

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

In respect of:

Dhaval Kirti Kothari

(PAN: ASIPK4437H)

Address: A-7 Mahesh Krupa,
Devidayal Road, Mulund (West),
Mumbai - 400080

In the matter of dealing in illiquid stock options at BSE

BACKGROUND

1. SEBI observed large scale reversal of trades in Stock Options segment of Bombay Stock Exchange (hereinafter, referred to as "BSE") leading to creation of artificial volume. SEBI conducted an investigation into the trading activity in illiquid Stock Options at BSE (hereinafter, referred to as "investigation") for period 01/04/2014 to 30/09/2015 (hereinafter referred to as "I.P.").
2. Pursuant to investigation, it was observed that during the I.P, total 2,91,643 trades comprising substantial 81.38% of all the trades executed in Stock Options Segment of BSE 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 I.P.
3. Reversal trades were considered those trades in which an entity reverse 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, and allegedly lead to false or misleading appearance of trading in terms of generation of artificial volume, hence were deceptive and manipulative. Artificial volume is considered to be the volume (no. of units) reversed in both legs of said reversal trades while keeping out the volume, if any, which is not reversed.
4. It is noted that Dhaval Kirti Kothari bearing PAN: ASIPK4437H (hereinafter, referred to as "Noticee") was one of the various entities which were indulged in execution of non-genuine trades in Stock Options Segment of BSE during the I.P. The dealings of Noticee in Stock Options segment of BSE during the I.P., and allegations against Noticee for execution of non-genuine trades are emanated below.

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5. Noticee, while dealing in Stock Option segment of BSE during the I.P. allegedly executed 50 non-genuine trades in 12 contracts resulting in artificial volume of total 9446000 units in such contracts. Following is noted from the dealings of Noticee in aforesaid 12 contracts at BSE:
- All the trades executed by Noticee in aforesaid 12 stock option contracts were non genuine trades.
 - No. of non-genuine trades of Noticee has significantly contributed to the total no. of trades from the market in the above contracts, as up to 100% of the trades that happened in the said 12 contracts were due to non-genuine trades executed by the Noticee.
 - All the volume generated by the Noticee in each of the 12 contracts was artificial volume. Further, artificial volume generated by Noticee also contributed to significant up to 100% of the total volume from the market in said 12 contracts.
 - Alleged non genuine trades executed by Noticee had significant difference in buy rates and sell rates considering that the trades were reversed on same day.
6. In view of the foregoing, it was alleged that Noticee indulged in execution of reversal trades in Stock Options at BSE during the I.P. Such reversal trades were allegedly non-genuine in nature and have created false or misleading appearance of trading in terms of artificial volumes in stock options and therefore alleged to be manipulative, deceptive in nature. Thus, it is alleged that Noticee violated the provisions of Regulation 3(a),(b),(c),(d), 4(1), 4(2)(a) of SEBI (Prohibition of Fraudulent and Unfair Trading Practices related to Securities Markets) Regulations, 2003 (hereinafter, referred to as “PFUTP Regulations 2003”).

APPOINTMENT OF ADJUDICATING OFFICER

7. SEBI, in terms of Section 19 read with Section 15I(1) and (2) of the SEBI Act, 1992 and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter, referred to as “SEBI Adjudication Rules, 1995”) appointed Adjudicating Officer to inquire into and adjudge the alleged violations of aforesaid regulations in respect of Noticee, and if satisfied that penalty is liable, impose such penalty deemed fit in terms of Rule 5 of SEBI Adjudication Rules, 1995 and Section 15HA of SEBI Act.

SHOW CAUSE NOTICE, WRITTEN SUBMISSIONS, PERSONAL HEARING

8. Show Cause Notice dated February 22, 2019 (hereinafter referred to as “SCN”) was issued to the Noticee and sent through Speed Post AD mentioning the allegations against the Noticee and requiring it to show cause within 14 days of receipt of the SCN, as to why an inquiry should not be held and penalty be not imposed under Section 15HA of SEBI Act for the aforesaid alleged violations against it.

9. Noticee, vide letter dated March 11, 2019 requested for inspection of documents and records in connection with the SCN and to provide the entire records and papers in possession of SEBI in the matter. In this regard, vide letter dated March 19, 2019, it was informed that all the information and documents which were relied upon in the present proceedings have been provided to Noticee along with the SCN. In the said letter, Noticee was advised to submit its reply to SCN latest by April 10, 2019.

10. Noticee, vide its letter dated April 10, 2019 submitted its reply to the SCN, comprising following key submissions:

- a. I refer to captioned Show Cause Notice issued to me and respond as under.
- b. At the outset, deny all such allegations and observations against me in the Show Cause Notice in so far as the same are contrary to the present submissions or specifically admitted herein. Nothing contained in the Show Cause Notice shall be deemed to be admitted by me for the lack of traverse.

Background of allegations in the Show Cause Notice

- c. It is alleged in the Show Cause Notice that while dealing in the stock option segment of BSE, I had indulged in execution of reversal trades which allegedly created artificial volumes during the investigation period ranging from April 1, 2014 to September 30, 2015.
- d. It is alleged that I had executed 50 non-genuine trades in 12 unique contracts on 9 days i.e. on February 10, 2015 and March 2, 2015. These trades allegedly reversed on the same day with the same counterparty with a significant differential in buy and sell rates.
- e. It is therefore alleged that I have violated provision of Regulation 3(a), (b), (c), (d), 4(1) and 4(2)(a) of the SEBI (Prohibition of Fraudulent and Unfair Trading Practices related to Securities Market) Regulation, 2003 ("PFUTP Regulations").

