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:

Blackcherry Commosale Private Limited
(**PAN**: AAECB7488G)
(**CIN**: U74999WB2011PTC169088)
Address: 6, Lyons Range, Unit No 8, 3rd Floor, Room No 308, Kolkata, West Bengal – 700001

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 Blackcherry Commosale Private Limited bearing PAN: AAECB7488G (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.

5. Noticee, during the I.P. traded in total 26 unique contracts in F&O segment of BSE in which it allegedly executed 86 non genuine trades resulting in artificial volume of total 14505000 units.

Alleged non genuine trades of Noticee resulted into loss of Rs. 1.53 Core to it. Following is noted from the dealings of Noticee in aforesaid 26 contracts at BSE:

a) All the trades executed by Noticee in said 26 contracts were non genuine trades.

b) No. of non genuine trades of Noticee has significantly contributed to the total no. of trades from the market in the said 26 contracts, as a significant up to 100% of the trades that happened in these contracts were due to non-genuine trades executed by the Noticee.

c) All the volume generated by the Noticee in each of these contracts was artificial volume, and further artificial volume generated by Noticee also contributed to significant up to 100% of the total volume from the market in these contracts.

d) Non genuine trades executed by Noticee in said 26 contracts 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 are 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 by Adjudicating Officer) 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 October 15, 2018 (hereinafter referred to as "**SCN**") was issued to the Noticee, mentioning the allegations against the Noticees 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. SCN was delivered to the Noticee through speed post AD. Noticee, vide letter dated November 3, 2018, requested to adjourn the proceedings for two months. In this regard, vide notice dated November 15, 2018 Noticee was advised to submit its reply latest by December 5, 2018, and was also granted an opportunity of hearing on December 10, 2018.

10. Noticee, vide letter dated December 3, 2018 submitted its reply to SCN. Aforesaid reply of the Noticee has following key submissions:

"Noticee, incorporated on December 3, 2011, is engaged in the business of trading and marketing of raw jute since 2014-15 till date and before that the company had investment in shares. It is the first time that SEBI has issued any notice to the Company for any alleged violation.

Noticee made non-current investment in several quoted and un-quoted shared. Additionally, in the past, the Company used to engage in trading in share future in the initial few years, which resulted in loss as provided hereunder:

2012	2013	2014	2015	2016	2017	2018
Nil	Nil	17,80,245	1,52,57,714	40,19,408	Nil	Nil

Noticee started earning profits from financial year ending 2014 onwards, except for financial year 2015, where company booked loss of Rs. 4,31,357 which was on account of huge loss suffered in share future trading. Considering, the huge losses suffered by the Company due to stock option trading, the Company had stopped trading in futures with effect from financial year 2016-17.

While the Noticee engaged in trading in futures, it did not deliberately engage in reverse trading, as alleged by SEBI. As evident from the trading records, Noticee did intra day trading as a measure to stop loss. It was misfortune on the part of the Company that the trades executed by Noticee resulted in losses as the price started plummeting post investment. As a result, in order to stop loss, Noticee had no option but to reverse the position and book least possible losses.

Noticee is not in the business of trading. It took positions to park surplus funds and earn quick returns. Nobody invests/ trades in order to book losses. However, owing to lack of knowledge, sheer bad luck, misfortune, Noticee could not earn profits in the manner envisaged in most of the trades, barring a few ones.

*While, Noticee reversed the position as a stop loss measure and executed the same through Kayan Securities Private Limited ('**Broker**'), the Noticee was not apprised that there was a likely risk of engaging in reverse trade. The Noticee had no knowledge about the party with which the transaction was being undertaken. Neither the Noticee intended to indulge in any kind of unfair trading practice nor was the Company intimated / cautioned by the broker of having indulged in the same. As a result, all the impugned trades were executed on the floor of exchange through a registered share broker wherein the trading system was anonymous and automated and the counter parties could not be identified. Accordingly, it was impossible for the Noticee to know who is/are the counter parties to the trades.*

In the absence of any alert/ caution from the broker the Noticee could not foresee the risk of potentially indulging in reverse trading and proceeded to square off the trade as a stop loss measure. The Noticee did not voluntarily engage in any kind of unfair trade practice at any point of time. It was unfortunate of the Noticee to not be able to receive timely guidance from the broker of such a possibility.

