BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER No: ORDER/SS/SK/2019-20/6270]

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:

Hans Metals Limited
H No. 111/155, Harsh Nagar,
Kanpur - 208012.

In the matter of Illiquid Stock Options at BSE

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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. Hans Metals Limited (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 it had executed total 68 trades in 27 unique Stock Option contracts during the Investigation Period, out of which 66 reversal trades in 26 unique contracts had been found to be non-genuine trades which allegedly lead to creation of artificial volume of total 54,83,000 units. It was further observed that the Noticee, by executing non-genuine trades during the Investigation Period, registered a profit of ₹ 3,86,65,300/- 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 26 Stock Options contracts is as follows:

Table 1: Summary of dealings of the Noticee in contracts wherein it 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 Entity 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	ACCL15APR1590.00CE	14.00	64750	48.00	64750	100%	25%	100%	12%
2	ACCL15APR1680.00CE	2.50	46000	15.50	46000	100%	9%	100%	30%
3	BAJT15APR1890.00PE	5.04	231750	13.66	231750	100%	44%	100%	40%
4	BHRT15APR390.00PE	1.50	66500	10.50	66500	100%	14%	100%	20%
5	BHRT15APR41O.OOPEW3	12.00	60000	22.00	60000	100%	33%	100%	33%
6	BOBL15APR160.00CE	9.00	127500	16.80	127500	100%	12%	100%	31%
7	BPCL15APR700.00PE	1.00	223000	14.00	223000	100%	100%	100%	100%
8	BPCL15APR740.00PE	5.00	115500	31.00	115500	100%	50%	100%	65%
9	CESC15APR640.00PEW4	25.00	120000	50.00	120000	100%	100%	100%	100%
10	COAL15APR360.OOPE	0.50	79000	6.70	79000	100%	25%	100%	27%
11	GRSM15APR3400.00PE	5.00	66625	35.00	66625	100%	33%	100%	53%
12	GRSM15APR3650.00PE	65.73	72875	113.07	72875	100%	61%	100%	72%
13	HOBK15APR111O.OOPE	54.00	64500	85.00	64500	100%	33%	100%	43%
14	HPCL15APR620.00PEW4	3.00	66500	18.00	66500	100%	50%	100%	31%
15	HULL15APR900.00PE	2.50	119000	23.50	119000	100%	100%	100%	100%
16	KARB15APR125.00PE	1.44	256000	5.55	256000	100%	33%	100%	28%
17	KARB1SAPR135.00PE	6.00	138000	12.50	138000	100%	33%	100%	64%
18	KOTB15APR1290.00PEW4	4.00	135500	18.00	135500	100%	100%	100%	100%
19	KOTB15APR1410.00CE	2.00	50000	22.00	50000	100%	100%	100%	100%
20	MARU15APR3500.00PEW4	6.00	42500	26.00	42500	100%	33%	100%	29%
21	MARU15APR3850.00CE	16.00	31000	45.00	31000	100%	67%	100%	56%
22	NMOC15APR135.00PE	4.00	170000	9.00	170000	100%	50%	100%	50%
23	OBNK15APR230.00CEW4	0.40	141000	6.40	141000	100%	50%	100%	50%
24	OBNK15APR240.00PE	11.00	85000	21.00	85000	100%	50%	100%	50%
25	YESB15APR840.00CEW4	2.50	84500	15.50	84500	100%	33%	100%	34%
26	YESB15APR860.00CE	1.00	84500	14.00	84500	100%	25%	100%	32%

3. It was observed that:

   a. The alleged non-genuine trades of the Noticee had contributed from 9% to 100% of the total trades that had happened in the aforementioned contracts in the market.

   b. The volume of 54,83,000 units generated by alleged non genuine trades of the Noticee in the above 26 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 appearance of trading.

