BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/KS/AA/2019-20/3407]

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

In respect of

Rector Investments Private Limited
(PAN: AAACR6998R)

In the matter of Trading in Illiquid Stock Options on BSE

BACKGROUND OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") observed large scale reversal of trades in stock options segment of Bombay Stock Exchange (hereinafter referred to as "**BSE**"). SEBI observed that such large scale reversal of trades in stock options lead to creation of artificial volume at BSE. In view of the same, SEBI conducted an investigation into the trading activities of certain entities in illiquid stock options at BSE for the period April 1, 2014 to September 30, 2015 (hereinafter referred to as "**Investigation Period / IP**")

2. Pursuant to investigation, it was observed that total 2,91,643 trades comprising substantial 81.38% of all the trades executed in stock options segment of BSE during the Investigation Period 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 Investigation Period. It was observed that Rector Investments Private Limited (hereinafter referred to as the "**Noticee**") was one of the various entities which indulged in execution of reversal trades in stock options segment of BSE during the Investigation Period. Such trades were observed to be non-genuine in nature and created false or misleading appearance of trading in terms of artificial volumes in stock options and therefore alleged to be manipulative, deceptive in nature. In view of the same, SEBI initiated adjudication proceedings against the Noticee for violation of the provisions of Regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003 (hereinafter referred to as "**PFUTP Regulations**").

APPOINTMENT OF ADJUDICATING OFFICER

3. The undersigned was appointed as the Adjudicating Officer vide order dated April 3, 2018, under section 19 read with section 15I(1) of the SEBI Act, 1992 (hereinafter referred to as "**SEBI Act**") and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as "**Adjudication Rules**") to conduct adjudication proceedings in the manner specified under Rule 4 of Adjudication Rules read with section 15I (1) and (2) of SEBI Act, and if satisfied that penalty is liable, impose such penalty deemed fit in terms of Rule 5 of Adjudication Rules and Section 15HA of SEBI Act.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. A Show Cause Notice dated September 21, 2018 (hereinafter referred to as '**SCN**') was issued to the Noticee under Rule 4 (1) of the Adjudication Rules to show-cause as to why an inquiry should not be initiated against the Noticee and why penalty should not be imposed upon the Noticee under Section 15HA

of the SEBI Act for the violations alleged to have been committed by the Noticee.

5. It was *inter alia* alleged in the SCN that the Noticee had executed 2,319 non genuine trades in 118 Stock Options contracts which resulted in artificial volume of total 2,15,55,500 units. The Noticee made a profit of approx. Rs. 3,06,50,831 by executing non genuine trades during the I.P. Summary of dealings of the Noticee in 118 Stock Options contracts, in which the Noticee allegedly executed non genuine trades during the I.P, is as follows:

S. No.	Contract Name	Avg. Buy Rate (Rs.)	Total Buy Volume (No. of units)	Avg. Sell Rate	Total Sell Volume (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	ABNV15APR1650.00CE	32.61	76000	54.68	80000	93%	78%	96%	69%
2	ABNV15MAR1650.00PE	16.03	81000	29.13	81000	100%	100%	100%	100%
3	ACCL15APR1560.00CE	40.56	67000	69.69	67000	100%	82%	100%	30%
4	ACCL15MAR1560.00CE	24.88	49250	33.73	49250	100%	47%	100%	14%
5	ACCL15MAR1620.00PE	32.36	58750	24.96	58750	100%	76%	100%	20%
6	ADEL15APR600.00CE	24.97	74000	34.42	74000	100%	100%	100%	100%
7	ADEL15APR600.00PE	20.89	55000	24.11	55000	100%	100%	100%	100%
8	ADEL15MAR580.00CE	18.50	84500	27.64	84500	100%	100%	100%	100%
9	ALBK15MAR110.00PE	3.40	24000	2.40	24000	100%	40%	100%	3%
10	ALBK15MAR95.00CE	3.31	70000	5.85	70000	100%	86%	100%	81%
11	AXIS15MAR560.00PE	5.30	315000	7.69	315000	100%	94%	100%	93%
12	BAJT15APR2100.00CE	25.53	117875	37.36	117875	100%	77%	100%	32%
13	BAJT15APR2100.00PE	96.12	12500	120.00	12500	100%	60%	100%	20%
14	BAJT15MAR2010.00CE	10.52	57500	18.19	57500	100%	100%	100%	100%
15	BATA15APR1200.00CE	4.56	90000	13.83	90000	100%	100%	100%	100%
16	BHEL15MAR270.00PE	15.19	56000	8.26	56000	100%	55%	100%	6%

17	BOIL15MAR200.00CE	5.99	265000	8.79	265000	100%	100%	100%	100%
18	BPCL15MAR740.00PE	0.08	60000	1.68	60000	100%	50%	100%	10%
19	CANB15MAR380.00CE	2.53	112000	3.82	112000	100%	86%	100%	51%
20	CENT15APR640.00PE	30.52	100000	42.91	100000	100%	100%	100%	100%
21	CENT15MAR500.00PE	23.80	59000	19.33	59000	100%	100%	100%	100%
22	CENT15MAR540.00CE	20.13	61000	25.73	61000	100%	61%	100%	12%
23	CENT15MAR540.00PE	14.11	165000	5.62	165000	100%	74%	100%	28%
24	CENT15MAR560.00CE	8.45	67000	12.98	67000	100%	52%	100%	8%
25	CENT15MAR560.00PE	6.04	60000	14.93	60000	100%	8%	100%	4%
26	CENT15MAR580.00PE	21.17	45000	9.33	45000	100%	16%	100%	9%
27	CENT15MAR620.00CE	6.04	75000	3.74	75000	100%	71%	100%	34%
28	CESC15FEB580.00CE	15.50	30000	7.25	30000	100%	83%	100%	50%
29	CESC15MAR600.00CE	17.30	45000	11.33	45000	100%	35%	100%	10%
30	CESC15MAR600.00PE	5.68	140500	8.94	140500	100%	51%	100%	25%
31	CIPL15MAR700.00CE	6.03	29500	13.15	29500	100%	33%	100%	6%
32	CIPL15MAR720.00PE	9.45	88500	17.21	88500	100%	87%	100%	26%
33	COAL15FEB370.00CE	19.00	15000	11.00	15000	100%	10%	100%	3%
34	COAL15FEB380.00CE	9.16	72000	4.88	72000	100%	91%	100%	37%
35	COLG15APR2100.00CE	17.81	114500	34.06	114500	100%	100%	100%	100%
36	DIVI15APR1800.00CE	55.64	65000	80.05	65000	96%	65%	100%	86%
37	DRRL15APR3400.00CE	119.49	130000	151.68	130000	100%	87%	100%	71%
38	GRSM15APR3600.00PE	82.61	120000	120.20	120000	100%	65%	100%	57%
39	HDBK15APR1020.00PE	14.58	130000	28.44	130000	100%	80%	100%	63%
40	HDBK15FEB1080.00CE	21.88	52500	17.85	52500	100%	100%	100%	100%
41	HERO15APR2600.00CE	75.09	75000	88.04	75000	100%	43%	100%	46%
42	HERO15APR2650.00CE	54.24	34000	77.53	34000	100%	100%	100%	100%
43	HNDL15APR135.00CE	4.58	24000	5.63	24000	100%	100%	100%	100%
44	HNDL15FEB150.00CE	6.19	56000	3.15	56000	100%	100%	100%	100%
45	HNDL15MAR130.00CE	3.98	42000	2.23	42000	100%	14%	100%	7%
46	HNZL15FEB180.00PE	9.18	28000	4.45	28000	100%	100%	100%	100%
47	HPCL15APR640.00PE	23.48	195000	29.08	195000	100%	79%	100%	47%
48	ICIC15MAR320.00CE	15.88	82500	10.59	82500	100%	32%	100%	9%
49	ICIC15MAR340.00CE	4.49	60000	2.31	60000	100%	36%	100%	10%
50	ICIC15MAR340.00PE	9.84	120000	6.74	120000	100%	73%	100%	35%
51	INFY15APR2250.00PE	77.32	80000	106.89	80000	100%	100%	100%	100%
52	INFY15FEB2280.00CE	40.00	7500	48.00	7500	100%	10%	100%	19%
53	INFY15MAR2160.00CE	35.07	15000	79.90	15000	100%	100%	100%	100%
54	INFY15MAR2250.00PE	28.60	15000	49.90	15000	100%	13%	100%	22%
55	JBFW15APR1500.00PE	44.51	117500	62.33	117500	100%	100%	100%	100%
56	JSPL15MAR180.00CE	7.40	45000	4.85	45000	100%	40%	100%	55%