Preliminary Objections

- f. I respectfully submit that SEBI has not provided any evidence or proof to show that my trades were fraudulent. None of the ingredients of the said PFUTP Regulations are attracted in the present case essentially because:
 - i. The trades were executed on the floor of the exchange with due compliance with all the rules and regulations of the exchanges;
 - ii. For the transaction to be termed fraudulent, as per the definition of "fraud", there has to be an "inducement" and SEBI has not even alleged inducement;
 - iii. There is no nexus, directly or indirectly with the counter party brokers or the clients in the present matter and SEBI has not even alleged this;
 - iv. None of the trades are deceptive in nature or have any impact on the investors or their investment decision which is a sine qua non of "fraud".
 - v. At no point of time was there any warning or any observation about the scrips/stocks which were executed by me;
 - vi. The observations regarding the stocks being illiquid is incorrect;
 - vii. Even assuming the stocks were illiquid, then any small quantity or volumes would look significant as there are no active traders in the stock;
 - viii. The trades in question were in the normal course of business and there is nothing amiss in the trades executed by me;
 - ix. Show Cause Notice is erroneous in as much as it is only a belated coercive use of power I action in terms of which power is sought to be used against 3 - 4 years back settled trades on the basis of wrong interpretation of power deemed to have been existed with SEBI under PFUTP Regulations.
 - x. The Show Cause Notice does not specify and consider facts matrix of our dealings in stock options segment of BSE. It does not state the reasons, rational, cause of action, locus and invoking of jurisdiction after over 3 years from the dates of settled transactions. The Show Cause Notice is therefore arbitrary.
 - xi. The Show Cause Notice fails to appreciate that when SEBI itself has not discharged its obligations of quick investigation, seeking explanation of the parties at that time, declaring trades in stock options as illegal at the relevant time, subjecting me to adjudication proceeding belatedly in unfair, unreasonable and absurd.

Inspection of Documents not granted

- g. I humbly submit that, upon reading of the Show Cause Notice, it appears that there are various documents and data that are referred to and relied upon by SEBI in the captioned proceedings as there is a disconnect in the charging provision and the allegation/observation mentioned in the Notice. I therefore requested for an inspection so that the disconnect be fixed. In fact, serious allegation is made against me that I have committed "fraud" in securities market without even providing the investigation report or any cogent evidence in this regard.
- h. In view thereof, by my letter dated March 4, 2019 ("Letter") I had requested the Ld. Adjudicating Officer to produce and provide us the entire records and papers in possession of SEBI in the matter and to grant me an opportunity of inspection of the same, to enable me to understand the allegations against me and to effectively respond to the Show Cause Notice. However, by SEBI's letter dated March 19, 2019 my legitimate request for inspection of documents has not been acceded to and I have been called upon to file my reply.

- i. I submit that in the interest of natural justice and in order to enable me to comprehensively defend myself, SEBI ought to have provided me the details and information sought by y letter. In absence of same, I am crippled to holistically represent myself.
- j. Be that as it may, I hereby submit our explanations and clarifications with the limited data/information retrieved by me and made available to me in the subsequent paragraphs. I crave leave to file further submissions after I am provided with additional information as sought by me during the course of captioned proceedings.

Submissions on dealing in 'illiquid' option segment of BSE

- k. With respect to observation that I have dealt in stock options contracts which are illiquid in nature, I submit that if we observe the underlying scrips in which I traded it can be established that these scrips are highly liquid in nature i.e. frequently traded in market. I traded in contracts such as Biocon, Exide, HDIL, IOB, NHPC, NMDC, NTPC, IDBI etc. In fact, I submit with humility that underlying stock of most of aforesaid contracts consists of companies which make up index of Bombay Stock Exchange. Thus, to allege that I deliberately traded in only those options which were illiquid in nature is unfair.
- l. Apparently, SEBI has held that I transacted in 'illiquid options' on the basis that my trades were in far-off strike prices and therefore very few entities were trading in such strike rates. However, in that case, it may also be concluded that said trades could have had no effect on other investors or market at large and that such illiquidity would be reason for volatility and alleged 'reversal' transactions since variations in option price would be dramatic if the chosen strike price is thinly traded.
- m. I submit that BSE and SEBI have themselves allowed and permitted trading in options for 'far months' with a strike price which are at large variance to current market price. The fact that such parameters are laid down is clearly indicative of fact that options will always be 'in the money' and 'out of money' and since regulators have themselves permitted trading in same, no adverse inference be drawn against me in this regard.
- n. It is pertinent to mention that stock exchanges regularly come out with list of illiquid scrips in cash segment. However, no such list is issued by exchanges or regulator for dealing in stock options contracts. Thus, to fasten the responsibility or allege a single individual investor that he traded in illiquid option is unwarranted and unfair.
- o. I submit with humility that derivative market is 'zero-sum game' and thus in each and every case one party will inevitably make profit and counterparty will make loss. In capital market neither BSE nor SEBI can guarantee profit or loss to any individual/entity. In derivative trading, traders often make profit or loss over a period of time since the market does not always behave as per their prediction/expectation. Thus, profit and loss is concomitant to trading in derivative segment. The mere fact that I traded in option segment cannot be a ground to rope me into present proceedings.

