BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/KS/AA/2019-20/4208]

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

In respect of

Sarthak Sales Pvt. Ltd.,
(PAN: AADCS8244A)

In the matter of Trading in Illiquid Stock Options on BSE

BACKGROUND OF THE CASE

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

2. Pursuant to investigation, it was observed that total 2,91,643 trades comprising substantial 81.38% of all the trades executed in stock options segment of BSE during the Investigation Period were non genuine trades. The aforesaid non-genuine trades resulted into creation of artificial volume to the tune of 826.21

crore units or 54.68% of the total market volume in stock options segment of BSE during the Investigation Period. It was observed that Sarthak Sales Pvt. Ltd. (hereinafter referred to as the "**Noticee**") was one of the various entities which indulged in execution of reversal trades in stock options segment of BSE during the Investigation Period. Such trades were observed to be non-genuine in nature and created false or misleading appearance of trading in terms of artificial volumes in stock options and therefore alleged to be manipulative, deceptive in nature. In view of the same, SEBI initiated adjudication proceedings against the Noticee for violation of the provisions of Regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003 (hereinafter referred to as "**PFUTP Regulations**").

APPOINTMENT OF ADJUDICATING OFFICER

3. The undersigned was appointed as the Adjudicating Officer vide order dated April 3, 2018, under section 19 read with section 15I(1) of the SEBI Act, 1992 (hereinafter referred to as "**SEBI Act**") and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as "**Adjudication Rules**") to conduct adjudication proceedings in the manner specified under Rule 4 of Adjudication Rules read with section 15I (1) and (2) of SEBI Act, and if satisfied that penalty is liable, impose such penalty deemed fit in terms of Rule 5 of Adjudication Rules and Section 15HA of SEBI Act.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. A Show Cause Notice dated September 21, 2018 (hereinafter referred to as '**SCN**') was issued to the Noticee under Rule 4 (1) of the Adjudication Rules to show-cause as to why an inquiry should not be initiated against the Noticee and why penalty should not be imposed upon the Noticee under Section 15HA

of the SEBI Act for the violations alleged to have been committed by the Noticee.

5. It was *inter alia* alleged in the SCN that the Noticee had executed 110 non genuine trades in 8 Stock Options contracts which resulted in artificial volume of total 28,24,000 units. The Noticee incurred a loss of approx. Rs. 1,93,62,200 by executing non genuine trades during the I.P. Summary of dealings of the Noticee in 8 Stock Options contracts, in which the Noticee allegedly executed non genuine trades during the I.P, is as follows:

S. No.	Contract Name	Avg. Buy Rate (Rs.)	Total Buy Volume (No. of units)	Avg. Sell Rate	Total Sell Volume (No. of units)	% of Non Genuine trades of Noticee in the contract to Noticee's Total trades in the Contract	% of Non Genuine trades of Noticee in the contract to Total trades in the Contract	% of Artificial Volume generated by Noticee in the contract to Noticee's Total Volume in the Contract	% of Artificial Volume generated by Noticee in the contract to Total Volume in the Contract
1	BHRT15JUN460.00PEW2	46.17	202000	32.05	202000	100%	100%	100%	100%
2	DABU15MAY300.00PEW1	45.81	95000	26.00	95000	85%	61%	64%	47%
3	HNZL15MAY145.00CEW1	31.83	400000	22.50	400000	100%	100%	100%	100%
4	IRBI15MAY270.00PEW2	43.89	67000	29.00	67000	57%	12%	36%	9%
5	IRBI15MAY290.00PE	47.57	53000	31.25	53000	100%	47%	100%	39%
6	NTPC15JUN125.00CEW2	15.54	190000	7.20	190000	100%	100%	100%	100%
7	VEDL15MAY250.00PEW3	40.62	223000	25.05	223000	100%	100%	100%	100%
8	VOLT15APR250.00CEW4	47.56	259000	27.15	259000	100%	59%	100%	44%

6. From the above table, following was noted as regards to dealings of the Noticee:
   (a) The Noticee has executed non genuine trades in 8 contracts, wherein all trades of the Noticee in 6 contracts were non genuine trades.
   (b) No. of non genuine trades of the Noticee has significantly contributed to the total no. of trades from the market in the above contracts, as 12% to

100% of the trades that happened in the aforementioned contracts were due to non-genuine trades executed by the Noticee.

(c) A substantial 36% to 100% of volume generated by the Noticee in each of the above contracts was artificial volume, and further artificial volume generated by the Noticee also contributed to 9% to 100% of the total volume from the market in said contracts.

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

7. The SCN issued to the Noticee was sent via Speed Post Acknowledgement Due and via a digitally signed email. Thereafter, the Noticee vide letter dated November 15, 2018, *inter alia* requested for copies of certain documents in the matter. In view of the same, the request of the Noticee was forwarded to the concerned department of SEBI vide letter dated December 03, 2018. The concerned department of SEBI provided an opportunity of inspection of documents to the Noticee and the Authorized Representatives ('AR') of the Noticee viz. Shri Arun Goenka and Shri Pravin Oza took inspection of documents relied in the matter by the Adjudicating Officer on March 13, 2019. Further, at the request of the Noticee, the soft copy of Annexure – B and C to the SCN was provided to the Noticee in compact disc. From the available records, I am convinced that the inspection of documents, which have been relied in the matter, has been given to the Noticee.