57	JUST15APR1350.00PE	66.92	100000	96.04	100000	100%	100%	100%	100%
58	LICH15FEB490.00PE	11.21	43000	5.37	43000	100%	100%	100%	100%
59	LICH15MAR430.00CE	1.72	40000	0.41	40000	100%	50%	100%	12%
60	LICH15MAR440.00CE	7.52	197000	13.71	197000	100%	100%	100%	100%
61	LICH15MAR460.00CE	18.82	45000	11.33	45000	100%	100%	100%	100%
62	LICH15MAR480.00CE	18.54	90000	8.54	90000	100%	100%	100%	100%
63	LICH15MAR490.00PE	18.14	157000	12.06	157000	97%	71%	97%	29%
64	LNTL15FEB1680.00CE	25.49	45000	16.48	45000	100%	100%	100%	100%
65	LNTL15FEB1740.00CE	9.75	30000	3.25	30000	50%	50%	50%	50%
66	ONGC15APR300.00CE	11.04	30000	16.70	30000	100%	100%	100%	100%
67	ONGC15FEB340.00CE	11.85	124500	9.09	124500	100%	59%	100%	40%
68	ONGC15MAR310.00CE	10.70	261500	6.29	261500	100%	34%	100%	26%
69	ONGC15MAR320.00CE	5.08	45000	1.92	45000	100%	75%	100%	21%
70	ONGC15MAR320.00PE	10.95	30000	7.41	30000	92%	61%	92%	8%
71	RCAP15FEB440.00CE	10.10	30000	5.93	30000	100%	93%	100%	99%
72	RCAP15FEB480.00CE	12.31	60000	9.08	60000	100%	100%	100%	100%
73	RCAP15MAR440.00CE	3.33	107500	4.87	107500	100%	51%	100%	31%
74	RCAP15MAR460.00CE	21.85	50000	12.80	50000	100%	43%	100%	14%
75	RECL15FEB330.00PE	16.33	117000	12.61	117000	100%	86%	100%	84%
76	RECL15MAR330.00CE	5.60	45000	10.63	45000	100%	60%	100%	8%
77	RECL15MAR340.00PE	5.91	60000	10.33	60000	100%	100%	100%	100%
78	RECL15MAR350.00CE	7.88	20000	4.64	20000	67%	19%	75%	2%
79	RECL15MAR360.00PE	14.97	77000	9.47	77000	100%	45%	100%	6%
80	RELI15APR800.00CE	29.71	90000	38.29	90000	100%	100%	100%	100%
81	RELI15APR840.00CE	19.13	90000	28.48	90000	100%	100%	100%	100%
82	RELI15FEB840.00CE	16.63	59000	10.73	59000	100%	100%	100%	100%
83	RELI15FEB900.00CE	15.15	57500	10.11	57500	100%	100%	100%	100%
84	RELI15FEB920.00PE	18.99	89000	15.17	89000	100%	100%	100%	100%
85	RELI15MAR840.00CE	16.82	318250	15.32	318250	100%	59%	100%	19%
86	RELI15MAR860.00CE	30.89	172500	15.61	172500	100%	75%	100%	19%
87	RELI15MAR860.00PE	19.52	131250	13.34	131250	100%	100%	100%	100%
88	RELI15MAR880.00PE	28.92	180000	39.42	180000	100%	63%	100%	51%
89	RLNF15FEB460.00CE	4.68	30000	2.67	30000	100%	45%	100%	50%
90	RLNF15MAR420.00CE	8.65	296000	12.69	296000	100%	89%	100%	26%
91	RLNF15MAR440.00CE	6.01	106500	9.63	106500	100%	76%	100%	17%
92	SBIL15APR260.00PE	6.49	165000	8.95	165000	100%	100%	100%	100%
93	SBIL15FEB290.00CE	9.35	30000	6.68	30000	100%	100%	100%	100%
94	SBIL15FEB300.00CE	11.94	50000	7.80	50000	78%	78%	88%	88%
95	SBIL15MAR290.00CE	12.18	120000	6.59	120000	100%	75%	100%	18%
96	SBIL15MAR290.00PE	13.06	392500	14.85	392500	100%	65%	100%	28%

97	SUNP15APR1020.00CE	37.15	75000	46.98	75000	100%	64%	100%	58%
98	SUNP15APR1020.00PE	28.78	90000	37.62	90000	100%	100%	100%	100%
99	SUNT15FEB450.00CE	5.20	45000	2.58	45000	100%	100%	100%	100%
100	TAMO15APR520.00CE	21.96	195000	28.90	195000	100%	92%	100%	50%
101	TAMO15FEB560.00CE	10.19	58000	6.02	58000	100%	100%	100%	100%
102	TAMO15FEB580.00CE	14.32	57000	8.42	57000	100%	89%	100%	39%
103	TAMO15MAR560.00PE	16.22	150000	16.67	150000	100%	45%	100%	35%
104	TAMO15MAR580.00CE	18.28	125000	11.34	125000	100%	43%	100%	11%
105	TCSL15APR2600.00PE	81.26	83000	123.24	83000	100%	100%	100%	100%
106	TCSL15MAR2650.00CE	8.70	183000	13.00	189500	97%	3%	98%	32%
107	TCSL15MAR2700.00CE	72.13	84750	37.75	84750	100%	2%	100%	18%
108	TCSL15MAR2700.00PE	47.68	93750	33.08	93750	100%	100%	100%	100%
109	TGBL15FEB150.00CE	4.82	74000	2.76	74000	100%	100%	100%	100%
110	TISC15APR320.00CE	11.09	85000	9.09	85000	100%	58%	100%	66%
111	TISC15FEB360.00CE	7.80	74500	3.62	74500	100%	100%	100%	100%
112	TISC15FEB360.00PE	10.80	111500	7.41	111500	100%	100%	100%	100%
113	TISC15FEB370.00PE	10.67	118000	8.71	118000	100%	100%	100%	100%
114	TISC15MAR320.00CE	5.93	304500	8.87	304500	100%	94%	100%	50%
115	TISC15MAR340.00PE	18.38	60000	12.63	60000	100%	57%	100%	17%
116	TISC15MAR350.00CE	17.79	71000	11.96	71000	100%	100%	100%	100%
117	TISC15MAR360.00PE	20.22	69500	15.53	69500	100%	100%	100%	100%
118	UCOB15MAR70.00PE	6.20	36000	3.35	36000	100%	21%	100%	5%

6. From the above table, following was noted as regards to dealings of the Noticee:
   (a) The Noticee has executed non genuine trades in 118 contracts, wherein all trades of the Noticee in 110 contracts were non genuine trades.
   (b) No. of non genuine trades of the Noticee has significantly contributed to the total no. of trades from the market in the above contracts, as 2% to 100% of the trades that happened in the aforementioned contracts were due to non-genuine trades executed by the Noticee.
   (c) A substantial 50% to 100% of volume generated by the Noticee in each of the above contracts was artificial volume, and further artificial volume generated by the Noticee also contributed to 2% to 100% of the total volume from the market in said contracts.

(d) Non genuine trades executed by the Noticee in above contracts had significant differential in buy rates and sell rates considering that the trades were reversed on same day.

7. The SCN issued to the Noticee was sent via Speed Post Acknowledgement Due and via a digitally signed email. Thereafter, the Noticee vide letter dated October 23, 2018 requested for additional time of four weeks to submit its reply to the SCN. In view of the same, the Noticee was granted time till November 20, 2018 for submitting its reply to the SCN vide letter dated November 02, 2018. Subsequently, a letter from the Noticee was received on November 29, 2018, wherein the Noticee made its reply to the SCN. In the said letter, the Noticee *inter alia* made the following submissions:

"…..PRELIMINARY SUBMISSION/ OBJECTION

1. *That the Noticee is a Private Limited Company incorporated under the provisions of erstwhile Companies Act, 1956 & is carrying out its business honestly being a law abiding corporate citizen of India. That the Noticee is a regular assessee of Income Tax and have no pending case against it.*

2. *That the Noticee Company hereby respectfully deny all the wrongful allegations & averments imposed by Hon'ble Adjudicating Officer in the impugned Show Cause Notice (Herein after referred to as "SCN") on Noticee w.r.t. allegedly carrying out artificial volume or executing non- genuine trades or creating false and misleading appearance of trading or any manipulative or deceptive trades Noticee & therefore contest the same.*

3. *Noticee hereby submits that there are no grounds on the basis of which any directions as contained in the impugned SCN can be taken against the Noticee. The impugned SCN is based on imagination and presumptions without any basis allegedly categorizes the trades in question as non- genuine trades in spite of the fact that Noticee Company made payment of all of its pay-in obligations to the Exchange clearing corporation from normal banking channel through its registered intermediary. It is humbly submitted that no illegality can be attributed against the*

Noticee solely on the basis of fact that Noticee performed trading in Stock Option at BSE which co-incidentally matched with some counter party without any knowledge of Noticee. Whereas impugned SNC is silent on whether Noticee had the knowledge that the alleged trades in question are in violation of SEBI laws.

4. *The impugned SCN failed to appreciate that trading on any recognized Stock Exchange, like NSE/BSE, is conducted on screen through several thousands of terminals interlinked with each other under the established systems of the Authorities. The impugned SCN further failed to appreciate that the anonymous systems of the Exchange do not allow a transacting party to know the details of the counter party and whereas these can be found out only on a detailed enquiry after the trade is executed and that too either by BSE/SEBI. But Noticee humbly submit that it never knew the identity of counter party of trades before receiving the impugned SCN because all the trades of Noticee were bonafide and alleged matching/reversal of trades was merely a co-incidence keeping in view that there were limited buyers/seller in stock option at BSE and hence cannot be termed as non- genuine without proper findings. Therefore the allegation of executing non-genuine trades by Noticee cannot hold water.*

5. *The impugned SCN failed to appreciate that securities market is highly volatile which may hits new highs and lows, moves erratically, and may suddenly experiences rapid increases and dramatic falls in fraction of seconds. That in securities market no one can predict in advance whether a particular transaction results in profit or loss but the same is incidental to the transactions on stock exchange. Though SEBI and Exchanges have put in place a mechanism of price band in Capital Market Segment to control extreme volatility, which may result in trades taking place at unrealistic prices. Whereas no such price band mechanism was in place for options segment. This in itself means that all prices at which trades of Noticee were executed were not unrealistic.*

6. *The impugned SCN failed 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 derived based on complex formulas dealing with Price of the underlying, Time to expiry, Expected volatility, Rate of interest etc., all of which are dynamic thus resulting in exponential increase in the lower and upper valid prices of options as a result of which 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 SEBI and Exchanges, it cannot be expected from common investors and traders to know the correct range of option prices and therefore it is submitted that trades of Noticee Company were absolutely genuine and no fault can be found in them.

