BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. EAD-6/PM-AB/61/2018-19]

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

In respect of:

Nouvelle Advisory Services Pvt. Ltd.

PAN: AADCN1774A

In the matter of *Dealing in Illiquid Stock Options at the BSE*

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter be referred to as, the "***SEBI***") conducted investigation into the trading activity in illiquid stock options on BSE Limited (hereinafter be referred to as, the "***BSE***") for the period April 01, 2014 to September 30, 2015 (hereinafter be referred to as, the "***Investigation Period***") after observing large scale reversal of trades in the Stock Options segment of the BSE.

2. Investigation revealed that during the Investigation Period, a total of 2,91,643 trades comprising 81.38% of all the trades executed in the BSE Stock Options Segment were trades which involved reversal of buy and sell positions by the clients and counterparties in a contract. M/s Nouvelle Advisory Services Pvt. Ltd. (hereinafter be referred to as, the "***Noticee***") was one such client whose reversal trades involved squaring off open positions with a significant difference without any basis for such change in the contract price. The aforesaid reversal trades allegedly resulted into generation of artificial volumes, leading to allegations that the Noticee had violated Regulation 3(a), (b), (c), (d) and

Regulation 4(1), 4(2) (a) of the SEBI (Prohibition of Fraudulent and Unfair Trading Practices related to Securities Markets) Regulations, 2003 (hereinafter be referred to as, the "***PFUTP Regulations***").

APPOINTMENT OF ADJUDICATING OFFICER

3. SEBI initiated adjudication proceedings and appointed the undersigned as Adjudicating Officer under Section 15-I of the Securities and Exchange Board of India Act, 1992 (hereinafter be referred to as, the "***SEBI Act***") read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter be referred to as, the "***Adjudication Rules***") *vide* order dated April 3, 2018 to inquire into and adjudge under Section 15HA of the SEBI Act against the Noticee for the alleged violation of aforesaid provisions of PFUTP Regulations. The appointment of the AO was communicated *vide* order dated May 29, 2018.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. A Show Cause Notice dated October 30, 2018 (hereinafter be referred to as, the "***SCN***") was served upon the Noticee under Rule 4(1) of the Adjudication Rules to show cause as to why an inquiry should not be held and penalty be not imposed against it under Section 15HA of the SEBI Act for alleged violations of Regulations 3(a),(b),(c),(d) and 4(1), 4(2)(a) of the PFUTP Regulations.

5. The allegations levelled against the Noticee in the SCN are summarized as below:

a) That the Noticee was one of the entities which indulged in reversal trades which allegedly created false and misleading appearance of trading, generating artificial volumes in Stock Options segment of the BSE during the Investigation Period.

b) That the Noticee engaged in 306 instances in 113 unique contracts which led to generation of artificial volume in these unique contracts.

c) The trades entered by the Noticee were reversed on the same day with same counterparties at a substantial price difference without any basis for significant change in the contract price which indicates that these trades are artificial and are non-genuine in nature.

d) A summary of dealings of the Noticee in the 113 Stock Options contracts in which the Noticee executed non-genuine reversal trades during the Investigation Period are as under:

Table 1: Summary of trading of the Noticee in Illiquid Stock Options on BSE

S. No.	Contract Name	Avg. Buy Rate (Rs.)	Total Buy Volume (no. of units)	Avg. Sell Rate (Rs.)	Total Sell Volume (no. of units)	% of Artificial trades of the Noticee in the contract to Total trades in the contract	% of Artificial Volume generated by Noticee in the contract to Total Volume in the Contract
1	ABNV15APR1650.00CEW1	27.00	12000	20.55	12000	17%	13%
2	ADEL15APR600.00CEW1	13.95	15000	6.25	15000	25%	21%
3	ALBK15FEB95.00CE	11.00	48000	7.00	48000	33%	47%
4	AMBC15APR260.00PEW2	10.90	45000	5.25	45000	33%	29%
5	AMTK15APR135.00PEW2	6.90	30000	2.75	30000	50%	38%
6	ANBK15MAR95.00PEW2	12.26	108000	7.80	108000	100%	100%
7	APLT15APR160.00PEW2	4.00	46000	0.75	46000	50%	56%
8	ARVI15APR270.00CEW1	6.00	25000	2.25	25000	17%	14%
9	ARVI15FEB290.00CE	21.66	118000	11.50	118000	80%	73%
10	ARVI15MAR290.00CEW2	29.80	95000	14.38	95000	83%	84%
11	ASPL15APR800.00CE	36.00	100000	16.00	100000	50%	38%
12	ASPL15APR840.00PE	42.50	81500	18.00	81500	25%	37%
13	AUPL15APR1170.00PEW2	27.75	15000	13.00	15000	50%	50%
14	AUPL15JUN1440.00CE	60.00	5000	43.00	5000	25%	19%
15	AXIS15APR540.00CE	21.00	40000	27.00	40000	17%	9%
16	AXIS15APR560.00CEW1	13.00	30000	5.25	30000	20%	17%
17	AXIS15APR580.00PE	43.00	40000	50.00	40000	100%	100%
18	BATA15APR1170.00CEW1	19.00	15000	11.25	15000	13%	9%

S. No.	Contract Name	Avg. Buy Rate (Rs.)	Total Buy Volume (no. of units)	Avg. Sell Rate (Rs.)	Total Sell Volume (no. of units)	% of Artificial trades of the Noticee in the contract to Total trades in the contract	% of Artificial Volume generated by Noticee in the contract to Total Volume in the Contract
19	BHEL15APR220.00CEW2	18.60	20000	15.50	20000	11%	3%
20	BHEL15APR220.00PEW2	0.90	30000	0.10	30000	100%	100%
21	BHEL15APR225.00CEW2	11.60	10000	8.00	10000	100%	100%
22	BHEL15APR255.00PEW2	23.83	20000	19.15	20000	57%	50%
23	BHEL15MAR240.00CEW1	36.00	10000	28.00	10000	15%	6%
24	BHFL15APR1320.00CEW1	16.90	13000	7.25	13000	17%	10%
25	BHRT15APR390.00PEW2	5.75	45000	2.05	45000	25%	24%
26	BIOC15APR440.00CEW1	5.90	25000	1.05	25000	14%	11%
27	BIOC15FEB420.00CE	24.20	76000	11.91	76000	100%	100%
28	BOBL15MAR175.00CE	13.10	25000	5.10	25000	13%	3%
29	BOBL15MAR180.00CEW2	4.40	332500	0.20	332500	100%	100%
30	BOIL15APR200.00PEW2	3.95	48000	1.00	48000	50%	52%
31	BOIL15MAR230.00PE	7.10	312000	0.70	312000	10%	16%
32	BOIL15MAR240.00CE	4.80	430000	0.15	430000	25%	43%
33	CANB15APR360.00PE	8.10	100000	3.40	100000	50%	53%
34	CANB15APR370.00PE	10.05	40000	18.00	40000	13%	8%
35	CANB15FEB390.00CEW3	28.30	115000	14.68	115000	100%	100%
36	CANB15MAR450.00CE	3.50	45000	0.20	45000	100%	100%
37	CARN15MAR225.00CEW2	10.89	201000	5.80	201000	100%	100%
38	CARN15MAR230.00CEW1	22.41	82000	12.40	82000	26%	16%
39	CARN15MAR240.00PE	28.00	121000	15.60	121000	9%	11%
40	CENT15APR560.00PEW2	8.00	18000	2.25	18000	25%	17%
41	CENT15APR620.00PE	25.50	23000	47.00	23000	100%	100%
42	CENT15MAR580.00CE	30.00	107000	16.00	107000	7%	3%
43	CESC15APR600.00PE	25.05	20000	35.00	20000	13%	6%

