BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO: Order/SBM/KL/2021-22/12896]

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

In respect of:

AAY JAY Consultants & Investment Private Limited
PAN:AACCA0949F

103, Mahatma Gandhi Road, Kolkata – 700007

In the matter of
Dealings in illiquid stock options at BSE

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') observed large scale reversal of trades in the Stock Options segment of Bombay Stock Exchange (hereinafter referred to as '**BSE**') leading to alleged creation of artificial volume in the stock options segment. In this regard, SEBI conducted an investigation into the trading activity in the illiquid Stock Options Segment at BSE for the period April 01, 2014 to September 30, 2015 (hereinafter referred to as "**Investigation Period**").

2. It was observed during the course of investigation that a total of 2,91,643 trades comprising 81.38% of all the trades executed in the Stock Options Segment at BSE during the investigation period were trades which involved reversal of buy and sell positions by the clients and counterparties in a contract on the same day. It was also observed that the aforesaid trades resulted into alleged creation of artificial volume to the tune of 826.21 crore units or 54.68% of the total market volume in the Stock

Options segment of BSE during the investigation period. In view of the large scale reversal of trades that were observed in the illiquid Stock Options segment at BSE, it is alleged that these trades were non-genuine in nature.

3. It was observed that AAY JAY Consultants & Investment Private Limited (hereinafter referred to as "**Noticee**") was one of the various entities which indulged in the execution of non-genuine trades in the Stock Options Segment at BSE during the above referred investigation period. It was observed that Noticee had entered into reversal trades with its counterparties which involved squaring off transactions with significant difference in sell value and buy value of the transactions. Therefore, it is alleged that Noticee had executed the reversal trades which were non-genuine in nature and have created false or misleading appearance of trading in terms of creation of artificial volume in the Stock Options segment at BSE and therefore, it is alleged that the Noticee has violated the provisions of Regulations 3(a), (b), (c), (d) and Regulation 4(1), 4(2) (a) of the SEBI (Prohibition of Fraudulent and Unfair Trading Practices relating to Securities Markets) Regulations, 2003 (hereinafter referred to as "**PFUTP Regulations**"). In view of the above reasons, adjudication proceedings have been initiated against the Noticee under the provisions of section 15 HA of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act'**).

APPOINTMENT OF ADJUDICATING OFFICER

4. The undersigned was appointed as the Adjudicating Officer, vide order dated April 26, 2021 under Section 19 read with Section 15-I of the SEBI Act read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as '**Adjudication Rules**') to inquire into and adjudge under the provisions of section 15HA of the SEBI Act for the aforementioned alleged violation of the provisions of law by the Noticee.

SHOW CAUSE NOTICE, HEARING AND REPLY

5. Show Cause Notice ref. SEBI/HO/EAD1/SBM/KL/11809 dated June 08, 2021 (hereinafter referred to as '**SCN'**) was issued to the Noticee in terms of Rule 4 of the

Adjudication Rules requiring the Noticee to show cause as to why an inquiry should not be held against it and why penalty, if any, should not be imposed on the Noticee under the provisions of section 15HA of the SEBI Act. The SCN issued to the Noticee, *inter alia*, mentioned the following-:

i. *It is noted that Noticee was one of the various entities which were indulged in execution of such alleged non-genuine trades in Stock Options Segment of BSE during the Investigation period. Following points deal with the dealings of Noticee during the Investigation period and allegations against it for execution of non-genuine trades.*

ii. *For the purpose of illustration of non-genuine trades and creation of artificial volume by the Noticee, details of trading done by the Noticee in the contract viz. "NMDC15MAR150.00CEW3" on March 18, 2015 is given below:*

Date	*Buyer*	*Seller*	*Buy Order Time*	*Sell Order Time*	*Trade Time*	*Trade Rate (Rs.)*	*Trade Quantity*
18/03/2015	*AAYJAY CONSULTANTS & INVESTMENT PVT LTD*	*KARTICK CHANDRA KUNDU*	*15:01:10.910892*	*14:57:03.514326*	*15:01:10.910892*	*0.5*	*2000*
18/03/2015	*AAYJAY CONSULTANTS & INVESTMENT PVT LTD*	*KARTICK CHANDRA KUNDU*	*15:01:10.910892*	*14:57:26.670055*	*15:01:10.910892*	*1*	*60000*
18/03/2015	*KARTICK CHANDRA KUNDU*	*AAYJAY CONSULTANTS & INVESTMENT PVT LTD*	*15:10:55.580615*	*15:06:01.232720*	*15:10:55.580615*	*0.05*	*66000*
18/03/2015	*AAYJAY CONSULTANTS & INVESTMENT PVT LTD*	*KARTICK CHANDRA KUNDU*	*15:01:10.910892*	*14:57:32.449832*	*15:01:10.910892*	*0.95*	*4000*

