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:
Dinesh Kumar Somani
(PAN: AJNPS3822N**)**
Address: House No. – 107/G, Kedarnath Ghera, Ramaiya Ward, Village Jagdalpur, District Bastar, Chattisgarh – 494001

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 Dinesh Kumar Somani bearing PAN: AJNPS3822N (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, while dealing in Stock Option segment of BSE during the I.P. allegedly executed 43 non genuine trades in 14 contracts resulting in artificial volume of total 5233750 units in such contracts. Following is noted from the dealings of Noticee in aforesaid 14 contracts at BSE:

a) All the trades executed by Noticee in aforesaid 14 stock option contracts were allegedly non genuine trades.

b) No. of alleged non-genuine trades of Noticee 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 14 contracts were due to these non-genuine trades executed by the Noticee.

c) All the volume generated by the Noticee in each of the 14 contracts was allegedly artificial volume. Further, artificial volume generated by Noticee also contributed significantly up to 100% of the total volume from the market in said 14 contracts.

d) 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 April 03, 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 email dated April 13, 2019 sought extension of time to file reply to the SCN and the same was acceded to. Accordingly, vide email dated April 15, 2019, the Noticee was required to file reply to the SCN latest by April 27, 2019.

10. Noticee, vide its letter dated April 25, 2019 submitted its reply to the SCN, comprising following key submissions:

a. *This is in reference to the captioned Show Cause Notice ("SCN") issued to me as the noticee under the aforementioned Rules (hereinafter referred to as the Noticee)*

b. *I had, vide my email dated April 13, 2019, sought extension of two weeks' time for replying to the SCN. I hereby file my reply to the SCN under Rule 4 (3) of the said Rules.*

ALLEGATION

c. *I submit that the SCN alleges broadly as under:*

i. *Non-genuine trades were carried out by the Noticee in 14 illiquid stock options contracts through 43 trades at BSE generating a volume of 52,33,750 units ("Alleged Trade(s)");*

ii. *Same day reversal of trade in stock options segment of BSE lead to creation of artificial volume. The Alleged Trade were reversed on the same day and had the same counter party on both legs, lacked basic trading rational, lead to false or misleading appearance of trading in terms of generation of artificial volume, hence were deceptive and manipulative;*

iii. *The Alleged Trades were non-genuine trade as they had significant difference in the buy and sell rate considering that the trades were reversed on the same day;*

iv. *Such Alleged Trades were allegedly carried out by the Noticee with entities such as*

- *Aroma Chemicals;*
- *Bina Udyog Private Limited;*
- *Evergrowing Iron & Finvest Private Limited;*
- *Kashni Gupta;Maa Mahamaya Industries Ltd;*
- *Mahabir Prasad Dudchani;*
- *Manika Choraria;*
- *Namita Jain;*
- *Pooja Vijaykumar Ahuja;*
- *Radha Smelters Limited;*
- *Radhey Shyam Manchanda;*
- *Ranmak Works Pvt Ltd;*
- *Shubhang Exports Limited;*
- *Siddhartha Sharda;*
- *Siddhartha Sharda (HUF)*
- *Sunil Goyal HUF;*
- *Sunita Bhuwalka;*
- *Swastik Plywood Limited,*

as the counter parties.

INVESTIGATION REPORT AND OTHER DOCUMENTS RELIED UPON

d. *Para 3 of the SCN makes a reference to an investigation covering the period April 01, 2014 to September 30, 2015 in relation to trades in stock , options segment of BSE. At the outset, I humbly request you to provide me a copy of the Investigation Report, for enabling me to draft an appropriate reply to the SCN.*

e. *Further, there are various statement/allegations made in the SCN for which no details have been provided in terms of the documents that have been relied upon for making such statement/allegations. In the absence of such information/documents, I am not be in a position to comment on the factual accuracy of such statements or provide any reply to the allegations made in such statements. An indicative listing of such unsubstantiated statements for which no documentary evidence has been provided along with the SCN is enclosed as* **Annexure 1.**

NOTWITHSTANDING *the receipt of the above documents/information Including the Investigation Report, I submit as follows.*

SUBMISSION

f. *In this context while I shall endeavour to reply to each and every allegation contained in the Show Cause Notice and that non-denial or non-replying of any particular allegation may not be treated as my admission in any manner for want of denial.*

g. *Without prejudice to the above, I respectfully make the following submissions:*

i. *Derivates as a financial instrument derive its value from other, more basic, underlying variables like the share price of a particular scrip in the cash segment of the market or the stock index of a portfolio of stocks, time to expiry, expected volatility in the underlying stock etc. Derivative trading in India is governed by Section 18-A of the Securities Contracts (Regulation) Act, 1956 which was inserted with effect from February 22, 2000. Section 18A states as follows in relation to Contracts in derivative: "18A. Notwithstanding anything contained in any other law for the time being in force, contracts in derivative shall be legal and valid if such contracts are—*

- *traded on a recognised stock exchange;*
- *settled on the clearing house of the recognised stock exchange, in accordance with the rules and bye-laws of such stock exchange."*

All the Alleged Trades imputed in the SCN were traded by the Noticee on the floor of BSE and were settled though the clearing house of BSE in accordance with the rules and bye-laws of BSE and as per the requirement of Section 18-A of the Securities Contracts (Regulation) Act, 1956.

ii. *Derivative segment is highly volatile and involves a complexed form of trading with high risks and the players in this segment do not follow the herd mentality as is often noticed in the cash segment but take decisions based on their own perception of the market. The number of persons trading in this segment is comparatively much less than those in the cash segment. Artificial/fictitious trades in the cash segment do give a false appearance of active trading in a particular scrip by increasing volumes which tend to lure the lay investors to invest in that scrip. The impression given to the investors is* *that the scrip is highly liquid and much in demand and this interferes with the price discovery mechanism of the exchange and it is for this reason that such trades are held illegal in the cash segment. This, however, cannot be the case in the F & O segment.*

iii. *Further, all the Alleged Trades were carried out by me through SEBI Registered Stock Broker on screen based trading platforms including transactions in BSE stock options contracts, which carried hundreds of different contracts, however neither Stock Broker nor BSE ever raised any query / notice at any time nor have I received any notice/intimation/information from my stock broker about alleged non-genuine or unrealistic trades or even any query for our volume / transactions while putting orders and carrying out transactions. It is extremely strange on the part of SEBI to suddenly label my trades as artificial and non-genuine after approximately 4 years of the transactions and that too on completely untenable grounds and unjustified reasons. On this ground also the SCN should be set aside, leave apart other valid reasons and explanation herein a It is also submitted that all submissions in this reply are without prejudice to each other.*

