BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER No: Order/AP/SK/2020-21/7506]

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

In respect of:

Ashwani Kumar Jain
(PAN: AAGPJ7280F)
R/o 314, 3rd Floor, Ambica Vihar,
Sunder Vihar,
New Delhi - 110087.

In the matter of Illiquid Stock Options at BSE

1. Securities and Exchange Board of India ('SEBI') observed large scale reversal of trades in the Stock Options Segment of the BSE Limited (hereinafter be referred to as 'BSE') and, pursuant to this, it conducted investigation into the trading activities of certain entities in illiquid Stock Options at the BSE for the period April 01, 2014 to September 30, 2015 (hereinafter be referred to as 'the Investigation Period'). Investigation revealed that during the Investigation Period, a total of 2,91,643 trades (comprising 81.38% of all the trades executed in the Stock Options Segment of BSE) involved reversal of buy and sell positions by the clients and counterparties in a contract. These alleged 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 Investigation Period. It was further noted that said alleged non genuine trades were not restricted to any specific contract or between any specific set of entities.

2. Ashwani Kumar Jain (hereinafter be referred to as 'the Noticee") was one of the several entities which was indulged in execution of such alleged non genuine trades. It was observed from the trade log of the Noticee that he had traded in 44 unique Stock Option contracts during the Investigation Period, out of which 90 reversal trades have been found to be non-genuine trades which allegedly lead to creation of artificial volume of total 22,65,000 units. It was further observed that the Noticee, by executing non-genuine trades during the Investigation Period, registered a positive close out difference of ₹ 1,10,04,400/- approx. The trades entered by the Noticee were reversed on the same day within few minutes with same counterparty at a substantial price difference without any basis for significant change in the contract price which indicates that these trades were artificial and non-genuine in nature. The summary of dealings of Noticee in such 44 Stock Options contracts is as follows:

Table 1: Summary of dealings of the Noticee in contracts wherein he executed non- genuine trades

S. No.	Contract Name	Avg. Buy Rate (Rs.)	Total Buy Volume (no. of units)	Avg. Sell Rate (Rs.)	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	ABNV15AUG1890.00CE	34.00	12000	63.00	12000	100%	50%	100%	38%
2	ABNV15JUL1560.00PEW3	2.40	12000	14.00	12000	100%	100%	100%	100%
3	ABNV15JUL1620.00PEW4	14.00	15000	21.00	15000	100%	100%	100%	100%
4	AXIS15AUG460.00PE	1.15	40000	6.50	40000	100%	25%	100%	24%
5	BAJT15AUG2130.00PE	8.25	15000	21.95	15000	100%	25%	100%	25%
6	BAJT15JUL2520.00CE	32.00	10000	67.00	10000	100%	100%	100%	100%
7	BAJT15SEP2300.00PE	27.75	15000	54.00	15000	100%	50%	100%	52%
8	BATA15AUG900.00PE	2.15	25000	10.95	25000	100%	33%	100%	54%
9	BIOC15AUG410.00PE	1.05	50000	4.85	50000	100%	33%	100%	45%
10	BPCL15JUL780.00PE	2.65	30000	7.35	30000	100%	100%	100%	100%
11	BPCL15SEP940.00CE	14.25	21000	27.00	21000	100%	50%	100%	58%
12	CENT15AUG600.00PE	15.00	50000	28.00	50000	100%	100%	100%	100%
13	CENT15JUL600.00PE	8.00	50000	18.00	50000	100%	100%	100%	100%
14	CESC15AUG480.00PE	1.00	45000	5.75	45000	100%	25%	100%	39%
15	CESC15SEP520.00PE	4.15	31000	14.00	31000	100%	14%	100%	12%
16	CIPL15AUG680.00CE	3.05	36000	9.85	36000	100%	33%	100%	61%
17	CIPL15JUL540.00PE	2.05	39500	4.95	39500	100%	20%	100%	34%
18	COAL15AUG350.00PE	2.05	36000	5.75	36000	100%	50%	100%	36%
19	COLG15JUL1830.00PE	15.00	15000	28.00	15000	100%	50%	100%	56%
20	DRRL15AUG3250.00PE	51.00	10000	89.00	10000	100%	50%	100%	67%
21	GAIL15AUG340.00PE	2.05	40000	5.75	40000	100%	25%	100%	26%
22	GRSM15JUL3150.00PEW4	18.00	10000	39.00	10000	100%	100%	100%	100%
23	HDBK15AUG930.00PE	7.25	23000	17.00	23000	100%	20%	100%	29%
24	HERO15AUG2350.00PE	30.00	10000	49.00	10000	100%	50%	100%	50%
25	ICIC15AUG230.00PE	1.15	50000	4.50	50000	100%	100%	100%	100%
26	INFY15AUG940.00PE	7.00	23000	16.95	23000	100%	25%	100%	23%
27	INFY15JUL915.00PE	3.05	24000	9.75	24000	100%	50%	100%	44%
28	JUST15AUG1110.00PE	12.00	30000	27.00	30000	100%	100%	100%	100%
29	LNTL15AUG1620.00PE	18.00	20000	47.00	20000	100%	100%	100%	100%
30	LNTL15JUL1590.00PE	4.00	20000	27.00	20000	100%	50%	100%	65%
31	MNML15AUG1110.00PE	4.60	47000	14.00	47000	100%	33%	100%	32%
32	PIDI15AUG400.00PE	2.25	36000	6.90	36000	100%	50%	100%	64%
33	PIDI15JUL360.00PE	1.25	40000	5.70	40000	100%	100%	100%	100%
34	RELI15AUG780.00PE	4.25	25000	11.00	25000	100%	100%	100%	100%
35	SHTF15JUL800.00PE	6.00	12000	22.00	12000	100%	100%	100%	100%
36	SIEM15JUL1170.00PE	6.00	20000	12.00	20000	100%	17%	100%	16%
37	STAC15AUG1470.00CE	9.00	20000	16.00	20000	100%	100%	100%	100%
38	STAC15AUG930.00PE	4.15	25000	12.00	25000	100%	14%	100%	16%