My trades did not depress the price/volume of underlying shares in cash segment

- p. I submit that we traded in the stock market in ordinary course consequent to my bonafide trading in option segment. The analysis of alleged non-genuine trades vis-à-vis market volume is as under:

Table 1

Sr. No	Name of Contract	% of impugned volume to the total volume in Stock Exchange
1	APLT15FEB17000PE	45%
2	BIOCI 5FEB440.00PE	50%
3	EXID15FEB165.00PE	16%
4	HDIL15FEB105.00PEW2	100%
5	IDBI15FEB80.00CE	100%
6	IOBL15FEB50.00CE	20%
7	MCRS15MAR235.00CEW1	23%
8	MFSL15FEB250.00PE	29%
9	NHPC15FEB18.00PE	12%
10	NHPC15MAR26.00CEW3	46%
11	NMDC15MAR120.00CEW1	100%
12	NTPC15FEB125.00PE	100%

- q. From the above Table 1, it can be observed that in most cases my trades were low percentage of market. Thus, it erroneous to allege that my trades created artificial volume on BSE. Going by the logic of SEBI if these were illiquid stock options, then any trade and transaction would look significant. In fact, the impugned trades constituted around 0.017% of the total alleged artificial trades during investigation period thereby constituting only a miniscule percentage of overall trades.
- r. I submit that there was no major movement in price of underlying scrip which itself proves that my trades had no impact on market. Thus, my transactions neither distorted the equilibrium in market nor caused any loss or prejudice to investors at large. Submitting without admitting, I submit that any kind of alleged fictitious/ manipulative trade in cash segment may create distorted impression in minds of investors that price of scrip if rising/falling who may invest/divest from said scrip. However, in case of option

segment there is no such effect since each contract expires at end of contract period and for every party who makes profit there is counter party who makes a loss. There is no question of transfer of beneficial ownership in option segment since at end of settlement cycle only net loss/profit is adjusted. Therefore, in my humble opinion, allegation of creation of 'artificial' or 'reversal' trade is of no consequence in option segment of exchange.

No relationship with the counterparty or its broking entities

- t. I did not act in concert or in collusion with anyone and nor was I part of any group or connected with anyone for the purpose of influencing price or for any manipulative activity alleged or otherwise. It is an admitted position that there is no connection whatsoever between me and counter parties.
- u. On analysis of the transactions provided to me with the Show Cause Notice, I understand that the following were the counterparties to my trades:

Table 2

Sr. No	Name of the counterparty to impugned trades	PAN Number of the counterparty to impugned trades
1	Adarsh Credit Co Op Society Limited	AAAJA0296J
2	Consistent Vyapaar Pvt Ltd	AADCC3480E
3	Gaurav Commodeal Private Limited	AAACG9240M
4	K V Ramana Shetty	ATZPS3443D
5	Pressweld Vessels Pvt Ltd Pvt Ltd	AACCP2284J
6	Rampur Industries & Investments Ltd	AABCR6319P
7	Sagar Vincom Pvt Ltd	AALCS5250N
8	Shivdhan Agency Private Limited	AAOCS2875E
9	Shubham Investment And Finance Pvt Ltd	AACCS4116L
10	Sri Krishna Viniyog Pvt Ltd	AAECS8984Q
11	Tarang Stock Broking Services Private Limited	AAACT9338F

- v. I state and assert that I have no 'connection' or 'relation' with any of counterparties to my trade as mentioned in Table 2 hereinabove. My trading in stock option segment was independent of any other entities dealing in the same and based on my limited understanding of capital market.
- w. All my transactions have been carried out on the floor of stock exchange. Undisputedly, in case of screen-based trading, the automated system itself matches orders on a price- time priority basis and hence it is not possible for anybody to have access over identity of counter party. Since counter party identity is not displayed; one can never have any choice with whom it wants to deal or not to deal.
- x. Be the case as it may, I state and assert that at no point of time was I aware of counterparty with which our transactions got matched since all my transactions were executed through the normal screen-based trading system of stock exchange where matching is done by automated on-line trading module.
- y. Further, we had dealt in stock option segment through a SEBI registered intermediary viz; MKB Securities Pvt. Ltd. From the data provided by SEBI, it can be observed that the counterparties were dealing with different broking entities:

Table 3

Sr. No.	Name of the counterparty to impugned trades	PAN Number of the counterparty to impugned trades
1	Adarsh Credit Co Op Society	Aryav Securities Pvt. Ltd.



	Limited	
2	Consistent Vyapaar Pvt Ltd	Aryav Securities Pvt. Ltd.
3	Gaurav Commoddeal Private Limited	Aryav Securities Pvt. Ltd.
4	K V Ramana Shetty	Aryav Securities Pvt. Ltd.
5	Pressweld Vessels Pvt Ltd Pvt Ltd	The Calcutta Stock Exchange Ltd.
6	Rampur Industries & Investments Ltd	Aryav Securities Pvt. Ltd.
7	Sagar Vincom Pvt Ltd	Aryav Securities Pvt. Ltd.
8	Shivdhan Agency Private Limited	Aryav Securities Pvt. Ltd.
9	Shubham Investment And Finance Pvt Ltd	Lalit Kumar Tulshyan
10	Sri Krishna Vinayog Pvt Ltd	V.G.Capital Market Pvt.Ltd.
11	Tarang Stock Broking Services Private Limited	Aryav Securities Pvt. Ltd.

- ~ I state, declare and assert that I had no prior meeting of minds with aforesaid broking entities as well as their clients, nor any contemporaneous knowledge about any alleged wrongdoing. I am not guilty of conduct which is contumacious or dishonest or acted in conscious disregard of law.
- aa. I would like to draw your kind attention to the matter of Jagruti Securities (2008 SCC online SAT 184) and SPJ Stockbroker Pvt. Ltd (2013 SCC Online SAT 67) wherein it was held that such alleged trades cannot be treated as illegal per se unless there is some cogent connection between the counterparties or there is "mischievous meeting of minds amongst certain parties". I submit that such element is completely absent in the captioned case.
- bb. Additionally, I would like to draw your kind attention to Order dated May 18, 2012 passed by the Hon'ble Securities Appellate Tribunal in matter of Sanjay Agrawal vs. SEBI wherein it was held that in order to establish an allegation of reversal trade between parties a cogent evidence or connection between the parties needs to be established. In my humble submission, in the present case, no such connection is established in Show Cause Notice since none exist.
- cc. I would like to further submit that all my trades in option segment were within prudential norms of exchange and as per procedures and guidelines as prescribed by regulator (BSE). At the relevant time, none of my trades were questioned by the brokers who are SEBI registered intermediaries and frontline gate-keepers of stock exchange. Had I been alerted by the broker or stock exchange I would have taken prompt and immediate corrective measures, if any, at that point in time only.
- dd. Further, no cautionary warning, advisory, communication or alarm was raised by BSE at any point of time. There was nothing in the public domain that there is anything amiss in the matter. In fact, with a fool proof and state of art surveillance system BSE could have annulled the trades at that point in time only in case it considered that the trades were fraudulent. However, this was not the case, which means that the trades executed by me were genuine and fair.
- ee. It is pertinent to mention that it is only recently that BSE, vide Notice No. 20160308-33 dated March 08, 2016, announced that it has introduced measure for prevention of reversal trades in Equity Derivative Segment w.e.f from March 14, 2016. Thus, in case of potential reversal trade, second leg (latest leg) of a reversal trade shall automatically be cancelled by exchange in an on-line real time basis on trading system. I submit that merely because on-line preventive measure and check & balance did not exist at relevant point of time to avoid inadvertent reversal trades no adverse inference be drawn against me in this regard.

