

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/KS/AA/2019-20/4391]

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

Sai Ram Services,
(PAN: AAOPS8758B)

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 Sai Ram Services (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 88 non genuine trades in 26 Stock Options contracts which resulted in artificial volume of total 69,02,000 units. The Noticee incurred a loss of approx. Rs. 1,06,48,075 by executing non genuine trades during the I.P. Summary of dealings of the Noticee in 26 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	ALBK15AUG70.00CE	21.26	56000	12.56	56000	100%	100%	100%	100%
2	AMBK15APR230.00CEW2	22.15	100000	12.20	100000	100%	11%	100%	13%
3	ANBK15MAY70.00CE	7.30	100000	4.30	100000	100%	20%	100%	16%
4	ANBK15MAY85.00PE	7.80	72000	5.00	72000	100%	14%	100%	16%
5	DABU15MAR280.00CE	3.60	143000	0.10	143000	100%	10%	100%	13%
6	DRRL15APR3600.00CE	72.00	15625	8.00	15625	100%	33%	100%	15%
7	DRRL15APR3650.00CE	62.00	31875	15.00	31875	100%	17%	100%	23%
8	HPCL15APR580.00PE	5.47	450000	2.80	450000	100%	100%	100%	100%
9	HPCL15APR600.00PE	8.00	85500	1.00	85500	100%	43%	100%	23%
10	HPCL15APR600.00PEW4	6.40	420000	3.54	420000	100%	100%	100%	100%
11	IFCI15JUN18.00CEW3	8.10	88000	5.00	88000	100%	14%	100%	6%
12	INCM15APR65.00CEW2	34.20	8000	21.75	8000	100%	14%	100%	7%
13	ITCL15MAR360.00CE	2.50	150000	1.17	150000	100%	50%	100%	66%
14	ITCL15MAR370.00CE	1.50	100000	0.50	100000	100%	33%	100%	48%
15	JPPW15JUN4.00CEW3	2.25	255000	1.30	255000	100%	50%	100%	50%
16	JPPW15MAR8.00PEW1	0.05	105000	1.95	105000	100%	33%	100%	11%
17	JSWE15MAR110.00PE	0.25	100000	3.25	100000	100%	20%	100%	12%

18	LNTF15AUG80.00PEW3	9.35	84000	5.00	84000	100%	33%	100%	42%
19	LNTF15JUN70.00PEW3	7.50	84000	13.50	84000	100%	14%	100%	16%
20	MFSL15MAR270.00CE	3.10	34000	0.10	34000	100%	100%	100%	100%
21	NHPC15JUN10.00CEW3	9.10	100000	6.00	100000	100%	33%	100%	16%
22	NHPC15JUN16.00CEW2	1.70	120000	3.20	120000	100%	17%	100%	38%
23	NMDC15MAR140.00PE	4.80	232000	0.50	232000	100%	25%	100%	24%
24	UCOB15AUG40.00CEW3	11.00	112000	5.95	112000	100%	67%	100%	48%
25	UNIT15JUN2.00CEW3	5.75	99000	3.75	99000	100%	11%	100%	8%
26	UNIT15MAR20.00PE	1.40	306000	0.10	306000	100%	25%	100%	11%

6. From the above table, following was noted as regards to dealings of the Noticee:

- (a) The Noticee has executed non genuine trades in 26 contracts, wherein all trades of the Noticee in the said 26 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 10% to 100% of the trades that happened in the aforementioned contracts were due to non-genuine trades executed by the Noticee.
- (c) A substantial 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 6% 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 Authorized Representative ('AR') of the Noticee viz. M/s Joby Mathew & Associates, Advocates, vide letter dated November 19, 2018, *inter alia* requested for copies and inspection of certain documents in the matter. In view of the same, the request of the Noticee was forwarded to the concerned department of SEBI vide letter dated December 03, 2018. The concerned department of SEBI provided an

opportunity of inspection of documents to the Noticee and the AR of the Noticee viz. Shri Nikhil Shah, Advocate, took inspection of documents relied in the matter by the Adjudicating Officer on March 15, 2019. From the available records, I am convinced that the inspection of documents, which have been relied in the matter, has been given to the Noticee.