S. No.	Contract Name	Avg. Buy Rate (Rs.)	Total Buy Volume (no. of units)	Avg. Sell Rate (Rs.)	Total Sell Volume (no. of units)	% of Artificial trades of the Noticee in the contract to Total trades in the contract	% of Artificial Volume generated by Noticee in the contract to Total Volume in the Contract
44	CESC15APR600.00PEW2	17.50	20000	10.25	20000	25%	19%
45	CIPL15APR700.00PE	21.25	30000	29.30	30000	11%	8%
46	COAL15APR370.00PEW2	8.25	45000	4.15	45000	50%	47%
47	DABU15APR270.00CE	9.70	5000	9.55	5000	5%	1%
48	DABU15FEB280.00PE	13.20	114000	7.00	114000	100%	100%
49	DISH15MAR60.00CEW1	22.03	104000	11.40	104000	100%	100%
50	DLFL15FEB140.00CE	9.41	140000	4.80	140000	67%	43%
51	DLFL15FEB160.00PE	13.79	46000	7.40	46000	100%	100%
52	DLFL15MAR135.00CEW1	21.50	20000	14.50	20000	29%	9%
53	DLFL15MAR160.00CE	6.90	308000	0.40	308000	13%	15%
54	DRRL15APR3450.00CEW1	42.00	20000	59.85	20000	14%	18%
55	DRRL15APR3650.00CE	62.00	43875	5.00	43875	17%	32%
56	DRRL15MAR3400.00CE	100.00	35750	44.00	35750	50%	48%
57	EXID15APR180.00CEW1	2.25	60000	5.75	60000	11%	7%
58	EXID15MAR160.00CEW1	21.58	104000	11.90	104000	32%	19%
59	FEDB15MAR140.00CE	3.75	168000	0.15	168000	31%	21%
60	FEDB15MAR140.00PE	3.50	360000	1.00	360000	17%	19%
61	GAIL15APR390.00CEW1	0.55	50000	2.25	50000	13%	14%
62	GRSM15APR3450.00PE	43.00	27125	8.00	27125	11%	8%
63	HDBK15APR1050.00CE	16.53	6000	16.30	6000	11%	2%
64	HDFC15APR1380.00PE	130.90	22000	115.05	22000	100%	100%
65	HDIL15MAR110.00PE	4.40	196000	0.40	196000	14%	14%
66	HDIL15MAR115.00PE	6.50	268000	0.90	268000	11%	16%
67	HDIL15MAR90.00CEW3	23.31	76000	13.30	76000	40%	23%
68	HERO15APR2650.00CEW1	4.00	20000	14.50	20000	14%	18%

S. No.	Contract Name	Avg. Buy Rate (Rs.)	Total Buy Volume (no. of units)	Avg. Sell Rate (Rs.)	Total Sell Volume (no. of units)	% of Artificial trades of the Noticee in the contract to Total trades in the contract	% of Artificial Volume generated by Noticee in the contract to Total Volume in the Contract
69	HPCL15APR640.00CE	32.13	10000	31.90	10000	15%	7%
70	HULL15MAR980.00CE	3.25	249000	0.25	249000	60%	62%
71	HXTL15APR270.00CEW1	24.00	50000	29.90	50000	13%	15%
72	HXTL15FEB280.00PE	21.47	102000	9.40	102000	10%	43%
73	IBRL15MAR80.00CE	3.60	588000	0.20	588000	50%	68%
74	IIBK15APR900.00CE	29.10	20000	20.00	20000	17%	20%
75	JBFW15APR1500.00CE	78.25	20000	58.00	20000	50%	67%
76	JSPL15APR160.00CE	14.80	10000	7.25	10000	25%	11%
77	JUST15APR1350.00CE	93.00	5000	63.00	5000	50%	33%
78	KARB15MAR125.00CEW1	18.50	4000	12.50	4000	22%	3%
79	KARB15MAR135.00PEW3	3.40	500000	0.75	500000	50%	50%
80	KOTB15APR1320.00PE	35.00	25000	56.00	25000	100%	100%
81	LICH15APR450.00PEW2	27.50	50000	23.00	50000	100%	100%
82	LNTL15APR1680.00PEW2	66.00	15000	46.00	15000	100%	100%
83	LUPL15APR1860.00PE	30.00	28000	18.25	28000	100%	100%
84	LUPL15APR1950.00PE	59.80	30000	46.45	30000	100%	100%
85	LUPL15APR1980.00CE	80.25	27000	57.00	27000	17%	39%
86	MARU15APR3600.00PEW2	30.00	20000	18.25	20000	100%	100%
87	MARU15APR3650.00CE	56.00	20000	78.00	20000	8%	7%
88	MARU15APR3650.00PE	51.50	22000	68.90	22000	9%	7%
89	NMDC15MAR125.00CE	6.00	400000	2.00	400000	100%	100%
90	OBNK15APR210.00CE	9.50	10000	5.40	10000	22%	13%
91	OBNK15MAR240.00CEW1	16.50	10000	11.00	10000	100%	100%
92	OBNK15MAR240.00PE	2.00	159000	8.30	159000	7%	7%
93	OBNK15MAR265.00PEW1	13.50	10000	7.50	10000	100%	100%