No role attributed to me in Show Cause Notice

- ff. I submit that there is no reason for any allegation that I have violated the provisions of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Markets) Regulations, 2003 Regulations or the SEBI Act. I humbly submit that besides recording common generic allegations against me, not a single instance or observation on my specific role in alleged reversal is delineated in the Show Cause Notice. Such an approach, in my humble submission is bad in law. In this regard, I would like to draw your kind attention to case of Commissioner of Central Excise, Bangalore vs M/s Brindavan Beverages (P) Ltd. and Ors [Civil Appeal 3417 of 2002] decided on June 15, 2007; wherein Hon'ble Supreme Court observed as under:

"...9. We find that in the show cause notice there was nothing specific as to the role of the respondents, if any. The arrangements as alleged have not been shown to be within the knowledge or at the behest or with the connivance of the respondents. Independent arrangements were entered into by the respondents with the franchise holder. On a perusal of the show cause notice the stand of the respondents clearly gets established.

10. There is no allegation of the respondents being parties to any arrangement. In any event, no material in that regard was placed on record. The show cause notice is the foundation on which the department has to build up its case. If the allegations in the show cause notice are not specific and are on the contrary vague, lack details and/or unintelligible that is sufficient to hold that the notice was not given proper opportunity to meet the allegations indicated in the show cause notice. In the instant case, what the appellant has tried to highlight is the alleged connection between the various concerns. That is not sufficient to proceed against the respondents unless it is shown that they were parties to the arrangements, if any..."

Summary

- gg. In summary, with regard to my dealings in stock options on BSE, I would like to clarify my role as under:
- I acted as bonafide trader and have transacted in stock option segment in normal course of our business activity and our trading in the same was very much within my own financial and risk bearing capacity.
 - I submit that in any business activity in stock market, one can either make profit or loss. I humbly submit that at the relevant time we had no idea of any profit or loss in said transactions and I traded in option segment taking into account our 'risk and reward' parameters.
 - I am not connected to counterparty of my transactions in option segment and neither do I have any relation with promoters/directors/key management person of underlying scrips in cash segment.
 - I believe there has been no grievance by any investor, broker, stock exchange or any other agency concerned with respect to my dealing in the option segment of BSE Ltd.
 - SEBI has discontinued proceedings against the brokers and intermediaries against whom similar allegations of dealing in illiquid stock options while executing trades on behalf of clients have been levelled. I humbly submit that the same recourse ought to be adopted on an individual entity like me.
 - Speaking for myself, I state that I had followed and complied with all the procedures and requirements of capital market while dealing through SEBI registered intermediary. All the pre-trade, trade and post trade activities were carried out on the trading, clearing and settlement system of stock exchange which itself has sophisticated on-line surveillance software and systems in place.

Prayer

- hh. Based on my aforesaid submissions, it is apparent that I was not involved in any 'modus operandi' or manipulations while dealing in option segment of BSE. There is enough material on record to suggest that no further enquiry is required in the matter. It is, therefore, humbly requested that the Show Cause Notice dated February 22, 2019 be dropped without imposing any monetary penalty on me.
- ii. I humbly request that an opportunity of personal hearing be granted to me so as to enable me to present my submissions before your honor and seek discharge from present proceedings.
- jj. I humbly request the Ld. Adjudicating Officer that a lenient view be taken in the matter and I be discharged from captioned proceedings.
11. Vide notice dated May 03, 2019 sent through SPAD and e-mail, an opportunity of hearing was provided to the Noticee on May 20, 2019.
12. AR of the Noticee availed the hearing on May 20, 2019, in which original letter of authorisation was submitted, and also AR reiterated the submissions of the Noticee made in aforesaid reply dated April 10, 2019.

CONSIDERATION OF ISSUES AND FINDINGS

13. On perusal of the material available on record and giving regard to the facts and circumstances of the case and submissions of the Noticee, following issues require consideration in the present matter:
- Whether the Noticee has violated the provisions of Regulations 3(a),(b),(c),(d), 4(1), 4(2)(a) of PFUTP Regulations 2003?
 - Does the violation, if any, on part of the Noticee attract monetary penalty under Section 15HA of SEBI Act?
 - If so, what quantum of monetary penalty should be imposed on the Noticee taking into consideration the factors mentioned in Section 15J of the SEBI Act read with rule 5 (2) of the SEBI Adjudication Rules, 1995?
14. Aforesaid provisions alleged to have been violated by the Noticee reads as follows:

PFUTP Regulations 2003

3. Prohibition of certain dealings in securities



No person shall directly or indirectly—

- (a) buy, sell or otherwise deal in securities in a fraudulent manner;
- (b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;
- (c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;
- (d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.