S. No.	Contract Name	Avg. Buy Rate (Rs.)	Total Buy Volume (no. of units)	Avg. Sell Rate (Rs.)	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
39	SUNP15AUG760.00PE	8.10	20000	16.00	20000	100%	17%	100%	15%
40	SUNP15JUL760.00PE	4.15	20000	8.75	20000	100%	33%	100%	29%
41	WOCK15AUG1320.00PE	59.00	10000	102.00	10000	100%	100%	100%	100%
42	WOCK15JUL1260.00PE	25.00	10000	60.00	10000	100%	100%	100%	100%
43	YESB15AUG980.00CE	6.00	20000	12.00	20000	100%	100%	100%	100%
44	YESB15JUL780.00PEW4	5.00	20000	11.00	20000	100%	100%	100%	100%

3. It was observed that:

    a. The alleged non-genuine trades of the Noticee had contributed from 14% to 100% of the total trades that had happened in the aforementioned contracts in the market.

    b. The volume of 22,65,000 units generated by alleged non genuine trades of the Noticee in the above 44 contracts was artificial volume which had contributed 12% to 100% of the total volume in said contracts in the market.

    c. These alleged non genuine trades, executed by the Noticee had significant differential in buy rates and sell rates considering that the trades were reversed on the same day.

    d. The Noticee had allegedly engaged in the non-genuine trades in the Option Segment of BSE for the purpose of creating false or misleading appearance of trading in the aforementioned contracts in the Stock Option Segment of BSE.

4. Based on above findings of the investigation, the competent authority in SEBI *prima facie* felt satisfied that there are sufficient grounds to inquire and adjudicate the alleged violation of the provision of Regulation 3(a), (b), (c), (d), 4(1) and 4(2)(a) of the SEBI (Prohibition of Fraudulent and Unfair Trading Practices related to Securities Markets) Regulations, 2003 (hereinafter be referred to as, the "PFUTP Regulations") by the Noticee and appointed Shri Suresh B Menon., Chief General Manager ('erstwhile AO') as Adjudicating Officer vide *communication order* dated May 29, 2018 to inquire and adjudge under Rule 5 of SEBI (Procedure for Holding Inquiry and imposing penalties by Adjudicating Officer) Rules, 1995 and under section 15HA of the SEBI Act, the alleged violations by the Noticee. Thereafter, vide a *communication order* dated March 25, 2019, Shri Santosh Kumar Shukla, Chief General Manager was appointed as Adjudicating Officer pursuant to transfer of Shri Suresh B Menon. Subsequently, by a *communication order* dated January 07, 2020, this case has been transferred to the undersigned with an advise that except for the change of the Adjudicating Officer the other terms and conditions of the original orders *'shall remain unchanged and shall be in full force and effect'* and that the "*Adjudicating Officer*

shall proceed in accordance with the terms of reference made in the original orders". The text of the provisions of PFUTP Regulations are as under:

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.

5. After receipt of records of these proceedings, it was noted that the erstwhile AO had issued the notice to show cause no. SEBI/HO/EAD/25514/2018 dated August 27, 2018 ('the SCN') to the Noticee in terms of Rule 4(1) of the Adjudication Rules read with section 15I of the SEBI Act. Vide letter dated February 21, 2019, the Noticee had submitted his reply.