S. No.	Contract Name	Avg. Buy Rate (Rs.)	Total Buy Volume (no. of units)	Avg. Sell Rate (Rs.)	Total Sell Volume (no. of units)	% of Artificial trades of the Noticee in the contract to Total trades in the contract	% of Artificial Volume generated by Noticee in the contract to Total Volume in the Contract
94	PFCL15MAR280.00PE	4.40	244000	0.30	244000	5%	7%
95	PFCL15MAR300.00CE	7.50	414000	0.50	414000	5%	18%
96	PGCL15APR150.00PEW2	5.80	100000	3.25	100000	100%	100%
97	RANB15APR780.00CE	61.00	38000	38.25	38000	100%	100%
98	RANB15APR860.00CE	13.00	40000	1.85	40000	100%	100%
99	RCAP15APR450.00CEW1	7.23	30000	3.25	30000	20%	8%
100	SAIL15MAR60.00CE	14.00	40000	6.20	40000	50%	77%
101	SAIL15MAR65.00CE	7.00	40000	4.00	40000	22%	4%
102	SBIL15APR270.00CE	10.15	10000	5.00	10000	8%	6%
103	STAC15JUN1410.00CE	69.00	10000	5.00	10000	17%	20%
104	STAC15MAY1110.00PE	36.00	20000	16.00	20000	50%	50%
105	SYND15MAR115.00CE	8.50	50000	4.00	50000	20%	4%
106	TATP15MAR100.00PEW1	15.00	20000	8.25	20000	100%	100%
107	TATP15MAR70.00CEW1	17.00	16000	11.00	16000	100%	100%
108	TITA15MAR430.00PEW3	39.20	145000	19.00	145000	100%	100%
109	UBIL15MAR160.00CEW1	18.00	15000	12.50	15000	100%	100%
110	UBIL15MAR190.00PEW1	17.50	15000	11.50	15000	100%	100%
111	UCOB15MAR60.00CEW1	9.10	16000	13.00	16000	100%	100%
112	VOLT15MAR280.00CE	9.30	137000	1.50	137000	13%	10%
113	WOCK15APR1800.00CE	201.00	4000	190.25	4000	25%	16%

e) By indulging in execution of aforesaid non-genuine reversal trades, the Noticee has violated Regulations 3(a),(b),(c),(d) and 4(1), 4(2)(a) of the PFUTP Regulations, text of which is reproduced as under:

*“**SEBI (Prohibition of Fraudulent and Unfair Trading Practices Related to Securities Markets) 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 thereunder;

(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 or 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;

…..”

6. The SCN was served upon the Noticee by way of Speed Post with Acknowledgment Due (hereinafter be referred to as, the “**SPAD**”), an acknowledgment of which is available on record. No reply in response to the SCN was filed by the Noticee.