8. In view of the principles of natural justice, the Noticee was granted an opportunity of hearing in the matter on July 23, 2019 vide hearing notice dated July 01, 2019. Thereafter, the AR of the Noticee – Shri Arun Goenka, Chartered Accountant, submitted a letter dated July 05, 2019 on behalf of the Noticee and *inter alia* made the following submissions:

(1) At the outset, we refute and deny each and every charge and allegation on us.

(2) The Noticee is RBI registered NBFCs engaged primarily in the business of Finance& Investment.

(3) The above referred notice for adjudication seems to be based on a flawed or improper understanding of the securities market and the mechanism of execution of the trade in BSE. In the Bombay stock exchange the outcry system of trade has been abolished many years ago after introduction of on-line trading. Unlike the outcry system, the digital/on-line trading system is faceless. The identity of the client or even its broker is not known to the parties to a contract.

(4) The trades in question have all been done on the on-line trading platform of BSE in derivative segment of the market. The identity of the counterparty is not known to the trading parties. As a matter of fact "The Indian Clearing Corporation Limited, a wholly owned subsidiary of BSE, acts as the central counterparty to all trades executed on the BSE trading platform and provides full novation, guaranteeing the settlement of all bonafide trades executed."

Source--https://www.bseindia.com/static/about/Company Overview.html

(5) Derivatives are financial securities whose value or price is derived from an underlying asset or a group of assets, such as stocks, bonds, commodities and currencies, among others.

Derivatives allowed to be traded are always based on the underlying assets of very large and reputed corporates of the country. In the case of NOTICEE, we have traded in derivatives of following companies.

a. NTPC Ltd. (NTPC)- a Government of India PSU with market cap of about 1.4 Lakh Crores as on 2nd July 2019. It is one of the NAVRATNA unit.

b. VOLTAS (VOLT)- This is very old company belonging to the reputed TATA group with market capitalisation of Rs.21,654Crores. As on 2nd July 2019

c. DABUR (DABU)- This is one of a premier company of the country mainly in AYURVEDIC and other FMCG products with market capitalisation of Rs.71,212 Crores as on 2nd July 2019

d. HINDUSTAN ZINC (HNZL)- This was a government of India PSU which was privatised and now enjoys a market capitalisation of more than One Lac Crores as on 2nd July 2019

e. IRB INFRASTRUCTURE DEVELOPERS LTD (IRBI) is the leading company in the country undertaking large infrastructure projects - roads, *bridges etc. Market capitalisation of IRBI is about Rs.3,373 Crores As on 2nd July 2019*

f. *VEDANT LTD. (VEDL) This again is huge company with market capitalisation of about Rs.64,679 Crores As on 2nd July 2019*

g. *BHARATI AIRTEL (BHRT) This was the largest telecom service provider in the country. JIO has now overtaken it. The market capitalisation of the company is about Rs.1,78,661 Crores as on 2nd July 2019*

(6) *No one can create significant artificial volumes in the securities of Companies with such huge market capitalisation running into lakhs of crores.*

(7) *The pricing of the derivative is a function of risk perception, time to expiry, volatility and price change in the price of the underlying security. The change in the price of a derivative will be much higher in terms of percentage as compared to the value of the underlying security.*

For Example if the underlying security is valued at Rs.100 and assuming the PE was traded around that time at Rs. 5. A 5 % increase in the value of the underlying will mean an increase of 50-100% in the price of the PE.

(8) *It is mentioned in the Show Cause Notice (SCN) that during the investigation period "total of 291643 trades comprising substantial .38% of all the trades executed in the stock option segment of BSE are non-genuine".*

We would humbly like to submit that in the premier stock exchange of the country like Bombay stock exchange if 81.38% of all trades executed in the segment are considered as non genuine it raises serious concerns about the surveillance and monitoring mechanism of stock exchanges as well as SEBI.

(9) *The main allegations against the Noticee are that we have indulged in:*

a. *Non-genuine trade, defined as trades reversed with the same counterparty on the same day*

b. *Creating artificial volume*

A*llegation of non genuine trade*

We have not indulged in any non genuine trade. It must be appreciated that till date we do not know the so called counterparty — JJ ENTERPRISES. In order to do any non genuine trade one will have to know each other and pre- arrange and set-up a false trade. We could not have entered into any non-genuine trade in an on-line and *faceless trading system where the identity of the counterparty is not known. The trades are matched through a mechanised system based on a complex algorithm. The system does not allow to the trader any kind of identification of parties. The non genuine trade, defined as trades reversed with the same counterparty on the same day, is just not possible for the Noticee who till date do not know the party J J ENTERPRISES. It is a news to us that the name of the other party is JJ ENTERPRISES.*

Further, please note that as per the established norms and practice the clearing corporation is the counterparty in all the trades. The trades in question have all been done on the on-line trading platform of BSE in derivative section of the market. The identity of the other party is not known to the trading parties. As a matter of fact "The Indian Clearing Corporation Limited, a wholly owned subsidiary of BSE, acts as the central counterparty to all trades executed on the BSE trading platform and provides full novation, guaranteeing the settlement of all bonafide trades executed."