iii. *It is observed from the table above that the trades entered by the Noticee in the contract of "NMDC15MAR150.00CEW3" on March 18, 2015, with its counterparty viz. Kartick Chandra Kundu were reversed between the Noticee and the same counterparty on the same day resulting in reversal of trades which are, prima facie, considered to be non-genuine. Therefore, in the process artificial volume in the stock option contract at BSE has been generated by the Noticee through such non-genuine trades. From the table above, it is observed that the artificial volume created as no. of units reversed in non-genuine trades is 1,32,000 shares comprising both volume of initial trade and volume of reversal trade, while not considering the volume which is not reversed.*

iv. *It is further observed from the trade data of the Noticee that it has allegedly entered into non-genuine trades in 2 contracts wherein it executed a total of 10 trades all of which were, prima* *facie, non-genuine trades. In view of this, it is alleged that such fraudulent trades of the Noticee had resulted into creation of artificial volume of total 4,92,000 units.*

v. *In this regard, details of all the alleged non-genuine trades of the Noticee in Stock Option Segment of BSE during relevant period are attached as Annexure B. From the perusal of the trade data of the alleged non-genuine trades of the Noticee, it is observed that Noticee has allegedly executed non-genuine trades in 2 contracts. The total volume of 4,92,000 units generated by the Noticee in these 2 contracts due to its alleged non-genuine trades was artificial volume generated by the Noticee in the stock option segment of BSE. These alleged non-genuine trades, executed by Noticee in above contracts, had significant differential in buy rates and sell rates considering that the trades were reversed on same day.*

vi. *In view of the foregoing, it is alleged that the Noticee, by indulging in execution of reversal trades in Stock Options with same entities on the same day, which were non-genuine in nature, has created false or misleading appearance of trading in the aforementioned contracts traded in the option segment of BSE. In view of the fact that these options contracts were illiquid in nature, having very small volume in trading, the Noticee allegedly created artificial volumes in stock options which was manipulative and deceptive in nature. Therefore, in view of above, it is alleged that the Noticee has violated Regulation 3(a), (b), (c), (d), 4(1) and 4(2)(a) of PFUTP Regulations, 2003.*

6. Vide letters dated June 22, 2021 and July 22, 2021, Noticee submitted its reply to the SCN, details of which are given below:

<u>Reply dated June 22, 2021</u>

i. *It is submitted that it is a matter of record that we had traded in two (2) weekly stock options contract on the options segment of BSE on 18/03/2015, namely NMDCC 3C 150, strike price 150, having expiry date of 19/03/2015 and also ANBKC3P65, strike price 65, also having expiry date of 19/03/2015. Both these weekly contracts had a life span of 5 days, starting from a Friday (13/3/2015 in this case) and ending on a Thursday 09/3/2015 in this case). Both these contracts Were heavily traded on 18/03/2015, the day we had traded in these contracts. Besides, a quantity of 16, 003000 was traded on 17/03/2015 in contract ANBKC3P 65 expiring on 19/03/2015. This voluminous trading shows that these were not "illiquid" contracts. Thus, it is submitted that the allegation that these options contracts were "illiquid" in nature is not factual, A from the website of BSE is enclosed as Annexure "A" to substantiate above submission, ii) Besides the above ,the* *underlying Securities in the cash market ,namely NMDC Ltd and Andhra Bank Ltd were regularly traded in the cash market segment on BSE (as also on NSE) and the cash market volume in these underlying scrips during the pendency of these respective options contracts expiring on 19/03/2015 were as on BSE:-*

Thus, not only the underlying securities in the Cash Market but also the derivative options contracts in these were fairly liquid and not illiquid in nature, and were not having "very small volumes".

ii. *It is further submitted that the impugned trades executed by us were neither manipulative, nor deceptive nor as alleged, as explained below :*

   a. *As is evident from records of our trades available with SEBI, orders in NMDC stock options contract were placed on 18/03/2015 between 14:57 and 15:01. This was at the far end of trading session ending at 15-30 hrs. Thus, price discovery in this options contract had already taken place during the trading day since Commencement of trading at 09:15 Hrs as the trading session was coming to a close in another 30 minutes. In case of any 'manipulative or deceptive practice adopted by us, the effect of such alleged practice, either in price or in volume, should have been visible in this options contract after our trades Were executed. NO such allegation has been made in the Notice, neither is there any mention in the Notice about any material available with SEBI to this effect. The price movement of impugned derivative contract on or the underlying cash market security also is not indicative of existence of any such practice. The scrip had closed that day at Rs 131.85 after opening at Rs 130.45. We request you to provide us with relevant material regarding this allegation which may be in your possession so that the same may be dealt with by us appropriately. In absence of it, the allegation does not hold ground.*

   b. *Likewise, orders in ANBK3CP65 were placed by us between 13:43 and 14:03 Hrs on 18/03/2015. As above, no material has been brought forward in the Notice showing that these orders placed by us had manipulated or deceived others to enter into any contracts. Neither is it alleged in the Notice that our orders had influenced either the price or the volume in either the* *options contract or the underlying cash market security nor is there any such activity visible in the prices of derivative contract and underlying cash security, the scrip had Closed at Rs 81.45 after opening at Rs.794. We request you to provide relevant material, if available with you, to substantiate the allegation so that we may rebut it.*