The entire trading process was like a blind mechanism as far as buying and/or selling of options by a client through a broker is concerned. As a client, the Noticee had only instructed broker to buy or sell in options specifying the quantity. The Noticee has traded in the options of very well-known companies like Allahabad Bank, Axis Bank, Andhra Bank, Bajaj Auto, GMR infra, HDIL, IDBI Bank, Rpower, IOB, Uco Bank, JP power & infra, L&T Finance and Holdings, NHPC ,IFCI, SAIL, India Cement which had credible position in the market. Accordingly, there was no reason to doubt credibility of the platform provided by the exchange as approved by SEBI and therefore, the Noticee though it was appropriate to trade on the stock options segment without any intention to create any false or misleading appearance of trading in the market. These were business/financial calls taken by the Noticee which eventually resulted in making profits/ booking losses on the BSE's Stock Options Segment. Thereafter, it was impossible for us to know the counter parties to our trades. The Noticee was not aware of the manner in which the trades were undertaken by the broker. It is also likely that the liquidity may be low on the segment of BSE which increased chances of reverse trade.

While, the trades executed by the Noticee were intra-day trades involving buying and selling during the same trading session of the same day with huge price variations which may result into profit or loss for investors, it cannot be inferred that execution of trades during the same day with same counterparty are being executed with malafide intention to create artificial volume. Further, mere matching of orders of BSE's system cannot be termed as creation of artificial volume.

To be more specific, in our case, the trading decisions executed had always resulted into loss except in one or two cases. Accordingly, we find no good reason as to why a Company will execute non genuine trades by creating artificial volume in stock exchange to suffer losses wherein there are no known parties to the contract or any hidden benefit to the Noticee. As a consequence of those trades, the Company and no other investor or any other entity, suffered losses.

Further, the SEBI alleged that the Company has executed specific contracts with Mammon Concast Private Limited ('Mammon') to which we want to submit that we have no connections with the alleged counter party. Also the SCN does not specify any connection between the Company and Mammon apart from the presumption that the trades executed between both are matching trades. These were not a case of pre-planned trades which usually demands a prior meeting of minds of the counterparties. Therefore, the reverse trade executed was mere co-incidence and not pre-planned.

The trades were done in economic sense, either with the objective to make profits or to stop/ minimize losses. The Noticee did not make any intentional profit or loss.

Therefore, one has to appreciate those profits / losses are incidental to transactions on stock exchange and merely because the transactions on BSE in Stock Options Segment resulted in a loss, they cannot be said to be non-genuine. There are thousands of other trades on NSE, MCX and other exchanges, which were executed on an intraday basis like the ones recorded in the SCN and resulted in loss. We can also take inference from case of Barclays in 2008 wherein in a frantic hour of trading, Barclays lost a quarter of its value that resulted in its collapse. Further, in the year 1995, Rogue Traders incurred heavy losses through unauthorised trading of large amounts of Nikkei futures and options. There are endless examples of losses in stock market due to wrong trading decisions, therefore, the losses made in our case is not due to any malafide intention but due to wrong trade decisions and sheer bad luck. However, the irony or coincidence of the situation is that most of the times the Company executed a transaction and suffered losses.

Thereby, it is humbly submitted that the Noticee was unaware that the trades were in the nature of reverse trades before receiving the SCN. And that it did not execute trades knowing that it will result into a loss and therefore, the allegation of deliberately engaging in reverse trading and additional allegations of generating artificial volume or executing non-genuine trades or creating false and misleading appearance of trading or any manipulative or deceptive trading should be dropped and no penalty should be levied.

It is further submitted a Company will not intend to deliberately book losses and allow anonymous counterparties to constantly incur profits. In the present case, the Noticee had merely invested our idle funds on a temporary basis in the capital market and had withdrawn the same from the markets at an opportune time either to book profits or to stop loss. Neither the broker nor the exchange had ever warned/ cautioned the Noticee for excessive trades or unrealistic trades or for our volumes in giving orders. The Noticee had placed its orders with the broker, who is responsible for the execution of trade and who understands the technicalities of the trading system.

Noticee pleads ignorance. It has already suffered financial losses in the trading of the stock options and humbly request your office to not impose any further penalty as the same shall add to our financial burden. "

11. Authorised Representative of the Noticee appeared for the hearing on behalf of the Noticee on December 10, 2018, and reiterated submissions of the Noticee made in its reply dated December 3, 2018.