8. In view of the principles of natural justice, the Noticee was granted an opportunity of hearing in the matter on July 23, 2019 vide hearing notice dated July 01, 2019. Thereafter, the AR of the Noticee viz. M/s Joby Mathew & Associates, Advocates, submitted a letter dated July 22, 2019 on behalf of the Noticee and *inter alia* made the following submissions:

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2. *At the outset and without prejudice to anything that is stated hereinafter, our client denies all the allegations set out in the said SCN; nothing contained in the said SCN may be considered as having been accepted or admitted by us merely on account of non-traverse and unless specifically accepted or admitted by our client.*
3. *Vide letter dated November 19, 2018 and January 23, 2019, on behalf of and at the instructions of our client, we requested that our client may be provided with copies of all documents and records relied on and referred to in the said SCN including the Investigation Report alongwith all the Annexures thereto and requested that they may be granted an opportunity to inspect originals of the said documents consequently on March 15, 2019, an opportunity of inspection of relevant documents relied upon by SEBI in respect of the show cause notice was granted. However during the inspection a request was made by the Authorized Representative of the Noticee to grant inspection/ copy of the examination/ investigation report, but the request was denied, hence the inspection granted on March 15, 2019 was incomplete. Copy of the minutes of the Inspection carried out on March 15, 2019 is annexed hereto and marked as Annexure “A”. In this regard, our client submits as under: -*

- a. *Our client submits that in the matter of Price Waterhouse Coopers vs. SEBI, the Hon'ble Supreme Court has only reiterated the well accepted Principles of Natural Justice that an accused person should be provided with all the documents and records that are relied upon while making the accusation so that he can submit a complete and comprehensive reply to the allegations and charges made against him.*
- b. *Admittedly, SEBI has relied upon the Investigation Report and the findings therein while setting out the allegations and charges against our client in the said SCN. Furthermore, the analysis of the circumstances that led to a conclusion that our client's trades were irregular/ illegal and in violation of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to the Securities Market) Regulations, 2003 ("FUTP Regulations") are contained in the Investigation Report and are not set out in the said SCN.*
- c. *Similarly, the roles of various entities and persons who participated in the alleged illegal trades; for e.g. counter party clients and Stock Brokers/ Trading Members who placed the orders are also set out in the Investigation Report and not in the said SCN. In addition to the above, in the course of the investigation, SEBI is likely to have recorded the statements of the counter party client and/or Stock Brokers/Trading Members who placed the orders and also examined records such as (but not limited to) bank statements of the counter party client and/or Stock Brokers/Trading Members. All these records and statements are relevant documents and records as far as our client is concerned for the purpose of preparing and submitting a reply to the allegations and charges made in the said SCN.*
- d. *In addition to the above, the complete order log is required to understand the state of the market at the time that orders were placed on behalf of our client by his stock broker; these are available only with the stock exchange and SEBI.*
- e. *Admittedly, all the aforementioned relevant documents and records have not been provided to our client. This failure and refusal of SEBI to provide*

relevant documents and records to our client thus amounts to a clear violation of the Principles of Natural Justice and may render the present proceedings arbitrary, unreasonable and thus unsustainable in law.

f. Therefore, once again, our client requests that they may be provided with all the documents and records relied upon by SEBI while making the allegations and charges in the said SCN including, but not limited to the following:

- (i) The Investigation Report along with all annexures thereto.*
- (ii) Statements of the counter party client and/ or Stock Brokers/ Trading Members in so far as the trades of our client are concerned.*
- (iii) Records relating to the counter party client and/ or Stock Brokers/ Trading Members which were examined by SEBI in connection with the impugned trades of our client.*
- (iv) The complete order log relating to the time at which orders were placed on behalf of our client.*

g. Our client also requests that they may be granted an additional time of 4 weeks from the date of receipt of the aforesaid and other relevant documents and records, to make further submissions.