7. *That the Impugned SCN failed to appreciate that SEBI itself had promoted & allowed trading in illiquid scrips by introducing Liquidity Enhancement Schemes and that the Noticee bonafide performed trades in stock options of BSE under bonafide belief that the same is within legal framework as allowed by SEBI. It is respectfully submitted that raising question mark on the genuine trades of Noticee by Hon'ble SEBI is unconscionable and unreasonable in the light of fact that SEBI itself had promoted LES to promote liquidity in illiquid scrips and to the best of knowledge of Noticee SEBI have not even banned trades in illiquid scrips. Hence it is requested to kindly withdraw the impugned SCN and do not take any coercive action against the Noticee Company in the interest of justice.*

8. *It is most respectfully stated that BSE and SEBI both are regulators of Securities Market and equipped with ultra modern techniques using which they can judge any uneven trades/movement in market spontaneously. If at all it is assumed for the sake of arguments, without accepting the same, that the trades in questions were non-genuine trades, BSE/SEBI must generate alarm on live basis & should immediately embargo alleged trades as it is the duty of BSE/SEBI to regulate the market; ensure integrity of securities market & to safeguard the investors at large. And whereas it is completely unconscionable on the part of Hon'ble SEBI to perform investigation as a post-mortem by pin pointing the trades of Noticee allegedly as artificial & non-genuine trades after a lapse of 3-4 years without even providing opportunity of being heard to the Noticee during alleged investigation. It*

is thus submitted that the belated and purported action by SEBI, coupled with the fact that the impugned SCN is vague and no Investigation report has been provided, leads to the reasonable deduction that the impugned SCN has been passed in haste and without any due and proper application of mind. Therefore the Impugned SCN is liable to be set aside on this reason alone, leave apart other valid reasons and explanation herein below.

9. *That the trades of Noticee Company have all the following traits of being genuine and therefore cannot be categorized as non-genuine because:*
    - *(a) All the trades of Noticee were executed on the anonymous platform of the Exchange.*
    - *(b) In none of the trade Noticee Company was aware of its counter party.*
    - *(c) All the trades were performed at price ranges that were permitted by the Exchange and SEBI in the light of fact that there is no price band mechanism in F&O segment.*
    - *(d) All the obligations arising out of trades executed at BSE platform have been settled through the clearing mechanism of the Exchange through normal banking channel.*

10. *That the impugned SCN does not hold water in the light of fact that it erred in not mentioning following essential details:*
    - *(a) Impugned SCN is silent w.r.t. details of investors who have been misled due to the trades in question carried out in Noticee account.*
    - *(b) Impugned SCN is silent w.r.t. the details of third parties, if any, who had suffered loss due to the transactions in question carried out in Noticee Account.*
    - *(c) Impugned SCN has not even attempted to identify any alleged possible motive of Noticee for carrying out the alleged artificial volumes and non-genuine trades*
    - *(d) Impugned SCN has not even attempted to identify the possible disproportionate undue benefit that Noticee could derive from such trades in question.*

11. *That the Noticee Company hereby submits that:*
    - *(a) Noticee Company had not used or employed any manipulative or deceptive device or contravene in contravention of provisions of the Act or the Rules or the Regulations made in securities market;*
    - *(b) Noticee Company had not Employed any device to artifice or defraud in connection with dealing in or issue of securities which are listed on a recognize stock exchange; &*
    - *(c) Noticee Company had not engaged in any act, practice during the course of business which operate as fraud or deceit upon any person in connection with dealing in stock market.*
    - *(d) Noticee Company did not earn any disproportionate gain or take any unfair advantage in course of its trades in question.*
    - *(e) Due to trades of Noticee no loss has been caused to any investor/group of investors.*

<u>FACTS OF THE CASE</u>

12. *That Noticee Company has been carried out trades in various segments & Exchanges inter alia including NSE & BSE.*

13. *That during the trading tenure Noticee executed trades on the anonymous platform of the Exchanges and had met all of its obligations arising out of trades performed by it on exchange platform either by making payments of the Pay- in /debits/losses or receiving the payments for pay-outs/credits/profits. That all the payments made/received by Noticee Company were through normal banking channel & the same was duly reflected in financial ledger of respective stock brokers.*

    Hereto annexed and marked as follows:
    - *Annexure 1: Copy of bank statement of noticee reflecting actual banking payments to brokers*
    - *Annexure 2: Copy of contract notes issued by its broker*

14. *It is humbly and most respectfully submitted that all the trades executed by Noticee, at highly regulated exchange platform, are genuine, bonafide & executed*

in complete compliance with all the requirements of SEBI and exchanges. Whereas for the year 2014-15 Noticee Company booked Rs. 1.53 Crores (Approx.) as net loss in its trades in securities market and hence stopped further trades in securities market thereafter.

Hereto annexed and marked as follows:

- *Annexure 3: Copy of financial ledger as maintained by brokers*
- *Annexure 4: Copy of net position of trades of Noticee in securities market*

REPLY TO THE SHOW CAUSE NOTICE

15. *That the contents of para 1 under reply is denied to the said fact that Noticee had carried out any non-genuine trades in illiquid stock options at BSE and violated Regulation 3(a), (b), (c), 4(1), 4(2)(a) of SEBI (Prohibition of Fraudulent and Unfair Trading Practice related to Securities Markets) Regulations 2003.*

16. *That w.r.t. contents of para 2 under reply it is respectfully submitted that Hon'ble SEBI has miserably failed to adhere Principle of natural justice for Noticee Company as no opportunity of being heard was provided to the Noticee during investigation and before appointment of Adjudicating Officer and even Investigation report has not been provided to the Noticee for proper understanding.*

17. *That though the contents of para 3 under reply do not warrant any reply, it is respectfully submitted that it is expected from the regulator, SEBI/BSE, to use its ultra modern techniques and to have birds' eye view on securities market on live basis to stall / embargo any suspicious trade immediately for effective regulation of securities market so as to protect the interest of investors at large.*

18. *That w.r.t. contents of para 4 under reply it is most respectfully submitted that there is no concrete definition of the words "Artificial" and "Non-Genuine" in PFUTP Regulations or any of the Acts Regulations of SEBI applicable in Securities Market. That as per Cambridge dictionary the term "artificial" means "made by people often as a copy of something natural; not sincere". Whereas the term "non-genuine" is opposite of "genuine" which is defined as "really coming from its reputed source etc., not sham; properly so called; pure bred." That if we go with the dictionary*

meaning of these words, trades of Noticee Company, keeping in view of fact that all the trades were done at highly regulated trading platform of BSE where no buyer/seller is having any mechanism to know identity of counter party to its trades, neither come in the category of Artificial trades nor non-genuine trades. It is further submitted that there are limited buyers and seller in an illiquid scrip and matching of trades of Noticee is mere a co-incidence and cannot be termed as Non-Genuine or artificial.

19. *That contents of para 5 & 6 under reply is denied to the said fact that trades of Noticee were non genuine trades. It is further denied that trades of Noticee resultant creation of artificial volume in stock options segment of BSE. Had the motive of Noticee is to create artificial volume or to conduct non genuine trades or to earn disproportionate gain out of such trades in question, it would have conducted trades more frequently & at higher pace and would not limited to 22 days out of total investigation period of one and half year.*

20. *That w.r.t. contents of para 7 & 8 under reply, it is respectfully submitted that the Noticee had conducted trades not only in option stock of BSE but also conducted trades in other segments and exchanges and had incurred net loss of Rs. 1.53 Crores (Approx.) during F/Y 2014-15. And in the light of fact of loss to Noticee it would be wrong to suggest that Noticee made a profit of Rs. 3.06 Crore as all the securities market transactions should be taken as a whole and not in bits and pieces. If at all it is presumed, without admitting the same, that 2319 trades of Noticee allegedly considered by SEBI as non genuine trades against total 2,91,643 alleged identified trades & that the share of Noticee is merely 0.79% of total alleged identified trades. It is beyond imagination that how a person having less than 1% of alleged trades in question can adversely affect the market. Had the Noticee have any wrong intention to manipulate the market, the percentage of its trades in question would have been much higher.*

21. *That the contents of para 9 under reply is a matter of record and hence not replied.*

22. *That w.r.t. contents of para 10 & 11 under reply, it is stated that the Noticee had not executed any non genuine trades. It is denied that 'the Noticee had done Non-Genuine trades considering that the trades were reversed on same day'. That it is unconscionable to treat trades of Noticee as non-genuine merely because Noticee trades closed its positions on daily basis. It is respectfully submitted that in the absence of any concrete direct definition of the words "Non-Genuine" and "Artificial" in the Act the trades of Noticee cannot be termed as Non-Genuine or Artificial on mere presumptions of Hon'ble SEBI.*

23. *That the contents of para 12 under reply is misleading, misconceived and hence denied. It is denied that Noticee Company indulged in execution of reversal trades in stock option at BSE. It is further denied reversal trades are non genuine in nature and have created false or misleading appearance of trading and therefore alleged to be manipulative, deceptive in nature. It is respectfully submitted that the matching of trades is just a co-incidence keeping in view that in illiquid scrips there are limited buyers/seller. It is respectfully submitted at the risk of repetition that the trades of Noticee cannot be termed as non genuine as*
    (a) *Noticee did not deal with securities in fraudulent manner/unfair trade practice;*
    (b) *Noticee did not used any manipulative of deceptive device and Noticee did not employ any scheme to defraud in connection with dealing in or issue of securities;*
    (c) *Noticee did not engage in any act, practice or course of business which operates as fraud or deceit upon any person in connection with dealing in or issue of securities.*
    (d) *Noticee did not aware of counter party of its trades and hence Noticee was not indulged in any alleged act to create false or misleading appearance of trade in securities market.*

24. *That w.r.t. contents of para 13 & 14 under reply it is respectfully submitted that since no primary violation against the Noticee has been made out and as the Noticee has also explained the genuineness of the case, the question of proceeding inquiry against the Noticee as prescribed under Rule 4 of SEBI*

Adjudication Rules r/w section 15-1 of SEBI Act does not arise and therefore no penalty should be imposed on Noticee in terms of Rule 5 and provisions of Section 15HA of SEBI Act, 1992 as

a. *There was no ill intention of Noticee to deceive any person*
b. *The Noticee did not earn any disproportionate gain*
c. *No investor or group of investors*

25. *That the contents of para 15 to 16 does not warrant any reply, hence not given.*