CONSIDERATION OF ISSUES AND FINDINGS

12. 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:

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

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

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?

13. Aforesaid provisions alleged to have been violated by the Noticee reads as follows:

<u>PFUTP Regulations 2003</u>

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;

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?

14. It has been alleged that Noticee, while dealing in stock option contracts at BSE during the I.P, consistently indulge in execution of reversal trades which were non genuine. It is noted that reversal trades as specified in the investigation by SEBI, is the trade where 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.

15. It is noted that Noticee executed 86 reversal trades trades in 26 contracts which were allegedly non genuine, resulting into artificial volume of total 14505000 units. Summary of trades of Noticee 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	ALLD15JAN56.00CEW3	7.15	376000	3.90	376000	2	752000	100%	40%	100%	64%
2	ANBK15FEB95.00CEW1	2.09	452000	0.10	452000	3	904000	100%	13%	100%	22%
3	AXIS15APR560.00CE	28.60	88500	6.00	88500	2	177000	100%	15%	100%	35%
4	BAJT15APR2100.00CEW3	32.00	124000	16.00	124000	2	248000	100%	100%	100%	100%
5	GMRI15FEB28.00CEW1	1.90	54000	0.05	54000	2	108000	100%	17%	100%	4%

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	GMRI15JAN12.00PE	0.90	405000	0.10	405000	5	810000	100%	23%	100%	10%
7	HDIL15FEB95.00CEW2	21.35	16000	9.45	16000	4	32000	100%	50%	100%	44%
8	IDBI15JAN60.00PE	1.55	200000	0.05	200000	3	400000	100%	100%	100%	100%
9	IFCI15FEB34.00PEW2	1.10	304000	0.10	304000	3	608000	100%	19%	100%	30%
10	INCM15JAN85.00PE	1.80	570000	0.05	570000	13	1140000	100%	100%	100%	100%
11	IOBL15FEB50.00PEW1	1.70	844000	0.05	844000	7	1688000	100%	26%	100%	40%
12	IOBL15JAN50.00PE	1.45	224000	0.10	224000	3	448000	100%	30%	100%	29%
13	JPPW15FEB12.00CEW2	1.85	390000	0.15	390000	2	780000	100%	20%	100%	45%
14	JPPW15FEB14.00CEW1	1.90	210000	0.05	210000	3	420000	100%	25%	100%	26%
15	JPPW15JAN8.00PE	0.45	510000	0.05	510000	2	1020000	100%	40%	100%	61%
16	JPPW15JAN8.00PEW4	1.00	105000	0.05	105000	2	210000	100%	100%	100%	100%
17	LNTF15FEB65.00PEW2	2.29	136000	0.05	136000	3	272000	100%	19%	100%	18%
18	LNTF15JAN50.00PEW4	2.45	104000	0.05	104000	3	208000	100%	60%	100%	46%
19	LNTF15JAN55.00PEW4	2.45	20000	0.05	20000	2	40000	100%	17%	100%	3%
20	NHPC15FEB14.00PEW2	1.05	50000	0.05	50000	2	100000	100%	29%	100%	7%
21	NHPC15JAN14.00PEW3	1.05	10000	0.05	10000	2	20000	100%	13%	100%	1%
22	NHPC15JAN16.00PEW3	0.05	20000	1.05	20000	2	40000	100%	10%	100%	<0%
23	NHPC15JAN22.00CEW4	1.05	780000	0.05	780000	5	1560000	100%	38%	100%	42%
24	RPOW15JAN55.00PEW4	3.85	204000	0.05	204000	3	408000	100%	43%	100%	65%
25	SAIL15JAN70.00PE	1.05	404000	0.10	404000	3	808000	100%	9%	100%	28%
26	UCOB15FEB60.00PEW2	2.09	652000	0.10	652000	3	1304000	100%	100%	100%	100%

16. From the above table, it is noted that trading activity of Noticee in 26 contracts was only indulging in reversal trades. It is also pertinent to note that Noticee through its reversal trades, has contributed significantly to the total no. of trades (up to 100%) and volume (up to 100%) in such contracts.