4. In view of the above, it was alleged that the Noticee, had created false or misleading appearance of trading in the aforementioned contracts in the Stock Option Segment of BSE. Therefore, the Noticee is alleged to have violated the provisions 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"). The text of these 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. The competent authority in SEBI *prima facie* felt satisfied that there are sufficient grounds to inquire and adjudicate the alleged violations of the provision of Regulation 3(a), (b), (c), (d), 4(1) and 4(2)(a) of the PFUTP Regulations by the Noticee and appointed Shri Biju S., Chief General Manager 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 *communication order* dated July 06, 2018, Shri Satya Ranjan Prasad, Chief General Manager as Adjudicating Officer ('erstwhile AO') was appointed as Adjudicating Officer pursuant to transfer of Shri Biju S. Subsequently, by a *communication order* dated May 22, 2019, this case has been transferred to me with 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"*.

6. After receipt of records of these proceedings, it was noted that the erstwhile AO had issued the notice to show cause no. EAD-4/ADJ/SRP/HKS/OW/P/29075/1/2018 dated October 17, 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 November 02, 2018, the Noticee had denied and refuted the allegations made in SCN and requested for the inspection of the documents in the matter and to provide it copy of the investigation report and trade and order log *qua* it. It was observed that Noticees's request for inspection of documents and supply of additional documents was still pending consideration. Therefore, in the interest of principles of natural justice, the Noticee was allowed inspection of documents relied upon in the matter. After completing the inspection of documents on August 29, 2019, the Noticee submitted its reply on September 07, 2019. Thereafter, an opportunity of hearing was granted to the Noticee on October 10, 2019 in terms of Rule 4(3) of the Adjudicating Rules when Mr. Vikas Bengani, Advocate, Authorized Representative ("AR") appeared before me and made submissions on the lines of the Noticee's written reply filed in this matter.

7. The replies /submissions of the Noticee are *inter alia* as follows:

    a. The inspection of the documents was allowed and carried out by AR on August 29, 2019 at SEBI office. The officer of the SEBI provided the inspection of only those documents which have already annexed with the SCN. It is submitted that complete material documents in support of the allegation contained in the SCN has not been made available to it despite its request. Hence, it is not in position to file a proper reply effectively answering the charges levelled against it in the SCN. Moreover, not providing complete materials/ documents to it is in violation and is contrary to the settled principles of natural justice.

    b. There is no mention of any specific grounds on the basis of which the Ld. Whole Time Member *prime facie* found grounds to adjudicate upon the alleged violation by the Noticee.

Thus, the appointment of the Adjudicating Officer has been made without application of judicious mind and on this ground alone, the SCN is invalid, illegal and non-est.

c. The Noticee's trades in the Stock Option Segment of BSE during the Investigation Period comprising of 18 months was only restricted to 4 days. It is further pertinent to mention that its trades in Stock Option Segment of BSE were only in well-known Companies.

d. The Noticee has not been provided with any material/ data of total market volume in Stock Option Segment of BSE during the Investigation Period. It has also not been provided trade and order log for total 2,91,643 trades comprising 81.38% of all trades executed in Stock Option Segment of BSE during the Investigation Period which were allegedly found to be non-genuine trades which resulted into creation of artificial volume to the tune of 826.21 Crores units or 54.68% of the total market volume in Stock Option Segment of BSE during the Investigation Period. Thus, the allegation made in the SCN is vague, bald and devoid of any substance.

e. All the trades in Stock Option Segment of BSE were executed on anonymous screen based trading platform provided by BSE, wherein, identity of the counter parties remain undisclosed. Hence, the question of any non-genuine trade does not arise at all unless it is proved that such trades were executed in connivance with any counter party. However, all the counter party (ies) whose names have been disclosed in the SCN was/ were completely unknown to it.

f. BSE has a sophisticated surveillance system and if there had been any reversal of trade, the system could have alarmed BSE to take corrective measures to restrain any non-genuine trades happening in its trading platform. However, it had not received any warning or caution letter from BSE for any of its trade in its Stock Option Segment during the period of its trading and any period thereafter, during the Investigation Period. Thus, the allegation of execution of non-genuine trades by it in Stock Option Segment of BSE which purportedly resulted into creation of artificial volume is totally farfetched and is based on presumptions, assumptions, surmises and conjectures. It had meticulous track record of trading in the securities market and except the SCN, it had not received even a warning letter.