4. It is also pertinent to note that the said SCN does not set out the exact penalty that is proposed to be imposed on our client for the alleged violations mentioned therein. In this regard, we draw your attention to the judgment of the Hon'ble Supreme Court in the case of Gorkha Security Services vs. Government (NCT of Delhi) and others 2014 (9) SCC 105 wherein the Court set out the two requirements that a show cause notice should meet to fulfill the requirements of principles of natural justice viz. : -

- a. The material/ grounds to be stated which according to the department necessitates an action*
- b. Particular penalty/ action which is proposed to be taken.*

It is clear from the above that the said SCN does not set out the particular penalty which is proposed to be imposed and therefore, the said Show Cause Notice does not fulfill the requirements of the principles of natural justice and

therefore, ought to be withdrawn. A copy of the aforesaid judgments of the Hon'ble Supreme Court is annexed hereto and marked as Annexure "B".

5. It is further submitted that admittedly, all orders in respect of our trades in stock options on the Bombay Stock Exchange Limited ("BSE") ("the impugned trades") during the period April 1, 2014 to September 30, 2015 ("the relevant period") were placed on by our client's stock broker. However, despite being a necessary party to the impugned trades, SEBI has not included our client's stock broker, Kayan Securities Private Limited in the said SCN or the present proceedings. Our client submits that they had deposited a lumpsum amount of Rs. 10,00,000/- with the stock broker on their assurance of a profit on the said investment through trading in stock options. Our client never gave any specific instructions regarding any stock options, time, quantity or rate thereof; the stock broker itself decided on the same. Therefore, our client submits that the present proceedings are vitiated by the absence of the stock broker who is a necessary party and, on this ground also, the same ought to be withdrawn as against our clients.

6. Our client is in the business of handling cross border remittance business of PayPal, US based listed Company, operating a worldwide online payment system, in India. Our client is also involved in following activities:

- a. Business Development, Mainly Instrumental in launching latest payments related products like IMPS, UPI for PayPal in India.*
- b. Account Reconciliation*
- c. Customer Support*
- d. Recoveries in case of Incorrect Details\Fraud\Duplicate*
- e. Forex Management*
- f. Funds Management*

As with all other business, idle funds are invested by our client in productive and liquid assets; during the relevant period, as per the recommendations of its stock broker and other financial advisors, our client invested some of its funds in stock options on the BSE.

7. As is evident from the above, our client's expertise lies in payments related products like IMPS, UPI for PayPal in India. Therefore, our client trusted its stock broker to act in a legal and proper manner while they invested our client's funds. It is erroneous to presume that our client would put its reputation and business at risk by indulging into any unfair trade practices. Also, it is alleged that our client has incurred a loss of Rs. 1,06,48,075/- approximately and no person would enter into any trades intentionally to incur loss to such an extent. On the other hand, it is quite probable that the stock broker, who invested funds of our client in stock options, did so in a fraudulent manner, of which our client was admittedly unaware, and thereby generated loss for our client. Therefore, our client is entitled to the benefit of the doubt and it ought to be discharged from the present proceedings on this ground also.

8. With reference to paragraphs 1 and 2 of the said SCN, our client submits that the contents of the same are a matter of record; however our client denies that they had carried out any non- genuine trades in illiquid stock options at BSE or that they violated Regulations 3(a), (b), (c), (d) and 4(1), 4(2)(a) of the FUTP Regulations or provisions of the Securities and Exchange Board of India Act, 1992 ("SEBI Act") or any other provision of law as falsely alleged or otherwise.