RELATIVE TRADING DETAILS OF THE NOTICEE

iv. *On a relative basis, during the Investigation Period i.e. between April 01, 2014 to September 30, 2015,*

- *the total trades executed the Noticee constituted 0.0147% of the alleged total trades observed by SEBI i.e. 43 out of alleged total trades of 2,91,643;*
- *the total trading volume of the Noticee constituted 0.0634% of the alleged total trading volume observed by SEB] i.e. 52.34 lacs units as against an alleged aggregate of 826.21 crore units;*
- *the Alleged Trades were carried out of 9 trading days as against a total of 368 trading days during the period; and*
- *the 'Alleged Trades constituted a smail proportion of the overall alleged trading in the respective contracts as is evident from the following:*

Relative % of the total trades in the contract	*Based on no. of trades*	*Based on Traded Volumes (Units)*
Less than 30%	*7*	*7*
>=30% but less than 40%	*3*	*2*
>=40% but less than 50%	*0*	*3*
>=50% but less than 100%	*2*	*0*
100%	*2*	*2*
Total	*14*	*14*

Thus, the Alleged Trades during the Investigation Period as highlighted in the above para were miniscule, insignificant, very small percentage/proportion of

- *The overall total trades as alleged to have been observed by SEBI;*
- *The overall total trading volume as alleged to have been observed by SEBI; and*
- *The number of trading days during that period.*

SAME DAY REVERSAL OF TRADES IN DERIVATIVE MARKETS

v. *Derivative contracts are one-sided contract where the loss suffered, if any, by the buyer (of an option) is limited only to the premium amount paid whereas the loss which could be suffered by the writer of the contract (seller) is limitless. Similarly, the upside for an option seller/writer is limited to the upfront premium received, whereas the upside for the option buyer/purchaser is limitless. As per normal market incidents, options which have been purchased / sold may get reversed at different rates on the very same day. Such reversal trades are only to avoid greater potential losses on the one side, and to book profits on the other side. The "reversal" of trades on the same day is a normal practice of trading in the Options segment. The buyer has the choice to close the options contract and settle the transaction on any day at the then current market price, even during the period of the settlement, i.e., before the settlement date. If the market starts moving or there is a change in the perception of the market and the anticipated future performance thereof, then the seller (writer) may anticipating a substantial loss, and would want to square off his position to restrict the loss. The seller / writer would therefore put in an offer or accept an offer of a higher premium. This often happens on the same day as the first options 'contract, since, the buyer alone has an option to settle and close the options contract at the end of any day and demand payment. The seller therefore has to in effect repurchase the contract at a higher rate/premium to avoid such an eventuality and consequent greater loss. The buyer on the other hand may choose to accept/offer such higher premium so as to assure his profit, and that too, in a very short time span. The reversal of trades on the same day in the F & O segment cannot be categorized as fictitious and non-genuine.*

vi. *The contracts in this segment are settled at the end of the settlement period in cash and there is no physical delivery of the underlying asset. Unlike in the cash segment where trading is done by making the entire payment upfront, trading in the F & O segment is carried on with a relatively small amount which provides the possibility of greater profits and/or losses.*

vii. *The trades were executed by the Brokers traders, and they were not given any instructions by the Noticee as to the manner of execution of the trades except that the total quantity to be bought/sold and that the position has to be squared off before the end of the day limiting the margin money requirements. The findings/observations as to the alleged non-genuine trades, cannot in any manner be a charge against the Noticee. Furthermore, no documents or material or data have been disclosed/provided in the SCN to substantiate the said allegation of on-genuineness" of any trades. It is repeated and reiterated, that the said "concerns" are based on a misconception of the nature of trading in the Options Market. The impugned trades were genuine and in no manner undermined price discovery or affected the market integrity as incorrectly insinuated or otherwise.*

viii. *Having taken a position in an option (bought/sold a put/call option), the Noticee went ahead to cover its position/restrict losses by an offsetting transition based on a business call taken at that particular time. Just because a trade has resulted in a loss, the same cannot be alleged as non-genuine or fictitious. It is therefore submitted that the entire allegation and charge in the said SCN, that merely because transactions were entered into by the Noticee in the options market which were later on the same day in effect reversed, tantamount to violation of any Regulations and was manipulative &/or deceptive &/or non-genuine &/or fictitious &/or fraudulent, etc. is incorrect and based on a misconception of the trading system and the implications thereof. Admittedly the Options market is illiquid, very few parties trade therein, and therefore the potential for such reversal trades occurring between the same parties is obvious.*

ix. *The Alleged Trades as highlighted in the SCN couldn't have had an impact on the derivative as well as the underlying cash market or any influence on any other investors. Further, the SCN does not make a case that other investors were misled due to the Alleged Trades or that any third party suffered any loss on account of the alleged trades.*

FINANCIAL IMPACT OF THE ALLEGED TRANSACTIONS

x. *Since all the Alleged Trades were settled in cash through the stock exchange mechanism, they were genuine and these could not create a false or misleading appearance of trading in the F & O segment. Trades cannot .be termed as non-genuine simply because the trading activity resulted is a loss.*

xi. *It is further pertinent to note that the Noticee is neither a broker nor a trading member of any Exchange and is in fact only an investor who had entered into the impugned transactions in the normal course of trading as an investor/speculator with the object and intention of trading on the platform of the Exchange. All the Alleged Trades were trades in Options only. All the said trades followed the requirements of the rules and regulation of the*

Exchange for trading in the Options plow segment. Further the Noticee had met all the contractual obligations of the said transaction within the required time and has not committed any default. Further, the Noticee has also paid all the applicable statutory charges inter alia including Brokerage, Service Tax, STT, SEBI Charges, Stamp Duty etc. as reflected from the contract notes attached. The allegation that the aforesaid trades were not genuine or created artificial markets is incorrect and denied.

Copies of contract notes in relation to each of the above trade and the Ledger Account of the Noticee with the broker for FY 2014-2015 and FY2015-2016 is enclosed as Annexure 2.