PROVISIONS OF LAWS

26. *That Hon'ble SEBI vide its circular CIR/DNPD/5/2011 dated 02.06.2011 and Circular No. CIR/MRD/DP/05/2013 dated 08.02.2013 had allowed LES scheme thereby allowing trading in illiquid scrips.*

27. *In terms of Clauses 1.2 and 1.3 of Risk Disclosure Document (RDD), which deals with Risk of low liquidity and Risk of wider, it can be construed that SEBI is well aware of the possible losses due to lower liquidity and wider spreads. The impugned SCN also records that the contracts in which Noticee Company dealt were illiquid. Noticee is advised to state that liquidity in the contracts recorded in the impugned SCN was low and spreads were bound to be wide so we were constrained to square off our trades at a price difference, which is also appreciated by the RDD issued by SEBI. However this knowledge has been given a good bye while issuing the impugned SCN and the impugned SCN wrongly goes on to allege that trades of Noticee were non-genuine. Such a conclusion is absolutely untenable in light of the fact that SEBI itself recognizes that there losses may occur in contracts with lower liquidity and wider spreads.*

28. *There is no concrete and direct definition of words "Non- Genuine", "artificial" and Reversal of trades" given in securities laws for the time being in force in India.*

QUESTION OF LAW

A. *Whether the Impugned SCN issued by Hon'ble SEBI is faulty.*

B. *Whether Impugned SCN issued by Hon'ble SEBI contrary to Principle of Natural Justice.*

C. *Whether Impugned SCN issued by Hon'ble SEBI contrary to express laws framed by itself for LES and whether Impugned Notice is contrary to principle of equality.*

D. *Whether alleged opinion of Hon'ble SEBI to treat trades of Noticee as Artificial and non genuine contrary to its dictionary meaning and hence whether treating trades of Noticee Company as artificial is wrong interpretation of law and common parlance.*

E. *Whether it was not totally erroneous on the part of Hon'ble SEBI to treat trades of Noticee as artificial contrary to Risk Disclosure Document issued by SEBI itself w.r.t. trades conducted in securities market.*

F. *Whether the allegation in Impugned SCN w.r.t. artificial volume & non-genuine trades without having any documentary evidence to prove ill intention or unfair conduct of Noticee shows lack of reasonable and sensible investigation.*

G. *Whether Hon'ble SEBI while issuing Impugned SCN erred in forming opinion that everyone is presumed to know the law.*

H. *Whether Impugned SCN hold water despite it does not records loss to any other investor/group of investors due to trades of Noticee or indulgence of Noticee Company in any malpractice in past.*

I. *Whether Hon'ble SEBI could not have issued Impugned SCN contrary to the fact that it is Exchange who is expected to point out any act/trade/transaction which is not as per law so as to put embargo on the same on live basis.*

GROUNDS

A. *Because the Impugned SCN issued by Hon'ble SEBI is faulty in the light of following facts:*

    a. *The trades of Noticee contributes only 0.79% of total identified trades and it is beyond imagination how a person having less than 1% of alleged trades in question can adversely affect the market. Had the Noticee have any wrong intention to manipulate the market, the percentage of its trades in question would have been much higher.*

b. The Noticee conducted trades in stock option at BSE on 22 days and had the Noticee was having any intention to manipulate the market, it would have conducted trades more frequently & at higher pace and would not limited to 22 days out of total investigation period of one and half year.

c. While conducting alleged investigation, has allegedly picked up partial trades of Noticee & wrongly opined that Noticee earned Rs. 3.06 Crore whereas actually during F/Y 2014-15 the Noticee had actually incurred net loss of Rs. 1.5 Crore (approx) in securities market trades

d. The Noticee made payments to the stock broker through normal/defined banking channel for meeting out its pay-in obligations and/or financial debits.

B. Because the alleged investigation conducted by Hon'ble SEBI is faulty in nature as Noticee Company was not provided any opportunity of being heard during Investigation and that alleged opinion was made by Ld. Investigating Officer of indulgence of Noticee in artificial and non genuine trades and Adjudicating Office has allegedly been appointed without giving any opportunity of being heard to Noticee is totally unconscionable, unreasonable and against the principle of natural justice. It is pertinent to note here that right of fair hearing is an inalienable right which is not interpreted by perusing the letters of the statute but is embodied as a principle of 'rule of law' guaranteed by the Constitution of India itself. Therefore, even if the procedure in an Act or Regulation does not specifically prescribe that an opportunity of hearing must be provided before taking any decision, the personal hearing has to be provided by the statutory authority as it an unwritten, inalienable and fundamental right of the party.

It is submitted that principle of natural justice are embodied under Article 14 and 21 of the Constitution of India and SEBI being a statutory authority and a 'State' as per Article 12 of the Constitution of India cannot violate the fundamental right of any person.

Because by completing alleged investigation proceedings without providing an opportunity of being hear to the Noticee & by allegedly opined Noticee for carrying *our alleged non-genuine trades without giving proper reason/analysis for arriving at any conclusion is against the basic rule of justice and fair play, hence present adjudicating proceedings are liable to be stopped as against the Noticee and impugned SCN issued is liable to be withdrawn on this ground only.*

RELIANCE MADE ON:

(a) In Sayeedur Rehman v. The State of Bihar, AIR 1973 SC 239, a three-Judges Bench of the Supreme Court highlighted importance of the rule of hearing in the following words:

"This unwritten right of hearing is fundamental to a just decision by any authority which decides a controversial issue affecting the rights of the rival contestants. This right has its roots in the notion of fair procedure. It draws the attention of the party concerned to the imperative necessity of not overlooking the other side of the case before coming to its decision, for nothing is more likely to conduce to just and right decision than the practice of giving hearing to the affected parties. The omission of express requirement of fair hearing in the rules or other source of power claimed for reconsidering an order is supplied by the rule of justice which is considered as an integral part of our judicial process which also governs quasi-judicial authorities when deciding controversial points affecting rights of parties."

(b) In Swadeshi Cotton Mills v. Union of India, (1981) 1 SCC 664, R.S. Sarkaria, J., speaking for the majority in a three-Judge Bench, lucidly explained the meaning and scope of the concept of "natural justice". Referring to several decisions, His Lordship observed that:

"Rules of natural justice are not embodied rules. Being means to an end and not an end in themselves, it is not possible to make an exhaustive catalogue of such rules. But there are two fundamental maxims of natural justice viz. (i) audi alteram partem and (ii) nemo judex in re sua. The audi alteram partem rule has many facets, two of them being (a) Notice of the case to be met; and (b) opportunity to explain. This rule cannot be sacrificed at the altar of administrative convenience or celerity. The general principle-as distinguished from an absolute rule of uniform that where a statute does not, in terms, exclude this rule of prior hearing but contemplates a post-decisional hearing amounting to a full review of the original

order on merits, then such a statute would be construed as excluding the audi alteram partem rule at the pre-decisional stage. Conversely if the statute conferring the power is silent with regard to the giving of a pre- decisional hearing to the person affected and the administrative decision taken by the authority involves civil consequences of a grave nature, and no full review or appeal on merits against that decision is provided, courts will be extremely reluctant to construe such a statute as excluding the duty of affording even a minimal hearing, shorn of all its formal trappings and dilatory features at the pre-decisional stage, unless, viewed pragmatically, it would paralyse the administrative process or frustrate the need for utmost promptitude. In short, this rule of fair play must not be jettisoned save in very exceptional circumstances where compulsive necessity so demands. The court must make every effort to salvage this cardinal rule to the maximum extent possible, with situational modifications. But, the core of it must, however, remain, namely, that the person affected must have reasonable opportunity of being heard and the hearing must be a genuine hearing and not an empty public relations exercise."

(c) In Automotive Tyre Manufacturers Association v. The Designated Authority, (2011) 2 SCC 258 the Supreme Court explained the meaning and scope of "audi alteram partem" which is a fundamental maxim of natural justice. The Supreme Court observed that this maxim has many facets, two of them being (a) Notice of the case to be met and (b) opportunity to explain and this rule cannot be sacrificed at the altar of administrative convenience or celerity. It was observed that:

"It is thus, well settled provision, either specifically or by necessary implication excludes the application of principles of natural justice, because in that event the Court would not ignore the legislative mandate, the requirement of giving reasonable opportunity of being heard before an order is made, is generally read into the provisions of a statute, particularly when the order has adverse civil consequences which obviously cover infraction of property, personal rights and material deprivations for the party affected. The principle holds good irrespective of whether the power conferred on a statutory body or Tribunal is administrative or quasi-judicial. It is equally trite that the concept of natural justice can neither be put in a strait-jacket nor is it a general rule of universal application. Undoubtedly, there

can be exceptions to the said doctrine. As stated above, the question whether the principle has to be applied or not is to be considered bearing in mind the express language and the basic scheme of the provision conferring the power; the nature of the power conferred and the purpose for which the power is conferred and the final effect of the exercise of that power. It is only upon a consideration of these matters that the question of application of the said principle can be properly determined."

(d) *In State of Orissa vs. Dr. (Miss) Binapani Dei, AIR 1967 SC 1269 the Supreme Court was considering how the State should conduct an enquiry for the purpose of removing a holder of an office in its medical department before her superannuation "good and sufficient reasons". The Supreme Court observed that basic rules of justice and fair play must be observed. Following observations of the Supreme Court need to be quoted:*

"The deciding authority, it is true, is not in the position of a Judge called upon to decide an action between contesting parties, and strict compliance with the forms of judicial procedure may not be insisted upon. He is however under a duty to give the person against whom an enquiry is held an opportunity to set up his version or defence and an opportunity to correct or to controvert any evidence in the possession of the authority which is sought to be relied upon to his prejudice. For that purpose the person against whom an enquiry is held must be informed of the case he is called upon to meet, and the evidence in support thereof The rule that a party to whose prejudice an order is intended to be passed is entitled to a hearing applies alike to judicial tribunals and bodies of persons invested with authority to adjudicate upon matters involving civil consequences."