7. After considering the facts and circumstances of the case, the undersigned granted an opportunity of personal hearing to the Noticee on January 4, 2019 *vide* Notice of Hearing dated December 14, 2018. Thereafter, *vide* e-mail dated December 29, 2018, the Noticee communicated that its representatives will attend the hearing on the said date. Further, the Noticee vide e-mail dated January 3, 2019 also submitted its reply to the SCN. During the course of hearing, the representatives of the Noticee submitted a copy of the reply dated January 3, 2019 and reiterated the submissions made therein.

8. The submissions of the Noticee are summarized as under:

a) The Noticee was restrained from trading by way of SEBI order dated August 20, 2015 which pertained to same trades as mentioned in the current SCN. Further, the restraint was removed after almost 3 years through order dated April 5, 2018. During this period the Noticee suffered reputationally and financially and the Noticee has not done any trading till date after the order. Hence, no penalty is warranted against the Noticee.

b) All the trading done by the Noticee was genuine, bonafide and in normal course of business without any fraudulent/manipulative intent.

c) All the trading has been done within the applicable price band and have been settled as per exchange norms.

d) At the time of trading the Noticee was not aware that the trades were in nature of reversal and it was not even aware of the counterparty. The matching of trades is by coincidence and not by design.

e) The Noticee has no link/nexus/relationship/connection/dealing with the counterparty and nothing to that effect has been alleged in the SCN. In order to allege artificial volume creation, some connection to the counterparty has to be shown.

f) There is no impact on the price of underlying scrip due to trading done by the Noticee and merely because 100% of the trading is due to the trades of the Noticee, no adverse inference can be drawn.

g) Reliance is placed on the orders of Hon'ble Securities Appellate Tribunal ("SAT") in matters of Saroj & co. Proprietor Sanjay Agarwal vs. SEBI (Order date 18.05.2012) and S.P.J. Stock Brokers Pvt. Ltd. v. Securities and Exchange Board of India (Order date 04.09.2013) wherein it has been held that it is important to establish nexus between the parties to show manipulation.

h) BSE has a robust surveillance system and has the power to annul the trades if the trades are executed for fraud. The instant trades had cleared the BSE surveillance system and were not even investigated/annulled by BSE.

CONSIDERATION OF ISSUES AND FINDINGS

9. The issues that arise for consideration in the instant matter are:

Issue No. I Whether the trading in illiquid Stock Options done by the Noticee during the Investigation Period were in violation of Regulations 3(a), (b), (c), (d) and 4(1) & 4(2)(a) of the PFUTP Regulations?

Issue No. II If yes, whether the violation, on the part of the Noticee would attract monetary penalty under Section 15HA of the SEBI Act?

Issue No. III If yes, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5 (2) of the

Adjudication Rules?

Issue No. I **Whether the trading in illiquid Stock Options done by the Noticee during the Investigation Period were in violation of Regulations 3(a), (b), (c), (d) and 4(1) & 4(2)(a) of the PFUTP Regulations?**

10. As stated in preceding paragraphs, the position /trades entered into by the Noticee were squared up within a short span. The striking feature of the trades of the Noticee was that all the positions/trades were squared with the same counterparty with whom Noticee had originally traded/created position. The squaring up of the position/trade was at the substantial variation of price from the original position/trade. Thus, it was alleged that the Noticee had indulged in reversal trades. The said allegation was supported with evidence from the trade log containing records of all trades and reversal trades carried out by the Noticee in the Stock Options segment of the BSE during the Investigation Period and was also provided to the Noticee along with the SCN. On perusal of the details of trades carried out by the Noticee, it is observed that the Noticee took positions and then squared it up in 306 instances in 113 unique option contracts during the Investigation Period.