Source-https://www.bseindia.com/static/about/Companv Overview.html

Allegation of creating artificial volume

No one can create significant artificial volumes in the securities of Companies with such huge market capitalisation running into lakhs of crores. Further no motive has been ascribed to the notice for doing so. It has been alleged that we have created artificial volume in the contract of NTPC. NTPC is a very large Public sector Undertaking Owned by Government of India with a market capitalisation of 1.4 Lac Crores. The issued capital of NTPC is 824,54,64,400 no. of shares. Our trading volume of 1,90,000 shares will form a very insignificant percentage 0.002% of the issued capital of the company.

(10) Vide our letter dated 15th November 2018 we asked for several specific details and evidences, none of which could be produced to us for our inspection when we came for inspection on 13th March 2019. Copy of our letter dated 15th November 2018 and PROCEEDINGS OF INSPECTION OF DOCUMENTS, duly signed by Shri Vinod Pardeshi, AGM is attached for your immediate perusal.

(11) Parawise reply to the SCN:

(a) Para 1 of SCN- The charge of non genuine trade in illiquid stock options of BSE and violating Regulations 3(a), (b), (c) , (d), 4(1) and 4(2) (a) of SEBI

(Prohibition of Fraudulent and Unfair Trading Practices related to Securities Markets) Regulations , 2003 (PFUTP Regulations, 2003) is denied and refuted totally as incorrect.

(b) *Para 2 of SCN - We would like to humbly state that there is no ground for you to inquire into the affairs and adjudicate upon the alleged violations.*

(c) Para 3 of SCN-This refers to the general large scale reversal of trades in stock options segment of Bombay Stock Exchange. For the period 1st April 2014 to 30th sep 2015. We are not aware of these facts and offer no comments. If at all this has taken place, we are no way connected to it.

(d) Para 4 of SCN- The charge of non genuine trade and creating artificial volume is not correct. We have already clarified that the identity of the counterparty is never known to us. We could not have entered into any non- genuine trade in an on-line and faceless trading system where the identity of the counterparty is not known. The trades are matched through a computerised system based on a complex algorithm. The system does not allow to the trader any kind of identification of parties. The non genuine trade, defined as trades reversed with the same counterparty on the same day, is just not possible for the Noticee who till date do not know the party J J ENTERPRISES. It is a news to us that the name of the other party is JJ ENTERPRISES.

Please note that as per the established norms and practice the clearing corporation is the counterparty in all the trades. The trades in question have all been done on the on-line trading platform of BSE in derivative section of the market. The identity of the other party is not known to the trading parties. As a matter of fact "The Indian Clearing Corporation Limited, a wholly owned subsidiary of BSE, acts as the central counterparty to all trades executed on the BSE trading platform and provides full novation, guaranteeing the settlement of all bonafide trades executed."

Source-https://www.bseindia.com/static/about/Companv Overview.html

Further, no one can create significant artificial volumes in the securities of Companies with such huge market capitalisation running into lakhs of crores. Further no motive has been ascribed to the notice for doing so.

(e) Para 5 of SCN - If 81.38% of all the trades executed in the stock option Segment of the BSE are considered as non genuine, it raises serious concerns about the surveillance and monitoring mechanism of stock exchanges as well as SEBI. If the system of the oldest national stock exchange cannot be relied upon, the market participants will have no recourse.

(f) Para 6 of SCN- If the above facts are true, we are not anyway connected to it. We are not aware of any entity which indulged in non genuine trade.

(g) Para 7 of SCN- We reiterate and repeat that we have not indulged in any execution of non genuine trade in stock option segment of BSE. All our dealings are genuine. NTPC is a very large Public sector Undertaking Owned by Government of India with a market capitalisation of 1.4 Lac crores. The issued capital of NTPC is 824,54,64,400 no. of shares. Our trading volume of 1,90,000 shares will form a very insignificant percentage 0.002% of the issued capital of the company.

(i) Para 7 (a) of SCN- 1,90,000 units were purchased and later on squared up, this has been mentioned here as "5 Trades for 3,80,000 units".

(ii) Para 7 (b) of SCN - We have heard the name of the alleged counterparty JJ Enterprises for the first time from this SCN only. We do not know any such party.lt has been correctly stated that initially 190000 unit were sold in one lot and subsequently covered in four lots at a loss. Trading in highly Fluctuating market with high stakes is a game of nerves .The rising prices sets panic in the mind of the person who is carrying an adverse position and staring at huge loss. As the loss increases the panic is heightened. Out the trading pattern in the scrip confirms the genuineness of our trade. Initially loss was booked only on 2000 units which were bought at 9.20. However when prices went up further another 2000 were bought at 11.20. When the prices rather than cooling down were moving up, we panicked and exited the entire position by buying 186000 units at 15.65. This was done as a STOP LOSS strategy. The mind-set at that time was that if the loss is not booked immediately, it will increase further.