9. With reference to paragraphs 3 and 4 of the said SCN, our client submits as under:

- a. Since they have not been provided with copies of the Investigation Report and/or other documents and records relied upon by SEBI, our client is unaware of the extent of the said alleged reversal trades observed by SEBI in stock options on the BSE during the relevant period or the details and particulars thereof. It is also not clear what was the artificial volume created and in which securities.
- b. Our client denies that they were aware of the identity of the counterparty stock broker or counter party client to their orders; therefore, till we were provided with the trade logs as part of the annexure to the said SCN, we

were unaware that our orders matched with the same counter parties. Furthermore, our client repeats, reiterates and submits that they did not instruct their stock broker to “reverse” the positions in a given stock option in the course of a given trading day or otherwise and our client definitely did not instruct the stock broker to match trades with the same counter party. While repeating and reiterating that nothing in the records provided to us show otherwise, we put SEBI to strict proof regarding the same.

- c. It is also pertinent to note that the contract notes and bills issued by our client’s stock brokers did not indicate that the trades were matched with a particular counter party or that these were reversed with the same counter party. In the absence of such knowledge and in the absence of instructions to the stock broker, our clients may not be held liable for any irregularity in the trades.
10. With reference to paragraph 5 of the said SCN, our client submits that the details of total trades in stock options on the BSE during the relevant period are not known to them; it is also not set out in the said SCN or annexures thereto how and in what manner 81.38% of such trades have been considered as non-genuine. Evidently, reversal trades are only one species of non-genuine trades and therefore, it is not specified whether all the said alleged non-genuine trades were reversal trades or otherwise and no details or particulars have been provided to our client. Similarly, no details or particulars of the purported artificial volume created on account of the said alleged non-genuine trades have been brought on record or provided to our client. In the absence of the aforesaid details and particulars, the statements made in paragraph 5 of the said SCN remain unsubstantiated thereby discrediting the present proceedings. Therefore, the present show cause notice ought to be withdrawn qua our client.
11. With reference to paragraphs 6 to 11 of the said SCN, our client submits as under:

- a. *Our client repeats, reiterates and denies that they indulged in execution of non-genuine trades in stock options during the relevant period.*
 - b. *Our client further repeats, reiterates and submits that they did not instruct their stock broker, Kayan Securities Private Limited regarding the time, quantity or price/rate of stock options to be purchased or sold, it is essential that the said stock broker be asked to explain the execution of the trades in the contracts set out in paragraph 7 and Table at page 4 of the said show cause notice in our client's account.*
 - c. *Our client repeats, reiterates and confirms that they were not aware of the identity of the counterparty to their orders at the time of placement of orders, at the time of execution of the same and thereafter, until they received and perused the said SCN and the annexures thereto.*
 - d. *To the best of the knowledge of our client, losses were made by the stock broker in the account of our client by trading in stock options on the BSE in a legitimate manner. It is only now, after receipt of the said SCN that our client is for the first time informed after 4 years that these losses may not be genuine. Since these trades were not carried as per the instructions of our client, they cannot be held liable or responsible for any irregularity or illegality in the same.*
 - e. *It is pertinent to note that till our client received the said SCN, the impugned trades were never called into question by BSE where the trades were executed or by SEBI; in fact, SEBI never sought any clarification or information from our client in the- course of the investigation or brought the said alleged irregularity/illegality of the impugned trades to our client's notice at any time in the 4 years that elapsed between the trades and the receipt of the said SCN.*
 - f. *In the light of the above, our client ought to be given the benefit of the doubt and discharged from the present proceedings.*
12. *With reference to paragraphs 12 & 13 of the said SCN, our client repeats, reiterates and denies that they were involved in execution of alleged reversal trades in stock options on the BSE and therefore, deny that they have acted in*

a deceptive or manipulative manner or that they have violated Regulation 3(a),(b),(c),(d) and 4(1),4(2)(a) of the FUTP Regulations 2003 or any other provision of law in force. In view of the above, our client submits that no penalty is imposable on them under the provisions of Section 15HA of the SEBI Act or any other provision of law as falsely alleged or otherwise.

13. In the light of the above, our client humbly requests that they may be discharged from the said SCN and the present proceedings and an order may be passed accordingly...”

