BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. EAD-9/ AO/SM/ 13 /2019-20]

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

In respect of:

Winsher Commercial Private Limited

PAN: AAACW3125H

In the matter of dealing in Illiquid Stocks Options at BSE

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI'), observed large scale reversal of trades in Illiquid Stock Options (hereinafter referred to as "ISO") segment of Bombay Stock Exchange (hereinafter referred to as "BSE") leading to creation of artificial volume. Reversal trades were considered those trades in which an entity reverse its buy or sell positions in a contract with subsequent sell or buy position with the same counter party 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. Whereas the artificial volume was considered as the volume (no. of units) reversed in non-genuine trades, comprising both original volume and reversed volume while keeping out the volume which is not reversed.

2. SEBI conducted an investigation into the trading activities of certain entities in ISO, BSE for period April 1, 2014 to September 30, 2015 (hereinafter referred to as "Investigation Period"/IP"). Pursuant to investigation, it was observed that during IP, total 2,91,643 trades comprising substantial 81.38% of all the trades executed in Stock Options of BSE were non-genuine trades. The aforesaid non-genuine trades resulted in 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 IP. It was also noted that said non-genuine trades were not restricted to any specific contract or between any specific set of entities.

3. It was alleged that Winsher Commercial Private Limited (hereinafter referred to as "Noticee") was one of the entities who had indulged in creating artificial volume of 12134000 units through 87 non-genuine trades in 26 stock option contracts. Following is noted from the dealings of Noticee in aforesaid 61 contracts at BSE

    a. Of the 157 trades executed by the Noticee on BSE Stock option segment, 87 trades were non-genuine.
    b. No. of non-genuine trades of Noticee has significantly contributed to the total no. of trades from the market in the said 87 contracts.
    c. A substantial 6% to 100% of volume generated by the Noticee in each of the 26 contracts was artificial volume, and further, artificial volume generated by him also contributed to significant upto 100% of the total volume of the market in above contracts.
    d. In all of the above contracts, alleged non-genuine trades executed by Noticee had significant difference in buy rates and sell rates. The difference in buy/sale price of the trades executed by the Noticee was in the range of 0.09 times to 84 times of previous trade executed in the same contract on the same day and with the same counter party and in a gap of few minutes . For example in the contract 'NHPC15FEB12.00PEW2, the Noticee sold 90000 units at ₹1.05 and 10000 units at ₹1 to Suresh Kumar Saraf at 14:36:54 and this order was

reversed at ₹0.05 at 14:40:41 on the same day between same counter parties within 3 minutes 47 seconds.

4. In view of the foregoing, it was alleged that the Noticee has entered into reversal trades in BSE ISO and these reversal trades were non-genuine in nature and have created false and misleading appearance of trading in terms of artificial volume in Stock Options and therefore alleged to be manipulative, deceptive in nature. The Noticee was alleged to have violated regulations 3(a), (b), (c) and (d), 4(1), 4(2)(a) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as "PFUTP Regulations").

APPOINTMENT OF ADJUDICATING OFFICER

5. Vide an order of the Competent Authority, SEBI, dated April 3, 2018, the undersigned has been appointed as the Adjudicating Officer under Section 15-I of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "SEBI Act") read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as "Adjudication Rules") to inquire and adjudge under section 15HA of SEBI Act.

SHOW CAUSE NOTICE, REPLY AND HEARING

6. Based on the findings by SEBI, Show Cause Notice dated October 3, 2018 (hereinafter referred to as 'SCN') was issued to the Noticee under Rule 4(1) of Rules to show cause as to why an inquiry should not be held and penalty should not be imposed on him for the alleged violations. The Noticee, vide letter dated October 15, 2018stating, inter alia following:

- *Paragraph 6 illustrates one of the contracts entered into by us and the paragraph alleges that there is a substantial difference in the price between the sell and the buy transaction entered into with the same counter party. The paragraph further alleges that these trades* *are artificial and are not genuine in nature. While we do not deny that we have entered into such a transaction, it has been done with an object of making gains only and is truly a genuine transaction. There is no element of truth in your allegation that the transaction is not genuine.*

- *We deny the allegation in Paragraph 7 that 100% of our trades are artificial and are not genuine in nature. We deny this allegation totally. All the contract s have been entered with an intention of making gains and to further our objects and are genuine in nature. They have not been entered into with an intention to create any artificial volumes in the market.*

- *Paragraphs 8 details the trades done by us a s annexures to the notice, and alleges that the trades done in Annexure C and D are not genuine in nature and are entered into with a n intention to create an artificial market. While we do not deny that we have entered into such a transact ion, it has been done with an object of making gains only and is truly a genuine transaction. There is no element of truth in your allegation that the transaction is not genuine.*

7. In order to comply with the principles of natural justice an opportunity of personal hearing was given to the Noticee on November 02, 2018 vide letter dated October 24, 2018 and on April 26, 2019 vide letter dated March 20, 2019. The noticee attended on the scheduled date April 26, 2019 through its authorised representative .