(iii) Para 7 (c) of SCN- the Noticee who till date do not know the party JJ ENTERPRISES. It is a news to us that the name of the other party is JJ ENTERPRISES.

(iv) Para 7 (d) of SCN- 1,90,000 units were sold and later on squared up, this has been mentioned here as "Noticee generated artificial volume of 3,80,000 units which is 100% of the volume traded I the said contract from the market during the I.P. period." NTPC is a very large Public sector Undertaking Owned by Government of India with a market capitalisation of 1.4 Lac crores. The issued capital of NTPC is 824,54,64,400 no. of shares. Our trading volume of 1,90,000 shares will form a very insignificant percentage 0.002% of the issued capital of the company.

(h) Para 8 of SCN- It is once again reiterated and denied that we have indulged in any non genuine trade and artificial volume. The company is an established RBI Registered NBFC and investment and trading in securities is a part of its regular business, Profit and loss is an outcome of the business activity. Anyone doing any business aims to earn profit out of such business activity. Any loss incurred is an unfortunate outcome of the business activity.

(i) Para 9 of SCN- It is once again reiterated and denied that we have indulged in any non genuine trade and artificial volume.

(j) Para 10 of SCN- It is once again reiterated and denied that we have indulged in any non genuine trade and creating artificial volume. The table shows list of contracts entered into by us. All these contracts are for very large and reputed companies of the country, executed at the premier Stock exchange -BSE, through SEBI registered brokers. There is absolutely no gap in meeting all the laid down regulatory criteria. As regards our trade constituting 57% to 100% of the trades done in the contract, the answer is given in the SCN itself, which said that these contracts were illiquid. In an illiquid counter even one trade done will mean that 100% of the volume has been cloaked by only one person.

(k) Para 11 of SCN-

(i) Para 11(a) of SCN- It is once again reiterated and denied that we have indulged in any non genuine trade and artificial volume. All our trades are genuine.

(ii) Para 11(b) & (c) of SCN- The notice has been made with a preconceived mind that non genuine and artificial trades have taken place. A trade of 190000 units which was reversed has been mentioned not as 190000 but as 380000 units executed. Similarly here it has been mentioned that our trades have contributed "12- 100 % of the trades that happened in the aforementioned contract" This statement should be viewed in the light of the fact mentioned in para no 1 of the SCN that such stock option were illiquid. In an illiquid counter if only one trade has happened it will mean 100 % volume has been cloaked by one party alone. In such a situation calculating percentage becomes meaning less.

(iii) Para 11 (d) of SCN- it is not surprising to any market player that the price of a Options derivative has jumped 50-100% on same day. The price fluctuation of the derivative will be much sharper in terms of percentage as compared to the value of the underlying security. For Example Voltas was traded around that time at Rs 300 whereas the calls were executed at Rs. 27/- A 10 % increase in the value of Voltas will mean a change of Rs 30 in the price of the underlying security. However the same increase of Rs.30 in the derivative CE/PE segment will mean more than 100% jump in the price.

(l) Para 12 of SCN- It is once again reiterated and denied that we have indulged in any non genuine trade and artificial volume. It is denied that we have violated any regulation. It is denied that any of our trade is manipulative and deceptive. It is denied that we have violated Regulations 3 (a),(b), (c), (d), 4(1) and 4 (2) (a) of PFUTP Regulations, 2003.

(m) Para 13 of SCN- It is once again reiterated and denied that we have indulged in any non genuine trade and artificial volume. We have not indulged in any non compliance and cannot be subjected to any penalty under section 15 HA of SEBI act.

(n) Para 14 of SCN- We have given detailed and sufficient ground why no Inquiry is required to be undertaken against us in terms of rule 4 of SEBI Adjudication rule 1995 read with section 15-1 of SEBI act and no penalty should be imposed on us under provisions of section 15 HA of the SEBI Act.

(o) *Para 14 of SCN- We humbly request you to kindly condone the delay by us in submitting the reply….."*

9. I note from the records that the Noticee failed to avail of the hearing opportunity on the scheduled date of hearing, i.e., on July 23, 2019. In view of the same, a final opportunity of hearing was granted to the Noticee on August 23, 2019 vide hearing notice dated August 07, 2019. Shri Arun Goenka, Shri Kushal Goenka and Shri Pravin Oza appeared as the AR of the Noticee in the hearing on August 23, 2019. During the course of hearing, the AR reiterated the contents of the letter dated July 05, 2019 submitted on behalf of the Noticee. Further, the AR undertook to make post hearing submissions in the matter latest by August 27, 2019.