4. Prohibition of manipulative, fraudulent and unfair trade practices

- (1) Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.
- (2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:—
 - (a) indulging in an act which creates false or misleading appearance of trading in the securities market;

15. Before proceeding to the issues, the following technical issues raised by the Noticee are being addressed.

15.1 Noticee has contended that it was not provided with documents /evidence in the present proceedings inter-alia including several documents listed by Noticee, viz, copy of investigation report, noting recorded by WTM, SEBI that Noticee violated alleged provisions, investigation report, alerts generated, if any, complete trade log for the 12 stock options, correspondence with any other law enforcement agency, statements of person/entities recorded in the matter and all other information relevant for determination of issues in the matter, etc. In this regard, it is noted that Noticee has already been provided in the SCN with relevant narrative from the investigation report leading to allegation in respect to the Noticee, and also to substantiate the allegations, information provided in the SCN includes illustration of trades of Noticee in one of the 12 contracts to show execution of alleged non genuine trades and creation of artificial volume by the Noticee, and short summary of contract wise details of alleged non genuine trades and artificial volume by the Noticee. Further annexures to the SCN also bears more records / documents in support of the allegations and relied upon in the present proceedings viz, Annexure A bear the order communicating appointment of Adjudicating Officer to carry adjudication proceedings in respect of Noticee for the alleged violations of PFUTP Regulations in the present matter; Annexure B bear trade log of all the trades executed by Noticee in the Stock Option segment of BSE during the I.P; Annexure C bear trade-log of all the alleged 50 non genuine trades executed by Noticee in Stock Option segment of BSE during the I.P; and Annexure D bear contract wise detailed summary of dealing of Noticee in the 12 contracts in which it allegedly executed non genuine trades.

15.2 Given the above, it is noted that Noticee has already been provided with information regarding allegation in respect of it, along with the supporting information / documents to substantiate the allegations.



- 15.3 Noticee has submitted that besides recording generic allegations, no specific role has been attributed to the Noticee in the SCN. It is noted that allegations in respect to the Noticee is for execution of alleged non-genuine reversal trades resulting in misleading appearance of trading in terms of artificial volume. In this regard, as already noted above, information about the allegations and the supporting evidence in terms of trade-logs and summary of dealings of Noticee were provided to Noticee in the SCN. Thus it is clear that relevant information was provided for the specific charges mentioned in the SCN in respect of the Noticee. Having settled the technical issues raised by the noticee, the core issues are being examined as under.

Issue a) - Whether the Noticee has violated the provisions of Regulations 3(a),(b),(c),(d), 4(1), 4(2)(a) of PFUTP Regulations 2003?

16. Reversal trades were considered those trades in which an entity reversed its buy or sell positions in a contract with subsequent sell or buy positions with the same counterparty during the same day. These trades were alleged to have been reversed in short period of time with significant variation in price. It has been alleged that the said reversal trades were non genuine trades as they were not executed in normal course of trading, lack basic trading rationale, and allegedly lead to false or misleading appearance of trading in terms of generation of artificial volume, hence were deceptive and manipulative.
17. Since the aforesaid reversal trades did not effect change in beneficial ownership, it has been alleged that they created artificial volume. Artificial volume is considered to be the volume (no. of units) reversed in both legs of reversal trades entered between same counterparties while keeping out the volume, if any, which was not reversed.
18. Noticee executed 50 reversal trades in 12 Stock option contracts, which were allegedly non genuine and same resulted into artificial volume of total 9446000 units. Contract wise dealings of Noticee in said 12 contracts during the I.P is as follows:

Sl	Contract Name	Avg. Buy Rate (Rs.)	Total Buy Volume (no. of units)	Avg. Sell Rate (Rs.)	Total Sell Volume (no. of units)	No. of non genuine trades of Noticee in the Contract	Artificial volume generated by Noticee in the Contract (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	APLT15FEB170.00PE	0.10	300000	3.45	300000	6	600000	100%	43%	100%	45%
2	BIOC15FEB440.00PE	1.00	88000	12.25	88000	5	176000	100%	56%	100%	50%
3	EXID15FEB165.00PE	0.10	240000	2.65	240000	3	480000	100%	12%	100%	16%
4	HDII15FEB105.00PEW2	0.10	600000	1.75	600000	6	1200000	100%	100%	100%	100%
	IDBI15FEB80.00CE	0.05	228000	2.28	228000	3	456000	100%	100%	100%	100%



Sl	Contract Name	Avg. Buy Rate (Rs.)	Total Buy Volume (no. of units)	Avg. Sell Rate (Rs.)	Total Sell Volume (no. of units)	No. of non genuine trades of Noticee in the Contract	Artificial volume generated by Noticee in the Contract (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
6	IOBL15FEB50.00CE	0.05	248000	1.24	248000	3	496000	100%	60%	100%	20%
7	MGRS15MAR235.00CEW1	0.10	232000	5.70	232000	4	464000	100%	15%	100%	23%
8	MFSL15FEB250.00PE	0.10	145000	5.25	145000	2	290000	100%	33%	100%	29%
9	NIIPC15FEB18.00PE	0.10	580000	1.05	580000	5	1160000	100%	19%	100%	12%
10	NIIPC15MAR26.00CEW3	0.10	1060000	1.09	1060000	4	2120000	100%	33%	100%	46%
11	NMDC15MAR120.00CEW1	11.70	302000	18.27	302000	3	604000	100%	100%	100%	100%
12	NTPC15FEB125.00PE	0.10	700000	1.80	700000	6	1400000	100%	100%	100%	100%