17. Upon further perusal of trades of Noticees in abovementioned 26 contracts, it is noted that Noticee has reversed its trades within a short span of up to 76 minutes, and wherein in 15 contracts, trades were reversed within mere 30 minutes of the first leg of the respective trade. Details of trading undertaken by Noticee in 5 of the said 26 contracts is given below:

Sl.	Buyer Name	Seller Name	Trade Time (hh:mm:ss)	Rate (Rs.)	Traded Qty (No. of Units)	Time Difference (hh:mm:ss)
1	**Dealings in contract viz, ALLD15JAN56.00CEW3 on 09/01/2015**					
(i)	Blackcherry Commosale	Mammon Concast	10:13:03	7.15	376000	00:57:01
(ii)	Mammon Concast	Blackcherry Commosale	11:10:04	3.9	376000	
2	**Dealings in contract viz, NHPC15JAN14.00PEW3 on 09/01/2015**					
(i)	Blackcherry Commosale	Mohit Agarwal	13:52:13	1.05	10000	00:03:09
(ii)	Mohit Agarwal	Blackcherry Commosale	13:55:22	0.05	10000	
3	**Dealings in contract viz, LNTF15JAN55.00PEW4 on 19/01/2015**					
(i)	Blackcherry Commosale	Hari Kishan Chandak	09:56:20	2.45	20000	01:06:48
(ii)	Hari Kishan Chandak	Blackcherry Commosale	11:03:08	0.05	20000	
4	**Dealings in contract viz, AXIS15APR560.00CE on 25/03/2015**					
(i)	Fairdeal Infin Services	Blackcherry Commosales	10:53:57	6	88500	00:00:22
(ii)	Blackcherry Commosales	Fairdeal Infin Services	10:54:19	28.6	88500	
5	**Dealings in contract viz, BAJT15APR2100.00CEW3 on 25/03/2015**					
(i)	Blackcherry Commosales	Srijan Cements Limited	12:03:38	32	124000	00:00:04
(ii)	Srijan Cements Limited	Blackcherry Commosales	12:03:42	16	124000	

18. If dealing of Noticee in one of the contract mentioned above viz, BAJT15APR2100.00CEW3 on 25/03/2015 is taken as illustration to understand the dealings of Noticee, it is noted that Noticee at 12:03:38 hrs took buy position with counterparty viz, Srijan Cements Limited for 124000 units at the rate (premium) of Rs. 32 per unit. Subsequently, within 4 seconds of the aforesaid trade, Noticee entered into reversal sell position with the same counterparty for same quantity at significantly lower rate Rs. 16 per unit. Hence, above two trades resulted into 2 reversal trades with total volume 248000 units. While the above trades undertaken within short span of time resulted into losses to Noticee, it at the same time resulted into gains to the counterparty. It is pertinent to note that though the above trades did not carried forward the positions of the entities involved to the next day, however, they have shown impression of trades in such contract, and which was deceptive to the unsuspecting investors.

19. As seen above, Noticee consistently and throughout its dealings in 26 contracts, carried out reversal of trades with same counterparties in two legs of the respective trades within short span of time, and that too with significant negative difference in price (except 1 contract), resulting into significant losses to it.

20. It is noted that the reversal trades undertaken by the Noticee defy the criteria to be called normal practice, as they were consistently reversed within in short span of execution of first leg of the respective trades to incur losses. It is not mere coincidence that Noticee could match its trades consistently with same counterparties with whom it undertaken first leg of trades, and same appears to be outcome of a deliberate attempt to deal in aforesaid manner. It is clear that such reversal trades do not follow the basic trading sense or rationale usually behind trading in securities, hence, same are non genuine. In this regard, reliance is also placed on judgement of Hon'ble Supreme Court in the matter in respect of Civil Appeal Nos. 1969, 3174-3177 and 3180 of 2011 decided on 08.02.2018, which inter-alia states in para 35 and 73 that:

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

21. It is noted that volume reversed in non-genuine trades executed by the Noticee is artificial volume, as positions were reversed on same day between same counterparties, and this volume has created misleading appearance of genuine trading to unsuspecting investors.

22. Noticee has put forth defence that it was not aware that trades under question are in nature of reversal trades; matching of its trades with any specific counterparties, and reversal of trades with them and incurring losses was not deliberate at its end. In this regard, as noted above, Noticee throughout its dealing during the I.P. has indulge in consistently in same trading pattern in all the aforesaid 26 contracts, wherein it reversed the respective trades with same counterparties in intra-day trading, and with exception of dealing in 1 contract, it has booked losses in all the rest 25 contracts by reversing trades in short interval of time. Aforesaid losses booked by the Noticee do not appear to be mere incidental, and it is also noted that admittedly, Noticee has incurred losses while dealing in securities in three consecutive years viz, 2014, 2015 and 2016.