10. Subsequently, the AR of the Noticee Shri Arun Goenka *inter alia* made the following post hearing submissions vide email dated August 23, 2019:

"….Allegation of non genuine trade—our response

- *All trades done by us are genuine.*
- *Trades have been done through SEBI recognised broker who are members of the exchange.*
- *Trades were executed on the platform of BSE—SEBI recognised and oldest stock exchange of the country, more than 100 years old, approx. 145 years old.*
- *All payments have been made through the banking channels.*
- *The company is an established RBI Registered NBFC and investment and trading in securities is a part of its regular business, any business activity of the company is carried out with an aim to earn profit. Any loss incurred is an unfortunate outcome of the business activity.*
- *The company is subjected to several scrutiny and audits of its accounts.*
- *Incurring losses through non genuine trade will mean passing off the company's wealth to strangers.*
- *SEBI could not produce any material evidence to show that these trades are not genuine.*

- *SEBI has confirmed on 13th March 2019 in the document titled as "PROCEEDINGS OF INSPECTION OF THE DOCUMENTS IN THE MATTTER OF ILLIQUID STOCK OPTIONS ON MARCH 13, 2019 AT 2.45 PM AT SEBI MUMBAI" that they have solely relied upon Annexures B & C to the SCN.*
- *Theses Annexures are nothing but trade data of the transactions done by the Noticee. This clearly means that it is mere assumption and inference of SEBI without there being any material evidence to prove the Noticee's guilt.*
- *Any person having actual experience of trading and having suffered the nerve wrecking tension would easily agree and accept the decisions done at the time of trading and on the trading table, than the person sitting on the side-line and analysing the data subsequently. It is very common to find traders daily cursing themselves for their own behaviour and trade where they lost money or did not make enough money. Speculation/ trading is a pure game of nerve.*
- *It has been correctly stated that initially 190000 unit were sold in one lot and subsequently covered in four lots at a loss. Trading in highly Fluctuating market with high stakes is a game of nerves .The rising prices sets panic in the mind of the person who is carrying an adverse position and staring at huge loss. As the loss increases the panic is heightened. Our trading pattern in the scrip confirms the genuineness of our trade. Initially loss was booked only on 2000 units which were sold at 9.20. However when prices went up further another 2000 were sold at 11.20. When the prices rather than cooling down were moving up, we panicked and exited the entire position by selling the balance 186000 units at 15.65. This was done as a STOP LOSS strategy. The mind-set at that time was that if the loss is not booked immediately, it will increase further.*
- *It must be appreciated that till date we do not know the so called counterparty — JJ ENTERPRISES. In order to do any non genuine trade one will have to know each other and pre- arrange and set-up a false trade. We could not have entered into any non-genuine trade in an on-line and faceless trading system where the identity of the counterparty is not known. The trades are matched through a mechanised system based on a complex algorithm. The system does not allow to the trader any kind of identification of parties.*
- *As per the established norms and practice the clearing corporation is the counterparty in all the trades.*

- *"The Indian Clearing Corporation Limited, a wholly owned subsidiary of BSE, acts as the central counterparty to all trades executed on the BSE trading platform and provides full novation, guaranteeing the settlement of all bonafide trades executed."*

  Source--https://www.bseindia.com/static/about/Company_Overview.html
- *The fact that the trade done by the Noticee were fully settled by the BSE certifies that the trade done by Noticee are bonafide.*
- *If the company were to indulge in such non genuine trade and incur losses, it would mean passing off its wealth to the strangers. Shareholders of the company will never forgive the management for such an act which will be categorised as fraud and would have lead to massive uproar and action for oppression and mismanagement etc. The shareholders of the company have not found any act of the management not acceptable to them.*

Allegation of creating artificial volume

- *No one can create significant artificial volumes in the securities of Companies with such huge market capitalisation running into lakhs of crores. It has been alleged that we have created artificial volume in the contract of NTPC.NTPC is a very large Public sector Undertaking Owned by Government of India with a market capitalisation of 1.4 Lac Crores. The issued capital of NTPC is 824,54,64,400 no. of shares. Our trading volume of 1,90,000 shares will form a very insignificant percentage 0.002% of the issued capital of the company.*
- *No motive has been ascribed to the noticee for doing so.*
- *All contracts are for very large and reputed companies of the country, executed at the premier Stock exchange –BSE, through SEBI registered brokers. There is absolutely no gap in meeting all the laid down regulatory criteria. As regards our trade constituting 57% to 100% of the trades done in the contract, the answer is given in the SCN itself, which said that these contracts were illiquid. In an illiquid counter even one trade done will mean that 100% of the volume has been cloaked by only one person.*
- *Such sweeping statements made that in the premier stock exchange of the country like Bombay Stock Exchange 81.38% of all trades executed in the Option*

segment are non genuine, projects the capital market of the country, and its Stock Exchanges etc. in a very poor light in front of international investors. .