The above submissions clearly demonstrate that the trades carried out by the Noticee were in fact:

- *genuine trades;*
- *carried out on the floor of the exchange, settled in cash; and*
- *Having financial impact on the Noticee as reflected in the financials of the Noticee.*

SIGNIFICANT DIFFERENCE IN BUY AND SELL RATE

xii. *The proposed action on the basis of the allegation that the Alleged Trades carried out by the Noticee had significant difference in the buy and sell rate is unfounded, unsubstantiated and misplaced since it is devoid of the facts in regard to the way trades happen in the option market.*

xiii. *The SCN fails to appreciate that though SEBI and Exchanges have put in place a mechanism of price band in Capital Market Segment to GC' control extreme volatility, which may result in trades taking place at unrealistic prices, there is no such price band mechanism for the option Segment. So, there is no such thing as unrealistic price for options contracts. The SCN fails to appreciate that pricing of options is a complex arithmetical calculation based on several variables most of which are subjective and presumptive thus making a huge range of price to be completely valid and genuine. The price of an option is on 7 derived based on complex formulas dealing with Price of the sent underlying, time to expiry, expected volatility, rate of interest etc., all which are dynamic thus resulting in exponential increase in the "lower and upper valid prices of options as a result of which e% * presumably, SEBI and Exchanges in their wisdom did not stipulate any price band for options. After having failed to put in place such a mechanism due to complexity of such a product in spite of having infinite wherewithal with SEB! and Exchanges, it cannot be expected of common investors and traders to know the correct range of option prices and therefore 1 submit that my trades and their prices were absolutely genuine and no fault can be found with them.*

xiv. *The SCN also failed to appreciate that profits / losses are incidental to transactions on stock exchange and merely because the transactions on BSE in Stock Options Segment resulted in a loss or believing but without admitting that the same are carried out with one/same counterparty, they cannot be said to be non-genuine. As a part of common KYC documents, SEB! itself has prescribed Risk Disclosure Document ("RDD") for capital market and derivatives segment, which states about certain basic risks including Risk of Higher Volatility, Risk of Lower Liquidity, Risk of Wider Spreads etc. and thereby it has been stated by SEBI to the effect that in securities / contracts having lower liquidity, there may be higher volatility and higher risk / wider spreads. As a result, an order may only be partially executed, or may be executed with relatively greater price difference or may not be executed at all. Further, Buying or selling securities / derivatives contracts as part of a day trading strategy may also result into losses, because in such a situation, securities / derivatives contracts may have to be sold / purchased at low / high prices, EX, compared to the expected price levels, so as not to have any open position or obligation to deliver or receive a security / derivatives contract. Further, Lower liquidity and higher volatility may result in wider than normal spreads for less liquid or illiquid securities / derivatives contracts. This in turn will hamper better price formation.*

With the above background we further state that the SCN also records that the contracts in which we dealt were illiquid contracts and thus were highly risky in terms of wider spreads. Due to lower liquidity of the contracts, we were forced / compelled to square off the trades at a price difference, as appreciated by SEBI in terms of RDD.

In our belief, issuing the captioned SCN by SEBI is totally contradictory to SEBI's own stand as per prescribed by RDD (which is issued by SEBI for the benefit of investors and/or traders) and thus on this lone ground also SCN is absolutely untenable in the eyes of law.

xv. *Considering the impugned trades as non-genuine only on the basis that there is significant difference in the buy and sell rate is bad in law and unjustified since that is regular phenomena and happens in many such trades in illiquid options market.*

ALLEGED REVERSAL OF TRADES BETWEEN SAME PARTIES

xvi. *Considering the illiquid market in individual stock options such as stock specific put and call option, it is quite obvious that only those parties who have taken position in the derivative would have an incentive to cut exposure by entering into an opposite trade. In such circumstance, the possibility of the same entities being represented by the brokers on different legs of a trade cannot be ruled out. However, the mere fact that the same entities entered into opposite trade does not per se makes such trade illegal or non-genuine.*

xvii. *It is also noteworthy that the Alleged Trades have matched with seventeen different counter parties. Had the trades been non- genuine, the Noticee ought to be related to the counter parties. The does not provide an iota of evidence as to how the Noticee is related to the counter parties. There is no material on records or stated reasons as to why the Noticee would enriched 18 totally different and unrelated counter parties at its cost and consequences of loss of Rs. 1.66 crores approx. I therefore humbly submit that without the theory of conspiracy between two parties established, the allegations of the SCN do not hold water.*

xviii. *The SCN is not in line with the established principles recorded in various judgments such as:*

- *In Jagruti Securities vs Securities and Exchange Board of India (Appeal No. 102 of 2006, decided on 27.10.2008), the Hon'ble Sat has gone ahead to record in para 4 ".... we are of the view that in an artificial trade there has to be collusion between the buyer and the seller and in the absence of any collusion, the trade cannot be termed as 'artificial'."*
- *S.P.J. Stock Brokers Pvt. Ltd. vs Securities and Exchange 'Board of India (Appeal No. 52 of 2013, Order Date 04.09.2013) "13. Unless some connection between appellant and counterparties with whom appellant traded is established, it is difficult to hold that trades in question were carried out with a view to manipulate market by creating false volumes resulting in upsetting market equilibrium."*

IDENTITY OF THE COUNTER PARTY OR ITS BROKER NOT KNOWN

xix. *On a screen-based trading through the price order matching mechanism of the exchange, it is not possible to know who the counter party or his broker (or sub broker) is and when the trade is executed, their names or codes do not appear on the screen. For all practical purpose the relevant stock exchange in the counter party for the trade and guarantees settlement. In India the credit risk of the counter party is addressed by the Settlement / Trade Guarantee Funds set up by the respective stock exchanges. Except as stated in the SCN in relation to the alleged counter parties and its brokers, the Noticee had no knowledge or means of ascertaining the counter party or their brokers, for the trades carried out by the broker for the Noticee on the screen-based trading system. Nor does the contract note from the broker indicates the name or identity of the counter party or its broker. Nor has it been alleged in the SCN that the Noticee was aware or had contacted the counter party in any manner, whatsoever. There was no financial connection between the Noticee and the alleged counter parties and the SCN has not brought on record the necessary factors to prove any connection the Noticee had with these entities in question to establish a case of meeting of minds. The Alleged Trades carried out by the Noticee involved seventeen different parties and not just one counter party. it's not the case that the Noticee or its broker (or the sub-broker) was aware of the counter party or his broker at the time when the trade was executed. There is no such allegation in the SCN.*

