Noticee was apprised that the option to avail benefit of SEBI Settlement Scheme 2020 expired on December 31, 2020. The Hearing Notice was sent to the Noticee through Speed Post with Acknowledgement Due as well as via e-mail. The same was delivered to Noticee's address on March 03, 2022. The acknowledgement receipt and tracking details from www.indiapost.gov.in is on record.

15. Vide letter dated February 28, 2022, the Noticee was further advised to refer Securities and Exchange Board of India (Settlement Proceedings) Regulations, 2018 (hereinafter

referred to as '**SEBI Settlement Regulations'**) in case she wished to prefer settlement under such regulations.

16. Vide Hearing Notice dated February 28, 2022, in terms of adjudication rules and in the interest of natural justice, an opportunity of personal hearing in the instant matter was provided to the Noticee on March 10, 2022 at 03:30 PM through Cisco webex platform or offline in-person hearing.

17. Vide e-mail dated March 09, 2022, the Noticee requested for an offline in-person hearing instead of online hearing. Mr. Bharat J Shah (Chartered Accountant) had appeared as the Authorized Representative ('AR') on behalf of the Noticee on the stipulated date of hearing. During the course of hearing, the AR made following submissions:

1. The Learned AR submitted that the Noticee has received the Show Cause Notice dated November 17, 2021. Further, Learned AR submitted that the Noticee has filed a reply vide letter dated December 03, 2021, which was taken on record.

2. The Learned AR reiterated the submissions made by the Noticee in its letter dated December 03, 2021 and has stated that there are no further submissions to make.

3. The Learned AR submitted that the Noticee does not challenge the SCN and pleads for minimum penalty.

4. The Learned AR also submitted that the Noticee does not want to prefer settlement mechanism as requested in her letter dated December 03, 2021.

CONSIDERATION OF ISSUES AND FINDINGS

18. I have perused the charges levelled against the Noticee 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?*

19. 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 manipulative, fraudulent or an unfair trade practice in securities markets.*

[Explanation.– For the removal of doubts, it is clarified that any act of diversion, misutilisation or siphoning off of assets or earnings of a company whose securities are listed or any concealment of such act or any device, scheme or artifice to manipulate the books of accounts or financial statement of such a company that would directly or indirectly manipulate the price of securities of that company shall be and shall always be deemed to have been considered as manipulative, fraudulent and an unfair trade practice in the securities market.]

(2) Dealing in securities shall be deemed to be a manipulative, fraudulent or an unfair trade practice if it involves any of the following:—

(a) knowingly indulging in an act which creates false or misleading appearance of trading in the securities market"

20. The allegation against the Noticee is that, while dealing in the stock option contracts at BSE during the IP, it had executed reversal trades on the same day which were allegedly non-genuine trades and the same had resulted in generation of artificial volume in stock option contracts at BSE. Reversal trades are those trades in which an entity places its buy or sell positions in a contract with subsequent sell or buy positions

with the same counterparty during the same day. These reversal trades are alleged to be non-genuine trades as they:

- 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.

21. I note from the trade log of the Noticee that it had traded in one unique contract in the stock options segment of BSE during the IP. The Noticee had executed two non-genuine trades in this one contract. I further note that the above mentioned trades of the Noticee had resulted in the creation of artificial volume of a total of 1,00,000 units in the said contract.

22. I note that the non-genuine trades executed by the Noticee in the above contract had a significant difference in the buy rate and sell rate 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 was squared up within a short span of time with the same counter-party. To illustrate, the Noticee, at 12:42:02.7084 hours on March 26, 2015, entered into a buy trade with the counter-party *viz*. Bestway Dealcom Private Limited for 50,000 units at the rate of Rs. 38.2 per unit in the contract VOLT15MAR220.00CE. Thereafter, on the same day, the Noticee, at 12:50:44.3823 hours entered into a sell trade with same counterparty for 50,000 units at the rate of Rs. 57.35 per unit in the same contract. Thus, while dealing in the said contract during the IP, the Noticee executed the reversal trade with same counterparty viz. Bestway Dealcom Private Limited on the same day with significant price difference in buy and sell price without any significant change in the price of the underlying which indicates that these trades were non-genuine in nature. Thus, the Noticee, through its dealing in the contract viz. “VOLT15MAR220.00CE” during the IP, executed non-genuine trades which is 4.17% of the total trades from the market in the

said contract during the IP, and thereby generating an artificial volume of 1,00,000 units.