6. Thereafter, an opportunity of hearing was granted to the Noticee on January 28, 2020 in terms of Rule 4(3) of the Adjudicating Rules when Mr. Chirayu Jain, Advocate, Authorised Representative ('AR') appeared before the undersigned and made oral submissions on the lines of written reply dated February 21, 2019. The AR emphasized on para 7.2, 7.3, 10 and 14 of the said reply and reiterated that the contract name as mentioned in SCN does not match with the contract notes for the relevant trades executed through the broker Ashlar Securities. The AR also submitted copies of Bill of Ladings pertaining to the firms of the Noticee to demonstrate that the Noticee was actively involved in his business and not on trading in the securities market during the relevant period. The AR further requested 14 days' additional time to submit post hearing additional submissions. The request of the AR was allowed. Vide letter dated February 10, 2020, the Noticee submitted his additional submissions. The replies /submissions of the Noticee are *inter alia* as follows:

   a. He raised a preliminary objection that all the incriminating material found against him was not shared with him in the interests of fair hearing. He has never indulged in any illegal activity or unfair practice as has been alleged. He has been a bonafide investing member on the stock exchanges since 1992 and he remains an outsider and is completely ignorant about underlying mechanics of stock market through which crimes like insider trading take place. It is for the first time that he has ever received any such notice. The said notice lacks basis and is denied in its entirety.

b. He objected that the SCN was issued at a belated date i.e. on August 27, 2018 more than three years after the purported period of investigation i.e. between April 01, 2014 to September 30, 2015. The SCN is in direct contravention of the established principles of law and adverse assumptions are being drawn regarding his trading activities of the Noticee that he may have undertaken more than three years back. Given the belated SCN, it is completely unjustified and irrational to expect him to verify the facts relating to his trading history which was undertaken on a particular day more than three years ago and file reply justifying in detail the said trades that he undertook, why he undertook them, what market factors influenced the decisions etc.

c. As per the website of BSE, a trade in derivatives market can only take place when there is an opposite matching order, i.e. matching in quantity and price (premium). Therefore, it is obvious that the quantity and price (premium) between party and counterparty must match and the trade gets executed only at the time when an opposite matching order is placed/is found. The time of purchase/sale by a party would by default be within milliseconds of sale/purchase by the counterparty. Thus, all the three components-quantity, price (premium) and time would therefore match between the party and counterparty.

d. As per the SCN, he is shown as having indulged in reciprocal trading with one 'J.B. Overseas' and with one 'Xion Gems & Jewellers Pvt. Ltd.'. It is not stated that in respect of which stock, the said transactions were entered into. He is unaware about the said 'J.B. Overseas' and 'Xion Gems & Jewellers Pvt. Ltd.' and is not related to the said entities or their promoters and he is also not related to any director of a listed company nor is he a director in any listed companies. Further, the SCN also fails to bring on record any material to say that he is related to the said 'J.B.Overseas' or 'Xion Gems & Jewellers Pvt. Ltd.' and/or to the directors of the listed companies. Therefore, he could neither have indulged in reciprocal trading with the said entities nor had any interest in creating artificial volume for any stock option whatsoever.

e. His investments/trades made during the relevant period were made by his stock brokers- Mr. Sunil Rana (through 'Sharekhan Ltd') and Mr. Ajay (through 'Multiplex Capital Ltd.' and 'Ashlar Securities Private Limited'). In 2014 or 2015, he was approached by one, Mr. Ajay, who promised high returns, and therefore, he reluctantly decided to engage him as well. He would only discuss about his overall trade position, the sectors and the type of security his brokers had invested/traded during the week, once or twice during the week. Otherwise, he had no knowledge about the bids being made, stocks being invested into and the time of such bids.

f. His full-time work has been that of importer and manufacturer of plastics and packaging materials. During the relevant period, he imported 50,000 MT tonnes of stock lot of packaging materials and was fully invested into his work. A sample of Bill of ladings pertaining to his firms during month of June 2015 are provided for reference. His manufacturing base is located in Alipur village, New Delhi and at the relevant time in 2014-15 the said area lacked proper internet access and mobile data/smartphones had not become a commonplace back then. Given the circumstances, it was impossible for him to carry out 'reciprocal trading' as alleged.

g. All through he has been a passive investor in the stock market, he relied on his stock brokers who were given part of commission out of profits. He had little occasion to verify or to ascertain their conduct, independently, and therefore went by the word of mouth and carried out investments on the stock market.

h. In 2020, it has now come to his knowledge that the said-Ashlar Securities Private Limited is under investigation by SEBI for having carried out/abetted huge number of offences involving reciprocal trading. There was no occasion for him in 2015 to have known/learnt about the unscrupulous nature of Ashlar Securities Private Limited. He undertook to assist SEBI in its investigation against Ashlar Securities Private Limited and disclose the details of how he was approached and induced on behalf of Ashlar Securities Private Limited.

i. During the relevant period, he incurred a huge loss in the stock markets and it wrong to say that he created artificial volume of total 22,65,000 units and making profit/positive close out difference of ₹ 1,10,04,400. He provided a ledger account to demonstrate that he actually incurred a huge loss in the stock markets during 2015- 16. In order to substantiate his claim, he provided copy of his ITR Returns indicating losses suffered by him in the stock market during the AYs 2014-17.

j. He contended that placing order/trading on stock market is not a crime. Since only the price (premium) could be varied and not the quantity, for any particular security, a trader should simultaneously place both purchase and sell orders at varying premiums. The purchase orders should be at lower rates than the sell orders. This is done so that, in any event of trade getting executed, the trader ends up making a profit, no matter how marginal. .It is likely that his portfolio managers were adopting the said strategy only. It is impossible for him to go back in time and to seek an explanation as to why such and such trades were made. However, he placed reliance on the 'Bhav Copy' downloaded from BSE for the date of June 22, 2015 and provided a copy of the same for records.

k. The annexure forming part of the SCN shows that he had purportedly traded in few stocks. The same are of well known 'large cap' companies with huge market capitalization and huge volumes of their stocks are traded each day in both equity and derivative markets. Their shares are highly liquid at all times. Only persons like institutional buyer or huge investment broker could influence their stock prices and that too only for a little margin. A small trader like him is in no position to influence the prices of stocks of such large cap stock options. Thus, the allegation that he created 'artificial volume' to artificially influence the price is without any substance.