ARBITRARY DEFINITION OF NON-GENUINE TRADE

xx. *Further, NOTWITHSTANDING THAT NO NON-GENUINE TRANSACTION HAVE BEEN CARRIED OUT BY THE NOTICEE, it is submitted that the definition of reverse trades and non-genuine trades as stated in para 4 of the SCN is completely arbitrary, contrary to the well laid out principles of screen-based trading mechanism and is not backed by any act, rules or regulation or any circular/direction issued either by the SEBI to Stock Exchanges or by the Stock Exchanges to Brokers trading on such exchange. There is no reference in the SCN to any such direction/circular issued at or prior to the relevant time by:*
    - *SEBI to stock exchange defining and/ or prohibiting such trades; or*
    - *Requiring stock exchanges to monitor such trades and report the same to SEBI; or*
    - *By the stock exchanges to the brokers trading on the floor of exchange cautioning against such trades.*

xxi. *The Noticee submit that the Alleged Trades have all traits of being genuine and therefore cannot be categorised as non-genuine. These trades were executed on the anonymous platform of the Exchange, without any knowledge of counter party, at price ranges that were permitted by the Exchange and SEBI and the obligations arising out of it have been settled through the clearing mechanism of the Exchange. Further the reasons of trades being carried out at a substantial price difference and reversed with the same party are also genuine as the RDD issued by SEBI envisages such a situation and also warns the investors and traders against them as it accepts that these are bound to happen. If SEBI believed that such trades cannot happen, then there was no reason to include such clauses in RDD. Having included clauses dealing with situations of possible trading in illiquid securities where profits and losses may occur due to low liquidity and wider spreads, the conclusion of categorising the Alleged Trades as non-genuine is not tenable. Simply because the trades resulted in losses, cannot be a reason to label them as non-genuine.*

xxii. *Further, 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. It is submitted 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 the Noticee in this regard.*

xxiii. *The Noticee further submit that in addition to being completely arbitrary and discriminatory the definition on Non-Genuine trade as provided by SEBI does not amounts to a reasonable classification and thus violative of Article 14 of the Constitution of India. This is quite evident from an analysis of sample trades considered by SEBI during the Investigation Period. Extract of the trading details of*
    - *Sample 1 — Thirteen (13) Trades - Eight (8) Counterparties - Same Day; and*
    - *Sample 2 - Forty-Seven (47) Trades - Twenty-Two (22) Counterparties — Two Days*

are enclosed as Annexure 3. These details are based on data shared by SEBI in a similar notice vide Annexure C to some other noticee. The SCN issued to the Noticee do not include the complete details of all trades considered by SEBI during the Investigation Period.

Sample 1:

The sample analysis of Thirteen (13) trades involving in all Eight (8) counter parties on March 23, 2015 between 12.42 p.m. to 13.14 p.m. in the call option contract ADPW15MAR52.00CE with strike price of Rs. 52 and expiry date as March 26, 2015 is as follows:

Client	Bought	Buy Rate	Sold	Sell Rate	Net Position
Ankur Shah	1,600,000	0.55	1,600,000	0.05	0
Vardhaman Textile Company Pvt ltd	1,992,000	0.55	1,992,000	0.05	0
Jitendra Kumar Falor HUF	1,192,000	055	1,192,000	0.05	0
Indra Agarwal	800,000	0.05	800,000	0.55	0
Vimlesh Modi	400,000	0.05	400,000	0.55	0
Moolibai Mangilal Rakhecha	400,000	0.05	400,000	0.55	0
Nawal Kishore Agarwal	400,000	0.05	400,000	0.55	0
Aditi Garg	400,000	0.05	400,000	0.55	0
	7,184,000		7,184,000		

Further, as per SEBI arbitrary definition of NON-GENUINE TRADE, out of the above 13 trades only two trades would be categorized as non-genuine and that to in relation to 3,92,000 units of buy and sell.

CLIENTNAME	CP_CLIENTNAME	Trade Rate	Trade Quantity
Vardhaman Textile Company Pvt. Ltd.	Indra Agarwal	0.55	800000
Indra Agarwal	Vardhaman Textile Company Pvt. Ltd	0.05	392000

Sample 2:

The sample analysis of Fourth-Seven (47) trades involving in all Twenty-Two (22) counter parties on January 23, 2015 between 3.12 p.m. to 3.22 p.m. and on January 27, 2015 between 11.04 a.m. to 1.59 p.m. in the call option contract ADEL15FEB520.00 CEW1 with strike price of Rs. 520 and expiry date as February 05, 2015 is as follows:

Client	Bought	Buy rate	Sold	Sell Rate	Net Position
Ananinath Vincom Private Limited	130,000	62.40	130,000	16.2	0
Ashok Kumar Sahu	6,000	35.00	6,000	62.75	0
Babu Lal Agarwal	3,000	16.20	3,000	62.75	0
Chitrakut Holding Ltd.	20,000	62.50	20,000	16.2	0
Dabriwal Investment & Financiers Pvt Ltd	16,000	62.50	16,000	1602	0
GM Holdings Pvt Ltd	15,000	62.50	15,000	16.2	0

Kashinath & Co Pvt Ltd	*9,000*	*62.50*	*9,000*	*16.2*	*0*
Kumud Kumar Goyal	*3,000*	*16.20*	*3,000*	*62.75*	*0*
Motilal Makhanlal Holdings Pvt Ltd.	*30,000*	*42.50*	*30,000*	*62.50*	*0*
Nirmal Deep Resources Ltd	*18,000*	*62.50*	*18,000*	*16.2*	*0*
Pankaj Goyal	*3,000*	*16.20*	*3,000*	*62.75*	*0*
Ridhika Gupta	*3,000*	*16.20*	*3,000*	*62.75*	*0*
Rinku Bohara	*3,000*	*16.20*	*3,000*	*62.75*	*0*
Shilpa Banthia	*3,000*	*16.20*	*3,000*	*62.75*	*0*
Subh Karan Banthia	*3,000*	*16.20*	*3,000*	*62.75*	*0*
Sushil Goyal	*3,000*	*16.20*	*3,000*	*62.75*	*0*
Swamaratna Securities Pvt Ltd	*64,500*	*40.05-62.75*	*64,500*	*16.2*	*0*
Synergy Dealcom Private Limited	*60,000*	*62.50*	*60,000*	*16.2*	*0*
Tripurari Properties Private	*50,000*	*62.4-62.5*	*50,000*	*16.2*	*0*
Umesh Malani	*200,000*	*16.20*	*200,000*	*62.4*	*0*
Vision Sponge Iron Private Ltd	*198,500*	*16.20*	*198,500*	*35-62.5*	*0*
Xersus Sales Pvt Ltd	*40,000*	*62.40*	*40,000*	*16.2*	*0*
	881,000		*881,000*		

Further, as per SEBI arbitrary definition of NON-GENUINE TRADE, out of the above 47 trades none of the trades would be categorized as non-genuine as such trades were

- *Either spread over a period of two trading day — January 23, 2015 and January 27, 2015; and/or*
- *The counterparties on the reverse leg of the transactions were not the same.*
  Incidental, these trades constitute 100% of the trades shortlisted by SEBI in the call option contract ADEL15FEB520.00CEW1 In view of the above, the SCN needs to be set aside as arbitrary, discriminatory, exceeding delegated authority and being in violative of the Constitution of India.