(e) *In Assistant Commissioner, Commercial Tax Department, Works Contract and Leasing, Kota v. Shukla and Brothers, (2010) 4 SCC 785 the Supreme Court again emphasized the importance of giving an opportunity of hearing to the person who is likely to be adversely affected by the action of any administrative or quasi judicial authority and also the importance of passing reasoned orders. Following observations of the Supreme Court are material:*

"At the cost of repetition, we may Notice, that this Court has consistently taken the view that recording of reasons is an essential feature of dispensation of justice. A litigant who approaches the Court with any grievance in accordance with law is entitled to know the reasons for grant or rejection of his prayer. Reasons are the soul of orders. Non-recording of reasons could lead to dual infirmities; firstly, it may cause prejudice to the affected party and secondly, more particularly, hamper the proper administration of justice. These principles are not only applicable to administrative or executive actions, but they apply with equal force and, in fact, with a greater degree of precision to judicial pronouncements. A judgment without reasons causes prejudice to the person against whom it is pronounced, as that litigant is unable to know the ground which weighed with the Court in rejecting his claim and also causes impediments in his taking adequate and appropriate grounds before the higher Court in the event of challenge to that judgment……
The principle of natural justice has twin ingredients; firstly, the person who is likely to be adversely affected by the action of authorities should be given Notice to show cause thereof and granted an opportunity of hearing and secondly, the orders so passed by the authorities should give reason for arriving at any conclusion showing proper application of mind. Violation of either of them could in the given facts and circumstances of the case, vitiate the order itself. Such rule being applicable to the administrative authorities certainly requires that the judgment of the Court should meet with this requirement with higher degree of satisfaction. The order of the administrative authority may not provide reasons like a judgment but the order must be supported by the reasons of rationality. The distinction between passing of an order by an administrative or quasi-judicial authority has practically extinguished and both are required to pass reasoned orders."

C. *Because Impugned SCN erred in not appreciating principle of equality & justice that promotes right of equality i.e. equal treatment to all before law. That SEBI had itself allowed the trades in illiquid scrip vide its circular no. CIR/DNPD/5/2011 dated 02.06.2011 and circular no. CIR/MRD/DP/05/2013 dated 08.02.2013 naming it as 'Liquidity enhancement schemes'. Because Hon'ble SEBI at one end has allowed Exchanges viz a viz Stock Brokers to trade in illiquid scrips to enhance liquidity whereas at other end Hon'ble SEBI allegedly initiated alleged inquiry on innocent* *investor like noticee company for trading in illiquid stock option at BSE wrongly alleging indulgence of Noticee Company in non-genuine or artificial trade without proper and impartial analyses of documents beforehand. Hence the impugned SCN is liable to be withdrawn on this ground only and no penal action should be taken against Above Noticee.*

D. *Because words "artificial" and "non-genuine" are not defined in PFUTP Regulations or any of the Acts / Regulations of SEBI. Because as per Cambridge dictionary the term "artificial" means "made by people often as a copy of something natural; not sincere". Whereas the term "non- genuine" is opposite of "genuine" which is defined as "really coming from its reputed source etc., not sham; properly so called; pure bred." Because if we go with the dictionary meaning of these words, trades of Noticee Company, keeping in view of fact that all the trades were done at exchange platform & Noticee incurred loss on such trades, neither genuine trades. Hence the impugned SCN is liable to be withdrawn on this ground only.*

<u>RELIANCE MADE ON:</u>
In Jagruti Securities vs SEBI. [2008 SCC Online SAT 184: 2008 SAT 184], the Hon'ble SAT has gone ahead to record in para 4 "…we are of the view that inan 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'."

E. *Because the Noticee Company performed all its trades at Exchange trading platform without having knowledge of counter party to trades in the light of fact that the RDD issued by SEBI envisages volatility of securities market and also warns the investors and traders against them as it accepts that due to high volatility, huge price difference in illiquid securities where profits and losses may occur due to low liquidity and wider spreads, the conclusion of categorizing trades of Noticee Company as non-genuine is not tenable. Hence the impugned SCN is liable to be withdrawn on this ground only.*

F. *Because in order to make any person responsible for any alleged manipulative/fraudulent/unfair trade practice, ill intention/ mens rea to conduct* *such fraud is necessary. Whereas in the trading observed by you there was no bad intention on the part of Noticee Company is establishing. Whereas your good office is also failed to establish existence of mens rea/ ill intention on the part of Noticee Company of having indulgence in any kind of artificial /non genuine trades having content of fraudulent/manipulative/unfair trade practice w.r.t. trades in question. Amid that impugned SNC is silent on whether Noticee had the knowledge that the alleged trades in question are in violation of SEBI laws. Hence Impugned SCN is liable to be withdrawn on this ground only.*

G. Because Hon'ble SEBI erred in not appreciating the fact that Securities laws of this country, special legislations, are very complex & complicated in nature and are not always easy to understand/interpret. That it is a well known fact that the legislation in securities market undergoes so frequent changes and amendments, vide regular Notices, Circulars and guidelines issued from time to time by SEBI and also by NSE/BSE, that it is not possible for even a person specializing in this field, including the SEBI administrator, to claim that they are aware of each and every provision of these special laws/enactments. In fact it would not be out of place to mention that there are many actions which are though permissible under SEBI Laws (dealing in F&O) but the same act if combined with other simultaneous act (i.e. alleged reverse trade in present matter) would become contravening as per securities laws. Amid that everyone cannot be presumed to know the law as there is no such maxim known to law. Whereas even a common conscientious citizen (like Noticee Company) with his/her/its prudence would not be able to identify such alleged contravening act due to lack of direct provisions of law. And in order to violate any law there must be specific provisions under law and the person should know such provisions of law. It is further submitted that there is no specific definition is given in Securities laws for the words "Reversal of Trades", "Non-Genuine" and "Artificial" & in the absence of clear definition of these words SEBI cannot held Noticee responsible for any alleged violation of PFUTP Regulations. Viewed thus, it is therefore hereby requested to kindly withdraw the impugned SCN and do not initiate any penal proceedings against Noticee Company on this ground so as to render justice, equity and good conscience.

RELIANCE MADE ON:

Hon'ble Supreme Court of India in Motilal Padampat Mills Ltd V State of Uttar Pradesh reported in (1979) 118 ITR 326(SC) has rightly observed that:

"It must be remembered that there is no presumption that every person knows the law. It is often said that everyone is presumed to know the law, but that is not a correct statement: there is no such maxim known to the law. "

H. *Because the Noticee Company neither took any unfair advantage nor earn any disproportionate gain nor the trade of above notice resultant loss to any other investor or group of investors nor the noticee Company was indulge in any alleged default nor have any track record of indulgence in any such malpractice in past. Because Noticee Company has not in any manner repeatedly indulge in any alleged reversal trade in the securities market, have not acted in fraudulent manner and not violated any of the provisions of SEBI Act, rules or Regulations. The truth is that Noticee Company was victimized and trapped in securities market & in fact due to trades in securities market, Noticee incurred huge loss of Rs. 1.5 Crore (Approx.). Because Noticee actually experienced the pain of loss more acutely than the joy of gain, it stopped further trades in the stock market. Hence your good office is requested to kindly withdraw impugned SCN and not to initiate any penal action against Noticee Company in the interest of justice.*

   RELIANCE MADE ON:

   (a) *In this regard your kind attention is drawn to HonTble Supreme Court's decision in the case of Hindustan Steel vs. State of Orissa (AIR 1970 SC 253) where it was held as follows:*

   "An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi criminal proceeding and penalty will not be ordinarily imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be

justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bonafi.de belief that the offender is not liable to act in the manner prescribed by the statute. "

(b) *The Hon'ble Apex Court in the case of Ex-naik Sardar Singh vs. Union of India [(1991) 3 SCO 212] inter alia held that:*

"the penalty imposed must be commensurate with the gravity of the misconduct and that any penalty disproportionate to the gravity of the misconduct would be violative of Article 14 of the Constitution."

(c) *Further in the matter of Ranjit Thakur vs. Union of India (AIR 1987 SC 2386) it was held that:*

"The Sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review would ensure that even on an aspect which is, otherwise, within the exclusive province of Court Martial, if the decision of the Court even as to sentence is an outrageous defiance of logic then the sentence would not be immune from correction. Irrationality and perversity are recognized ground of judicial review. The penalty imposed must be commensurate with the gravity of the misconduct and that any penalty disproportionate to the gravity of the misconduct would be violative of Art. 14 of the Constitution. The point to note and emphasis is that all powers have legal limits."

I. *Because Hon'ble SEBI could not have issued Impugned SCN contrary to the fact that it is Exchange & SEBI who being regulators of Securities Market having ultra-modern techniques were expected to conduct due diligence of the trades executed at Exchange Platform and to raise alarm w.r.t. any act/trade/transaction which, as per BSE/SEBI, is not as per law so as to put embargo on any alleged act/trade on live basis. But BSE/SEBI had failed to conduct its duty immediately on execution of trades. Hence your good office is requested to kindly withdraw impugned SCN* *and not to initiate any penal action against Noticee Company in the interest of justice.*

Conclusion

29. *On the basis of facts, circumstances and provisions of laws for the time being in force in India in securities market, it can be said that:*
    a. *Noticee had not dealt in securities market in fraudulent or unfair manner as each and every trade in the account of Noticee Company was performed at Exchange terminal*
    b. *That Noticee Company have not, in any manner what so ever, indulge in a fraudulent or unfair trade practice in securities market*
    c. *Noticee have not violated any provision of Regulations 3 (a), 3(b), 3(c), 3 (d), 4 (1) and 4 (2) (a) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003*
    d. *Noticee is not liable for any monetary penalty under Section 15HA of the SEBI Act*

DISCLAIMER

30. *The Noticee Company craves leave of this Hon'ble Adjudicating Officer to refer to and rely upon any further documents, as may be required at hearing, if any, including judgments of the Supreme Court & High Courts if so required by Hon'ble court, when produced and reserves the right to make further submissions as may be required to prove bonafide of Noticee Company.*
31. *It is most respectfully and earnestly submitted that in past the Noticee has neither been involved in any litigation connected with the securities market nor there were any charges made by SEBI against Noticee nor any Noticee faced any disciplinary action from Stock Exchange or SEBI.*
32. *The Noticee Company craves leave to add, to alter or amend the above submission and /or paragraphs if so required necessary as per the circumstances of the case.*

PRAYER

33. *On the basis of aforesaid submissions, it is hereby requested that the Hon'ble Adjudicating officer of SEBI may be please to take an affirmative approach while deciding the matter qua Above Noticee and also may be pleased to graciously pass following order(s):*

(a) Pass an order to withdraw impugned SCN no. SEBI/HO/A&E/EAD/KS/AA/26414/2018 dated 21.09.2018 and to drop the proceeding against the Noticee without making any appropriate recommendation against the Noticee.