Therefore, there was neither any interest nor motive for him to create artificial volume for the said stock options and like any other investor, he was only interested in making profits.

l. The example quoted in the SCN shows that there is nothing wrong with the said purported trades that were executed on behalf of him as he believes that his sub-broker must have placed bids for varying units to be sold at the highest prices and to be purchased at the lowest prices. The bids must have been converted into trades as and when an opposite matching order got found on that particular day. Otherwise, the said orders/bids would have never gotten executed.

m. He cannot be called upon to justify the trades of the alleged counterparties. Only the said counterparties could explain on their part why they purchased a security at ₹ 14 and sold at ₹ 4.25. Nothing has been brought on record that the purported counterparty has alleged that it was acting for his gain or that the said counterparty carried out the said trades in connivance with him. If and when such allegation is made, he has to be made aware of the same so that the same could be considered and replied to effectively. Otherwise, it amounts to violations of basic principles of natural justice.

n. Further, on a perusal of the contract notes especially of the trades through 'Ashlar Securities Private Limited', he observed that there is a complete mismatch between contract description in stock ledger provided by his stock broker and the contract descriptions in the SCN. Therefore, the trades for which he is being accused of were never carried out either by him or on his behalf.

o. He undertakes to fully cooperate with SEBI in its investigation into the said purported illicit trade in ill-liquid stocks, which to his knowledge should be focused on the actions and conduct of the brokerage firms rather than on individuals like him who has haplessly gotten involved in the present case.

p. The offences for which he is being accused of: i.e. violation of the provisions of PFUTP Regulations is incorrect as none of the ingredients for any of the said offences are made out or established. Therefore, he cannot be penalised under section 15HA of the SEBI Act. In this regard, he placed reliance on the orders of Hon'ble Securities Appellate Tribunal ('SAT') in the matter of *KSL & Industries Ltd vs. SEBI* (Appeal No. 9 of 2003, Date of decision September 30, 2003) and *Vintel Securities Pvt. Ltd. vs. SEBI* (Appeal No 219 of 2009, Date of decision November 23, 2009).

q. Decision of the Hon'ble Supreme Court in *SEBI v. Rakhi Trading Pvt. Ltd. (2018) 13 SCC 753* is wholly inapplicable to the facts of present case as in the said case, the parties had admitted to having a relationship between themselves and having synchronized and reversed trades amongst themselves with the idea of tax planning. The said judgment is wholly based on the said admission by the parties. According to him, the said trades were completely valid, legal and rational until and unless, evidence is put forth that the counterparty was executing their trades for his benefit/detriment and he is given a fair chance to react to the same. Thus, the elements of the offence alleged and of *Rakhi Traders (supra)* do not stand satisfied.

r. The present case is clearly distinguishable from the facts of *SEBI v. Kishore R.Ajmera (2016) SCC 368*, wherein the Hon'ble Supreme Court took cognizance of the fact that the party and counterparty in that case had not only engaged the same sub- broker, but they were also closely related to each other. The said judgment cannot be read in absence of the said foundational facts of that case. The said linkage/relationship between the party and the counterparty in the present case is absolutely missing and there was no meeting of minds between him and the purported counterparties. This particular fact puts the present case on very different footing than *Kishore R. Ajmera (supra)*.

7. I have considered the allegation levelled in the SCN, reply / submissions of the Noticee and the relevant material brought on record. The Noticee has contended that all the incriminating material found against him was not shared with him by SEBI in the interests of fair hearing. In this regard, I note that all the relied upon copies of the documents in the matter were provided to the Noticee along with the SCN. I am of the view that since the copies of the relevant and relied upon material which is the trade log and order log relevant for the Noticee were given to him along with the SCN, no prejudice is caused to the Noticee on this account. Moreover, in this context, it is a settled position of law that only the relied upon documents has to be provided for inspection to the Noticee and the same position has been upheld by the Hon'ble Supreme Court in the matter of *Kanwar Natwar Singh v. Directorate of Enforcement [(2010) 2 SCC 497], Chandrama Tewari Vs. Union of India, Through General Manager, Eastern Railways, (1988) 1 SCR 1102* and *M/s Haryana Financial Corporation vs. Kailashchand Ahuja* [2008(9) SCC31], Hon'ble Delhi High Court Delhi High Court in its order dated 30.08.18 in the matter of *PRAR Holding Private Limited Vs. SEBI* and also by the Hon'ble SAT in number of its rulings. In the recent ruling of Hon'ble SAT in the case of *Shruti Vora Vs. Securities and Exchange Board of India, in* Appeal Number 28 of 2020 decided on February 12, 2020 held that *"…The contention that the appellant is entitled for copies of all the documents in possession of the AO which has not been relied upon at the preliminary stage when the AO has not formed any opinion as to whether any inquiry at all is required to he held cannot be accepted. 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…"* Therefore, the contention of the Noticee is not acceptable and hence rejected.