Legal position

PFUTP Regulations, 2003

- *Non genuine trade has not been defined in the PFUTP but SCN defines Non-genuine trade as Reversal trade.*
- *Reversal trade has again not been defined in PFUTP but the SCN has defined it as trades reversed on the same day with the same counter party.*
- *In case SEBI seriously wants to ban such "Reversal trades" then SEBI should have the trading terminals of the brokers modified to give full information of the counter party. At present the trader is completely unaware of the identity of the counter party and is thus subject to any arbitrary action against him.*

PFUTP sec. 2(C)

"fraud" includes any act, expression, omission or concealment committed whether in a deceitful manner or not by a person or by any other person with his connivance or by his agent while dealing in securities in order to induce another person or his agent to deal in securities, whether or not there is any wrongful gain or avoidance of any loss, and shall also include—XXXX

XXXXX

Thus the key ingredients of a fraud is

- *Induce another person to deal in securities*
- *Wrongful gain or avoidance of loss*

In our case there has been no allegation that:

- *We have induced anyone to trade/ deal in securities or*
- *That we got wrongful gain or avoidance of loss. Rather were have incurred losses.*
- *The facts of the case in The SC case law of RAKHI TRADING (CA NO. 1969 OF 2011) are different than our case. In that case the trades were reversed in few seconds. In the case of Rakhi Trading they were not displaying any normal trading pattern. Sarthak is an NBFC. In our case the trading pattern is quite normal and in fact many of the trades done have been accepted as genuine by SEBI. Out of all the trades, SEBI has identified only 8 contacts as non-genuine. "*

CONSIDERATION OF ISSUES

11. I have carefully perused the charges levelled against the Noticee, its reply and the documents / material available on record. The issues that arise for consideration in the present case are :
    (a) Whether the Noticee has violated regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of PFUTP Regulations?
    (b) Does the violation, if any, attract monetary penalty under Section 15HA of the SEBI Act?
    (c) If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in section 15J of the SEBI Act?

12. Before proceeding further, I would like to refer to the relevant provisions of the PFUTP Regulations as below:

    3. Prohibition of certain dealings in securities
    No person shall directly or indirectly—
    (a) buy, sell or otherwise deal in securities in a fraudulent manner;
    (b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;
    (c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;
    (d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.
    4. Prohibition of manipulative, fraudulent and unfair trade practices
    (1) Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.
    (2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:—

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

13. I note that the Noticee has *inter alia* stated that certain documents related to the investigation have not been provided to it. In this respect, I note from available records that the documents / information relied in the present matter have been provided to the Noticee as annexures to the SCN. Further, I note from available records that the inspection of documents relied in the present matter have been provided to the Noticee as per policy. In view of the same, I am convinced that the principles of natural justice have been complied with in the present matter.

14. I note that the allegation against the Noticee is that, while dealing in the stock option contracts at BSE during the Investigation period, the Noticee had executed reversal trades which were allegedly non-genuine trades and the same have resulted in the generation of artificial volume in stock option contracts at BSE. Reversal trades are considered to be those trades in which an entity reverses its buy or sell positions in a contract with subsequent sell or buy positions with the same counterparty during the same day. The said reversal trades are alleged to be non-genuine trades as they are not executed in normal course of trading, lack basic trading rationale, lead to false or misleading appearance of trading in terms of generation of artificial volumes, and hence are deceptive & manipulative.

15. I also note that the Noticee has argued mentioning, *inter alia,* that there was no wrongful gain or avoidance of loss in the matter. I note that the term 'fraud' carries an inclusive definition in Regulation 2(c) of the PFUTP Regulations. On a close reading of the said definition, I find that it is not necessary to gain or to avoid loss in order to commit a fraud. Also, the Noticee has argued that the terms "non-genuine" or "Reversal Trade" have not been defined in the PFUTP Regulations. I find it not necessary that every term should be defined

in the law. Terms that are used based on market conduct have to be construed accordingly. Thus, the arguments of the Noticee in this regard are not convincing.

16. I note from the trade log of the Noticee that it had traded in 8 unique contracts in the stock options segment of BSE during the investigation period. It is observed that the Noticee had executed 110 non-genuine trades in the said 8 contracts. I further note that the above mentioned trades of the Noticee had resulted in the creation of artificial volume of a total of 28,24,000 units in the said 8 contracts and the said trades have also resulted in a close out difference of approximately Rs. 1,93,62,200 against the Noticee. Summary of non-genuine trades of Noticee is as follows:

S. No.	Contract Name	Avg. Buy Rate (Rs.)	Total Buy Volume (No. of units)	Avg. Sell Rate	Total Sell Volume (No. of units)	% of Non Genuine trades of Noticee in the contract to Noticee's Total trades in the Contract	% of Non Genuine trades of Noticee in the contract to Total trades in the Contract	% of Artificial Volume generated by Noticee in the contract to Noticee's Total Volume in the Contract	% of Artificial Volume generated by Noticee in the contract to Total Volume in the Contract
1	BHRT15JUN460.00PEW2	46.17	202000	32.05	202000	100%	100%	100%	100%
2	DABU15MAY300.00PEW1	45.81	95000	26.00	95000	85%	61%	64%	47%
3	HNZL15MAY145.00CEW1	31.83	400000	22.50	400000	100%	100%	100%	100%
4	IRBI15MAY270.00PEW2	43.89	67000	29.00	67000	57%	12%	36%	9%
5	IRBI15MAY290.00PE	47.57	53000	31.25	53000	100%	47%	100%	39%
6	NTPC15JUN125.00CEW2	15.54	190000	7.20	190000	100%	100%	100%	100%
7	VEDL15MAY250.00PEW3	40.62	223000	25.05	223000	100%	100%	100%	100%
8	VOLT15APR250.00CEW4	47.56	259000	27.15	259000	100%	59%	100%	44%