g. It is further submitted that it is a matter of common knowledge that the Stock Option Segment of the BSE has not been as vibrant as NSE. In such a situation, it is just a coincidence that the orders placed by it might have been matched. However, nowhere in the entire SCN it is alleged that it or its directors had any connection/ association/ relationship with any of the counter parties. In absence of any such connection/ association/ relationship with any of the counter party(ies) to its trades, it is illogical and irrational to allege that its trades with the said counter party(ies) were non-genuine trades which resulted into creation of any artificial volume.

h. It is submitted that the trades executed the Noticee in the Stock Option Segment of BSE were in the normal course of business devoid of any fraudulent intentions. In the derivative segment, only those stock and indices are permitted which are very liquid and there is a robust risk mitigation mechanism is in place. Since, it had traded in the options of very well-known company which has tradable position in the market; there was no reason to doubt credibility of the platform provided by BSE as approved by SEBI. The allegation of trades being non genuine has no basis as the SCN failed to provide any evidence to prove that there was a misleading appearance created in the market by the trades executed by the Noticee.

i. It is very pertinent to mention that the SCN does not allege that it's all trades executed in the Stock Option Segment of the BSE as non-genuine trades. It is mentioned in the SCN that it had executed 68 trades in total 27 unique contracts and out of 68 trades, 66 trades in 26 unique contracts have been alleged as non-genuine trades. Thus, there is an apparent contradiction in the SCN that were non genuine trades and some were genuine trades. If its intention was to create artificial volume then all the trades would have been held as non-genuine trades. It is also not aware, whether counterparties to its trades have also been held to have executed non-genuine trades as if a trade is a non-genuine trade, the trade of both the legs are to be held as non-genuine trades. However, in absence of the relevant data, it is totally unaware whether the entities which were counterparties to its trades have also been issued SCN or not.

j. The allegation contained in para 11 (b) of the SCN that a number of non-genuine trades allegedly executed by it has contributed significantly to the total number of trades to the market in the 26 contracts as 9% to 100% of the trades that happened in the aforementioned contracts. In para 11(c) of the SCN, it is further alleged that the substantial 12% to 100% of the volume generated by it in each of the 26 contracts had contributed to significant contribution of the total volume from the market in the said contracts. However, no details of such trades in the said 26 unique contracts have been provided to it.

k. It is further submitted that these allegations are merely eyewash as it does not take into consideration the number of trades and volumes generated in entire Stock Option Segment in BSE in particular scrip on a particular day. It may be noted that the stock exchange platform at the relevant point of time gave a choice to write options at various strike prices as per the suitability of the trader. What has been considered in the SCN is only an option with a particular strike price and not the total trading on Stock Option Segment in particular scrip at the relevant point of time. Thus the percentages shown in the SCN are misleading and cannot be relied upon.

l. It is submitted that the trades of the Noticee have all traits of being genuine and therefore cannot be categorized as non-genuine. These trades were executed on the anonymous platform of BSE, without any knowledge of counter party (ies), at price ranges that were permitted by BSE and SEBI and the obligations arising out of it have been settled through the clearing mechanism of the BSE.

m. Nowhere in the PFUTP Regulations, is the definition of reversal of trade provided. The reversal of trade is not an unusual phenomenon in the securities market and hence *per se* is not illegal like synchronized trade.

n. The Noticee placed reliance upon the judgments of SAT in following matters:-

In the matter of *KSL & Industries Ltd. vs. SEBI* (Appeal No. 9 of 2003, Date of decision 30th September, 2003) it was *inter alia* held that:

> *"I do not find any material on record in support of the said charge. A wild allegation of market manipulation, in particular the charge of fraudulent action unsupported with convincing evidence is not to be sustained. I fully agree with Shri Khambatta 's submission in this regard that allegation of 'fraud' can not survive on mere conjectures and surmises. "*

In the matter of *Vintel Securities Pvt. Ltd . vs. SEBI* (Appeal No. 219 of 2009, Date of decision 23rd November, 2009) it was *inter alia* held that:

> *"A serious charge of fraudulent and unfair trade practice has been established against the appellant without even dealing with the trades executed by it. The adjudicating officer has given no reasons whatsoever in support of his conclusion. He has found the appellant guilty in paragraph 14 of the impugned order which · is ·as general as it could be without referring to the details of the trades executed by the appellant and without showing as to how it was acting in tandem with others. This is not the way in which such charges are established. It is not enough to say that the appellant is guilty of the charge.The impugned order must show how the charge stands established. The least that was required was that the adjudicating officer should have dealt with the trades executed by the appellant and demonstrated as to how the scrip in question was manipulated and the role which the appellant played in that manipulation. It is not in dispute that it was not only the appellant but several other entities were also involved in the manipulation. In. the absence of any specific finding in regard to the manner in which the appellant traded in the scrip in question we cannot uphold the impugned order. Consequently, the same is set aside ..."*

o. In view of above it is clear that the trades of the Noticee in the BSE Stock Options Segment were completely genuine and without any intention to create false and misleading appearance of trading in the market and therefore it could not be alleged to have violated the PFUTP Regulations as alleged in the SCN.

p. It has neither directly or indirectly bought or sold or otherwise dealt in securities in any fraudulent manner. As mentioned above its trades were completely genuine and were without any malafide intention of creating any false or misleading appearance of trading in the market.

q. It has not used or employed any manipulative or deceptive devise or contrivance in contravention of the provisions of the SEBI Act or the rules or the regulations made there under, the same has also not been specifically brought out in the SCN.

r. It has not employed any device, scheme or artifice to defraud anyone in the market and the same has also not been alleged in the SCN.

s. It has not engaged in any act, practice, course of business which operated or would have operated as a fraud or deceit upon any person with any dealing in the market in contravention of the provision of the SEBI Act or the rules and the regulations made there under.

t. It has not dealt in securities in a fraudulent manner or as indulged in unfair trade practice in the securities market. As submitted above its trades were completely genuine and have not created any false or misleading appearance of trading in the securities market as alleged in the SCN.

u. The Noticee in view of the facts stated, arguments advanced and authorities cited, humbly prayed that the present proceedings be quashed since no primary violation of the PFUTP Regulations is made out against it and the genuineness of the trades has also been explained hereinabove.

8. 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 SEBI has not provided it with all the documents including investigation report and had not provided inspection of the said documents. In this regard, it is pertinent to mention that Hon'ble Supreme Court in the matter of *Kanwar Natwar Singh v. Directorate of Enforcement [(2010) 2 SCC 497],* held that –"…*Even the principles of natural justice do not require supply of documents upon which no reliance has been placed by the Authority to set the law into motion. Supply of relied on documents based on which the law has been set into motion would meet the requirements of principles of natural justice…".* Also, in the matter of *ChandramaTewari Vs. Union of India, Through General Manager, Eastern Railways, (1988) 1 SCR 1102,* Hon'ble Supreme Court held that - it is not necessary that each and every document must be supplied to the Noticee facing charges. Only material and relevant documents are necessary to be supplied to it.

9. It is also relevant to mention that in the case of *M/s Haryana Financial Corporation vs. Kailashchand Ahuja* [2008(9)SCC31] the Hon'ble Supreme Court had observed that -"*the theory of reasonable opportunity and principle of natural justice have been evolved to uphold the rule of law and to assist the individual to indicate his just rights. Whether, in fact, prejudice has been caused to an employee or not on account of denial to him of the report has to be considered on the facts and circumstances of each case. Even in cases where procedural requirements*

have been complied with, action cannot be ipso facto illegal or void, unless it is shown that non-observance has prejudicially affected the delinquent." In this case, the basis of the allegations as made in the investigation report has been mentioned in the SCN and it is the findings of the investigation that are basis of charge against the Noticee and are relied upon in these proceedings. Further, the allegations are based upon order log and trade log of the Noticee that have been provided to it. Since principle of natural justice has been complied with in this case, the grievance of the Noticee, in my view, is without any foundation. This view also finds support from the following judgment of Hon'ble SAT on the similar issue in the case of *Manoj Gaur Vs. Securities and Exchange Board of India, in Appeal Number* 64 of 2012 decided on October 03,2012: -