23. Though Noticee has argued that trades were done in economic sense and it entered into reversal trades as a stop loss measure, however, no credible supporting fact or evidence have been provided in this regard which justify the reversal in such short span of time, and that too at significant difference. Above act of Noticee, clearly do not show any attempt to execute trades with economic sense and to make gains. Trading behaviour of the Noticee, confirm that such trades were not normal, and it is does not make any sense for the counterparties also to indulge into such act. In a gist, this whole trading behaviour does not make any economic sense, and has to be seen as means to book gains and losses by the participating entities.

24. Noticee has further pointed that it dealt in the options of very well-known companies which had credible position in the market, and also there was no reason to doubt credibility of the platform provided by the exchange as approved by SEBI, therefore Noticee thought it was appropriate to trade on the stock options segment without any intention to create any false or misleading appearance of trading in the market. In this regard, it is noted that there are no allegations w.r.t the choice of stock options or the stock exchange where trades were executed, and also there was no such bar, however, it is noted that the Noticee has exploited the trading systems at BSE and the illiquid nature of Stock Options to deliberately indulge into non genuine trades and to book losses.

25. Given the above observations, contention of the Noticee that it has no role in execution of non genuine trades and creation of artificial volume, is not found tenable. It appears that execution of non genuine trades and creation of artificial volume are deliberate act of Noticee to incur losses by dealing in securities. As regards to claim of lack of awareness about matching of trades with specific counterparties or no relation with them, it is noted that though the direct evidence of meeting of minds or collusion with other entities inter-alia the counterparties or agents / fronts is not forthcoming in the present matter, however, trading behaviour and other scenarios as noted above make it clear that such non genuine trades could not have been possible without meeting of minds at some level. In this regard, reliance is placed on judgement

of Hon'ble Supreme Court in the matter in respect of Civil Appeal Nos. 1969, 3174-3177 and 3180 of 2011 decided on 08.02.2018, which inter-alia states that:

"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 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 upon 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 wherein it was held 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."

26. In view of the above, it is clear that Noticee indulge in execution of 86 non genuine trades in 26 contracts and thereby created artificial volume of 14505000 units. Such act of Noticee was deceitful, and misleading to other unsuspecting investors, and was an inducement to trade in such contracts. It is clear that by indulging in execution of non genuine trades which have created artificial volume in Stock Option Contracts at BSE, Noticee has violated the provisions of Regulations 3(a), (b), (c) and (d) and 4(1) and 4(2)(a) SEBI (PFUTP) Regulations, 2003.

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

27. Given the findings hereinabove, it is clear that the reversal trades undertaken by Noticee were non genuine, and resulted into artificial volumes in 26 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), (b), (c) and (d) and 4(1) and 4(2)(a) SEBI (PFUTP) Regulations, 2003.

28. Reliance is also placed on order of the Hon'ble Supreme Court of India in the matter of *SEBI Vs. 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…"*.

29. 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?

30. 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.

31. 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.

32. It is noted that the trading was in illiquid stock option contracts where there was nil or negligible participation by the public. Hence, the impact of these non genuine trades has been considered. 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 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.

33. It is on record that Noticee has dealt in total 26 Stock Options Contracts and findings establishes that it executed 86 non genuine trades, resulting into artificial volume of 14505000 units. It is also noted that Noticee had significant contribution in trading in said 26 option contracts through its non genuine trades, and therein it contributed to upto 100% of the total no. of trades and total volume.

ORDER

34. In view of the above, after taking into consideration all the facts and circumstances of the case, violation established as mentioned above, and after considering the factors enumerated in section 15Jof the SEBI Act, following monetary penalty of Rs. 5,50,000/- (Rupees Five Lakh and Fifty Thousand only) is hereby imposed upon Noticee viz, Blackcherry Commosale Pvt Ltd

35. 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

36. 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.

37. 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)	
Purpose of payment (inluding the period for which payment was made e.g, Quarterly, Annually	
Bank Name and Account Number for which payment is remitted	
UTR No.	

38. 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: December 21, 2018
Place: Mumbai

Jeevan Sonparote
Adjudicating Officer