19. It is noted that all the trades executed by Noticee in aforesaid 12 contracts were reversal trades. It shows that Noticee's dealings in the aforesaid 12 contracts only comprised indulging in reversal of trades with same counterparties on the same day.
20. It is also pertinent to note that Noticee through its reversal trades contributed significantly to the total no. of trades (up to 100%) and volume (up to 100%) in the 12 contracts. In 5 of the 12 contracts, volume generated by Noticee contributed 50% to 100% of the total volume in these contracts. It shows that Noticee through above reversal trades dominated the dealing in these stock option contracts.
21. As per the SCN, Noticee has undertaken reversal of trades in two legs, viz, first it entered into buy or sell trade with a certain counterparty, and subsequently in second leg, it reversed the position taken in aforesaid trade through reverse sell or buy trades with same counterparty. Upon perusal of Annexure C of the SCN comprising trade-log of the alleged 50 non-genuine reversal trades in 12 contracts, it is noted that Noticee executed two legs of reversal trades within a short span of time, wherein in 8 of the aforesaid 12 contracts, trades were reversed within mere 30 minutes.
22. It is noted that Noticee, in each of the 12 contracts, executed rapid reversal of trades in course of few seconds to few minutes with substantial variation in price. For instance, gist of the dealing of Noticee in 3 contracts viz, APLT15FEB170.00PE, MFSL15FEB250.00PE and NTPC15FEB125.00PE are given below:



Sl.	Buyer Name	Seller Name	Rate (Rs.)	Trade Qty (no. of Units)	Trade Time (hh:mm:ss)	Buy order Time (hh:mm:ss)	Sell Order Time (hh:mm:ss)	Time difference in order entry (hh:mm:ss)	Time difference in reversal of trades (hh:mm:ss)
(1)	Dealing in contract viz, APLT15FEB170.00PE on 16/02/2015								
(i)	Shivdhan Agency	Dhaval Kirti Kothari	3.45	10000	10:43:45	10:43:45	10:43:05	00:00:40	00:18:28
(ii)	Shivdhan Agency	Dhaval Kirti Kothari	3.45	98000	10:43:45	10:43:45	10:43:23	00:00:22	
(iii)	Shivdhan Agency	Dhaval Kirti Kothari	3.45	100000	10:43:45	10:43:45	10:43:13	00:00:32	
(iv)	Shivdhan Agency	Dhaval Kirti Kothari	3.40	2000	10:43:45	10:43:45	10:42:55	00:00:50	
(v)	Shivdhan Agency	Dhaval Kirti Kothari	3.45	90000	10:43:45	10:43:45	10:43:38	00:00:07	
(vi)	Dhaval Kirti Kothari	Shivdhan Agency	0.10	300000	11:02:13	11:02:13	11:02:13	00:00:00	
(2)	Dealing in contract viz, MFSL15FEB250.00PE on 13/02/2015								
(i)	Tarang Stock Broking Services	Dhaval Kirti Kothari	5.25	145000	14:36:42	14:36:42	14:36:28	00:00:14	00:12:27
(ii)	Dhaval Kirti Kothari	Tarang Stock Services	0.10	145000	14:49:09	14:49:08	14:49:09	00:00:01	
(3)	Dealing in contract viz, NITPC15FEB125.00PE on 10/02/2015								
(i)	K V Ramana Shetty	Dhaval Kirti Kothari	1.75	2000	14:45:13	14:45:13	14:44:28	00:00:45	00:13:51
(ii)	K V Ramana Shetty	Dhaval Kirti Kothari	1.80	156000	14:45:13	14:45:13	14:44:40	00:00:33	
(iii)	K V Ramana Shetty	Dhaval Kirti Kothari	1.80	200000	14:45:13	14:45:13	14:44:55	00:00:18	
(iv)	K V Ramana Shetty	Dhaval Kirti Kothari	1.80	142000	14:45:13	14:45:13	14:45:05	00:00:08	
(v)	K V Ramana Shetty	Dhaval Kirti Kothari	1.80	200000	14:45:13	14:45:13	14:44:47	00:00:26	
(vi)	Dhaval Kirti Kothari	K V Ramana Shetty	0.10	700000	14:59:04	14:59:01	14:59:04	00:00:03	

a) While dealing in the contract viz, APLT15FEB170.00PE on 16/02/2015, Noticee at 10:43:45 hrs entered into 5 sell trades for total 300000 units with counterparty viz, Shivdhan Agency Pvt Ltd at average premium rate of Rs. 3.45 per unit. Subsequently, within 19 minutes of the aforesaid trade, Noticee at 11:02:13 hrs, reversed its above trades by entering into 1 reverse buy trade with same counterparty for same quantity of 300000 units, however, at significantly lower premium rate of Rs. 0.10 per unit. It is noted that orders for execution of both legs of reversal trades were entered by Noticee and its counterparty within 50 seconds of each other. Above dealings resulted into total 6 reversal trades (5 sell trades + 1 buy trade) with total volume 600000 units.

b) While dealing in the contract viz, MFSL15FEB250.00PE on 13/02/2015, Noticee at 14:36:42 hrs executed sell trade for 145000 units at premium rate of Rs.5.25 per unit with counterparty viz, Tarang Stock Broking Services Pvt Ltd. Subsequently, within 13 minutes of the aforesaid trade, at 14:49:09 hrs, Noticee entered into reversal buy trade with same counterparty for same no. of units, however, at relatively lower premium of Rs.0.10 per unit. It is noted that orders for execution of both legs of reversal trades were entered by Noticee and its counterparty within 14



seconds of each other. Above dealings resulted into total 2 reversal trades (1 sell trade + 1 buy trade) with total volume 290000 units.

- c) While dealing in the contract viz, NTPC15FEB125.00PE on 10/02/2015, Noticee at 14:45:13 hrs entered into 5 sell trades for total 700000 units at average premium rate of Rs.1.80 per unit with counterparty viz, K V Ramana Shetty. Subsequently, within 14 minutes of the aforesaid trade, at 14:59:04 hrs, Noticee reversed its above trades by entering into 1 reverse buy trade with same counterparty for same quantity of 700000, however, at relatively lower premium of Rs.0.10 per unit. It is noted that orders for execution of both legs of reversal trades were entered by Noticee and its counterparty within 45 seconds of each other. Above dealings resulted into total 6 reversal trades (5 sell trades + 1 buy trade) with total volume 1400000 units.