9. The AR of the Noticee vide a separate letter dated July 22, 2019 requested to reschedule the hearing, which had been scheduled for July 23, 2019. In view of the said request, a final opportunity of hearing was granted to the Noticee on August 23, 2019 vide hearing notice dated August 07, 2019. Shri Nikhil Shah and Shri Mit Shroff appeared as the AR of the Noticee in the hearing on August 23, 2019. During the course of hearing, the AR reiterated the contents of the letter dated July 22, 2019 submitted on behalf of the Noticee.

CONSIDERATION OF ISSUES

10. 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?

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

PFUTP Regulations, 2003

3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

- (a) buy, sell or otherwise deal in securities in a fraudulent manner;*
- (b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;*
- (c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;*
- (d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.*

4. Prohibition of manipulative, fraudulent and unfair trade practices

- (1) Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.*
- (2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:—*
 - (a) indulging in an act which creates false or misleading appearance of trading in the securities market;*

12. I note that the Noticee has *inter alia* stated that certain documents related to the investigation have not been provided to it. In this respect, I note from available records that the documents / information relied in the present matter have been provided to the Noticee as annexures to the SCN. Further, I note from available records that the inspection of documents relied in the present matter have been provided to the Noticee as per policy. In view of the same, I am convinced that the principles of natural justice have been complied with in the present matter.

13. 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.
14. The Noticee has *inter alia* submitted that it had deposited a lumpsum amount of Rs. 10,00,000/- with the stock broker on their assurance of a profit on the said investment through trading in stock options. The Noticee has also stated that it never gave any specific instructions regarding any stock options, time, quantity or rate thereof; and that the stock broker itself decided on the same. The Noticee has further contented that since the stock broker is not charged in the matter, the present proceedings are vitiated. In this respect, I note that the Noticee has not submitted any evidence in this respect to corroborate the above submissions on not instructing its stock broker. Further, the Noticee had admittedly deposited Rs. 10,00,000/- with the stock broker for trading in stock options and the impugned trades in illiquid stock options were done in the trading account of the Noticee. Therefore, I am of the view that the Noticee was responsible for the trades done in the illiquid stock options in its account. I also note that the relationship between the Noticee and its stock broker is contractual in nature. Thus, they have entered into a wilful contract; therefore, the Noticee claiming that it was unaware of the impugned transactions is not acceptable.

15. I note from the trade log of the Noticee that it had traded in 26 unique contracts in the stock options segment of BSE during the investigation period. It is observed that the Noticee had executed 88 non-genuine trades in the said 26 contracts. I further note that the above mentioned trades of the Noticee had resulted in the creation of artificial volume of a total of 69,02,000 units in the said 26 contracts and the said trades have also resulted in a close out difference of approximately Rs. 1,06,48,075 against the Noticee. Summary of non-genuine 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	ALBK15AUG70.00CE	21.26	56000	12.56	56000	100%	100%	100%	100%
2	AMBC15APR230.00CEW2	22.15	100000	12.20	100000	100%	11%	100%	13%
3	ANBK15MAY70.00CE	7.30	100000	4.30	100000	100%	20%	100%	16%
4	ANBK15MAY85.00PE	7.80	72000	5.00	72000	100%	14%	100%	16%
5	DABU15MAR280.00CE	3.60	143000	0.10	143000	100%	10%	100%	13%
6	DRRL15APR3600.00CE	72.00	15625	8.00	15625	100%	33%	100%	15%
7	DRRL15APR3650.00CE	62.00	31875	15.00	31875	100%	17%	100%	23%
8	HPCL15APR580.00PE	5.47	450000	2.80	450000	100%	100%	100%	100%
9	HPCL15APR600.00PE	8.00	85500	1.00	85500	100%	43%	100%	23%
10	HPCL15APR600.00PEW4	6.40	420000	3.54	420000	100%	100%	100%	100%
11	IFCI15JUN18.00CEW3	8.10	88000	5.00	88000	100%	14%	100%	6%
12	INCM15APR65.00CEW2	34.20	8000	21.75	8000	100%	14%	100%	7%
13	ITCL15MAR360.00CE	2.50	150000	1.17	150000	100%	50%	100%	66%
14	ITCL15MAR370.00CE	1.50	100000	0.50	100000	100%	33%	100%	48%
15	JPPW15JUN4.00CEW3	2.25	255000	1.30	255000	100%	50%	100%	50%
16	JPPW15MAR8.00PEW1	0.05	105000	1.95	105000	100%	33%	100%	11%
17	JSWE15MAR110.00PE	0.25	100000	3.25	100000	100%	20%	100%	12%
18	LNTF15AUG80.00PEW3	9.35	84000	5.00	84000	100%	33%	100%	42%
19	LNTF15JUN70.00PEW3	7.50	84000	13.50	84000	100%	14%	100%	16%