c. *It is submitted that the allegation that we created false and misleading appearance of trading or created artificial volume in these Contracts or that the transactions are not genuine is not true. The dictionary meaning of the word 'artificial', in the present context, would mean 'not truly intended' (as per Cambridge dictionary). Non genuine means something which is not genuine, not real. It bears noting that the gain or loss arising from these contracts was settled by the clearing corporation of BSE, and Same was Collected/ paid to respective clients by BSE through respective brokers. BSE had collected transaction charges on these transactions, stamp duty was collected by State government through BSE, SEBI had collected turnover fees and the broker had collected his brokerage. This was done for both ends of the transaction. The volume was recorded by BSE and is part of historical data. Thus, the trading did not have the character of false or misleading appearance of trading and the volume was not artificial and trade genuine, as the trades were acted upon by all the entities involved. It is powers of BSE and the Clearing Corporation to cancel non genuine trades but the Same "as not done as the trades were found genuine. It has not been alleged that Someone was misled by our trades as it Was false or misleading. We had fulfilled our obligations arising out of these transactions. The same is a matter of record and easily verifiable from the Broker. An extract of broker ledger evidencing payment is enclosed herewith (Annexure B). Thus, it cannot be alleged that we created artificial volumes or created false or misleading appearance of trading or that the trades were non genuine.*

It is thus submitted that the allegation that "the Noticee created artificial volumes in stock options which was manipulative and deceptive in nature and created false and misleading appearance of trading, or that these were non genuine trades, is a bald statement bereft of any factual foundation or material. We reiterate that we should be afforded opportunity to rebut any such material which may be in your possession to support your allegations.

It is further submitted that the trades done by us were not reversal trades and the bids and offers made were open and available to the entire universe of participants

The Table shows that the Counter party offers and our bids were not put at the same time and there was a considerable gap of up to 8 minutes between the placement of Order and execution of trade. During this intervening period, all participant traders having access to the trading terminals could the bid/ offer on the screen and were at liberty to act on it, Essential feature of a reversal trade is 'meeting of mind', meaning both buyer and seller being on the same page to execute a trade at the Same time at the same price. Such meeting of mind is possible only if the buyer and seller are known to each other. It is known that trading on Stock Exchanges takes place anonymously and identity of buyer and seller is not known to anyone. As is discernible from the data provided with the Notice, all the orders placed were open orders, meaning for the entire trading universe to see and act upon. Thus the trades ultimately executed by us cannot be called synchronized or reversal and it does not conclude collusion and meeting of mind. We are not aware of the identity of the counter parties namely Amit Agarwal HUF and Kartick Chandra Kundu, or which city do they belong to or who their broker is. There cannot be collusion or meeting of mind unless the buyer and seller are known to each other. These names have appeared before us for the first time in the Notice. No allegation to the effect that buyer and seller knew each other has been made in the Notice. Thus, we deny that these were reversal trades.

Besides knowing the counter party, matching of price is also an essential consideration in determining whether a trade is preplanned for reversal. As can be *seen, there is no price matching in the above cases leading conclusion that these were genuine trades.*

Thus it is submitted that on the touchstone of time gap between placement of order and difference in prices, such trades cannot be termed in genuine. Preponderance of probability in this case points to a genuine trade executed in the course of normal business.

d. *It is submitted, that provisions of Regulations 3 and 4 Of PFUTP Regulations 2003 not attracted in our case. The essence of these Regulations 3 and 4 is presence Of 'fraud' as defined in the exhaustive definition in Regulation 2(c) Of PFUTP Regulations 2003, and also unfair trade practices. The essential ingredient in this definition is "to induce another person or his agent to deal in securities". As we have already explained, there is no material or* record *brought out in the Notice, or in the price movement of the impugned options Contracts and the underlying securities, that our trades were intended to induce or that the trades actually induced, any one to trade taking a leaf out of our trades. In the absence of any such concrete averment in Notice, allegation of fraud cannot be leveled blankly. There must be solid material such as a person alleging that he has been induced by us by our trades or circumstances show the effect of alleged inducement. Similarly, unfair trade practice has to be specifically alleged as to how it is unfair trade practice, and not just implied. Both are absent in our ease. It is requested that should such material exist at your end, we must be afforded an opportunity to rebut the same, It is thus submitted that Regulations 3 and 4 Of PFUTP Regulations 2003 have no application in our case.*

e. *It is submitted that Sec 15 HA of SEBI Act 1992 applies Only if a person indulges in fraudulent and unfair trade practices relating to securities. Such "fraudulent and unfair trade practices" have been defined in Regulation 4(2) (a) of PFUTP Regulations 2003, An activity becomes fraudulent if it involves fraud and may include indulging in an act which creates false or misleading appearance of trading in the securities market. It is a trite law that a penalty provision should be construed strictly and not too Widely and should be applied only in extreme situations, as we* *have demonstrated that there is no factual allegation in the Notice about false or misleading appearance of trading, or that fraud was committed by us, Regulations g and 4 of PFUTP Regulations 2003 are not attracted. We have already explained in abovementioned paragraphs that such acts have not been committed by us. It is therefore, submitted that application of Section 15 HA is not called for.*

f. *The inordinate delay in issuing Notice has caused prejudice to the Noticee as in the meanwhile valuable rights have accrued upon the Noticee. Thus, the Notice deserves to be withdrawn as issued beyond a reasonable period.*