IMPACT ON THE DERIVATIVE MARKET AND/OR UNDERLYING SECURITIES

xxiv. *It has been further alleged in the SCN that the Noticee had entered into impugned trades to create Artificial Volumes leading to false or misleading appearance of trading in terms of generation of artificial volume.*

xxv. *In regard to above allegation, it would be appreciated that the SCN does not brings out the facts and figures as to the artificial volume that has been created due to impugned trades undertaken by the Noticee.*

xxvi. *It would be appreciated that the SCN needs to bring out complete facts supported with cogent evidences in regard to allegations made. The SCN cannot be issued in a mechanical manner which is not founded by any supporting data or any evidences.*

xxvii. *In fact, in case, an analysis the volumes that have taken place prior to and post entering of impugned trades by the Noticee are considered, it would be realised and concluded that there is no difference or impact in regard to volumes in the said Options contract. In absence of any such impact happening on the volume of trades or the traded price, post entering of the Alleged Trades, the allegations stating that the Noticee has created an artificial volume is bad in law and without any basis.*

xxviii. *Your attention is hereby invited to the sample analysis carried in ensuring paragraph which clearly depicts that the Alleged Trades have not resulted into creation of any artificial volumes or benefits by any particular class of people. The price range in the options market reflected the price movement in the underlying scrip. There has been no evidence of market manipulation or of having defrauded any particular investor or a class of investor on account of the trades carried out by the Noticee in the F&O segment. In fact, based on the trading in the underlying script and the fourteen contracts which are referred to in the notice:*

a. *There has been no unusual movement in the underlying script on account of the trades carried out by the Noticee in the F& O segment. Please refer Annexure 4 for the trades and price movement in the option's contracts and the underlying scrips.*

b. *In 2 out of the 14 contracts there has been no other trades in the contract. Thus, the Alleged Trades by the Noticee couldn't have had an impact on any other investors in that contract;*

c. *Further, in case of the following sample contracts, the price range of the trades by the Noticee were in line with the range within which other trades have happened in such contracts (Source: www.bseindia.com) either prior to or subsequent to the trades by the Noticee:*

- *Axis Bank PUT - SERIES AXIS15APR540.00PE |Expiry 30-04-2015*

Date	*High*	*Low*
27-03-15	*22.00*	*15.00*
23-03-15	*13.00*	*1.00*

Noticee Range Rs. 1.60 — Rs. 11.60 on March 25, 2015

- *Axis Bank call- series AXIS15MAR560.00CE Expire 26-04-2015*

Date	*High*	*Low*
20-03-15	*14.00*	*4.00*
16-03-15	*21.00*	*7.00*
10-03-15	*50.00*	*20.00*
09-03-15	*83*	*41.50*

Noticee Range Rs. 7.00 - Rs. 25.00 on March 17, 2015

- *Bajaj Auto PUT - SERIES BAJT15MAR2040.00PE [Expiry 26-03-2015*

Date	*High*	*Low*
20-03-15	*32.00*	*9.00*
19-03-15	*27.00*	*6.00*
17-0315	*48.00*	*7.00*
16-03-15	*50.00*	*10.00*

Noticee Range Rs. 7.00 — Rs. 26.00 on March 17, 2015

- *HDIL CALL - SERIES HDIL15MAR110.00CE [Expiry 26-03-2015*

Date	*High*	*Low*
12-03-15	*9.20*	*3.20*
10-03-15	*5.60*	*1.20*
26-02-15	*9.40*	*2.00*
23-02-15	*12.50*	*5.50*

Noticee Range Rs. 0.10 — Rs. 0.50 to 1.40 on March 24, 2015

- *Oriental Bank of Commerce Put – series OBNK15MAR240.00PE [Expiry 26-03-2015*

Date	*High*	*Low*
18-03-15	*7.85*	*3.00*
16-03-15	*9.55*	*3.00*
12-03-15	*8.40*	*3.00*
11-03-15	*11.25*	*2.00*
03-03-15	*8.50*	*1.50*

Noticee Range Rs. 8.00 — Rs. 13.50 on March 20, 2015

- *Yes Bank CALL - SERIES YESB15MAR820.00CE {Expiry 26-03-2015*

Date	*High*	*Low*
25-03-15	*9.45*	*2.00*
12-03-15	*25.00*	*6.00*
10-03-15	*30.00*	*8.00*

Noticee Range Rs. 18.00 — Rs. 27.00 on March 20, 2015

Thus, it is quite evident that the trades in the F & O market had significant difference between the High and Low price on a particular day and that such significant difference in the price is no indication of a non-genuine trade.

d. *In case of the following sample contracts, the price range of the trades by the Noticee were in line with the price movement in the underlying scrip on trade day at BSE:*

CONTRACTNAME	*Trade date*	*Diff btwn B-S rates of Noticee*	*Diff btwn H and L(1)*	*No of Shares (2)*	*No of trades*	*Total T/O (2)*
BHRT15MAR330.00PE	*11-03-15*	*1.50*	*31.60*	*9.43*	*23,434*	*35.94*
CIPL15MAR720.00CE	*16-03-15*	*5.00*	*23.60*	*4.11*	*7,374*	*28.65*
HDIL15MAR110.00CE	*24-03-15*	*1.30*	*3.65*	*17.03*	*14,043*	*17.15*
IIBK15MAR920.00PE	*18-03-15*	*15.50*	*27.90*	*1.35*	*6,590*	*12.27*
RLNF15MAR440.00PE	*03-03-15*	*3.80*	*17.40*	*5.49*	*17,897*	*26.97*
RLNF15MAR480.00PEW3	*03-03-15*	*5.75*	*17.40*	*5.49*	*17,897*	*26.97*
YESB15MAR820.00CE	*20-03-15*	*9.00*	*24.35*	*3.98*	*19,513*	*33.04*

- *The difference between the High and Low price on the underlying scrip in cash market on the respective day*
- *Number of underlying shares traded in lacs and the Total Turnover in Rs. Crore in the cash market on the respective day*

The SCN seems to completely ignore the impact of price movement in the underlying scrip on the respective date of trade by the Noticee on the option price.

e. *The SCN seems to completely ignore the role played by the time element in determining the option value. The SCN does not factors in the difference between the trade date and the expiry date of the contracts which in case of 2 contracts were more than 35 days, in 3 contracts more than 15 days and in 8 contracts more than 6 days. Thus, the conclusion that since there were differences between the buy and the sell price, the Alleged Trades were non-genuine is quite far fledged, imaginary and lacks any analysis of the reason determine the price of options, the movement in the underlying share price, the difference between the trade date and the expiry date etc.*