23. Following are the common observations from the dealings of Noticee in above mentioned 3 contracts. It is noted that there was synchronisation in placement of buy /sell orders by Noticee and its counterparties to match the trades. The two legs of reversal trades were entered at substantial variation in price considering that reversal was taken place within 20 minutes. In these reversal trades of Noticee, positions of both the parties to trades were squared off among themselves only and no open positions were carried forward. Hence, there was no change in beneficial ownership of the units traded in aforesaid reversal trades, and volume generated was artificial which gave misleading appearance of trading.
24. Similar modus operandi was seen in the dealing of Noticee in rest of the contracts. Synchronisation of trades is visible in the dealings of Noticee and its counterparties. From the trade-log provided in Annexure C of the SCN, it is noted that in 36 of the 50 reversal trades executed by Noticee, orders were entered by Noticee and its counterparties within a minute's time with matching quotes and same do not appear to be a mere coincidence. With the above facts taken into consideration, contention of the Noticee that its trades were executed in an anonymous screen based trading environment of the Stock Exchange without any knowledge of its counterparties, do not draw any merit. It is clear that these reversal trades of the Noticee could not have been possible without close co-ordination with the counterparties.
25. Noticee has argued that he traded in contracts of underlying securities viz, HDIL, IOB, NHPC, NMDC, etc, most of which were part of index of BSE and are liquid, hence, it is unfair to allege that he traded in illiquid options. In this regard, it is noted that despite the liquid nature of underlying stocks, their option contracts were illiquid. It was a commonly known fact that options contracts at BSE were illiquid. It is pertinent to note that the allegations do not relate to merely dealing in options which were illiquid, however, Noticee have been alleged to have executed non genuine trades which created artificial volume and misleading appearance of trading in option contracts.

26. Noticee has pointed that it is only recently that BSE in 2016, introduced measures viz, reversal trade prevention check, and such measures were not available at relevant point of time to avoid



inadvertent reversal of trades, hence, no adverse inference be drawn against the Noticee. In this regard, it has been noted that dealings of Noticee are not found to be in the nature of inadvertent reversal of trades, and there is a consistent pattern wherein Noticee entered into reversal of trades with same counterparties in a pre-determined manner through synchronised trades.

27. Above mentioned dealings of Noticee resulted into misleading appearance of trading in terms of generation of artificial volume in 12 stock option contracts. It is clear that such reversal trades executed by Noticee do not follow the basic trading rationale, as they are not executed in normal course of trading in which trading inter-alia happens in anonymous and spontaneous environment with economic sense. Therefore such trades are considered non genuine. In this regard, reliance is also placed on following observation in judgement of Hon'ble Supreme Court in the matter in the matter of SEBI vs. Rakhi Trading Pvt Ltd in Civil Appeal Nos. 1969, 3174-3177 and 3180 of 2011 decided on 08.02.2018, which was a similar case involving execution of reversal trades in index options.

"31.... 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.

"73. Applying the test laid down in Kishore R. Ajmera case to the present case, I find that by cumulative analysis of the reversal transactions between Respondent and Kasam Holding, quantity, time and significant variation of prices, without major variation in the underlying price of the securities clearly indicate that the Respondent's trades are not genuine and had only misleading appearance of trading in the securities market, without intending to transfer beneficial ownership.

28. Noticee has argued that it executed trades without any knowledge of the counterparty and it is not possible to have access over identity of counter party when the transactions are carried out on the floor of the stock exchange, while to hold the impugn trades as manipulative, there has to be collusion and meeting of minds between Noticee and counterparties for which the Noticee has quoted the matter of Jagruti Securities (2008 SCC online SAT 184) and S.P.J Stockbroker Pvt Ltd (2013 SCC Online SAT 67) and SAT order in the matter of Sanjay Agarwal vs SEBI. Though the above submissions are made, however, it is pertinent to note that Noticee while dealing with its counterparties indulge in execution of reversal trades with synchronisation of orders, and same would not have been possible without prior meeting of mind with the counterparties at some level. While synchronised trades may occur by accident in a liquid security, however, execution of synchronised trades in illiquid securities as in the present matter involving illiquid stock options, indicates a prior meeting of minds with a view to execute the reversal trades at a pre-determined price, and same cannot take place without pre-arrangement. Hence, evidently, Noticee acted in concert with its counterparties to undertake reversal of trades in pre-determined manner. In this regard, reliance is placed on following observation in judgement of Hon'ble Supreme Court in the matter of SEBI vs. Rakhi Trading Pvt Ltd in Civil Appeal Nos. 1969, 3174-3177 and 3180 of 2011 decided on 08.02.2018, which was a similar case involving execution of reversal trades in index options.

"92. 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



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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....."

Reliance is also placed on following observation in judgement of hon'ble Supreme Court of India in the matter of SEBI Vs Kishore R. Ajmera in Civil Appeal No. 2818 of 2008 decided on February 23, 2016, which has similar scenarios as of the present case:

"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."