Reply dated July 22, 2021

i. *We have in our reply dated June 22, 2021 explained how the derivative contracts in which we had traded on BSE, as also the underlying securities thereon were not illiquid and why the trades carried out by us were neither in genuine nor manipulative nor deceptive, nor was there any false and misleading appearance of trading. There was no reversal of trades because of factors of difference in time and prices. Hence the trading was not in genuine. We had also shown how 'fraud', which is essential to establish fraudulent or unfair trade practice cannot be attributed to us.*

ii. *A look at our trading behavior in past and in future pre and post 2015 would show that the trades covered in Notice dated June 8 2021 are 'one off trades and have neither occurred before or after 2015, We are regular participants on Stock Exchanges and we submit that the trades were done by us under the trading framework of BSE within the price limits set by the Exchange and under bona fide belief that no irregularity was involved as there was no prior warning by Exchange or SEBI about the contracts that we traded in.*

iii. *i) We had, in para 2 (c) (page 7) of our letter dated June 22, 2021 factually stated that we are not aware of the identities of the counter party to the trades and there cannot be collusion or meeting of minds unless the buyer or seller are known to each other. There is no allegation, nor evidence, in the Notice to the effect that buyer and seller knew each other. Our views find supporting the majority Judgment of Securities Appellate Tribunal in Amaresh Pathak vs SEBI (Appeal no 322/2020 dated 16.02.2021) where the Tribunal, following Ajmera's judgment of Supreme Court observed that*

10. In the absence of any finding of collusion between the buyer and the seller the charge of collusion and/or manipulation in the price of scrip cannot be sustained since it has not been proved.

13. There is no direct evidence of collusion between the appellant and the buyer. The only indirect evidence is that the appellants have sold miniscule quantities leading to an increase in the price of the scrip. One can infer manipulation but such trading cannot happen unilaterally. There must be evidence to show collusion between the buyer and the seller.

The principle of preponderance of probability cannot be exercised in the absence of any connection between the seller and buyer. This is what the Supreme Court has held in Ajmera's case.

ii) Further, Securities Appellate Tribunal observed in Almondz Entertainment Pvt Ltd v SEBI (Appeal 198 of 2020 dated 21.01.2021) that:

12. We are also of the opinion that synchronized trading can only happen between connected persons having common intentions. Since connection between the appellants and other entities have not been established, the charge relating to synchronized trading automatically fails."

iv. *We also refer to observations of Securities Appellate Tribunal in a case of manipulation of prices in the matter of Umang Dhanuka v SEBI (Appeal 102 of 2020 dated 8 June 2021) where lack of connection between the buyer and seller was noted and considered in the following words:*

We further find that there is no connection rather there is not even a thread of evidence to show any connection between the appellants and the counter party who bought the shares from the appellants.

v. *Your attention is also drawn to the Supreme Court judgement, in Securities and Exchange Board of India v. Kishore R. Ajmera [(2016) 6 SCC 368]. This was a case involving brokers and sub brokers trading reversal trades in cash market. While dealing with the concept of connection between the parties concerned the Court, in para 30 of the judgement held that "...According to us, knowledge of who the 2nd party / client or the broker is, is not relevant at all. While the screen based trading system keeps the identity of the parties anonymous it will be too naïve to rest the conclusions on the said basis which overlooks a meeting of minds elsewhere.*

The Apex Court has clearly stated that not the knowledge of who the counter party is but 'meeting of mind' is very important even in screen based trading. In this case before the Supreme Court, the parties trading reversal trades were found related to each other whereas the counter parties to our trade are neither connected nor related to us. A harmonious reading of this Supreme Court judgement along with other judgements quoted by us spells out that although knowledge of identity of other party is not important but there must be connection or relation between the parties to establish the charges, and such relation or connection is absent in our case.

vi. *Following the above propositions, we submit that in the absence of establishing connection or collusion between the buyer and the seller charge of in genuine trade in our case cannot be sustained. In para 2 (c) (i) (page 6), we had demonstrated from records that the time difference between placement of order and execution of trades in trades carried out by us* *was up to 8 minutes, and that this significant gap of the time enabled the trading universe an opportunity to act on open orders. Apex Court in para 36 of its judgement in SEBI vs Rakhi Trading Pvt Ltd (CA 1969 of 2011 dated Feb 8 2018) had noted the importance of such orders and that absence of such orders excludes other investors from participating in these trades, In para 2 (c) (ii) We had also pointed out that there was price difference existing between the order placed by us and order placed by the counter parties. We draw your attention to the extract from Adjudication order MC/DS/2019-20/6209-6214 dated December 24, 2019 passed in respect of Govindji Gupta and others, where the Ld. Adjudicating Officer had considered a time difference upto 5 minutes between two trades and also difference in order prices,to be significant and recorded his findings as under:*