CONSIDERATION OF ISSUES AND EVIDENCE

8. I have carefully perused the charges levelled against the Noticee in the SCN, his reply and the material / documents available on record. In the instant matter, the following issues arise for consideration and determination:-

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

II. Do the violations, if any, on the part of the Noticee attract monetary penalty under section 15HA of SEBI Act?

III. If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in section 15J of the SEBI Act?

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

Relevant provisions of PFUTP Regulations

Regulation 3. 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 recognised stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made thereunder;

(c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognised 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 recognised stock exchange in contravention of the provisions of the Act or the rules and the regulations made thereunder.

Regulation 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;

10. I note from the documents on record that the Noticee was one of the entities who had indulged in creating artificial volume of 818000 units through 36 non-genuine trades in 8 stock option contracts during IP.

11. The summary of trades is given below:

Stock Option Contract	Buy Quantity	Sell Quantity	Number of non genuine trades executed by Entity in the Contract	Total number of trades executed by the Entity in the Contract	Total number of trades executed in the contract	Artificial volume generated by Entity in the Contract (B+C)	Total volume generated by Entity in the Contract	Total volume in the Contract	% of Non Genuine trades of Entity in the contract to Entity's Total trades in the Contract = (D/E)	% of Non Genuine trades of Entity in the contract to Total trades in the Contract = (D/F)	% of Artificial Volume generated by Entity in the contract to Entity's Total Volume in the Contract = (G/H)	% of Artificial Volume generated by Entity in the contract to Total Volume in the Contract = (G/I)
A	B	C	D	E	F	G	H	I	J	K	L	M
ALLD15FEB58.00PE	80000	80000	2	2	8	160000	160000	1984000	100%	25%	100%	8%
APLT14DEC220.00CE	122000	122000	2	2	2	244000	244000	244000	100%	100%	100%	100%
GMRI14DEC24.00CE	280000	280000	3	3	6	560000	560000	1160000	100%	50%	100%	48%
GMRI15JAN14.00PEW1	198000	198000	3	3	10	396000	396000	1017000	100%	30%	100%	39%
IDFC15APR155.00PEW1	1600000	1600000	6	6	6	3200000	3200000	3200000	100%	100%	100%	100%
IFCI14DEC38.00CE	162000	162000	3	3	10	324000	324000	1647000	100%	30%	100%	20%
INCM15JAN95.00CEW2	46000	46000	2	2	2	92000	92000	92000	100%	100%	100%	100%
IOBL15JAN50.00PEW2	240000	240000	3	3	20	480000	480000	1880000	100%	15%	100%	26%
IOBL15JAN65.00CEW1	504000	504000	3	3	24	1008000	1008000	3032000	100%	13%	100%	33%
MIND15MAR1380.00PE	20000	20000	2	2	2	40000	40000	40000	100%	100%	100%	100%
NHPC14DEC14.00PE	276000	276000	3	3	13	552000	552000	3084000	100%	23%	100%	18%
NHPC15FEB12.00PEW2	100000	100000	3	3	7	200000	200000	1200000	100%	43%	100%	17%
NHPC15JAN12.00PEW2	140000	140000	4	4	8	280000	280000	820000	100%	50%	100%	34%
NHPC15JAN14.00PEW1	200000	200000	4	4	9	400000	400000	1930000	100%	44%	100%	21%
NHPC15JAN16.00PEW1	320000	320000	3	3	25	640000	640000	11580000	100%	12%	100%	6%
NTPC15MAR175.00CE	248000	248000	10	10	10	496000	496000	496000	100%	100%	100%	100%
SAIL14DEC60.00PEW3	108000	108000	3	3	3	216000	216000	216000	100%	100%	100%	100%
SAIL14DEC70.00PE	116000	116000	3	3	7	232000	232000	644000	100%	43%	100%	36%
SAIL14DEC90.00CEW3	120000	120000	3	3	3	240000	240000	240000	100%	100%	100%	100%
TMCL15MAR270.00PE	30000	30000	2	2	2	60000	60000	60000	100%	100%	100%	100%
UNIT14DEC12.00PE	187000	187000	3	3	8	374000	374000	3859000	100%	38%	100%	10%
UNIT14DEC14.00PEW3	425000	425000	3	3	27	850000	850000	4318000	100%	11%	100%	20%
UNIT14DEC18.00CE	153000	153000	3	3	9	306000	306000	408000	100%	33%	100%	75%
UNIT14DEC24.00CE	221000	221000	6	6	6	442000	442000	442000	100%	100%	100%	100%
UNIT15JAN12.00PEW2	54000	54000	2	2	6	108000	108000	711000	100%	33%	100%	15%
UNIT15JAN14.00PEW2	117000	117000	3	3	6	234000	234000	3834000	100%	50%	100%	6%