8. The Noticee has contended that the SCN was issued at a belated date i.e. more than three years after the investigation period, adverse inferences have been drawn against him and that the SCN is in direct contravention of the established principles of law. In this regard, it is relevant to mention that the instant proceedings are mandated pursuant to decision of the competent authority to enquire whether

in light of his alleged involvement in execution of reversal trades in stock options with same entities on the same day, which were non-genuine in nature, had created false or misleading appearance of trading in the contracts traded by him in the option segment of BSE during a particular period. The said decision is taken subsequent to the detailed investigation carried out in the matter involving thousands of entities. Further, the SCN was issued on August 27, 2018 containing the details of the allegations and the basis thereof and the provisions of Regulations viz. PFUTP Regulations alleged to have been violated by him. I, therefore, hold that contentions of the Noticee in this regard are not acceptable.

9. From the reply of the Noticee, I note that the Noticee on one hand contested that there is a complete mismatch between contract description in stock ledger provided by his stock broker and the contract descriptions in the SCN. On the other hand, he claims that there is nothing wrong with the said purported trades that were executed on behalf of him by his sub-broker. Thus, the statements made by the Noticee on the alleged trades are contradictory in nature. I am, therefore, of the view that the Noticee has not denied the execution and subsequent reversal of trades as alleged in the SCN.

10. According to the Noticee, his trades were in stocks of 'large cap' companies with huge market capitalization and which are highly liquid in nature and regularly traded in the cash & derivatives markets. In this regard, it is matter of common knowledge that the fraudulent trading in illiquid Stock Options cannot be justified merely because the impugned trading by the Noticee in illiquid Stock Option was in scrips of well-known companies which are highly liquid in nature. I, therefore, hold that contention of the Noticee in this regard is not acceptable.

11. With regard to the merit of allegation, it is worth mentioning that reversal trades are considered non-genuine if they involve an entity reversing its buy or sell positions in a contract with subsequent sell or buy positions with the same counterparty during the same day. In this regard, artificial volume is considered as the volume (no. of units) reversed in non-genuine trades, comprising both original volume and reversed volume while keeping out the volume which is not reversed. Admittedly, the Noticee had indulged in 90 such reversal trades in 44 unique contracts during the Investigation Period involving reversal of trades with same entity with whom it had done buy/ sell transaction within a close proximity of time in a synchronized manner. It is noted from the trade log relied upon in the matter that the Noticee and counterparty (ies) both had placed their respective sell-buy and buy–sell orders in same time i.e. within 0 to 2 second time gap. Further, each trade involved matching of time, price and quantity of units. For example, in respect of the 4 trades in contract "MNML15AUG1110.00PE" dated June 22 & 23, 2015, it is noted that –

   a. Details of non-genuine trades in the contract "MNML15AUG1110.00PE" by the Noticee:

<u>Table-1</u>

Sl.	Date	Buyer	Seller	Buy Order Time	Sell Order Time	Trade Time	Trade Rate (Rs.)	Trade Quantity	Trade Value (in Rs.)
1	22/06/2015	J.B.OVERSEAS	ASHWANI KUMAR JAIN	12:06:04. 120495	12:06:03. 416957	12:06:04. 120495	14	25000	28100000
2	22/06/2015	ASHWANI KUMAR JAIN	J.B.OVERSEAS	12:06:08. 010903	12:06:08. 010809	12:06:08. 010903	4.25	25000	27856250
3	23/06/2015	XION GEMS & JEWELLERS PVT. LTD	ASHWANI KUMAR JAIN	12:44:00. 561696	12:43:59. 858743	12:44:00. 561696	14	22000	24728000
4	23/06/2015	ASHWANI KUMAR JAIN	XION GEMS & JEWELLERS PVT. LTD	12:44:04. 265021	12:44:04. 374330	12:44:04. 374330	5	22000	24530000
		Total						**94,000**	**10,52,14,250**

b. From the above table, it is noted that the Noticee at 12:06:03 hrs on June 22, 2015 placed a sell order for 25,000 units of put option of contract "MNML15AUG1110.00PE" at a price of Rs. 14. This sell order of the Noticee got matched with the buy order of another entity named J. B. Overseas which itself had placed a buy order for 25,000 units in the same contract at 12:06:04 hrs i.e. within few milliseconds of the sell order placed by the Noticee.