"42........It has been further contended that there was huge order price gap between the both legs orders. There was huge order time gap between the both legs of orders placed by the Noticees and his counterparties. In most of the instances (more than 90% of orders) there were time gap of10 second to 5 minutes. Thus the structured trades could not have been said to be intentional. In this regard, while 10 seconds is a very small time difference between orders, I find the argument on difference in order prices acceptable, as a trade cannot be intended to match in a structured manner with difference in order prices

The Securities Appellate Tribunal put a stamp of approval on the above on grounds of consistency by accepting the findings of the AO and observing as follows in Almondz Entertainment Pvt Ltd v SEBI (appeal no 198 of 2020 dated 21.01.2021) "same charge were exonerated. In our opinion, if the six entities were exonerated, the appellants are entitled for the same relief.

Thus, it has been recognized by SEBI, and also Securities Appellate Tribunal that a trade involving a time gap of seconds to 5(five) minutes could not have been a structured trade. Reversal trade has been recognized as a structured trade. SEBI as a Regulator and Adjudicator cannot abandon its own yardstick adopted in one case and adopt a different yardstick in our case. Also coupled with the fact that counter party was not known or related to us, preponderance of probability would suggest existence of genuine trades. Supreme Court has, in KISHORE AJMERA case in para 26 has held that

' 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'.

What are the immediate and proximate facts to be considered and the inferential process thereon has been laid out in para31 of this Judgement and it reads as :

The conclusion has to be gathered from various circumstances like that volume of trade effected, the period of persistence in trading in the particular scrip, the particulars of buy and sell orders, namely, the volume thereof, proximity of time between the two and other relevant factors.

The above criteria laid down by the Supreme Court have been noted with approval and followed by the Supreme Court in another judgements in SEBI v KanaiyalalBaldevbhai Patel (2017 15 SCC 1) in para 62 and also in SEBI vs RakhiTrading Pvt Ltd (CA 1969 of 2011) in pages 72 and 73, and also followed in para 27 on Page 76.

iii) Weighed on these parameters, we fulfill most of the criteria, as explained in our replies, for our trades being treated genuine. We were not persistent in trading in particular scrip, our volume of trade was miniscule compared to overall volume, there was time gap between order time and trade time, there was price difference between order prices, this was the only occasion in our entire trading life that out trades have been called into question etc.

vii. *We may also point out that immediately on incurring losses to the tune of Rs 3,14,771, we stopped trading as no one trades continuously for making losses. We ended the year with a profit of about Rs 2, 90,000. It can be verified that such trades were not repeated by us. It is common sense that each and every transaction on the stock market cannot result in profit as one man's profit is another man's loss and thus everyone cannot be making profits. However, as stated by the Supreme Court in SEBI vs RAKI-IT TRADING (CA 1969 of 2011) consistent losses are a pointer to lack of commercial basis. We have, as a matter of record, not traded persistently for the purpose of making constant losses and stopped at once.*

viii. *We draw your attention to the concept of proportionality. The principle of proportionality envisages that a public authority ought to maintain a sense of proportion between his particular goals and the means he employs to achieve those goals. The principle also requires that the efforts of the means and the method adopted must not be disproportionate to the advantage sought. Various tests are applied to achieve this end, such as the Necessity test and the Cost Benefit Balancing test. The basic criteria that emerges is :-*

a *Is the measure suitable to achieve the goal?*

b Is the measure necessary or are there less strict measures available to achieve the same goal?

c The process of weighing and balancing the surrounding circumstances to answer (i) and (ii).

d b) Applying the above criteria, the following facts emerge as relevant in our case:-

e The amount earned / lost in the impugned trades is Rs 3,14,771, which is not a significant amount.

f The alleged trades are not repetitive in nature, and have not occurred either before or after 18/07/2019. These were solitary instance.

g We have never been subjected to any regulatory action before this Notice dated June 8 2021.

h There is material on record, in terms of time gap of order and trade, and in terms of price difference for orders of both sides, that the trades were not structured.

i No person has been induced to trade based on our trades and no price manipulation has occurred.

ix. The concept of proportionality has been applied from time to time by SEBI and Appellate forums where penalty was not imposed and only warning was given. The following are a few instances of the same.

a Adjudication order no 1 DS/2019-20/6209-6214 dated December 24, 2019, in respect of Govindji Gupta and others where it was ***not found to be a fit case for imposition of penalty****.*

b Adjudication order EAD/2/SS-SK/2019-20/3148 dated May 1 0/02/2019 in respect of JM Financial Institutions Securities Limited, where it was held that on a preponderance of probability that Noticee had bona fide belief and that violation was caused on account of oversight and not deliberately, and thus did not call for penal consequences.

c The Wholetime Member in the matter of Kotak Mahindra Asset Management Company , in order no WTM/AB/EFD-I/DRA4/8/2019-20 dated 31 May 2019 after into account Sec 15J, upheld the Adjudicating Officers views that imposition of penalty was not warranted in case of procedural , minor and non-serious violations of a circular.