> *"The investigation report is not the evidence on which reliance was placed by the adjudicating officer. Since the adjudicating officer has complied with the statutory requirements, there is no legal obligation on the Board to furnish the entire investigation report to the appellants. Learned counsel for the parties have relied on certain case law relating to principles of natural justice. We do not consider it necessary to refer to all those details in view of the fact that regulation 9 of the Regulations makes it obligatory to communicate the findings in the investigation report and not the whole report. It is nobody's case that such findings were not made available. If the procedure laid down in the regulations has been followed by the adjudicating officer, the grievance of violation of principles of natural justice is without any foundation."*

10. Further, Hon'ble Delhi High Court in its order dated 30.08.18 in the matter of *PRAR Holding Private Limited Vs. SEBI held* that - *"….only material of investigation "pertaining to the show cause notice" should be subject matter of inspection. It further says that any related to third party or other confidential material which the SEBI feels would be prejudicial that may also be segregated or de-tagged."*

11. I am, therefore, of the view that since the relevant and relied upon material which is the trade log containing the trades of the Noticee, no prejudice is caused if inspection of entire trade log or investigation report had not been provided to it. In this respect, the Noticee has further contended that it has not been provided with entire market trade log in the alleged stock option contracts during the investigation period. In this regard, I note that as held by Hon'ble SAT in the cases of *Mayrose Capfin Private Limited vs. SEBI* and *Rajesh Jhaveri Vs. SEBI* vides its order dated March 30, 2012 and April 16, 2012, respectively, the details which are relevant for the Noticee have to be furnished to it. I note that the trade log and order log relevant for the Noticee and relied upon in the matter had been provided to it. I, therefore, do not find any merit in the contentions of the Noticee.

12. The Noticee has raised contention regarding not mentioning of any specific grounds/ reasons on the basis of which the Whole Time Member *prime facie* found grounds to adjudicate upon the alleged violation by it. In this regard, I note that such *prima facie* satisfaction of the Whole Time Member is based upon the facts and circumstances leading to the allegations as described in the SCN. Further, the content and procedure of issuance of SCN are determined in terms of the Adjudication Rules. On being so appointed, the adjudicating officer is obligated to commence the proceedings by

issuance of the notice under Rule 4(1) of the Adjudication Rules. Therefore, such appointment cannot be questioned in these proceedings. It is also relevant to mention here that on this issue vide an order dated July 31, 2018, the Division Bench of Hon'ble Delhi High Court has stayed the operation of the judgment of the single Bench of Hon'ble Delhi High Court in the matter of *Amit Jain Vs. SEBI*. I, therefore, reject the contention of the Noticee in this regard.

13. The trades that are the basis of allegations in the SCN are admitted by the Noticee. According to the Noticee, it had traded only on 4 days during the Investigation Period and its trades were only in well-known companies. 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 respect of well-known companies. An option contract that cannot be easily sold or converted to cash quickly at the prevailing market price will always be treated as illiquid option that has very low or no open interest. I, therefore, do not agree with such contentions of the Noticee.

14. 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 66 such reversal trades in 26 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 2 trades in contract "BPCL15APR700.00PE" dated March 23, 2015, it is noted that –

    a. The Noticee, at 11:19:42 hrs placed a buy order for 2,23,000 units of said contract at a price of ₹ 1.00. This buy order of the Noticee got matched with the sell order of another entity named MANOHAR DEALCOM PVT LTD.

    b. Thereafter, on the same day, within 8 seconds from the above trade, the Noticee, at 11:19:50 hrs entered into 1 sell trade with same counterparty MANOHAR DEALCOM PVT LTD for 2,23,000 units at rate of ₹ 14 per unit.

    c. Thus the buy order placed by the Noticee at ₹ 1.00 was reversed with the same counterparty at ₹ 14.00 within 8 seconds and artificial volume generated through such non genuine trades was for 4,46,000 units which is 100% of the volume traded in the said contract from the market during the investigation period.