24. I note that the transactions executed by the Noticee are not genuine in view of the fact that on the same day, the Noticee reversed the position with the counterparty with a significant price difference, as observed from trade log of Noticee. The fact that there was a wide variation in prices of the said contracts and the transaction in a particular contract was reversed with the same counterparty on the same day only indicates prior meeting of minds with a *mala fide* intent to execute the reversal trades at a pre-determined price. Since, these trades were executed in illiquid option contracts, there was no trading in the said contract and hence, there was no price discovery in the strictest terms; this can only lead to a conclusion that the Noticee had indulged in reversal trades with the counterparty in the stock options segment of BSE and the same were not genuine.

25. Further, I observe that it cannot only be a coincidence that the Noticee could match trades with the same counterparty with whom it had undertaken the first leg of the respective trade. This is but an outcome of a meeting of minds and a deliberate attempt to deal in such a fashion.

26. 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 also place 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….."*

28. Further, the Hon'ble Securities Appellate Tribunal, 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. I note that while direct evidence may not be forthcoming in the present matter as regards to meeting of minds or collusion of the Noticee with other entity, there is guidance from the aforesaid order of the Hon'ble Supreme Court where it lays emphasis on the 'preponderance of probabilities' in each case to arrive at a decision considering the following:
    - the isolated trade and reversal in the same option contract;
    - the same counter party being involved in both the trades;

- the dates of the trade being the same; and
- the substantial difference in the buy and sell rate within same day

I cannot but conclude the trades have been executed with an ulterior motive to create artificial volume and are not genuine.

30. My conclusion, hence is that, considering the aforesaid factors, the trading behaviour of the Noticee has resulted in creating 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 Supreme Court of India in the matter of **SEBI Vs. Shri Ram Mutual Fund** [2006] 68 SCL 216(SC) 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…".*

31. 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:

Penalty for fraudulent and unfair trade practices.

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

32. 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.

33. I observe, the Noticee was instrumental in the creation of artificial volume in the illiquid stock option contracts at BSE during the investigation period by executing reversal /non-genuine transactions in the illiquid stock options segment at BSE. Further, it is not possible from the material available on record to quantify the amount of loss caused to genuine investors as a result of the reversal trades/non-genuine trades executed by the Noticee with her counterparties. However, from the manner in which Noticee executed the above mentioned transactions, the Noticee has violated the statutory provisions of law.

34. By considering all the facts, I note that Noticee indulged in execution of reversal trades in stock options contracts during 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 Regulation 3(a), (b), (c), (d), 4(1) and 4(2) (a) of the PFUTP Regulations, 2003. Therefore, I have no hesitation to impose the minimum penalty prescribed under the relevant provision of SEBI Act.

35. In the same context, the Hon'ble SAT while dismissing the appeal filed by Shruti Saraogi vs SEBI vide appeal No. 814 of 2021 dated January 13, 2022 quoted as under:

"......We find that the minimum penalty which can be imposed under Section 15 HA is Rs. 5 lacs. Therefore, we do not find any reason to reduce the penalty amount. ....."

ORDER

36. 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
NAYANA MANOJ SHAH (PAN: AMEPS1138B)	Regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of PFUTP Regulations, 2003	Rs. 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.

37. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order by way of Demand Draft in favour of *"**SEBI - Penalties Remittable to Government of India**"*, payable at Mumbai.

OR

Payment can also be made through online payment facility available on the website of SEBI www.sebi.gov.in on the following path at **ENFORCEMENT → Orders → Orders of AO → PAY NOW** or by clicking on the below payment link:
https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html

38. The aforesaid Noticee shall forward said Demand Draft or the details / confirmation of e-payments (in the format as given in the table below) to "Division Chief, Enforcement

Department – I, Division of Regulatory Action – I (EFD I – DRAI I), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C – 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051" and also send an e-mail to tad@sebi.gov.in with the following details:

Case Name :	
Name of Payee :	
Date of Payment:	
Amount Paid :	
Transaction No. :	
Bank Details in which payment is made :	
Purpose of Payment: (like penalties/ disgorgement/ recovery/ settlement amount	

39. 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.

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

Date: April 07, 2022 **E BALASUBRAMANIAN**

Place: Mumbai **ADJUDICATING OFFICER**