d SAT in case of DSE Financial Services Ltd vs SEBI (dated 11.09.2012) quashed AO's order imposing penalty for violations which were mostly technical or solitary instances, or for which corrective measures were taken. It was held that every discrepancy is not culpable and object could be achieved by making entity compliant.

e SAT in case of Piramal Enterprises Ltd vs SEBI (Appeal no 466 dt 15 May 2019) in the matter of insider trading, held that in case of an infraction of a rule and in view of the fact that till date there were no violations of SEBI Rules,remedial and not-punitive measures, should be taken at the first instance.

f Adjudicating Officer, in the matter of Ashika Stock broking Limited (AO Order /KS/ AE/2020-21/10564 dated 24 February 2021), considered the submission of the Noticee about irregularities committed by them, and while imposing a penalty of Rs 6 lacs u/s 15HB ofthe Act and noted that " I am of the view that the said penalty is commensurate with the lapse/omission on the part of the Noticee"

g Considering the above criteria, it is submitted that the present matter does not require a monetary penal action u/s 15HA and other deterrent measures should suffice.

x. *It has been held in SEBI vs. Bhavesh Pabari (2019 5 SCC 90) that sec 15 J of SEBI Act is not eclipsed by penal sections 15A to 15 HA of the Act , and that factors to be considered as enumerated in 15 J are not exhaustive. As explained in para 2(e)(ii) page 10 of our reply, considering the facts of the case, we fall under the criteria set u/s 15J, and coupled with the-concept of pre ponderance of probability and concept of' proportionality, it is •submitted that-no monetary penalty is warranted in this case.*

xi. *In view of the above submissions, read with our earlier submissions dated June 22, 2021, it is requested that the enquiry proceedings and the Penalty proceedings u/s 15 HA be dropped on the grounds set out in our representations.*

7. The Noticee was provided with an opportunity of personal hearing in the matter on July 26, 2021, through the online webex platform. Mr. Rajendra Kumar Agarwal and Ms. Anjali Agrawal appeared as the Authorized Representatives ('**ARs**') on behalf of the Noticee on the stipulated date of hearing. During the course of hearing, the AR reiterated the submissions made by the Noticee in its letters dated June 22, 2021 and July 22, 2021.

<u>CONSIDERATION OF ISSUES AND FINDINGS:</u>

8. I have taken into consideration the facts and circumstances of the case, the material available on record and the reply submitted by the Noticee. It is alleged that the Noticee had executed reversal trades, which were non-genuine trades and the same has resulted in the generation of artificial volume in the Stock Option contracts at BSE. In view of the same, it is alleged that Noticee has violated the provisions of Regulations 3(a), (b), (c), (d) and Regulation 4(1), 4(2)(a) of PFUTP Regulations and, therefore, it is alleged that Noticee is liable for penalty under the provisions of Section 15HA of the SEBI Act.

9. Before moving forward, the relevant provisions of law allegedly violated by the Noticee and as mentioned in the SCN are reproduced below:--

PFUTP Regulations

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;

10. Reversal trades are considered as those trades in which an entity reverse its buy or sell positions in a contract with subsequent sell or buy positions with the same counterparty during the same day. The said reversal trades are alleged to be non-genuine trades as they are not executed in the normal course of trading, lack basic trading rationale, and allegedly lead to false or misleading appearance of trading in terms of generation of artificial volumes, hence these trades are deceptive and manipulative. From the facts/material made available on record, I find that the repeated reversal trades executed by the Noticee, which were observed in the present case, were undertaken by the Noticee with its counterparties with a predetermined arrangement to book profit or losses respectively, and therefore, the parties to the trades were not trading in the normal sense and ordinary course of

business. Therefore, it is alleged that the Noticee by indulging in such reversal trades with its counterparties in the illiquid stock option segment at BSE has managed to generate artificial volume in the Stock Options segment at BSE during the investigation period.

11. In this regard, it is observed from the trade log of the Noticee that it had traded in 2 non-genuine contracts in the Stock Options segment of BSE during the above mentioned investigation period. The examination of the Trade log of the Noticee during the relevant period revealed that it had executed 10 non-genuine trades in 2 contracts on the Stock Options segment of BSE. I note that the abovementioned trades of the Noticee had resulted in the creation of artificial volume of a total of 4,92,000 units in the given 2 contracts. Further, it is observed that the trades executed by the Noticee were squared up within a short span of time with the same counterparty i.e. trades were reversed within minutes on the same day. Thus, it is observed that Noticee had indulged in reversal trades with its counterparties in the stock option segment of BSE and the same were non-genuine trades.