11. To illustrate, on March 27, 2015, the Noticee purchased 22,000 units of HDFC15APR1380.00PE at 13:08 (Buy order placed at 13:08; Sell Order placed at 13:08) from counterparty M/s Dev Commodity Brokers Private Limited at a price of Rs. 130.90. Thereafter, the Noticee reversed its position by selling 22,000 units to the same counterparty at 13:09 (Buy order placed at 13:09; Sell Order placed at 13:09) at a price of Rs. 115.05. Thus, the position of the Noticee was squared up within a minute at a difference of Rs. 15.85. The entire volume of 44,000 units in the said option contract was arising out of the 2 trades done by the Noticee.

12. Similarly, on April 8, 2015, the Noticee purchased 30,000 units of BHEL15APR220.00PEW2 at 13:42 (Buy order placed at 13:42; Sell Order placed at 13:42) from counterparty M/s Ashlar Securities Private Limited at a price of Rs. 0.90. Thereafter, the Noticee reversed its position by selling 30,000 units to the same counterparty at 13:42 (Buy order placed at 13:42; Sell Order placed at 13:42) at a price of Rs. 0.1. Thus, the position of the Noticee was squared up within 10 seconds at a difference of Rs. 0.8. The entire volume of 60,000 units in the said option contract was arising out of the 2 trades done by the Noticee.

13. A similar *modus operandi* is seen to be adopted by the Noticee in its trades in the other 111 unique option contracts. It is observed from the trading of the Noticee that in most of the trades the buy order and sell order has been entered within 1 second of each other. In 245 trades the time difference in buy order is less than a second and in remaining 61 trades, in 59 trades the time difference between buy order and sell order is less than 10 seconds. As stated earlier, there is a substantial variation in price in both the legs.

14. From the reply of the Noticee, I note that the Noticee has not disputed execution and subsequent reversal of trades as alleged in the SCN. However, the Noticee, in its reply, has contended that the transactions were carried out by him at an anonymous platform provided by the BSE where he had no knowledge of the counterparty and thus no linkage with the counterparty. I also note that the Noticee has cited a judicial pronouncement of the Securities Appellate Tribunal in the matter of ***Saroj & Co.*** (*supra*) and ***S. P. J. Stockbrokers*** (*supra*) stating that some relation between the Noticee and counterparties needs to be established in order to prove a charge of generating artificial volume. I have considered the aforementioned contention of the Noticee. In this regard, I find it relevant to refer to the decision of the Hon'ble Supreme Court in the matter of ***Securities and Exchange Board of India*** v. ***Kishore R. Ajmera*** [(2016) 6 SCC 368: AIR 2016 SC 1079] wherein, the Supreme Court has held, "*…According to us, knowledge of who the 2nd party /*

client or the broker is, is not relevant at all. While the screen based trading system keeps the identity of the parties anonymous it will be too naïve to rest the final conclusions on the said basis which overlooks a meeting of minds elsewhere. Direct proof of such meeting of minds elsewhere would rarely be forthcoming. The *test, in our considered view, is one of preponderance of probabilities so far as adjudication of civil liability arising out of violation of the Act or the provisions of the Regulations framed thereunder is concerned….*"

15. The Hon'ble Supreme Court, has further 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 gathered from various circumstances like that volume of trade effected; the period of persistence in trading in a particular scrip; the particulars of buy and sell orders, namely the volume thereof; the proximity of time between the two and such relevant factors…*". Placing reliance of the observation of the Hon'ble Supreme Court in the aforementioned matter, I cannot accept the submission of the Noticee that transactions were genuine on account of them being carried out on an anonymous platform of the exchange wherein, the Noticee had no knowledge of the counterparty. The manner of placement of the orders in both legs signify that the orders were entered in a premeditated manner and were not genuine in any manner.