SCN ITSELF IS UNSUSTAINABLE UNDER LAW

xxix. *The SCN has been issued to the Noticee under RULE 4(2) of SEBI (Procedure for holding Enquiry & Imposing Penalties by Adjudicating Officer) RULES, 1995 to grant an opportunity to noticee to show cause why an enquiry should not be held against the Noticee.*

xxx. *In regard to above, it needs to be appreciated that the Noticee have already given a detailed response above stating that there is no violation of Regulation — 3 or 4 of PFUTP Regulations, 2003 and therefore the question of initiating any enquiry in terms of Rule 4 of SEBI (Procedure for holding Enquiry & Imposing Penalties by Adjudicating Officer), Rules, 1995, does not arise.*

xxxi. *There is nothing on record to substantiate that the Noticee have knowingly misrepresented truth or concealed material fact, suggested a fact that the Noticee believed to be untrue, concealed any fact required to be disclosed. Further the Noticee never made any promise, made any representation, and not omitted any obligation under other law. Further, the behavior of the Noticee was in no way deceptive, nor did he make any false statement. In the* *absence of any acts of the Noticee being established as falling within the definition of fraud as mentioned in Regulation 2(1}(c), the SCN alleging violation of PFUTP Regulations of SEBI is bad in law.*

xxxii. *It needs to be appreciated that the Noticee had not made any disproportionate gain or unfair advantage nor the Alleged Trades have resulted into losses to any Investor or Group of Investors. On the contrary, as is evident from the SCN, the Noticee suffered a loss of Rs. 166 lacs and therefore also the question of imposing any Penalty under RULE — 5 of SEBI Adjudication Rules in the absence of any disproportionate gains being established does not arise.*

xxxiii. *The SCN is not substantiated by any evidence or material on record. In so far as the Noticee is concerned, the charges are based on surmises and conjectures and on the wild allegation of having carried out non-genuine trading, the impact of which on securities market have not been shown in the SCN. It is submitted that on such a charge alone no action can be taken against the Noticee. To make any one liable for any commission or omission to visit adverse consequences, there should be adequate justification and, in the absence, thereof any punishment meted to him will be unsustainable. Therefore, the Noticee submits that such allegations supported by no proof are in gross violation of the principles of natural justice and absolutely uncalled for. In this regard, to substantiate the argument, Noticee relied on judgement of Hon'ble Supreme Court in the matter of Nandakishore Prasad Vs. State of Bihar (1978) 3 SCC 366.*

h. ***WITHOUT PREJUDICE TO MY REPRESENTATIONS MADE ABOVE***

- *The Alleged Trades in a particular option contract were between two counterparties only without any involvement of the wider market,*
- *The Alleged Trades and the units traded therein as highlighted in the SCN constituted less than 0.015% of the alleged total number of reversal trades (43 trades out of alleged total 2,91,643 trades) and 0.064% of the alleged total volume of units traded (52.34 lacs out of alleged total of 826.21 crore), with trades executed by the Noticee only on 9 out of approximate 368 trading days with seventeen different counter parties during the Investigation Period as observed by SEBI. Thus, the proportion of the trades (as well as the units traded) carried out by the Noticee as compared to the total volume of reversal trades (as well as the overall units traded) in the market as alleged by SEBI during the Investigation period is very insignificant, negligible small proportion and had no impact on the markets (cash as well as derivative) or on any other investors. Agreeably, such small quantity of trading is completely incapacitated to create any artificial volume.*
- *It needs to be appreciated that in any case, as is evident from the SCN, the Alleged Trades resulted in a loss of more than Rs. 166 lacs which has in turn eroded the capital and net worth of the Noticee. There is no allegation in the SCN that the Noticee had made any disproportionate gains from the Alleged Trades. In absence of any gains in the hands of Noticee, there can be no question of imposing penalty in the hands of Noticee which can be imposed only in case disproportionate gains are made.*
- *The above SCN proposing an Enquiry does not brings out the losses if any made by Investors or Investor Group on account of impugned transactions entered by the Noticee. It will be appreciated that for the purpose of issuance of such SCN, there has to be clear-cut findings in the SCN as regard to the quantum of disproportionate gains if any made by the Noticee and amounts of loss if any suffered by the investors or Investor Group. In absence of the same, it can be concluded that there is no such disproportionate gains or losses incurred by any category of persons due to impugned trades and therefore the question of imposing any Penalty under Section 15-1 of SEBI Act, 1992 does not arise.*
- *The SCN continuously alleges that Alleged Trades are non-genuine trades. The SCN fails to point out to any Act, Rules, Regulations, Circular issued by SEBI wherein such non-genuine trades have been defined/clarified. In the common parlance, the non-genuine means the transactions which have been actually not taken place or the transactions that have been taken place are actually not executed or reversed amongst the Party by way of other means.*
- *In case the allegation is made that such transactions are non- genuine, it is obvious under the law that SCN ought to have brought out the manner in which the said Non-genuine transactions have been reversed amongst the counter parties with evidence of such reversals along with payments being reversed which is not the case of the SEBI.*
- *There are no findings whatsoever which has been brought out in the SCN as to reversal of impugned transactions amongst the counter parties whereby the loss suffered by the Noticee have been recouped by the counter parties to the Noticee by any other means. It is the obligation of the department to bring out in the SCN as to how the loss suffered on such impugned transactions have been reversed amongst the counter parties.*
- *In absence of the same, it would be appreciated that the said SCN is bad in law and therefore proposed enquiry deserves to be dropped.*

i. ***Further, in relation to my reply to the SCN, kindly provide me the following:***

- *A copy of the complete Investigation Report;*
- *A copy of the opinion formed by the Securities and Exchange Board of India ("Board") under rule 3 of the Rules for initiation of Adjudicating proceedings against the Noticee and the basis on which such an opinion was formed by the Board;*
- *Copies of document relied upon for forming the ground for the above opinion;*
- *Evidence as to the alleged violation of Regulation 3(a), (b), (c), (d) and 4(1) and 4(2)(a) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003, ("PFUTP Regulations") specially in relation to:*
    - *How were the buying and selling by the Noticee of options traded on the floor of the exchange fraudulent/deceptive?*
    - *Investor or group of investors defrauded or deceived by the Noticee's buying and selling of options on the floor of the exchange.*
    - *Evidence of any manipulative or deceptive device used by the Noticee for trading on the floor of exchange and who were defrauded by the same;*
    - *How was the Noticee's dealing in the options on the screen-based trading system of the stock exchange amounting to a fraud or deceit on any person and what provisions of any act, rules or regulations were contravened by the Noticee in such trading;*
    - *How the Noticee was's trading in the options on the floor of the exchange an unfair trade practice in securities market;*
    - *Evidence which establish that the Noticee's trading on the floor of the exchange created a false or misleading appearance of trading in the securities market*
    - *Any Act, Rules, Regulation, Circular by the Regulatory authority or the Exchange defining "non-genuine trades", the safeguards for preventing such trades, reporting/disclosure requirements for such non-genuine trades etc.*
- *What is the disproportionate gain or unfair advantage, if any, made by the Noticee as required to be established in terms of Section 15J(a) of the SEBI Act, 1992 and Rule 5(2)(a) of SEBI (Procedure for Holding 'Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995, for the purpose of Section 15HA of the SEBI Act, 1992.*
- *Documents relied upon for the statements/ allegations made in the SCN, more specifically as highlighted in Annexure A.*