12. Further, it is observed that most of these trades were squared up by the Noticee with its counterparties within a short span of time and mostly within few minutes and with a significant price difference. The non-genuineness of these transactions executed by the Noticee is evident from the fact that there was no commercial basis to suddenly, within a matter of few minutes, reverse the position with its counterparties with significant price difference when the value of the underlying had not undergone any significant change. The frequent trade reversals in the said case points out to the fact that the parties to the transactions, including the Noticee, did not intend to transfer the beneficial ownership and through these orchestrated transactions, the intention of which was not regular trading, other investors have been excluded from participating in these trades/ contracts. As already mentioned above, there was very little time gap between the buy and sell orders placed by the Noticee with its counterparties in different trades. The time gap between both the trades ranged from few seconds to minutes, but always on the same day. Given the

fact that the Stock Option contracts were illiquid in nature at BSE and also in view of the observations made above, I am convinced that Noticee has entered into reversal/non-genuine trades with its counter parties and in the process also generated artificial volume in the otherwise illiquid stock option contracts at BSE.

13. To illustrate, it is observed that the Noticee had executed a total of 4 trades during the Investigation period in the contract "NMDC15MAR150.00CEW3". All the aforesaid trades were done by the Noticee on March 18, 2015 wherein Noticee bought 2,000 units from Kartick Chandra Kundu (hereinafter referred to as "**Kartick**") at 15:01:10 at the rate of Rs. 0.5 per unit, 60,000 units at 15:01:10 at the rate of Rs. 1 per unit and 4,000 units at 15:01:10 at the rate of Rs. 0.95 per unit. The Noticee then sold 66,000 units to Kartick at the rate of Rs. 0.05 per unit at 15:10:55.

14. This resulted in 4 trades with total trade quantity of 1,32,000 units at a price of Rs. 0.5, Rs. 1, Rs. 0.05 and Rs. 0.95. Thus, in the above manner, the Noticee executed a total of 4 trades in the contract "NMDC15MAR150.00CEW3" and generated artificial volume of 1,32,000 units in the above said contract through such non-genuine and reversal trades.

15. The Noticee has contended that in the screen based trading, which is virtually anonymous, it is not possible for anyone to enter into such reversal trades. However, considering the precision at which the reversal transactions had taken place, the quantity, price and time and sale, parties being persistent in a large number of such trade transactions with huge price variations, I am of the view that it will be too naïve to hold that these 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 w.r.t the transactions entered into by the Noticee with its counterparties and such synchronized trading is clearly violative of the transparent norms of trading in the securities market. In view of the above observations, I hold that all the 10 transactions executed by the Noticee in the 2 Stock Option Contracts were synchronized trades, which were reversed within a small time gap with prior meeting of mind between the parties to the trade. Needless to mention the fact that these transactions were manipulative/deceptive device with

a view to create a desired loss and/or profit in the books of the parties to the transactions and in the process, artificial volumes were also generated through such contracts.

16. At this juncture, it is pertinent to refer to the decision of the Hon'ble Supreme Court of India in the matter of *Securities and Exchange Board of India v. Rakhi Trading Private Limited* (Civil Appeal Nos. 1969, 3174-3177 and 3180 of 2011 dated February 08, 2018) wherein, the Hon'ble Supreme Court while cumulatively analyzing the reversal transactions held that, "*From the facts before us, it is clear that the traders in question did not intend to transfer beneficial ownership and therefore these trades are non-genuine. Rather than allowing the market forces to operate in their natural course, the traders repeatedly carried out the impugned transactions which deprived other market players from full participation. The repeated reversals and predetermined arrangement to book profits and losses respectively, made it clear that the parties were not trading in the normal sense and ordinary course. Resultantly, there has clearly been a restriction on the free and fair operation of the market forces in the instant case"*

17. In the same matter, Hon'ble Supreme Court had further stated that- "……..*quantity, time and significant variation of prices, without major variation in the underlying price of the securities clearly indicate that Respondent's trades are not genuine and had only misleading appearance of trading in the securities market…………...*".

> "*35…. Contextually and in simple words, it means a practice which does not conform to the fair and transparent principles of trades in the stock market. In the instant case, one party booked gains and the other party booked a loss. Nobody intentionally trades for a loss. An intentional trading for loss per se, is not a genuine dealing in securities. The platform of the stock exchange has been used for a non-genuine trade. Trading is always with the aim to make profits. But if one party consistently makes losses and that too in a preplanned manner and rapid trades, it is not genuine……"*

18. In this context, I also find it relevant to refer to the decision of Hon'ble Supreme Court in the matter of *Securities and Exchange Board of India v. Kishore R Ajmera {(2016)} 6 SCC 368 : AIR 2016 SC 1079}* wherein, the Hon'ble Supreme Court has held that , " ….. *According to us, knowledge of who the 2nd party/client or the broker is, is not relevant at all. While the screen based trading system keeps the identity of the parties anonymous it will be too naïve to rest the final conclusions on the said basis which overlooks a meeting of minds elsewhere. Direct proof of such meeting of minds elsewhere would rarely be forthcoming. The test, in our considered view, is one of preponderance of probabilities so far as adjudication of civil liability arising out of violation of the Act or the provisions of the Regulations framed thereunder is concerned…..*"

19. In the same matter, the Hon'ble Supreme Court, has further 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 trade effected; the period of persistence in trading in a particular scrip; the particulars of buy and sell orders, namely the volume thereof; the proximity of time between the two and such relevant factors……..*"