16. At this juncture, I also find it relevant to refer to the decision of the Supreme Court in the matter of ***Securities and Exchange Board of India*** v. ***Rakhi Trading Private Limited*** (Civil Appeal Nos. 1969, 3174-3177 and 3180 of 2011 dated February 08, 2018) wherein, the Hon'ble Supreme Court while cumulatively analyzing the reversal transactions held that, "*Considering the reversal transactions, quantity, price and time and sale, parties being persistent in number of such trade transactions with huge price variations, it will be too naive to hold that the transactions are through screen-based trading* *and hence anonymous. Such conclusion would be over-looking the prior meeting of minds involving synchronization of buy and sell order and not negotiated deals as per the board's circular. The impugned transactions are manipulative/deceptive device to create a desired loss and/or profit. Such synchronized trading is violative of transparent norms of trading in securities"* The Court further stated that *"……quantity, time and significant variation of prices, without major variation in the underlying price of the securities clearly indicate that Respondent's trades are not genuine and hand only misleading appearance of trading in the securities market…..*".

17. Applying the ratio of the Supreme Court in the matter of ***Kishore R. Ajmera*** (*supra*) and ***Rakhi Trading*** (*supra*), I am of the view that execution of trades in an illiquid market with such precision in order placement indicates a prior meeting of mind with a view to execute the reversal trades at a pre-determined price. The Noticee has failed in explaining the rationale for the trading as mentioned in Table 1 wherein it has taken a position at a particular price and squared it up at significant price difference without any substantial variation in the price of underlying. Since, the option contracts were done in illiquid contracts (as the strike price was far away from the market price of underlying), there was no trading in the said contract and hence no price discovery. The only reason for the wide variation in prices of the same contract, within minutes and some, even seconds, was pre-determination in the prices by both counterparties when executing the trades. Thus, the nature of trading as brought out above clearly indicates an element of prior meeting of minds and therefore, a collusion to carry out trades at pre-determined prices. It is not possible to comprehend the reason for which the Noticee would enter into an option contract with a strike price very far away from the current market price of the underlying except for the fact that it wanted to execute non-genuine trades.

18. Further, it is observed from Table 1 above that the Noticee, on an average contributed 45.68% of the volume in the 113 contracts, wherein the Noticee has contributed 100% of volume in 32 contracts and 50% or more in in 13 contracts. The high contribution of the trading of Noticee in these contracts show that general public was not interested in such contracts where strike price was far from the market price of underlying. Thus, these contracts were easy to manipulate and were chosen by the Noticee to execute non-genuine trades.

19. I further note that the Supreme Court in the matter of ***Rakhi Trading*** (*supra*), has held that, "*Regulation 2(1)(c) defines fraud. Under Regulation 2(1)(c)(2) a suggestion as to a fact which is not true while he does not believe it to be true is fraud. Under Regulation 2(1)(c)(7), a deceptive behaviour of one depriving another of informed consent or full participation is fraud. And Under Regulation 2(1)(c)(8), a false statement without any reasonable ground for believing it to be true is also fraud. In a reverse dealing in securities, with predetermined arrangement to book loss or gain between pre-arranged parties, all these vices are attracted."* I am of the considered view that the scheme, plan, device and artifice employed by the Noticee in this case of executing reversal trades in illiquid stock options contracts at irrational, unrealistic and unreasonable prices, tantamount to fraud on the securities market in as much as it involves non-genuine/ manipulative transactions in securities and misuse of the securities market. The non-genuine and deceptive transactions of the Noticee are, prima-facie, covered under the definition of 'fraud' and the dealings of the Noticee as discussed herein above were "fraudulent", as defined under regulation 2(1)(c) of the SEBI (PFUTP) Regulations, 2003 and prohibited under the provisions of Regulations 3(a), (b), (c) and (d) and 4(1) and 4(2)(a) SEBI (PFUTP) Regulations, thereof.

20. Considering the synchronized manner of placing buy and sell orders within seconds of each other, reversing of the trades within a short time with widely varying prices of the two legs of trade in the same contract without any basis for such wide variation, I find that the reversal trades executed by the Noticee were *non-genuine* in nature and created an impression of genuine trading volumes in respective contracts. I am of the view that by engaging in such trades, the Noticee has violated provisions of Regulation 4(2)(a) of the PFUTP Regulations, which states that dealing in securities will be deemed to be a fraudulent or unfair trade practice if it involves "*indulging in an act which creates false or misleading appearance of trading in the securities market*".