j. *In the light of the above the Noticee deny that it had bought or sold or dealt in any securities in any fraudulent or manipulative or deceptive or unfair manner, or employed any deceptive device or contrivance, or contravened the provisions of any act or rules or regulation. It is denied that any of the impugned trades involved any fraud, or that the Noticee indulged in any act which created any false or misleading appearance of trading in the securities market, or that any of the said trades were intended to deceive or defraud any person.*

k. *It is further submitted that the Noticee did not violate the PFUTP Regulations as alleged in the SCN.*

- *I submit that I had not bought or sold or otherwise dealt in securities in a fraudulent manner. Hence, I submit that I have not violated Regulation 3 (a) of the PFUTP Regulations.*
- *I submit that I did not 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. Hence, I submit that I have not violated Regulation 3 (b) of the PFUTP Regulations.*
- *I submit that I did not 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. I submit that there was no allegation that I had defrauded any person or class of persons. Hence, I submit that I have not violated Regulation 3 (c) of the PFUTP Regulations.*
- *I submit that I did not engage in any act, practice, course of business which operated as fraud or deceit upon any person in connection with any dealing in or issue of securities in contravention of the provisions of the Act or the rules and the regulations made there under. Hence, I have not violated Regulation 3 (d) of the PFUTP Regulations.*
- *I submit that I had not indulged in manipulative, fraudulent or unfair trade practices as alleged in the SCN and hence not violated Regulations 4 (1) of the PFUTP Regulations.*
- *I submit that I had not indulged in fraudulent dealing in securities or unfair trade practice and that neither any fraud has been committed nor any false or misleading appearance of trading in the securities markets have been created as alleged in the SCN and hence not violated Regulations 4 (2)(a) of the PFUTP Regulations.*

l. In the light of the above, I submit that I have not made any violations alleged in the show cause and that there is no case made out in the SCN that an inquiry has to be conducted in the matter as foreseen under Rule 4 (3). I therefore humbly pray that the proceedings against me may kindly be dropped.

m. I request that an opportunity of personal hearing may kindly be granted to me before passing any orders in the matter.

n. I reserve my right to add further submissions based on receipt of information being sought here with and upon personal hearing.

11. Vide notice dated May 09, 2019 sent through SPAD and e-mail, the Noticee was provided the opportunity of hearing on May 21, 2019. In reply, vide e-mail dated May 10, 2019, a confirmation was received from the Noticee for availing the scheduled hearing. However, the hearing was rescheduled to May 23, 2019 and the same was communicated to the Noticee vide email dated May 20, 2019.

12. AR of the Noticee availed the hearing on May 23, 2019, in which a copy of Aadhaar ID of AR was submitted, and also AR reiterated the submissions of the Noticee made in aforesaid reply dated April 25, 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:

    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?

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 /information including the Investigation report in the present proceedings. 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 14 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 bears 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 bears the trade log of all the trades executed by Noticee in the Stock Option segment of BSE during the I.P; Annexure C bears the trade-log of all the alleged 43 non genuine trades executed by Noticee in Stock Option segment of BSE during the I.P; and Annexure D bears contract wise detailed summary of dealings of Noticee in the 14 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 the SCN is not substantiated by any evidence or material on record and the charges made are based on surmises and conjectures and on the wild allegation of having carried out non-genuine trading without adequate justification. 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 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 43 reversal trades in 14 Stock option contracts, which were allegedly non genuine and same resulted into artificial volume of total 5233750 units. Contract wise dealings of Noticee in said 14 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	ASPL15APR840.00CE	21.50	50000	1.50	50000	2	100000	100%	10%	100%	8%
2	AXIS15APR540.00PE	11.60	50000	1.60	50000	2	100000	100%	20%	100%	23%
3	AXIS15MAR560.00CE	25.00	83500	7.00	83500	2	167000	100%	7%	100%	17%
4	BAJT15MAR2040.00PE	26.00	68375	7.00	68375	2	136750	100%	8%	100%	14%
5	BHRT15MAR330.00PE	1.60	126500	0.10	126500	2	253000	100%	100%	100%	100%
6	CIPL15MAR720.00CE	8.75	200000	3.75	200000	2	400000	100%	33%	100%	35%
7	HDIL15MAR110.00CE	1.40	1156000	0.10	1156000	3	2312000	100%	18%	100%	47%

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
8	IIBK15MAR920.00PE	32.00	193000	16.50	193000	4	386000	100%	100%	100%	100%
9	OBNK15MAR220.00CE	10.00	100000	5.00	100000	2	200000	100%	33%	100%	48%
10	OBNK15MAR240.00PE	13.50	118000	8.00	118000	2	236000	100%	7%	100%	6%
11	RLNF15MAR440.00PE	4.00	53000	0.20	53000	4	106000	100%	50%	100%	23%
12	RLNF15MAR480.00PEW3	9.75	129000	5.09	129000	12	258000	100%	67%	100%	47%
13	WIPR15MAR600.00CE	47.00	123000	21.00	123000	2	246000	100%	33%	100%	33%
14	YESB15MAR820.00CE	27.00	166500	18.00	166500	2	333000	100%	13%	100%	17%

19. It is noted that all the trades executed by Noticee in aforesaid 14 contracts were reversal trades. It shows that Noticee's dealings in the aforesaid 14 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 14 contracts. In 5 of the 14 contracts, volume generated by Noticee has contributed 45% 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 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 aforesaid 43 alleged non genuine reversal trades, it is noted that Noticee executed two legs of reversal trades within a very short span of upto 12 minutes. In this regard, it is pertinent to note that in 11 of the 14 contracts, trades were reversed within span of mere 10 seconds.