12. To illustrate, on December 16, 2014 the Noticee entered into 1 sell trade for 122000 units at the rate of ₹4.55 per unit at 10:01:28 with Mammon Concast Private Limited for the contract named "APLT14DEC220.00CE". Thereafter, on the same day, Noticee, at 10:19:07 entered into 1 buy trade with same counterparty for 122000 units at rate of ₹9.5 per unit. It is noted that while dealing in the said contract during the I.P., Noticee executed total 2 reversal trades (1 buy trade + 1 sell trade) with same counterparty viz, Mammon Concast Private Limited on the same day and with significant price differential in buy and sell rate. Thus, Noticee, through its dealing in the contract viz, "APLT14DEC220.00CE" during the I.P, executed 2 non-genuine trades which is 100% of the total market trades in the said contract during the I.P and thereby, Noticee generated artificial volume of 244000 units which is 100% of the market volume traded in the said contract during the I.P. Also, counterparty to these trades Mammon Concast Private Limited had sold at rate of ₹9.5 per unit at 10:19:07 hrs which indicate that this trade was definitely non-genuine trade.

13. It is noted that of the 157 trades executed by the Noticee during the IP in stock option segment of BSE, Noticee indulged in reversal of trades on the same day with same counter party with substantial price difference in sell rates over the buy rates and vice versa in 87 trades.

14. It is also noted that the Noticee in abovementioned 26 contracts, has reversed his trades within a short span of time. The details of 3 such contracts as per following table:

Date	Stock Option Contract	Buyer	Seller	Trade Time	Rate	Traded Quantity	Time Difference
16/12/2014	UNIT14DEC14.00PE W3	Winsher Commercial Private Limited	Mammon Concast Private Limited	09:16:26	1.7	408000	
16/12/2014	UNIT14DEC14.00PE W3	Winsher Commercial Private Limited	Mammon Concast Private Limited	09:16:26	1	17000	

16/12/2014	UNIT14DEC14.00PE W3	Mammon Concast Private Limited	Winsher Commercial Private Limited	09:23:43	0.05	425000	0:07:17
02/02/2015	NHPC15FEB12.00PE W2	Suresh Kumar Saraf	Winsher Commercial Private Limited	14:36:54	49	18000	
02/02/2015	NHPC15FEB12.00PE W2	Suresh Kumar Saraf	Winsher Commercial Private Limited	14:36:54	19	18000	
02/02/2015	NHPC15FEB12.00PE W2	Winsher Commercial Private Limited	Suresh Kumar Saraf	14:40:41	45	20000	0:03:47
23/02/2015	ALLD15FEB58.00PE	Winsher Commercial Private Limited	Bhawar Lal Rathi	13:46:02	2.55	80000	
23/02/2015	ALLD15FEB58.00PE	Bhawar Lal Rathi	Winsher Commercial Private Limited	13:51:41	0.05	80000	0:05:39

15. The Noticee adopted similar modus operandi December 15, 16, 17, 22, 23, 26, 30, 31 of 2014 and February 02, 23 and March 24, 31 of 2015 i.e. 12 days In fact, it can be observed from the table that mostly all the trades executed by the Noticee in these 87 contracts were not genuine and the same has been reversed on the same day within few minutes with the relevant same counterparties with significant difference in price, resulting into significant profit to the Noticee.

16. It is not mere coincidence that Noticee could match his trades consistently with the same counterparties with whom he had undertaken first leg of the respective trades. This is the outcome of meeting of minds elsewhere and it was a deliberate attempt to deal in such a fashion. Here I would like to rely on the judgment of Hon'ble Supreme Court in SEBI v Kishore R Ajmera (AIR 2016 SC 1079), wherein it was held that "*in the absence of direct proof of meeting of minds elsewhere*

in synchronized transactions, the test should be one of preponderance of probabilities as far as adjudication of civil liability arising out of the violation of the Act or provision of the Regulations is concerned. The conclusion has to be gathered from various circumstances like that volume of the trade effected; the period of persistence in trading in the particular scrip; the particulars of the buy and sell orders, namely, the volume thereof; the proximity of time between the two and such other relevant factors. The illustrations are not exhaustive." It was further 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.*"