17. I note from the trade log that the trades executed by the Noticee in a contract were squared up within a short span of time with its counterparties. To illustrate, the Noticee on June 05, 2015 at 14:07:59 hrs entered into 1 sell trade

with counter party viz. J J Enterprises for 1,90,000 units at rate of Rs. 7.20 per unit in the contract “NTPC15JUN125.00CEW2”. Thereafter, on the same day, Noticee entered into 4 buy trades with same counterparty for a total of 1,90,000 units at an average rate of Rs. 15.54 per unit in the same contract. It is noted that while dealing in the said contract during the I.P., the Noticee executed total 5 reversal trades (4 buy trades + 1 sell trade) with same counterparty viz. J J Enterprises on the same day and with significant price differential in buy and sell rate. Thus, the Noticee, through its dealing in the contract viz. “NTPC15JUN125.00CEW2” during the I.P., executed 5 non genuine trades which is 100% of the total trades from the market in the said contract during the I.P., and thereby, Noticee generated artificial volume of 3,80,000 units which is 100% of the volume traded in the said contract from the market during the I.P. The Noticee has stated that a trade of 1,90,000 units has been mentioned not as 1,90,000 but as 3,80,000 units executed. However, I note that the Noticee had entered into both buy and sell trades in the contracts. Both the buy and sell trades are distinct trades and the counterparties to the said trades are responsible for the volume generated by the said trades. Since the Noticee was a counterparty to both the buy and sell trades in a particular contract, the volume generated through these two distinct trades has to be attributed to the Noticee.

18. The Noticee in its reply has stated that it had traded on a stop loss strategy in order to avoid further increase of its losses due to increase in price of the contract. In this respect, I note that the Noticee had contributed 100% of the volume in the above referred contract. This means that the Noticee was party to all the trades that occurred in the aforesaid contract and, therefore, there were no other trades in the contract which could have caused increase in the prevailing price of the contract. As such, the Noticee could not have adopted any stop loss strategy in the aforesaid contract. In view of the same, the contention of the Noticee cannot be accepted. The Noticee has further argued

that there can be high fluctuation in the price of an option contract. However, I note that the trades in the present matter were done in illiquid stock options wherein in many contracts the Noticee was a counterparty to all the trades in the said contract, which had high fluctuation in the prices of the option contracts. Since the Noticee was counterparty to the said trades, it had absolute control over the contract including its price. Therefore, the Noticee as a counterparty was responsible for the high fluctuation in price of the option contracts in the matter.

19. The Noticee has also stated that its trading volume of 1,90,000 shares will form a very insignificant percentage (0.002%) of the issued capital of NTPC. In this respect, I note that the allegation against the Noticee is of executing non-genuine trades in options contracts, and not of trading in the shares of NTPC. Therefore, the comparison of the Noticee's trading with the issued share capital of the company is not relevant.The Noticee has also argued without any basis that if it were to indulge in such non genuine trade and incur losses, it would mean passing off its wealth to the strangers. Shareholders of the company will never forgive the management for such an act which will be categorised as fraud and would have lead to massive uproar and action for oppression and mismanagement, etc. The Noticee has further stated that its shareholders have not found any act of the management not acceptable to them. I find the argument to be too general without any basis and, therefore, I am not convinced with the said argument.

20. The non-genuineness of these transactions executed by the Noticee is evident from the fact that there was no commercial basis as to why, within a short span of time, the Noticee reversed the position with its counterparties with significant price difference. The Noticee has claimed that the facts of SEBI v Rakhi Trading Private Limited (Civil Appeal Nos. 1969, 3174-3177 and 3180 of 2011 decided on February 8, 2018) are different from the present matter as the

trades were reversed within few seconds in the said case. However, I note from the trade log of the Noticee that the time taken by the Noticee for reversing its non-genuine trades ranged from 2 minutes & 37 seconds to 2 hours, 1 minute & 41 seconds. Such a short span of time taken for reversing the trades in an illiquid stock option contract suggests the non-genuineness of these trades executed by the Noticee.

21. The Noticee has also argued that it traded in stock options on anonymous and electronic trading platform of stock exchange, which is provided by stock exchange, and its orders were matched in normal course. However, the fact 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 observed that Noticee had indulged in reversal trades with its counterparties in the stock options segment of BSE and the same were non-genuine trades.

22. It is not mere coincidence that Noticee could match its trades with the same counterparties with whom it had undertaken first leg of the respective trades. This is the outcome of meeting of minds elsewhere and it was a deliberate attempt to deal in such a fashion. Here I would like to rely on the judgment of Hon'ble Supreme Court in SEBI v Kishore R Ajmera (AIR 2016 SC 1079), wherein it was held that - "…*in the absence of direct proof of meeting of minds elsewhere in synchronized transactions, the test should be one of preponderance of probabilities as far as adjudication of civil liability arising out of the violation of the Act or provision of the Regulations is concerned. The conclusion has to be gathered from various circumstances like that volume of the trade effected; the period of persistence*

in trading in the particular scrip; the particulars of the buy and sell orders, namely, the volume thereof; the proximity of time between the two and such other relevant factors. The illustrations are not exhaustive..."