c. Thereafter, the Noticee at 12:06:08 hrs placed a buy order for 25,000 units of put option of contract "MNML15AUG1110.00PE" at a price of Rs. 4.25. This buy order of the Noticee got matched with the sell order of J. B. Overseas which itself had placed a sell order for 25,000 units in the same contract at 12:06:08 hrs i.e. within few milliseconds of the buy order placed by the Noticee.

d. From the above table, it is also noted that the Noticee at 12:43:59 hrs on June 23, 2015 placed a sell order for 22,000 units of put option of contract "MNML15AUG1110.00PE" at a price of Rs. 14. This sell order of the Noticee got matched with the buy order of another entity named XION GEMS & JEWELLERS PVT. LTD which itself had placed a buy order for 22,000 units in the same contract at 12:44:00 hrs i.e. within few milliseconds of the sell order placed by the Noticee.

e. Thereafter, the Noticee at 12:44:04 hrs placed a buy order for 22,000 units of put option of contract "MNML15AUG1110.00PE" at a price of Rs.5. This buy order of the Noticee got matched with the sell order of XION GEMS & JEWELLERS PVT. LTD which itself had placed a sell order for 22,000 units in the same contract at 12:44:04 hrs i.e. within few milliseconds of the buy order placed by the Noticee.

f. Thus the sell order placed by the Noticee at Rs. 14 was reversed with the same counterparties at Rs. 4.25 and Rs. 5 respectively, within few seconds and total artificial volume generated through such non genuine trades was 94,000.

12. A similar *modus operandi* was adopted by the Noticee in respect of other 86 trades executed by the Noticee in other 43 illiquid Stock Options contracts, wherein trades has been entered in quick succession of each other and the time taken by the Noticee for reversing its non-genuine trades is within a span of few minutes The buy orders placed by the Noticee were matched with sell orders of counterparties and sell orders placed by the Noticee were matched with buy orders of counterparties in terms of number of units and price and time. Thus, the total volume generated through such non genuine trades was 22,65,000 units of the 44 Stock Options contracts. Such reversal of trades in quick succession with substantial price difference indicate towards employing of a manipulative device in connection with its dealing in said illiquid Stock Options contracts. The SCN and the data provided in its annexures clearly provide details of the contract name, average buy rate and sell rate, total buy and sell volume in particular contract, percentage of non-genuine trades to Noticee's trade, percentage of non-genuine trades of Noticee's to total trades in particular contract, percentage of artificial volume generated by the Noticee in the contract and percentage of artificial volume generated by the Noticee in the contract to total volume in the contract. It has been found that the Noticee's 90 trades in 44 contracts were executed with the same counterparty with whom he has executed buy-sell or sell-buy trades and such trades were reversed within a close proximity of time in a synchronized manner. Therefore, I find no merit in the argument of the Noticee that placing order/trading on stock market is not a crime and he cannot be called upon to justify the trades of the alleged counterparties and that there is nothing wrong with the said purported trades that were executed on behalf of him by his sub-broker who had placed the bids.

13. The Noticee has contended that violation of the provisions of PFUTP Regulations for which he is being accused of is incorrect as none of the ingredients for any of the said offences are made out or established. In this regard, he placed reliance on the orders of Hon'ble Securities Appellate Tribunal ('SAT') in the matter of *KSL & Industries Ltd vs. SEBI* (Appeal No. 9 of 2003, Date of decision September 30, 2003) and *Vintel Securities Pvt. Ltd. vs. SEBI* (Appeal No 219 of 2009, Date of decision November 23, 2009). I note that the impugned reversal trades were carried out by the Noticee in an illiquid Stock Options Contracts where there was no participation of public. The impugned reversal trades were carried out by the Noticee in an illiquid Stock Options contracts. Considering these facts and circumstances, I am of the view that the impugned trades of the Noticee were not just a coincidence or genuinely negotiated transactions. Rather the reversal trades were undertaken by the Noticee with his counterparty with a predetermined arrangement to book profit or losses respectively, and, therefore, the parties to the trades were not trading in the normal sense and ordinary course of business.

14. Such trading pattern in illiquid Stock Options cannot occur just by accident or coincidence. In this case, the trading behavior of the Noticee makes it clear that aforesaid trades of the Noticee could not have been possible without prior meeting of minds. The synchronized trading by the Noticee with same counterparty at same time for same quantity at same price and reversal of transaction with wide variation in price of the reversed trades in the same contract in a short time without any basis, 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 contracts in question. In view of the fact that these options contracts were illiquid in nature, having very small volume in trading, the Noticee created artificial volumes in Stock Options which was manipulative and deceptive in nature. Once the Noticee has been found to have indulged in such reversal transactions in illiquid Stock Options, he is liable for his acts and omissions and it is immaterial whether the brokerage firms / counterparties to his trades have been charged or not. Therefore, the contentions of the Noticee that there is no evidence of prior meeting of minds and no linkage/relationship between him and other counter parties are not acceptable. Such transactions in illiquid Stock Options cannot be taken as genuine one. Such trading was apparently without any economic rationale. Thus, the claim of the Noticee that his pattern of trading cannot be said to have resulted into artificial volume is not acceptable.