21. I once again find it relevant to place reliance on the decision of the Supreme Court in ***Rakhi Trading*** (*supra*) wherein, the Supreme Court while decision upon a case involving execution of reversal trades in index options, observed, "*the traders thus having engaged in a fraudulent and unfair trade practice while dealing in securities are hence liable to be proceeded against for violation of Regulations 3(a), 4(1) and 4(2)(a) of the PFUTP Regulations*."

22. In view of the aforesaid, I find that the Noticee, by engaging in such non-genuine transactions, created a misleading impression of trading in respective contracts while dealing in Stock Options contracts in a fraudulent manner. I am of the considered view that the aforesaid act of the Noticee is in clear violation of Regulations 3(a), 4(1) and 4(2) (a) of the PFUTP Regulations.

Issue No. II **If yes, whether the violation, on the part of the Noticee would attract monetary penalty under Section 15HA of the SEBI Act?**

&

Issue No. III **If yes, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5 (2) of the Adjudication Rules?**

23. Since violation of Regulations 3(a), 4(1) and 4(2)(a) of the PFUTP Regulations by the Noticee is established, I am of the view that the same warrants imposition of monetary penalty upon the Noticee under Section 15HA of the SEBI Act, text of which is produced as under :

SEBI Act

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

24. While determining the quantum of penalty under Section 15HA of the SEBI Act, the following factors stipulated in Section 15J of the SEBI Act, have to be given due regard:

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.

25. As established in the preceding paragraphs, the trades carried out by the Noticee were non-genuine in nature and created a misleading appearance of trading. As brought out earlier, such trades were carried out by the Noticee in illiquid stock options contracts where there was negligible participation by the public. Investigation has shown amount of profit / loss of the counterparties to the trades as a result of such non-genuine trades. However, considering that the violation by the Noticee is creation of artificial trading volumes by trading between two counterparties and wider market is not involved in the trades, the trades are such that one of the counterparty books a profit while the other counterparty books a loss. Hence, it would be appropriate to consider the impact of these transactions between the two counterparties in totality. When the impact of artificial volumes created by the two counterparties is seen as a whole, it is not possible from the material available on record to quantify the 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.

26. The Noticee has also contended that it has already undergone almost 3 years of restriction on trading due to SEBI Order for the instant trading. I agree that the Noticee was restrained due to SEBI Order. However, the restraint was only as an interim measure till SEBI investigated the matter and was not a penal measure. The current proceedings are initiated subsequent to completion of investigation with a purpose to impose monetary penalty on any entity who has committed the specified violations. Thus, it is not the case that the restraint on Noticee would be set off against the penalty imposable under the current proceedings. The restraint may be a mitigating factor but it cannot be a reason for non-imposition of penalty. Accordingly, the Noticee is liable for imposition of monetary penalty.

27. Therefore, taking into account the facts and circumstances of this matter, I am of the view that a penalty of Rs. 21,00,000/- will be commensurate with the violations of Regulations 3(a), 4(1) and 4(2)(a) of the PFUTP Regulations committed by the Noticee.

ORDER

28. After taking into consideration all the facts and circumstances of the case, in exercise of powers conferred upon me under Section 15I (2) of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose a penalty of Rs. 21,00,000/- (Rupees Twenty One Lakh only) upon the Noticee, under Section 15HA of the SEBI Act for violation of Regulation 3(a), 4(1) and 4(2)(a) of the PFUTP Regulations.

29. 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 e-payment facility into Bank Account the details of which are given below:

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

30. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to the Enforcement Department – Division of Regulatory Action – I of SEBI. The Noticee shall provide the following details while forwarding DD/ payment information:

a) Name and PAN of the entity (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

31. Copies of this Adjudication Order are being sent to the Noticee and also to SEBI in terms of Rule 6 of the Adjudication Rules.

Date: January 29, 2019

Place: Mumbai

PRASANTA MAHAPATRA
ADJUDICATING OFFICER