20. The observations made in the aforesaid judgments of Hon'ble Supreme Court apply with full force to the facts and circumstances of the present case. Therefore, applying the ratio of the above judgments, I am convinced that the execution of trades by the Noticee in the illiquid options segment with such precision in terms of order placement, time, price, quantity etc. and also the fact that the transactions were reversed consistently with the same counterparties clearly indicates a prior meeting of mind with a view to execute the reversal trades at a pre-determined price. It is observed that in respect of these trades executed in the illiquid stock options contracts, the strike price was far away from the price of the underlying. The only reason for the wide variation in prices of the same contract, within seconds/minutes was a clear indication that there was pre-determination in the prices by both the

counterparties when executing the trades. Thus, the nature of trading, as brought out above, clearly indicates an element of prior meeting of minds and therefore, a collusion of the Noticee with its counterparties to carry out the trades at pre-determined prices. It is not possible to comprehend the reason for which the Noticee would enter into an option contract with a strike price very far away from the current market price of the underlying except for the fact that it wanted to execute non-genuine trades.

21. Rather than allowing the market forces to operate in their natural course, the Noticee repeatedly carried out the impugned transactions with its counterparties which deprived other market players from full participation. The repeated reversals and predetermined arrangement to book profits and losses respectively, made it clear that the parties were not trading in the normal sense and ordinary course. Resultantly, there has clearly been a restriction on the free and fair operation of market forces in the instant case.

22. Such trading also involves an act amounting to manipulation of the price of the security in the sense that the price has been artificially and apparently prefixed. The price does not at all reflect the value of the underlying asset. It is also a transaction without any intention of performing it and without any intention of effecting a change of ownership of such securities, ownership being understood in the limited sense of the rights in the contract. By synchronization and repeated reversal trades, as has been carried out by the Noticee in the instant case, the price discovery system has been affected. Except the parties who have pre-fixed the price, nobody is in the position to participate in the trade. It also has an adverse impact on the fairness, integrity and transparency of the stock market.

23. Therefore, from the foregoing paragraphs and the observations/findings contained therein, I hold that the Noticee has violated the provisions of Regulations 3(a), 4(1) and 4(2)(a) of the PFUTP Regulations.

24. In view of the above, I conclude that the Noticee is liable for monetary penalty under the provisions of Section 15HA of the SEBI Act, which reads as under :

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 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.*

25. In this regard, the provisions of Section 15J of the SEBI Act and Rule 5 of the Adjudication Rules require that while adjudging the quantum of penalty, 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.

26. Clearly, from the above observations, the Noticee was instrumental in the creation of artificial volume in the illiquid stock option contracts at BSE during the investigation period by executing reversal / non-genuine transactions in the illiquid stock options segment at BSE. The Noticee has entered into 10 non-genuine transactions in 2 stock option contracts with its counterparties, which demonstrates the repetitive nature of the default on its part. It is not possible from the material available on record to quantify the amount of loss caused to genuine investors as a result of the reversal trades/ non-genuine trades executed by the Noticee with its counterparties. From the manner in which Noticee executed the above mentioned transactions, the Noticee has violated the statutory provisions of law. In this context, reliance is placed upon the order of the Hon'ble Supreme Court of India in the matter of Chairman, SEBI Vs Shriram Mutual Fund { [2006]5 SCC 361 } – wherein the Hon'ble Supreme Court of India 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…………...*"

ORDER

27. Having considered all the facts and circumstances of the case, the material available on record and the factors mentioned in the preceding paragraphs, I, in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, hereby impose a penalty of Rs.5,00,000/- (Rupees Five Lakh only) on the Noticee viz. AAY JAY Consultants & Investment Private Limited under the provisions of Section 15HA of the SEBI Act for the violation of Regulations 3(a), 4(1) and 4(2)(a) of the PFUTP Regulations. I am of the view that the said penalty is commensurate with the default committed by the Noticee.

28. The Noticee shall remit / pay the said amount of penalty within 45 (forty five) days of the receipt of this order either by way of Demand Draft (DD) in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai and the said DD should be forwarded to the Division Chief, Enforcement Department - I (EFD), Division of Regulatory Action - I [EFD1-DRA-1] SEBI Bhavan, Plot No.C4-A,' G' Block, Bandra Kurla Complex (BKC), Bandra (East), Mumbai – 400 051 and also send an email to tad@sebi.gov.in with the following details:

1. Case Name:	
2. Name of Payee:	
3. Date of payment:	
4. Amount Paid:	
5.Transaction No:	
6. Bank Details in which payment is made:	
7. Payment is made for: (like penalties /disgorgement/recovery/Settlement amount and legal charges along with order details)	

OR

29. Payment can also be made online by following the below path at SEBI website www.sebi.gov.in ENFORCEMENT → Orders → Orders of AO → Click on PAY NOW or at https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html.

30. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is sent to the Noticee viz. AAY JAY Consultants & Investment Private Limited and also to Securities and Exchange Board of India.

Place: Mumbai **SURESH B MENON**
Date: July 30, 2021 **ADJUDICATING OFFICER**