15. Further, with respect to the reversal of trades carried out by the Noticee, I note that the Hon'ble Supreme Court in the matter of *SEBI vs. Rakhi Trading Private Ltd.*, in Civil appeals no., 1969 of 2011 with Civil Appeal Nos., 31743177 of 2011 and Civil Appeal No., 3180 of 2011 decided on February 8, 2018 had observed that *"the price discovery system itself was affected by synchronization and rapid reverse trade, which also had the impact of excluding other investors from participating in the market. The Supreme Court, therefore found that the traders having engaged in a fraudulent and unfair trade practice while dealing in securities, are hence liable to be proceeded against for violation of Regulations 3(a), 4(1) and 4(2)(a) of PFUTP Regulations".*

16. The Hon'ble Supreme Court in the *Rakhi Trading Private Ltd.* case also observed that "*considering the reversal transactions, quantity, price and time and sale, parties being persistent in the number of such trade transactions with huge price variations, it will be too naïve to hold that the transactions are through screen-based trading and hence anonymous. Such conclusion would be over-looking the prior meeting of minds involving synchronization of buy and sell order and not negotiated deals as per the Board's circular. The impugned transactions are manipulative/deceptive device to create a desired loss and/or profit. Such synchronized trading is violative of transparent norms of trading in securities."*

17. The Noticee has contended that the facts and circumstance of the present case is distinguished from the case of *Rakhi Trading*. In this regard, he contested that in the case of *Rakhi Trading,* the parties had admitted to having a relationship between themselves and having synchronized and reversed trades amongst themselves with the idea of tax planning. I observe that the ruling in *Rakhi Trading Ltd.* case primarily deals with the impact of non-genuine reversal of trades between the counter parties which creates false or misleading appearance of trading and is not dependent on loss or profit made by the entities with the idea of tax planning. Further, the charge of artificial volumes created by the two counterparties by entering into non-genuine reversal of trade, is not dependent on making of loss or profit by an entity. In this regard, Noticee's contention regarding distinguishable factors is not tenable. In this regard, I note that the Hon'ble Supreme Court in *Rakhi Trading (supra)* case held that such undesirable transactions would certainly include unfair practices in trade and thus, orchestrated trades are a misuse of the market mechanism. It is also noted that the trades by the Noticee generated volumes without any change of beneficial ownership. With regard to such reversal transactions, Hon'ble Supreme Court also held in the *Rakhi Trading* case that - "*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". The Hon'ble Supreme Court further observed that - "*The non-genuineness of these transactions is evident from the fact that there was no commercial basis to suddenly, within a matter of minutes, reverse a transaction when the value of the underlying had not undergone any significant change*". The investigation has shown amount of profit / loss of the counterparties to the trades as a result of such non-genuine trades. The violation by the Noticee is creation of artificial trading volumes by trading between two counterparties and wider market is not involved in the trades, the trades are such that one of the counterparty books a profit while the other counterparty books a loss. Hence, it would be appropriate to consider the impact of these transactions between the counterparties in totality.

18. The Noticee has contended that he had traded in stock options on anonymous order matching system of BSE and his orders were matched in normal course when an opposite matching order is placed/is found. Further, the Noticee contended that the SCN fails to bring on record any material to say that he is related to the said 'J.B.Overseas' or 'Xion Gems & Jewellers Pvt. Ltd.' and/or to the directors of the listed companies and thus, SEBI has failed to show any nexus between him and other counter parties. I am of the view that the transactions in a particular contract were reversed with the same counterparties indicates a prior meeting of mind with a view to execute the reversal trades at a pre-determined price. Since these trades were done in illiquid option contracts, there was no trading in the said contract and hence, there was no price discovery in the strictest terms. The wide variation in prices of the said contracts, within a short span of time, is a clear indication that there was pre-determination in the prices by the counterparties while executing the trades. Thus, it is noted that the Noticee had indulged in reversal trades with his counter parties in the stock options segment of BSE and the same were non-genuine trades. Therefore, the Noticee's contentions are not acceptable and hence rejected.

19. I also find no merits in the submission of the Noticee that the trades were executed by his brokers and due to his pre-occupation, he was not involved in decision making. I am of the view that being a principal, the Noticee is responsible for the acts as alleged in this case.

20. I note that it is not mere coincidence that the Noticee could match his trades with the same counterparty with whom he had undertaken first leg of the respective trades. I note that though direct evidence is not available in the present matter as regards to meeting of minds or collusion of the Noticee with other entities. The genuineness of trading has to be determined based upon circumstantial evidence involving a bundle of factors such as trading pattern, liquidity and volatility in the scrip /contract, etc. 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 observed 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.*"

21. Further, in *SEBI v Kishore R Ajmera (AIR 2016 SC 1079)*, Hon'ble Supreme Court 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..."*.The Hon'ble Supreme Court further observed 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.*"

22. The Noticee has contended that the facts and circumstance of the present case is distinguished from the case of *Kishore R Ajmera*. In this regard, he contested that in the case of *Kishore R Ajmera,* Hon'ble Supreme Court took cognizance of the fact that the party and counterparty in that case had not only engaged the same sub-broker, but they were also closely related to each other. I observe that the ruling in *Kishore R Ajmera* case primarily deals with the 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 and that 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. In this regard, I note that Noticee's contention regarding distinguishable factors has been considered by undersigned and suitably dealt with and wherever required only relevant part of the rulings in the matter of *Kishore R Ajmera* has been referred in this case. Considering the same, I find no merit in such contentions of the Noticee.