17. It is noted that direct evidence is not forthcoming in the present matter as regards to meeting of minds or collusion with other entities inter-alia the counterparties or agents / fronts. However, trading behavior and other scenarios as noted above make it clear that aforesaid non-genuine trades could not have been possible without meeting of minds at some level. In this regard, reliance is placed on judgment of Hon'ble Supreme Court in the matter in respect of SEBI v Rakhi Trading Private Limited Civil Appeal Nos. 1969, 3174-3177 and 3180 of 2011 decided on February 8, 2018, which interalia states that: *"Considering the reversal transactions, quantity, price and time and sale, parties being persistent in number of such trade transactions with huge price variations, it will be too naive to hold that the transactions are through screen-based trading and hence anonymous. Such conclusion would be over-looking the prior meeting of minds involving synchronization of buy and sell order and not negotiated deals as per the board's circular. The impugned*

transactions are manipulative/deceptive device to create a desired loss and/or profit. Such synchronized trading is violative of transparent norms of trading in securities….."

18. There is no justification for such synchronization apart from pre-determination. It seems pretty obvious that the Noticee and the counterparties had a prior meeting of mind and had executed the trades at a particular rate.
19. The manner of placing buy and sell orders in a synchronized manner within few few minutes of each other, reversal of the trades within a short time on the same day, and wide variation in prices of the trades in the same contract in a short time without any basis for such wide variation, all indicate that the trades executed by the Noticee were not genuine trades and being non-genuine, created an appearance of artificial trading volumes in respective contracts. In view of the above, I find that the allegation of violation of regulations 3(a), (b), (c) and (d), 4(1), 4(2)(a) of PFUTP Regulations by the Noticee stand established.

20. The Hon'ble Supreme Court of India in the matter of SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC) held that "*In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant*…".

21. The above violation make the Noticee liable under section 15HA of SEBI Act, which reads as follows:

15HA Penalty for Fraudulent and Unfair trade practices

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

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

Section 15J - Factors to be taken into account by the adjudicating officer

While adjudging quantum of penalty under section 15, 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.

23. Though the records available before me does mention about amount of gain/loss of the entities involved in the non-genuine trades including the Noticee. However it is worth considering that entities involved in these non-genuine trades have either booked gains or loss and the gains or loss appears to be of notional in nature. It is further noted that the trading in illiquid stock option contracts there was nil or negligible participation by the public. Hence, the impact of these non-genuine trade has been considered. When the impact of artificial volume created by the two counterparties is seen as a whole, it is not possible from the material on record to quantify the amount of disproportionate gain or unfair advantage resulting from the artificial trades between the counter parties or the consequent loss caused to investors as a result of the default.

24. Here, Noticee has pleaded that due to his trades in illiquid stock option he has incurred loss. However, from the pattern of the trades, it is clear that the Noticee had entered into non-genuine reversal trades with prior meeting of mind with the counterparties. This pattern of trades continued for 12 days. Hence, it can be said that it repetitive in nature.

ORDER

25. In view of the above, after considering all the facts and circumstances of the case and the factors mentioned in the provisions of section 15-J of the SEBI Act, I, in exercise of the powers conferred upon me under section 15-I (2) of the SEBI Act read with Rule 5 of the SEBI Adjudication Rules, conclude that the proceedings against the Noticee stands established in terms of the provisions of the SEBI Act. Hence, in view of the charges established under the provisions of the SEBI Act, I, hereby impose monetary penalty under section 15HA of SEBI Act of ₹ 5,00,000/- (Rupees Five Lakh only) for violation of regulations 3(a), (b), (c) and (d), 4(1), 4(2)(a) of PFUTP Regulations.

26. 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 and 1) the said DD should be forwarded to the Division Chief, Enforcement Department (EFD), Division of Regulatory Action - II [EFD-DRA-2] SEBI Bhavan, Plot No.C4-A,' G' Block, Bandra Kurla Complex (BKC), Bandra (East), Mumbai – 400 051 OR 2) through e-payment facility into Bank Account, the details whereof are given as below :-

Account No. for remittance of penalty (ies) 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

27. The Noticee shall forward the said Demand Drafts or the details / confirmation of penalty so paid through e-payment to the Division Chief of the aforesaid Enforcement Department (EFD) of SEBI.

28. 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 Number (if any)	
PAN	
Amount (in Rs.	
Purpose of payment (including the period for which payment was made e.g Quarterly, annually)	
Bank Name and Account Number from which payment is remitted	
UTR No	

29. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

30. In terms of Rule 6 of the Adjudication Rules, copy of this order is sent to the Noticee and also to the Securities and Exchange Board of India.

Date: May 23, 2019
Place: Mumbai

SAHIL MALIK
ADJUDICATING OFFICER