15. Similar pattern on trading was observed in respect of other 64 trades executed by the Noticee in other 25 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 54,83,000 units of the 26 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.

16. 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 66 trades in 26 contracts were executed with the same counterparty with whom it 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 since 2 trades out of the 68 trades of the Noticee are genuine, then its other 66 trades cannot be termed as non-genuine trades.

17. The Noticee has contended that in the PFUTP Regulations the definition of reversal of trade has not been provided and the reversal of trade is not an unusual phenomenon in the securities market and hence *per se* is not illegal like synchronized trade. In this regard the Noticee has placed reliance on the judgment of SAT in the matter of *KSL & Industries Ltd. vs. SEBI* (Appeal No. 9 of 2003, Date of decision 30th September, 2003) and *Vintel Securities Pvt. Ltd . vs. SEBI* (Appeal No. 219 of 2009, Date of decision 23rd November, 2009). In this regard, 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. Reversal trades were undertaken by the Noticee with its 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. Such transactions in illiquid Stock Options cannot be taken as genuine one. Such trading was apparently without any economic rationale. Thus, the Noticee claim of a *bona fide* or genuine trader without having any specific role in creating artificial volume through alleged trades is not acceptable.

18. 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. When the impact of artificial volumes created by the two counterparties is seen as a whole, the making loss or profit is immaterial as the charge in this case is of creating false or misleading appearance of trading in the aforementioned contract. In view of the same, I find no merit in such contentions of the Noticee.

19. 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".* The Apex Court 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."*

20. The Noticee has contended that it has no knowledge about who were the counterparty (ies) to its trades as it was trading in anonymous platform of BSE at price ranges that were permitted by BSE and SEBI and the obligations arising out of it have been settled through the clearing mechanism of the BSE. I note that, it is not mere coincidence that the Noticee could match its trades with the same counterparty with whom it 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. With regard to reversal transactions, Hon'ble Supreme Court in the matter of *SEBI v Rakhi Trading Private Limited (Supra)*, further 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…..*"In the same matter, Hon'ble Supreme Court further held that- *"….quantity, time and significant variation of prices, without major variation in the underlying price of the securities clearly indicate that Respondent's trades are not genuine and had only misleading appearance of trading in the securities market*". In view of said Hon'ble Supreme Court judgment, I see no reason to take a different view in the present case. In view of the foregoing, I hold that the Noticee had indulged in execution of reversal trades in Stock Options with same counterparty (ies) on the same day, which are non-genuine in nature and have created false or misleading appearance of trading in terms of artificial volumes.

23. 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 it is liable for its acts and omissions and it is immaterial whether the counterparties to its trades have been charged or not. Therefore, the contentions of the Noticee are not acceptable.

24. 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*". Thus, the Noticee's contention regarding non vibrant Stock Option Segment at BSE in compare to NSE, non-receiving of any warning/ caution from BSE and not considering entire options available for a particular scrips at all strike price, is devoid of any merit and rejected hereby.

25. 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.

26. 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."*

27. 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 PFUTP Regulations. Further, it cannot be ignored that synchronization of trades in pre-determined manner 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."*

28. While determining the quantum of penalty, it is important to consider the factors stipulated in Section 15J of the SEBI Act which reads as follows:-

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;*

29. 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 26 Stock Option contracts which resulted into artificial volume in range of 12% to 100%, generated out of the non-genuine trades of the Noticee, I am of the view that such fraudulent trades deserve imposition of monetary penalty of the Noticee under section 15HA of the SEBI Act.

30. Considering all the facts and circumstances of the case including the aforesaid mitigating factors 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 ₹ 5,20,000/- (Rupees Five Lakh and Twenty Thousand 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.

31. 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

32. 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)	

33. 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.

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

Date: December 26, 2019 **Santosh Shukla**
Place: Mumbai **Adjudicating Officer**