22. It is noted that Noticee, in each of the 14 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, BHRT15MAR330.00PE, AXIS15MAR560.00CE, and AXIS15APR540.00PE 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, BHRT15MAR330.00PE on 11/03/2015								
(i)	Namita Jain	Dinesh Kumar Somani	0.10	126500	11:24:59	11:24:59	11:24:59	00:00:00	00:00:05
(ii)	Dinesh Kumar Somani	Namita Jain	1.60	126500	11:25:04	11:25:04	11:25:04	00:00:00	
2	Dealing in contract viz, AXIS15MAR560.00CE on 17/03/2015								
(i)	Maa Mahamaya Industries Ltd	Dinesh Kumar Somani	7	83500	11:12:48	11:12:48	11:12:48	00:00:00	00:00:05
(ii)	Dinesh Kumar Somani	Maa Mahamaya Industries Ltd	25	83500	11:12:53	11:12:53	11:12:53	00:00:00	
3	Dealing in contract viz, AXIS15APR540.00PE on 25/03/2015								
(i)	Pooja Vijaykumar Ahuja	Dinesh Kumar Somani	1.60	50000	11:31:09	11:31:09	11:31:09	00:00:00	00:00:04
(ii)	Dinesh Kumar Somani	Pooja Vijaykumar Ahuja	11.60	50000	11:31:13	11:31:13	11:31:13	00:00:00	

a) While dealing in the contract viz, BHRT15MAR330.00PE on 11/03/2015, Noticee at 11:24:59 hrs entered into sell trade for 126500 units at a rate of Rs.0.10 per unit with counterparty viz, Namita Jain. Subsequently, within mere 5 seconds of the aforesaid trade, at 11:25:04 hrs, Noticee reversed the above sell trade by entering into 1 buy trade with same counterparty for same no. of units, at premium rate of Rs. 1.60 per unit. It is noted that orders for execution of both the legs of reversal trades were entered by Noticee and its counterparty at the same time. Above dealings resulted into total 2 reversal trades (1 sell trade + 1 buy trade) with total volume 253000 units.

b) While dealing in the contract viz, AXIS15MAR560.00CE on 17/03/2015, Noticee at 11:12:48 hrs entered into sell trade for 83500 units at a rate of Rs.7 per unit with counterparty viz, Maa Mahamaya Industries Ltd. Subsequently, within mere 5 seconds of the aforesaid trade, at 11:12:53 hrs, Noticee reversed the above sell trade by entering into 1 buy trade with same counterparty for same no. of units, at premium rate of Rs. 25 per unit. It is noted that orders for execution of both the legs of reversal trades were entered by Noticee and its counterparty at the same time. Above dealings resulted into total 2 reversal trades (1 sell trade + 1 buy trade) with total volume 167000 units.

c) While dealing in the contract viz, AXIS15APR540.00PE on 25/03/2015, Noticee at 11:31:09 hrs entered into sell trade for 50000 units at a rate of Rs.1.60 per unit with counterparty viz, Pooja Vijaykumar Ahuja. Subsequently, within mere 4 seconds of the aforesaid trade, at 11:31:13 hrs, Noticee reversed the above sell trade by entering into 1 buy trade with same counterparty for same no. of units, at premium rate of Rs. 11.60 per unit. It is noted that orders for execution of both the legs of reversal trades were entered by Noticee and its counterparty at the same time. Above dealings resulted into total 2 reversal trades (1 sell trade + 1 buy trade) with total volume 100000 units.

23. Following are the common observations from the dealings of Noticee in above mentioned 3 contracts. It is noted that there was precise 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 mere 5 seconds. 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 43 reversal trades executed by Noticee, orders were entered by Noticee and its counterparties at the same 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 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, w.r.t allegation of non-genuine trades and creation of artificial volume, has put forth a key defence by denying instructing its Stock Broker to execute such trades. It is pertinent to note here that Stock Broker act as an agent to enter orders as per instruction of its respective client on the Stock Exchange platform. As per extant mechanism in the securities market, upon execution of trade by a Stock Broker on behalf of its client, trade confirmations are sent to client through SMS / e-mail, and subsequent contract note is sent by Stock Broker providing details of trades executed by it for the Client. If client has any issue related to execution of the trade, it can raise immediate contention with the Stock Broker, and client can also file complaint with Stock Exchange and / or SEBI. In the present matter, Noticee has not presented any information which shows that it disputed or complained in past after the execution of trades by its Stock Broker. Noticee has not denied in any of his submissions that it has not received the contract notes relating to these transactions. In fact, the Noticee in its submissions has provided the details of contract notes relating to its transactions.

26. Noticee submits that the alleged trades cannot be categorised as non-genuine trades by referring to the risk of lower liquidity, wider spreads mentioned in the Risk Disclosure Document (RDD), and argued that RDD envisages the scenarios as in the present case, where trade may happen at significant price difference with same counterparty due to lower liquidity and wider spread in the stock options. In this regard, it is important to note that the price of a stock option is based on several underlying parameters, and change in price has to be justifiable based on change in such parameters. It is noted that Noticee has not shown any credible basis for the substantial variation of price in its reversal trades undertaken in very short span of time. It is also pertinent to note that though Noticee has tried to take shed of the general risks of dealing in illiquid stock options, however, it has also been noted that the reversal trades of the Noticees were result of synchronised trading with the counterparties in a pre-determined manner.

27. Noticee claims that the trades cannot be termed as non – genuine simply because the trading activity resulted in a loss and there is no allegation made in the SCN regarding any third party suffering a loss. In this regard, it is pertinent to note that the above mentioned dealings of Noticee resulted into misleading appearance of trading in terms of generation of artificial volume in 14 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 or his broker when the transactions are carried out on a screen based trading through the price order matching mechanism of the stock exchange. Further, the alleged trades have matched with seventeen different counterparties for which the SCN has not provided evidence as to how the Noticee is related to the counter parties and hence, SCN is not in line with the established principles recorded in the judgements of Jagruti Securities and S.P.J Stockbroker Pvt Ltd. 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 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. Noticee submits that it did not violate the PFUTP regulations as alleged in the SCN. In this regard, it is noted that reversal trades of Noticee resulted into generation of artificial volume and gave misleading appearance of trading in 14 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 43 non genuine trades in 14 contracts and thereby created artificial volume of 5233750 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 14 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 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…".*

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 43 non genuine trades in 14 Stock Option Contracts, and thereby generated artificial volume of total 5233750 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 14 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 14 contracts, artificial volume generated by Noticee contributed 45% 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 Lakhs only) is hereby imposed upon Noticee viz, Dinesh Kumar Somani 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 by way of Demand Draft (DD) in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, addressed to the Division Chief of the Enforcement Department 1 (EFD1) – Division of Regulatory Action (DRA 1) of SEBI.

41. Payment can also be made online by following the below path at SEBI website www. sebi.gov.in: ENFORCEMENT -> Orders -> Orders of AO -> PAY NOW

42. 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 23, 2019	**Jeevan Sonparote**
Place: Mumbai	**Adjudicating Officer**