23. Further, Hon'ble Supreme Court in the matter of *SEBI vs. Rakhi Trading Private Ltd.* (*supra*), upheld that "*the entities were engaged in a fraudulent and unfair trade practice while dealing in Options and hence were liable for violation of SEBI (PFUTP) Regulations"*. In line with the aforesaid judgments of Hon'ble SAT and Hon'ble Supreme Court, I note from the foregoing findings that the trading pattern of the Noticee in terms of volume of reversal trades, proximity of buy/sell and subsequent reversal evidences the indulgence of the Noticee beyond a reasonable doubt of the manipulative intent in creation of artificial volume. Further, consistent pattern of dealings by Noticee only in such options contracts which are illiquid clearly demonstrates that the manipulative intent to use stock exchange platform to carry out non-genuine trades with the aim to execute such trades for various manipulative purposes. In this regard, I note that the Hon'ble Supreme Court in the matter of *SEBI vs. Rakhi Trading Private Ltd.*

(*supra*), also held that - *"The platform of the stock exchange has been used for a non-genuine trade. Trading is always with the aim to make profits. But if one party consistently makes loss and that too in pre-planned and rapid reverse trades, it is not genuine; it is an unfair trade practice". "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."*

24. In totality of the circumstances as observed above, it is not acceptable that the Noticee has not employed any manipulative and deceptive device in contravention of the SEBI Act or the rules and the regulations made there under. Further, the non-genuine and deceptive trades as found in this case are covered under the definition of '*fraud*' and dealing of Noticee were '*fraudulent*' as defined under Regulation 2(1)(c) of the PFUTP Regulations. Further, it cannot be ignored that synchronization of trades in pre-determined manner as found in this case had an adverse impact on the fairness, integrity and transparency in the securities market. 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 by the Noticee stands established. Thus, I hold that the Noticee liable for penalty under Section 15HA of the SEBI Act which reads as under:-

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

25. While determining the quantum of penalty, it is important to consider the factors stipulated in Section 15J of the SEBI Act which are as under:

    a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
    b) the amount of loss caused to an investor or group of investors as a result of the default;
    c) the repetitive nature of the default.

26. Having regard to the factors listed in section 15J, it is noted that it is not possible to determine the consequent loss caused to investors as a result of the default as found in this case. It is worth considering that generally, there is NIL or negligible participation of the public in the trading in such illiquid Stock Option contracts. When the impact of artificial volume created by the two counterparties is seen as a whole, it is not possible from the material on record to quantify the amount of disproportionate gain or unfair advantage resulting from the artificial trades between the counter parties or the consequent loss caused to investors as a result of the default. However, considering the fact that the trades of the Noticee in 44 stock option contracts which resulted into artificial volume in range of 14% to 100%, generated out of the 90 non-genuine trades of the Noticee, I am of the view that such trades had created a misleading appearance of trading in the scrip. In these circumstance I

am of the view that for the market abuse and fraudulent practices by the Noticee monetary penalty needs to be imposed under section 15HA of the SEBI Act.

27. Taking into consideration all the facts and circumstances of the case including the aforesaid 15J factors and the period of debarment of almost 3 years already undergone and exercising the powers conferred upon me under section 15I of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose, a monetary penalty of ₹ 9,00,000/- (Rupees Nine Lakh Only) on the Noticee section 15HA of the SEBI Act. In my view, the said penalty is commensurate with the violations committed by the Noticee in this case.

28. The Noticee shall remit / pay the said total amount of penalty within 45 days of receipt of this order in either of the way of demand draft in favour of "*SEBI - Penalties Remittable to Government of India*", payable at Mumbai, or by following the path at SEBI website www.sebi.gov.in, ENFORCEMENT > Orders > Orders of AO > PAY NOW; OR by using the web link https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html. In case of any difficulties in payment of penalties, the Noticee may contact the support at portalhelp@sebi.gov.in

29. The Demand Draft or details and confirmation of e-payment made in the format as given in table below should be sent to "*The Division Chief, EFD-DRA-I, Securities and Exchange Board of India, SEBI Bhavan, Plot no. C- 4A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051*" and also to e-mail id:- tad@sebi.gov.in.

1	Case Name	
2	Name of the 'Payer/Noticee'	
3	Date of Payment	
4	Amount Paid	
5	Transaction No.	
6	Bank Details in which payment is made	
7	Payment is made for (like penalties along with order details)	

30. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties.

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

Date: April 22, 2020 **Amit Pradhan**
Place: Mumbai **Adjudicating Officer**