23. The Hon'ble Supreme Court further observed in the same matter that – *"It is a fundamental principle of law that proof of an allegation levelled against a person may be in the form of direct substantive evidence or, as in many cases, such proof may have to be inferred by a logical process of reasoning from the totality of the attending facts and circumstances surrounding the allegations/charges made and levelled. While direct evidence is a more certain basis to come to a conclusion, yet, in the absence thereof the Courts cannot be helpless. It is the judicial duty to take note of the immediate and proximate facts and circumstances surrounding the events on which the charges/allegations are founded and to reach what would appear to the Court to be a reasonable conclusion therefrom. The test would always be that what inferential process that a reasonable/prudent man would adopt to arrive at a conclusion."*

24. I note that direct evidence is not forthcoming in the present matter as regards to meeting of minds or collusion of the Noticee with other entities. The Noticee has stated that its trades have matched with different entities and the counterparties were not related to it. However, I note that the trading behaviour of the Noticee makes it clear that aforesaid non-genuine trades could not have been possible without meeting of minds at some level. In this context, I deem it appropriate to refer to the Hon'ble SAT order dated July 14, 2006, in the case of Ketan Parekh vs. SEBI (Appeal no. 2/2004), wherein the Hon'ble SAT has 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."*

25. Further, I place my reliance on the judgment of Hon’ble Supreme Court in the matter in respect of SEBI v Rakhi Trading Private Limited (Civil Appeal Nos. 1969, 3174-3177 and 3180 of 2011 decided on February 8, 2018), in which the Hon’ble Supreme Court observed 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…..”*

26. The trading behaviour of the Noticee confirms that such trades were not normal and wide variation in prices of the trades in the same contract in a short time without any basis for such wide variation, all indicate that the trades executed by the Noticee were not genuine trades and being non-genuine, created an appearance of artificial trading volumes in respective contracts. 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. The Hon’ble Supreme Court of India in the matter of SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC) held that - *“In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant…”.*

27. In view of the same, I am convinced that it is a fit case for imposition of monetary penalty on the Noticee under the provisions of Section 15HA of the SEBI Act, which reads as under:

[1]*[**Penalty for fraudulent and unfair trade practices.***

15HA. If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty [2][which shall not be less than five lakh rupees but which may extend to twenty - five crore rupees or three times the amount of profits made out of such practices, whichever is higher].

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

    Factors to be taken into account by the adjudicating officer.

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

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

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

    (c) the repetitive nature of the default.

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

29. Though the records available before me does mention about amount of gain/loss of the entities involved in the non-genuine trades including the Noticee. However, it is worth considering that entities involved in these non-genuine trades have either booked gains or loss and the gains or loss appears to be of notional in nature. Generally, there is nil or negligible participation of the public in the trading in illiquid stock option contracts. Hence, the impact of these non-genuine trade has been considered. When the impact of artificial volume created by the two counterparties is seen as a whole, it is not possible

[1] Inserted by the SEBI (Amendment) Act, 2002, w.e.f.29-10-2002.

[2] Substituted for the words —twenty-five crore rupees or three times the amount of profits made out of such failure, whichever is higher by the Securities Laws (Amendment) Act, 2014, w.e.f. 08-09-2014

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. The Noticee has entered into 110 non-genuine transactions in 8 stock option contracts which demonstrates the repetitive nature of the default on its part.

ORDER

30. Having considered all the facts and circumstances of the case, the material available on record, the factors mentioned in Section 15J of the SEBI Act and in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose a penalty of Rs. 5,00,000 (Rupees Five Lakh only) on the Noticee viz. Sarthak Sales Pvt. Ltd. under the provisions of Section 15HA of the SEBI Act. I am of the view that the said penalty is commensurate with the lapse/omission on the part of the Noticee.

31. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of demand draft in favour of "SEBI -Penalties Remittable to Government of India", payable at Mumbai, OR through online payment facility available on the website of SEBI, i.e., www.sebi.gov.in on the following path, by clicking on the payment link: ENFORCEMENT -> Orders -> Orders of AO -> PAY NOW.

32. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to "The Division Chief (Enforcement Department -DRA- I), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C –4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai –400 051.". The Noticee shall also provide the following details while forwarding DD / payment information:
    (a) Name and PAN of the Noticee
    (b) Name of the case / matter

(c) Purpose of Payment – Payment of penalty under AO proceedings
(d) Bank Name and Account Number
(e) Transaction Number

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 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 the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticee viz. Sarthak Sales Pvt. Ltd. and also to the Securities and Exchange Board of India.

Date: August 29, 2019
Place: Mumbai

K SARAVANAN
CHIEF GENERAL MANAGER &
ADJUDICATING OFFICER