(b) Pass an order to declare Noticee Company as impeccable; discharge it from alleged inquiry/adjudicating proceedings in terms of Rule 4 of SEBI Adjudication Rules 1995 r/w Section 15-1 of the SEBI Act and consequently not to impose any penalty on Noticee as per section 15HA of the SEBI Act in the matter of alleged reversal of trades in Stock Option segment of BSE during 01.04.2014 to 30.09.2015.

(c) To kindly provide an opportunity of being heard to the Noticee Company through its counsel before any decision is taken at Delhi regional office of SEBI on the Principle of Natural Justice and morality.

(d) Pass any other further order/direction as may deem fit and proper on the basis of facts and circumstances of present matter.

8. In the interest of natural justice, an opportunity of hearing was granted to the Noticee on January 14, 2019 vide hearing notice dated December 28, 2018. Shri Amit Gupta, Advocate appeared as the Authorized Representative ('AR') of the Noticee for hearing on January 14, 2019. During the course of hearing, the AR reiterated the contents of the Noticee's reply received on November 29, 2018. During the course of hearing, the AR made additional submissions wherein the profit/loss incurred by the Noticee in various segments of the exchanges during the financial year 2014-15 was stated. The hearing proceedings were concluded and the AR sought no further hearing in the matter.

CONSIDERATION OF ISSUES

9. I have carefully perused the charges levelled against the Noticee, its reply and the documents / material available on record. The issues that arise for consideration in the present case are :

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

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

(c) 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?

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

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;

11. I note that the Noticee has *inter alia* stated that the investigation report was not provided to it. In this respect, I note from available records that the documents as available and relied in the present matter have been provided to the Noticee

along with the SCN. I also note that the Noticee was granted an opportunity of hearing in the present proceedings, which the Noticee has availed on January 14, 2018. In view of the same, I am convinced that the principles of natural justice have been complied with in the present matter.

12. I note that the allegation against the Noticee is that, while dealing in the stock option contracts at BSE during the Investigation period, the Noticee had executed reversal trades which were allegedly non-genuine trades and the same have resulted in the generation of artificial volume in stock option contracts at BSE. Reversal trades are considered to be those trades in which an entity reverses 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, lead to false or misleading appearance of trading in terms of generation of artificial volumes, and hence are deceptive & manipulative.

13. I note from the trade log of the Noticee that it had traded in 118 unique contracts in the stock options segment of BSE during the investigation period. It is observed that the Noticee had executed 2,319 non-genuine trades in 118 contracts. I further note that the above mentioned trades of the Noticee had resulted in the creation of artificial volume of a total of 2,15,55,500 units in the said 118 contracts and the said trades have also resulted in a positive close out difference of approximately Rs. 3,06,50,831 in favour of the Noticee. The Noticee has stated in its letter that it had conducted trades not only in stock options but also in other segments of the exchanges and had incurred a net loss of Rs. 1.53 crore during financial year 2014-15. However, I note that the scope of present proceedings is limited to the reversal trades conducted by the Noticee in stock option segment of BSE. Summary of such trades of Noticee is as follows:

S. No.	Contract Name	Avg. Buy Rate (Rs.)	Total Buy Volume (No. of units)	Avg. Sell Rate	Total Sell Volume (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	ABNV15APR1650.00CE	32.61	76000	54.68	80000	93%	78%	96%	69%
2	ABNV15MAR1650.00PE	16.03	81000	29.13	81000	100%	100%	100%	100%
3	ACCL15APR1560.00CE	40.56	67000	69.69	67000	100%	82%	100%	30%
4	ACCL15MAR1560.00CE	24.88	49250	33.73	49250	100%	47%	100%	14%
5	ACCL15MAR1620.00PE	32.36	58750	24.96	58750	100%	76%	100%	20%
6	ADEL15APR600.00CE	24.97	74000	34.42	74000	100%	100%	100%	100%
7	ADEL15APR600.00PE	20.89	55000	24.11	55000	100%	100%	100%	100%
8	ADEL15MAR580.00CE	18.50	84500	27.64	84500	100%	100%	100%	100%
9	ALBK15MAR110.00PE	3.40	24000	2.40	24000	100%	40%	100%	3%
10	ALBK15MAR95.00CE	3.31	70000	5.85	70000	100%	86%	100%	81%
11	AXIS15MAR560.00PE	5.30	315000	7.69	315000	100%	94%	100%	93%
12	BAJT15APR2100.00CE	25.53	117875	37.36	117875	100%	77%	100%	32%
13	BAJT15APR2100.00PE	96.12	12500	120.00	12500	100%	60%	100%	20%
14	BAJT15MAR2010.00CE	10.52	57500	18.19	57500	100%	100%	100%	100%
15	BATA15APR1200.00CE	4.56	90000	13.83	90000	100%	100%	100%	100%
16	BHEL15MAR270.00PE	15.19	56000	8.26	56000	100%	55%	100%	6%
17	BOIL15MAR200.00CE	5.99	265000	8.79	265000	100%	100%	100%	100%
18	BPCL15MAR740.00PE	0.08	60000	1.68	60000	100%	50%	100%	10%
19	CANB15MAR380.00CE	2.53	112000	3.82	112000	100%	86%	100%	51%
20	CENT15APR640.00PE	30.52	100000	42.91	100000	100%	100%	100%	100%
21	CENT15MAR500.00PE	23.80	59000	19.33	59000	100%	100%	100%	100%
22	CENT15MAR540.00CE	20.13	61000	25.73	61000	100%	61%	100%	12%
23	CENT15MAR540.00PE	14.11	165000	5.62	165000	100%	74%	100%	28%
24	CENT15MAR560.00CE	8.45	67000	12.98	67000	100%	52%	100%	8%
25	CENT15MAR560.00PE	6.04	60000	14.93	60000	100%	8%	100%	4%
26	CENT15MAR580.00PE	21.17	45000	9.33	45000	100%	16%	100%	9%
27	CENT15MAR620.00CE	6.04	75000	3.74	75000	100%	71%	100%	34%
28	CESC15FEB580.00CE	15.50	30000	7.25	30000	100%	83%	100%	50%
29	CESC15MAR600.00CE	17.30	45000	11.33	45000	100%	35%	100%	10%
30	CESC15MAR600.00PE	5.68	140500	8.94	140500	100%	51%	100%	25%

31	CIPL15MAR700.00CE	6.03	29500	13.15	29500	100%	33%	100%	6%
32	CIPL15MAR720.00PE	9.45	88500	17.21	88500	100%	87%	100%	26%
33	COAL15FEB370.00CE	19.00	15000	11.00	15000	100%	10%	100%	3%
34	COAL15FEB380.00CE	9.16	72000	4.88	72000	100%	91%	100%	37%
35	COLG15APR2100.00CE	17.81	114500	34.06	114500	100%	100%	100%	100%
36	DIVI15APR1800.00CE	55.64	65000	80.05	65000	96%	65%	100%	86%
37	DRRL15APR3400.00CE	119.49	130000	151.68	130000	100%	87%	100%	71%
38	GRSM15APR3600.00PE	82.61	120000	120.20	120000	100%	65%	100%	57%
39	HDBK15APR1020.00PE	14.58	130000	28.44	130000	100%	80%	100%	63%
40	HDBK15FEB1080.00CE	21.88	52500	17.85	52500	100%	100%	100%	100%
41	HERO15APR2600.00CE	75.09	75000	88.04	75000	100%	43%	100%	46%
42	HERO15APR2650.00CE	54.24	34000	77.53	34000	100%	100%	100%	100%
43	HNDL15APR135.00CE	4.58	24000	5.63	24000	100%	100%	100%	100%
44	HNDL15FEB150.00CE	6.19	56000	3.15	56000	100%	100%	100%	100%
45	HNDL15MAR130.00CE	3.98	42000	2.23	42000	100%	14%	100%	7%
46	HNZL15FEB180.00PE	9.18	28000	4.45	28000	100%	100%	100%	100%
47	HPCL15APR640.00PE	23.48	195000	29.08	195000	100%	79%	100%	47%
48	ICIC15MAR320.00CE	15.88	82500	10.59	82500	100%	32%	100%	9%
49	ICIC15MAR340.00CE	4.49	60000	2.31	60000	100%	36%	100%	10%
50	ICIC15MAR340.00PE	9.84	120000	6.74	120000	100%	73%	100%	35%
51	INFY15APR2250.00PE	77.32	80000	106.89	80000	100%	100%	100%	100%
52	INFY15FEB2280.00CE	40.00	7500	48.00	7500	100%	10%	100%	19%
53	INFY15MAR2160.00CE	35.07	15000	79.90	15000	100%	100%	100%	100%
54	INFY15MAR2250.00PE	28.60	15000	49.90	15000	100%	13%	100%	22%
55	JBFW15APR1500.00PE	44.51	117500	62.33	117500	100%	100%	100%	100%
56	JSPL15MAR180.00CE	7.40	45000	4.85	45000	100%	40%	100%	55%
57	JUST15APR1350.00PE	66.92	100000	96.04	100000	100%	100%	100%	100%
58	LICH15FEB490.00PE	11.21	43000	5.37	43000	100%	100%	100%	100%
59	LICH15MAR430.00CE	1.72	40000	0.41	40000	100%	50%	100%	12%
60	LICH15MAR440.00CE	7.52	197000	13.71	197000	100%	100%	100%	100%
61	LICH15MAR460.00CE	18.82	45000	11.33	45000	100%	100%	100%	100%
62	LICH15MAR480.00CE	18.54	90000	8.54	90000	100%	100%	100%	100%
63	LICH15MAR490.00PE	18.14	157000	12.06	157000	97%	71%	97%	29%
64	LNTL15FEB1680.00CE	25.49	45000	16.48	45000	100%	100%	100%	100%
65	LNTL15FEB1740.00CE	9.75	30000	3.25	30000	50%	50%	50%	50%
66	ONGC15APR300.00CE	11.04	30000	16.70	30000	100%	100%	100%	100%
67	ONGC15FEB340.00CE	11.85	124500	9.09	124500	100%	59%	100%	40%
68	ONGC15MAR310.00CE	10.70	261500	6.29	261500	100%	34%	100%	26%
69	ONGC15MAR320.00CE	5.08	45000	1.92	45000	100%	75%	100%	21%
70	ONGC15MAR320.00PE	10.95	30000	7.41	30000	92%	61%	92%	8%