20	MFSL15MAR270.00CE	3.10	34000	0.10	34000	100%	100%	100%	100%
21	NHPC15JUN10.00CEW3	9.10	100000	6.00	100000	100%	33%	100%	16%
22	NHPC15JUN16.00CEW2	1.70	120000	3.20	120000	100%	17%	100%	38%
23	NMDC15MAR140.00PE	4.80	232000	0.50	232000	100%	25%	100%	24%
24	UCOB15AUG40.00CEW3	11.00	112000	5.95	112000	100%	67%	100%	48%
25	UNIT15JUN2.00CEW3	5.75	99000	3.75	99000	100%	11%	100%	8%
26	UNIT15MAR20.00PE	1.40	306000	0.10	306000	100%	25%	100%	11%

16. 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 its counterparties. To illustrate, the Noticee on March 10, 2015 at 15:22:30 hrs entered into 1 sell trade with counter party viz. Shankar Lal Agarwal for 34,000 units at rate of Rs. 0.10 per unit in the contract “MFSL15MAR270.00CE”. Thereafter, on the same day, Noticee at 15:22:35 hrs entered into 1 buy trade with same counterparty for 34,000 units at the rate of Rs. 3.10 per unit in the same contract. It is noted that while dealing in the said contract during the I.P., the Noticee executed 2 reversal trades (1 buy trade + 1 sell trade) with same counterparty viz. Shankar Lal Agarwal on the same day and with significant price differential in buy and sell rate. Thus, the Noticee, through its dealing in the contract viz. “MFSL15MAR270.00CE” during the I.P., executed 2 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 68,000 units which is 100% of the volume traded in the said contract from the market during the I.P.

17. 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 3 seconds to 27 minutes & 21 seconds. Such a short span of time taken for reversing the trades in an illiquid stock option contract suggests the non-genuineness of these

trades executed by the Noticee. 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.

18. 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..."*
19. 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."

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

23. In view of the same, 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.

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].

24. 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.

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

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

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.

25. 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 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 88 non-genuine transactions in 26 stock option contracts which demonstrates the repetitive nature of the default on its part.

ORDER

26. 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. 5,00,000 (Rupees Five Lakh only) on the Noticee viz. Sai Ram Services

under the provisions of Section 15HA of the SEBI Act. I am of the view that the said penalty is commensurate with the lapse/omission on the part of the Noticee.

27. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of demand draft in favour of “SEBI -Penalties Remittable to Government of India”, payable at Mumbai, OR through online payment facility available on the website of SEBI, i.e., www.sebi.gov.in on the following path, by clicking on the payment link: ENFORCEMENT -> Orders -> Orders of AO -> PAY NOW.
28. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to “The Division Chief (Enforcement Department -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.”. The Noticee shall also provide the following details while forwarding DD / payment information:
- (a) Name and PAN of the Noticee
 - (b) Name of the case / matter
 - (c) Purpose of Payment – Payment of penalty under AO proceedings
 - (d) Bank Name and Account Number
 - (e) Transaction Number
29. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under Section 28A of the SEBI Act for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties.

30. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticee viz. Sai Ram Services and also to the Securities and Exchange Board of India.

Date: September 12, 2019

Place: Mumbai

K SARAVANAN

**CHIEF GENERAL MANAGER &
ADJUDICATING OFFICER**