29. It is noted that reversal trades of Noticee resulted into generation of artificial volume and gave misleading appearance of trading in 12 stock option contracts. It is pertinent to note that Regulation 4(2)(a) of PFUTP Regulations states that dealing in securities will be deemed to be a fraudulent and unfair trade practice if it involves "indulging in an act which creates false or misleading appearance of trading in the securities market".
30. These non-genuine and deceptive trades are covered under the definition of 'fraud' and dealing of Noticee noted hereinabove were 'fraudulent' as defined under regulation 2(1)(c) of SEBI PFUTP Regulations, 2003. Further, it cannot be ignored that repeated synchronisation of trades in pre-determined manner had an adverse impact on the fairness, integrity and transparency in the securities market.
31. In view of the above, it is clear that Noticee indulge in execution of 50 non-genuine trades in 12 contracts and thereby created artificial volume of 9446000 units. Such act of Noticee was deceitful and misleading to other unsuspecting investors, and amounts to manipulation of volume in these contracts. It is clear that by indulging in such execution of non-genuine trades, Noticee created a misleading impression of trading in said stock option contracts in a fraudulent manner, and thereby, it violated provisions of Regulations 3(a), 4(1) and 4(2)(a) of PFUTP Regulations, 2003

Issue b) – Does the violation, if any, on part of the Noticees attract monetary penalty under Section 15HA of SEBI Act?

32. Given the findings hereinabove, it is clear that the reversal trades undertaken by Noticee were non genuine, and resulted into artificial volumes in 12 stock option contracts. It is also noted that Noticee has deliberately acted in this manner. The above conduct of Noticee has therefore violated the provisions of Regulations 3(a), 4(1) and 4(2)(a) of PFUTP Regulations, 2003.



33. Reliance is also placed on order of the Hon'ble Supreme Court of India in the matter of *SEBI V/s. Shri Ram Mutual Fund* [2006] 68 SCL 216(SC), where honourable court has also held that "In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant..."

34. Hence, the Noticee is liable for monetary penalty under Section 15HA of SEBI Act, which states as follows:

88[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 89[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].

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

89 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

Issue c) - If so, what quantum of monetary penalty should be imposed on the Noticee taking into consideration the factors mentioned in Section 15J of the SEBI Act read with rule 5 (2) of the SEBI Adjudication Rules, 1995?

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

Section 15J of SEBI Act - Factors to be taken into account by the Adjudicating Officer

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

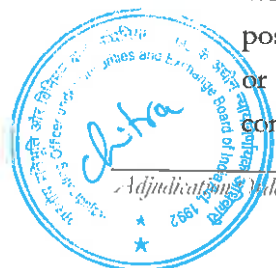
- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
- (b) the amount of loss caused to an investor or group of investors as a result of the default;
- (c) the repetitive nature of the default."

93[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.]

93 Inserted by Part VIII of Chapter VI of the Finance Act, 2017 vide Gazette Notification No. 7, Extraordinary Prt II Section 1 dated March 31, 2017. This shall come into force from April 26, 2017.

36. Records shows the amount of gain / loss of the entities involved in non-genuine trades including the Noticee, however, it is pertinent to note that entities involved in such trades have either booked gains or loss from the dealings at the Stock Exchange. These gain / loss at Stock Exchange thus appears to be notional.

37. Hence, the impact of these non-genuine trades has been considered. It is noted that the trading was in illiquid stock option contracts in which there was nil or negligible participation by the public. When the impact of artificial volumes created by the two counterparties is seen as a whole, it is not possible from material available on record to quantify the actual amount of disproportionate gain or unfair advantage resulting from the artificial trades between the counterparties, or the consequent loss caused to investors as a result of the default.



38. It has been noted that Noticee executed 50 non genuine trades in 12 Stock Option Contracts, and thereby generated artificial volume of total 9446000 units. Though the Noticee had insignificant contribution when its dealings are compared with entire stock option segment at BSE during the I.P. However, it had significant contribution in trading in aforesaid 12 stock option contracts through its aforesaid non-genuine trades and resulting artificial volume contributing to upto 100% of the total no. of trades and total volume in such contracts. It is pertinent to note that in 5 of the 12 contracts, artificial volume generated by Noticee contributed 50% to 100% of the total volume in these contracts.

ORDER

39. In view of the above, after taking into consideration all the facts and circumstances of the case, violation established as mentioned above, a monetary penalty of Rs. 5,00,000/- (Rupees Five Lakh only) is hereby imposed upon Noticee viz, Dhaval Kirti Kothari under Section 15HA of SEBI act for violation of Regulations 3(a), 4(1) and 4(2)(a) of PFUTP Regulations, 2003.
40. The Noticee shall remit / pay the said amount of penalty within 45 (forty five) days of receipt of this order either by way of Demand Draft (DD) in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, or through e-payment facility into Bank Account, the details whereof are as follows:-

Account No. for remittance of penalties levied by Adjudication Officer	
Bank Name	State Bank of India
Branch	Bandra Kurla Complex
RTGS Code	SBIN0004380
Beneficiary Name	SEBI – Penalties Remittable To Government of India
Beneficiary A/c No.	31465271959

41. The Noticee shall forward the said Demand Draft or the details / confirmation of penalty so paid through e-payment to the Division Chief of the Enforcement Department 1 (EFD1) – Division of Regulatory Action (DRA 1) of SEBI.
42. The format for forwarding details / confirmations of e-payments shall be made in the following tabulated form as provided in SEBI Circular no. SEBI/HO/GSD/T&A/CIR/P/2017/42 dated May 16, 2017 and details of such payment shall be intimated at e-mail ID: tad@sebi.gov.in:

Date	
Department of SEBI	
Name of Intermediary / Other Entity	
Type of Intermediary	
SEBI Registration no. (If any)	
PAN	
Amount (in Rupees)	

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Purpose of payment (including the period for which payment was made e.g, Quarterly, Annually)	
Bank Name and Account Number for which payment is remitted	
UTR No.	

43. Payment can also be made online by following the below path at SEBI website [www. sebi.gov.in](http://www.sebi.gov.in):
ENFORCEMENT -> Orders -> Orders of AO -> PAY NOW
44. In terms of rule 6 of the SEBI Adjudication Rules, copies of this order is being sent to the Noticee and also to the SEBI.

Date: July 12, 2019
Place: Mumbai

Jeevan Sonparote
Adjudicating Officer