71	RCAP15FEB440.00CE	10.10	30000	5.93	30000	100%	93%	100%	99%
72	RCAP15FEB480.00CE	12.31	60000	9.08	60000	100%	100%	100%	100%
73	RCAP15MAR440.00CE	3.33	107500	4.87	107500	100%	51%	100%	31%
74	RCAP15MAR460.00CE	21.85	50000	12.80	50000	100%	43%	100%	14%
75	RECL15FEB330.00PE	16.33	117000	12.61	117000	100%	86%	100%	84%
76	RECL15MAR330.00CE	5.60	45000	10.63	45000	100%	60%	100%	8%
77	RECL15MAR340.00PE	5.91	60000	10.33	60000	100%	100%	100%	100%
78	RECL15MAR350.00CE	7.88	20000	4.64	20000	67%	19%	75%	2%
79	RECL15MAR360.00PE	14.97	77000	9.47	77000	100%	45%	100%	6%
80	RELI15APR800.00CE	29.71	90000	38.29	90000	100%	100%	100%	100%
81	RELI15APR840.00CE	19.13	90000	28.48	90000	100%	100%	100%	100%
82	RELI15FEB840.00CE	16.63	59000	10.73	59000	100%	100%	100%	100%
83	RELI15FEB900.00CE	15.15	57500	10.11	57500	100%	100%	100%	100%
84	RELI15FEB920.00PE	18.99	89000	15.17	89000	100%	100%	100%	100%
85	RELI15MAR840.00CE	16.82	318250	15.32	318250	100%	59%	100%	19%
86	RELI15MAR860.00CE	30.89	172500	15.61	172500	100%	75%	100%	19%
87	RELI15MAR860.00PE	19.52	131250	13.34	131250	100%	100%	100%	100%
88	RELI15MAR880.00PE	28.92	180000	39.42	180000	100%	63%	100%	51%
89	RLNF15FEB460.00CE	4.68	30000	2.67	30000	100%	45%	100%	50%
90	RLNF15MAR420.00CE	8.65	296000	12.69	296000	100%	89%	100%	26%
91	RLNF15MAR440.00CE	6.01	106500	9.63	106500	100%	76%	100%	17%
92	SBIL15APR260.00PE	6.49	165000	8.95	165000	100%	100%	100%	100%
93	SBIL15FEB290.00CE	9.35	30000	6.68	30000	100%	100%	100%	100%
94	SBIL15FEB300.00CE	11.94	50000	7.80	50000	78%	78%	88%	88%
95	SBIL15MAR290.00CE	12.18	120000	6.59	120000	100%	75%	100%	18%
96	SBIL15MAR290.00PE	13.06	392500	14.85	392500	100%	65%	100%	28%
97	SUNP15APR1020.00CE	37.15	75000	46.98	75000	100%	64%	100%	58%
98	SUNP15APR1020.00PE	28.78	90000	37.62	90000	100%	100%	100%	100%
99	SUNT15FEB450.00CE	5.20	45000	2.58	45000	100%	100%	100%	100%
100	TAMO15APR520.00CE	21.96	195000	28.90	195000	100%	92%	100%	50%
101	TAMO15FEB560.00CE	10.19	58000	6.02	58000	100%	100%	100%	100%
102	TAMO15FEB580.00CE	14.32	57000	8.42	57000	100%	89%	100%	39%
103	TAMO15MAR560.00PE	16.22	150000	16.67	150000	100%	45%	100%	35%
104	TAMO15MAR580.00CE	18.28	125000	11.34	125000	100%	43%	100%	11%
105	TCSL15APR2600.00PE	81.26	83000	123.24	83000	100%	100%	100%	100%
106	TCSL15MAR2650.00CE	8.70	183000	13.00	189500	97%	3%	98%	32%
107	TCSL15MAR2700.00CE	72.13	84750	37.75	84750	100%	2%	100%	18%
108	TCSL15MAR2700.00PE	47.68	93750	33.08	93750	100%	100%	100%	100%
109	TGBL15FEB150.00CE	4.82	74000	2.76	74000	100%	100%	100%	100%
110	TISC15APR320.00CE	11.09	85000	9.09	85000	100%	58%	100%	66%

111	TISC15FEB360.00CE	7.80	74500	3.62	74500	100%	100%	100%	100%
112	TISC15FEB360.00PE	10.80	111500	7.41	111500	100%	100%	100%	100%
113	TISC15FEB370.00PE	10.67	118000	8.71	118000	100%	100%	100%	100%
114	TISC15MAR320.00CE	5.93	304500	8.87	304500	100%	94%	100%	50%
115	TISC15MAR340.00PE	18.38	60000	12.63	60000	100%	57%	100%	17%
116	TISC15MAR350.00CE	17.79	71000	11.96	71000	100%	100%	100%	100%
117	TISC15MAR360.00PE	20.22	69500	15.53	69500	100%	100%	100%	100%
118	UCOB15MAR70.00PE	6.20	36000	3.35	36000	100%	21%	100%	5%

14. I note from the trade log that the trades executed by the Noticee in a contract were squared up within a short span of time with the same counterparty. To illustrate, the Noticee on March 26, 2015 at 12:41:17 hrs entered into 1 sell trade with counter party viz. IM+ Investments & Capital Private Limited for 15,000 units at rate of Rs. 79.90 per unit in the contract “INFY15MAR2160.00CE”. Thereafter, on the same day, the Noticee at 12:41:53 hrs and at 12:42:44 hrs entered into 2 buy trades with same counterparty for a total of 15,000 units at an average rate of Rs. 35.07 per unit in the same contract. It is noted that while dealing in the said contract during the I.P., the Noticee executed total 3 reversal trades (2 buy trades + 1 sell trade) with same counterparty viz. IM+ Investments & Capital Private Limited on the same day. Thus, the Noticee, through its dealing in the contract viz. “INFY15MAR2160.00CE” during the I.P, executed 3 non genuine trades which is 100% of the total trades from the market in the said contract during the I.P., and thereby, Noticee generated artificial volume of 30,000 units which is 100% of the volume traded in the said contract from the market during the I.P.

15. The non-genuineness of these transactions executed by the Noticee is evident from the fact that there was no commercial basis as to why, within a short span of time, the Noticee reversed the position with its counterparties with significant price difference. I note from the trade log of the Noticee that the time taken by the Noticee for reversing its non-genuine trades ranged from 6 seconds to 43 minutes & 1 second. The Noticee has argued that it traded in stock options on

anonymous and electronic trading platform of stock exchange, which is provided by stock exchange, and its orders were matched in normal course. However, the fact that the transactions in a particular contract were reversed with the same counterparties indicates a prior meeting of mind with a view to execute the reversal trades at a pre-determined price. Since these trades were done in illiquid option contracts, there was no trading in the said contract and hence, there was no price discovery in the strictest terms. The wide variation in prices of the said contracts, within a short span of time, is a clear indication that there was pre-determination in the prices by the counterparties while executing the trades. Thus, it is observed that Noticee had indulged in reversal trades with its counterparties in the stock options segment of BSE and the same were non-genuine trades.

16. It is not mere coincidence that Noticee could match its trades with the same counterparties with whom it 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..."*

17. The Hon'ble Supreme Court further observed in the same matter 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."

18. The Noticee has *inter alia* submitted that its trades are genuine as the Risk Disclosure Document (RDD) issued by SEBI also envisages the possibility of significant price difference and losses / profits due to lower liquidity and wider spreads. In this context, I note that RDD is a document in the nature of general advisory to investors dealing in derivatives markets considering that derivatives products are complex, risky and high leverage products. Such a document in any case does not either implicitly or explicitly permit deliberate structuring of manipulative trades which lack economic rationale and run contrary to the dynamics of price discovery in option trading. Therefore, the contention of the Noticee devoid of any merit.

19. The Noticee has *inter alia* also stated that the securities laws of this country are very complex and complicated in nature and are not always easy to understand or interpret. However, I am not inclined to accept the said contention of the Noticee. "*Ignorantia juris non excusat*", that is to say, ignorance of law is not an excuse. Ignorance of law of the state does not exclude any person from the penalty for the breach of it, because every person is bound and presumed to know the law.

20. The Noticee has *inter alia* stated that its trades had taken place only on 22 days during the 1.5 years of the investigation period and had it intended to carry out non-genuine trades, the frequency of such trades would have been

higher. I am of the view that the contention of the Noticee that it had traded only on 22 days out of 1.5 years of investigation period does not establish that the trades of the Noticee were genuine. I note that direct evidence is not forthcoming in the present matter as regards to meeting of minds or collusion of the Noticee with other entities. The Noticee has stated that its trades have matched with different entities and the counterparties were not related to it. However, I note that the trading behaviour of the Noticee makes it clear that aforesaid non-genuine trades could not have been possible without meeting of minds at some level. In this context, I deem it appropriate to refer to the Hon'ble SAT order dated July 14, 2006, in the case of Ketan Parekh vs. SEBI (Appeal no. 2/2004), wherein the Hon'ble SAT has observed that - *"The nature of transactions executed, the frequency with which such transactions are undertaken, the value of the transactions, the conditions then prevailing in the market are some of the factors which go to show the intention of the parties. This list of factors, in the very nature of things, cannot be exhaustive. Any one factor may or may not be decisive and it is from the cumulative effect of these that an inference will have to be drawn."*

21. It is the contention of the Noticee that in absence of any concrete direct definition of words "non-genuine" or "artificial" in the PFUTP Regulations or SEBI Act, its trades cannot be termed as non-genuine or artificial. In this regard, I am of the view that the scheme, plan, device and artifice employed by the Noticee in this case of executing reversal trades in illiquid stock options contracts with wide variation in prices, tantamount to fraud on the securities market in as much as it involves non-genuine/ manipulative transactions in securities and misuse of the securities market. The non-genuine and deceptive transactions of the Noticee are *prima-facie* covered under the definition of "fraud" and the dealings of the Noticee as discussed herein above were "fraudulent", as defined under regulation 2(1)(c) of PFUTP Regulations and prohibited under the provisions of regulations 3 (a), (b), (c), (d), 4(1) and 4(2)(a) of PFUTP Regulations, thereof. Further, I place my reliance on the 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), in which the Hon'ble Supreme Court observed 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….."*

22. The trading behaviour of the Noticee confirms that such trades were not normal 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.

23. The Noticee has *inter alia* stated in its reply that no motive / mens rea has been identified in the SCN for it to carry out non-genuine trades. In this respect, I place my reliance on the observations of Hon'ble Bombay High Court in the matter of SEBI vs. Cabot International Capital Corporation (2004) 51 SCL 307 (BOM.), which reads as follows:

"…25. Thus, the following extracted principles are summarized:

(A) Mens rea is an essential or sine qua non for criminal offence.

(B) Strait jacket formula of mens rea cannot be blindly followed in each and every case. Scheme of particular statute may be diluted in a given case.

(C) If, from the scheme, object and words used in the statute, it appears that the proceedings for imposition of the penalty are adjudicatory in nature, in contra-distinction to criminal or quasi criminal proceedings, the determination is of the breach of the civil obligation by the offender. The word "penalty" by itself will not be determinative to conclude the nature of proceedings being criminal or quasi-criminal. The relevant considerations being the nature of the functions being discharged by the

authority and the determination of the liability of the contravenor and the delinquency.
(D) Mens rea is not essential element for imposing penalty for breach of civil obligations or liabilities.
(E) There can be two distinct liabilities, civil and criminal, under same act.
(F) Even the administrative authority empowered by the Act to adjudicate have to act judicially and follow the principles of natural justice, to the extent applicable.
(G) Though looking to the provisions of the statute, the delinquency of the defaulter may itself expose him to the penalty provision yet despite, that in the statute minimum penalty is prescribed, the authority may refuse to impose penalty for justifiable reasons like the default occurred due to bona fide belief that he was not liable to act in the manner prescribed by the statute or there was too technical or venial breach, etc.

26. Chapter VI-A of the SEBI Act deals with the penalties and the adjudication. Section 15-I of the SEBI Act envisage appointment of Adjudicatory Officer for holding an inquiry in the prescribed manner, after giving reasonable opportunity of being heard for the purpose of imposing any penalty. This section read with concerned Rules provide power to the Adjudicating Officer to summon and enforce the attendance of any person to give evidence or to produce relevant or useful document for an inquiry and, provides a sequence of the procedure to conduct the inquiry before imposing any penalty. Furthermore, it is also provided in Section 15J to consider various factors while adjudging the question of penalty under Section 15-I, after taking into account, the amount of disproportionate gain or unfair advantage, whenever quantifiable, loss caused to an investor or group of investors, the repetitive nature of default. These twin sections basically deal with the procedure of monetary penalty under the Act. All these sections 15A, 15B, 15C, 15D, 15E, 15F, 15G, 15H, 15HA and 15HB, provide monetary penalties for respective breaches or non-compliances of provisions of the SEBI Act and the Regulations. Default or failure, as contemplated under the Act includes : (15A) failure to furnish information, return, (15B) failure to enter into agreement with clients, (15C) failure to redress investors' grievances, (15D) default in case of mutual funds, (15E) failure to observe rules and regulations by an asset management company, (15F) default in case of stock brokers, (15G) for insider *trading, (15H) non-disclosure of acquisition of shares and takeovers, (15HA) fraudulent and unfair trade practices, (15HB), penalty if not separately provided.*

27. Therefore, for respective default or failure, penalty is provided under the Act. The scheme of the SEBI Act of imposing monetary penalty is very clear. This Chapter nowhere deals with criminal offence. These defaults for failures are nothing, but failure or default of statutory civil obligations provided under the Act and the Regulations made thereunder. It is pertinent to note that Section 24 of SEBI Act deals with the criminal offences under the Act and its punishment.

28. The adjudication for imposing penalty by the Adjudicating Officer, after due inquiry, is neither a criminal nor a quasi-criminal proceedings. The penalty leviable under this Chapter or under these sections, is penalty in cases of default or failure of statutory obligation or in other words breach of civil obligation. The provisions and scheme of penalty under SEBI Act and the Regulations, there is no element of any criminal offence or punishment as contemplated under criminal proceedings. Therefore, there is no question of proof or any mens rea by the Appellants and it is not essential element for imposing penalty under SEBI Act and the Regulations.

29. The penalty imposable under the SEBI Act and the Regulations under sections 15-I and 15J, is deterrent in nature to see that the parties or person concerned complies with the Regulations strictly. The imposition of the penalty under SEBI Act and Regulations is civil in nature and cannot be equated with penal in character as referred and submitted by the respondents and/or observed by the Appellate Authority. It is also clear that the word "penalty" has different colour and shades and facets and that has to be interpreted and imposed on the basis of particular act and policies or scheme. It is also clear that there can be two distinct liabilities under the same Act, i.e., civil and/or criminal. The Authorities or Regulatory Authority have ample power to initiate both proceedings, if case is made out, within the framework of the SEBI Act or the Regulations.

30. The SEBI Act and the Regulations, arc intended to regulate the Security Market and the related aspects, the imposition of penalty, in the given, facts and circumstances of the case, cannot be tested on the ground of "no mens rea, no *penalty". For breaches of provisions of SEBI Act and Regulations, according to us, which are civil in nature, mens rea is not essential. On particular facts and circumstances of the case, proper exercise or judicial discretion is a must, but not on a foundation that mens rea is an essential to impose penalty in each and every breach of provisions of the SEBI Act."*

24. I also note that 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 opinion, mens rea is not an essential ingredient for contravention of the provisions of a civil act. In our view, the penalty is attracted as soon as contravention of the statutory obligations as contemplated by the Act is established and, therefore, the intention of the parties committing such violation becomes immaterial. In other words, the breach of a civil obligation which attracts penalty under the provisions of an Act would immediately attract the levy of penalty irrespective of the fact whether the contravention was made by the defaulter with any guilty intention or not. We also further held that unless the language of the statute indicates the need to establish the presence of mens rea, it is wholly unnecessary to ascertain whether such a violation was intentional or not…".*

25. Therefore, I note that motive or mens rea is not essential to establish the charge in a proceeding of this nature as the present proceedings are neither criminal nor quasi-criminal in nature. In view of the above, I find no merit in the contention of the Noticee.

26. In view of the foregoing, I find that the allegation of violation of regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of PFUTP Regulations by the Noticee stands established. I am convinced that it is a fit case for imposition of monetary penalty on the Noticee under the provisions of Section 15HA of the SEBI Act, which reads as under:

    [1][***Penalty for fraudulent and unfair trade practices.***

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

15HA. If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty [2][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].

27. 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 reads as under:-

    Factors to be taken into account by the adjudicating officer.

    15J. While adjudging quantum of penalty under section 15-I, 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.

    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.

28. 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. Generally, there is nil or negligible participation of the public in the trading in illiquid stock option contracts. 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

[2] 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

unfair advantage resulting from the artificial trades between the counter parties or the consequent loss caused to investors as a result of the default. The Noticee has entered into 2,319 non genuine trades in 118 stock option contracts which demonstrates the repetitive nature of the default on its part.

ORDER

29. Having considered all the facts and circumstances of the case, the material available on record, the factors mentioned in Section 15J of the SEBI Act and in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose a penalty of Rs. 19,50,000 (Rupees Nineteen Lakh Fifty Thousand only) on the Noticee viz. Rector Investments Private Limited under the provisions of Section 15HA of the SEBI Act.

30. I am of the view that the said penalty is commensurate with the lapse/omission on the part of the Noticee. The amount of penalty shall be paid either by way of demand draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, or by e-payment in the account of "SEBI - Penalties Remittable to Government of India", A/c No. 31465271959, State Bank of India, Bandra Kurla Complex Branch, RTGS Code SBIN0004380 within 45 days of receipt of this order.

31. The said demand draft or forwarding details and confirmations of e-payments made (in the format as given in table below) should be forwarded to "The Division Chief, Division of Regulatory Action-1, Enforcement Department (EFD1 – DRA I), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C –4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai –400 051":

1. Case Name:	
2. Name of payee:	
3. Date of payment:	
4. Amount paid:	

5. Transaction no.:	
6. Bank details in which payment is	
7. Payment is made for : (like penalties/ disgorgement/ recovery/ settlement amount and legal charges along with order details)	

32. 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 for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties.

33. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticee viz. Rector Investments Private Limited and also to the Securities and Exchange Board of India.

Date: June 13, 2019

Place: Mumbai

K SARAVANAN

CHIEF GENERAL MANAGER &

ADJUDICATING OFFICER