ADJUDICATION ORDER NO. JS/DJ/2018-19/1667

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:

Mr. Avijit Saha(PAN: DCIPS3813Q)

Address: 7 Uttar Basudebpur, Madhya Pally Kamarhati Belghoria, North 24 Parganas, West Bengal - 700056

In the matter of dealing in illiquid stock options at BSE

BACKGROUND

1. SEBI observed large scale reversal of trades in Stock Options segment of Bombay Stock Exchange (hereinafter, referred to as "**BSE**") leading to creation of artificial volume. SEBI conducted an investigation into the trading activity in illiquid Stock Options at BSE (hereinafter, referred to as "**investigation**") for period 01/04/2014 to 30/09/2015 (hereinafter referred to as "**I.P.**").

2. Pursuant to investigation, it was observed that during the I.P, total 2,91,643 trades comprising substantial 81.38% of all the trades executed in Stock Options Segment of BSE were non genuine trades. The aforesaid non genuine trades resulted into creation of artificial volume to the tune of 826.21 crore units or 54.68% of the total market volume in Stock Options segment of BSE during the I.P.

3. Reversal trades were considered those trades in which an entity reverse its buy or sell positions in a contract with subsequent sell or buy positions with the same counterparty during the same day. The said reversal trades are alleged to be non genuine trades as they are not executed in normal course of trading, lack basic trading rationale, and allegedly lead to false or misleading appearance of trading in terms of generation of artificial volume, hence were deceptive and manipulative. Artificial volume is considered to be the volume (no. of units) reversed in both legs of said reversal trades while keeping out the volume, if any, which is not reversed.

4. It is noted that Mr. Avijit Saha (hereinafter, referred to as "**Noticee**") was one of the various entities which were indulged in execution of non genuine trades in Stock Options Segment of BSE during the I.P. The dealings of Noticee in Stock Options segment of BSE during the I.P., and allegations against Noticee for execution of non genuine trades are emanated below.

5. Noticee, during the I.P. traded in 37 unique contracts in F&O segment of BSE, out of which he allegedly executed 258 non genuine trades in 36 contracts, resulting in artificial volume of total 17043000 units. Alleged non genuine trades of Noticee resulted into gains of Rs.9.87 Core to him. Following is noted from the dealings of Noticee in aforesaid 36 contracts at BSE:

   a) In 35 of the above 36 contracts, all the trades executed by Noticee were non genuine trades.

   b) These non genuine trades of Noticee significantly contributed to the total no. of trades from the market in the above contracts, as a substantial 22% to 100% of the trades were due to non-genuine trades executed by the Noticee.

   c) A substantial 97% to 100% of volume generated by the Noticee in each of the above contracts was artificial volume, and further, artificial volume generated by him also contributed to significant 25% to 100% of the total volume from the market in above contracts.

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

6. In view of the foregoing, it was alleged that Noticee indulged in execution of reversal trades in Stock Options at BSE during the I.P. Such reversal trades are non-genuine in nature and have created false or misleading appearance of trading in terms of artificial volumes in stock options and therefore alleged to be manipulative, deceptive in nature. Thus, it is alleged that Noticee violated the provisions of Regulation 3(a),(b),(c),(d), 4(1), 4(2)(a) of SEBI (Prohibition of Fraudulent and Unfair Trading Practices related to Securities Markets) Regulations, 2003 (hereinafter, referred to as "**PFUTP Regulations 2003**").

APPOINTMENT OF ADJUDICATING OFFICER

7. SEBI, in terms of Section 19 read with Section 15I(1) and (2) of the SEBI Act, 1992 and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter, referred to as "**SEBI Adjudication Rules, 1995**") appointed Adjudicating Officer to inquire into and adjudge the alleged violations of aforesaid regulations in respect of Noticee, and if satisfied that penalty is liable, impose such penalty deemed fit in terms of Rule 5 of SEBI Adjudication Rules, 1995 and Section 15HA of SEBI Act.

SHOW CAUSE NOTICE, WRITTEN SUBMISSIONS, PERSONAL HEARING

8. Show Cause Notice dated August 31, 2018 (hereinafter referred to as "**SCN**") was issued to the Noticee, mentioning the allegations against the Noticees and requiring it to show cause within 14 days of receipt of the SCN, as to why an inquiry should not be held and penalty be not imposed under Section 15HA of SEBI Act for the aforesaid alleged violations against it.

9. SCN was delivered to the Noticee through speed post AD. As no reply was received after lapse of two weeks, vide e-mail dated 26/09/2018 at 5:48 pm to Noticee at e-mail id viz, avijitsaha180@gmail.com, asaha5273@gmail.com and ajit.saha@yahoo.com, Noticee was Noticee was advised to reply to SCN on immediate basis. Scanned copy of SCN and all the annexures were provided with the aforesaid e-mail. In response, Noticee, vide e-mail on the same day at 06:02 pm, replied with following:

> *"I am just receive the mail and I want to know about the mail. Cause I dont know about SEBI, TRADES, ILLIQUID STOCKS.*
>
> *The following given name and PAN no is mine but i am not doing this kind of work. Even I have ZERO knowledge about TRADE and STOCKS.*
>
> *I am a normal salaried employee. And i dont know about those.*
>
> *Please let me know what is going on."*

10. Vide subsequent e-mail dated 28/09/2018 at 3:00 pm to Noticee, he was inter-alia informed about SCN delivered to him at his address on September 10, 2018, gravity of the present proceedings instituted against him, and was also advised to reply to the SCN on immediate basis. Following was stated to the Noticee in aforesaid e-mail dated 28/09/2018:

> *"This has context with the adjudication proceedings instituted by SEBI in respect of Mr. Avijit Saha for allegedly carrying out non-genuine trades in illiquid stock options at BSE.*
>
> *It is to be noted that allegations of violations of law against you have been mentioned in the Show Cause Notice (SCN) dated August 31, 2018 issued to you.*
>
> *It is to be noted that said SCN has been delivered to you on September 10, 2018 at your address viz, 7 Uttar Basudebpur, Madhya Pally Kamarhati Belghoria, North 24 Parganas, West Bengal – 700056. For your ready reference, scanned copy of SCN along with its annexures in excel file format, are enclosed herewith.*
>
> *Be informed that as mentioned in the SCN, if violations against you are established, monetary penalty of upto Rs. 25 Crore can be imposed upon you (pls. refer SCN for the same). Hence, you are advised to submit your reply in view of the allegations made against you in the SCN, on immediate basis to the Adjudicating Officer, and same shall reach before October 10, 2018.*
>
> *It is once again to be noted that in case of failure to submit the reply by the prescribed date, matter will be concluded by Adjudicating Officer based on material and evidence available against you on record under Rule 4(7) of SEBI Adjudication Rules 1995.*
>
> *It is requested to also send the scanned copy of reply through e-mail to ead-8@sebi.gov.in."*

11. In response, Noticee vide its e-mail dated 28/09/2018 at 04:31 pm, inter-alia once again denied any knowledge about the trades alleged to have been executed by him. His aforesaid e-mail stated the following:

> *"After receiving your 2nd mail and observing all the documents I am sure that my PAN NO is used by someone and doing all these work.*
>
> *As I am saying in previous mail that I am a Simple Citizen and normal/very low salaried employee.*

I am belongs from HUMANITIES background, and a middle class family, I have zero knowledge about SHARES & TRADES.

I repeating once again that I am not doing this. Someone duplicating my IDENTITY PROOF and using for these works.

I am request to SEBI that please cross check. I am sure there is a Huge SCAM running of this kind of work."

12. In view of the mere denial by Noticee about knowledge and execution of alleged trades, vide e-mail dated 03/10/2018 to Noticee, following information / records were sought from him:

    (i) Details of actions taken by Noticee upon becoming aware of the trading activity at BSE using trading account of Noticee allegedly without your knowledge, along with supporting evidence.
    (ii) Details of all the dealings of Noticee in Stocks and its futures & Options during April 1, 2014 to September 30, 2015.
    (iii) Details of all the trading accounts with Stock Broker and De-mat account held by Noticee during April 1, 2014 to September 30, 2015.
    (iv) Details of all the bank accounts held by Noticee during period April 1, 2014 to September 30, 2015 viz, Bank account number, Name of Bank and Branch with address.
    (v) Copy of PAN of Noticee
    (vi) Copy of Form 16 issued by employer of Noticee to him for FY year 2013-14, 2014-15 and 2015-16.

13. Further, vide e-mail dated 04/10/2018 to Stock Brokers through which Noticee has alleged to have placed the order viz, Odyssey Securities and Concord Vinimay , following information and records were sought and it was advised to provide the same latest by 08/10/2018 by e-mail:

    i) Details of all the trading accounts held by Noticee with Concord / Odyssey during aforesaid period, along with copy of all the KYC documents and all the supporting documents gathered by Concord / Odyssey you from its client i.e, Noticee for KYC purposes.

    ii) Details of De-mat and Bank account(s) of their client i.e, Noticee linked with his trading account(s) for the purpose of settlement of trades.

14. Since no information was received from the aforesaid Stock Brokers of Noticee, vide e-mail dated 12/10/2018 to BSE, it was requested to provide the aforesaid information and records sought from the Stock Brokers of Noticee.

15. In the meanwhile Concord Vinimay provided through the e-mail scanned copy of KYC documents of the Noticee. Subsequently, BSE vide e-mail dated 16/10/2018 provided the scanned copy of KYC documents of Noticee maintained by its aforesaid Stock Broker viz,

Odyssey Securities and Concord Vinimay. It is noted that account of the Noticee was maintained with Odyssey Securities in the name of Avijit Saha, and with Concord Vinimay, account was operated in the name of Krishna Trading Company, Proprietor Avijit Saha (i.e, Noticee). Following list of KYC documents were provided by the aforesaid Stock Brokers of Noticee:

a) <u>KYC documents of Noticee provided by Odyssey Securities Pvt Ltd, Stock Broker</u>
   i) Copy of filled KYC form in the name of Avijit Saha filled by Noticee at the time of induction, dated 23/02/2015.
   ii) Copy of PAN card and Votor ID card of Avijit Saha
   iii) Copy of certificate of enrolment ref. no. ECC0559148 issued by Joint Commissioner, Profession Tax, Kolkata Region to Krishna Trading Company, proprietor Avijit Saha, and copy of Challan issued under West Bengal State Tax on Processions, Trades, Callings and Employements Act, 1979 to Krishna Trading Company, proprietor Avijit Saha.
   iv) Copy of certificate of enlistment issued by Kolkata Municipal Corporation to Krishna Trading Copany for trade viz, supplier of non-food items , textile Goods, and name Avijit Saha its Proprietor.
   v) Snapshot of bank account details with UCO Bank in the name of Krishna Trading Company, and copy of Cheque.

b) <u>KYC documents of Noticee provided by Odyssey Securities Pvt Ltd, Stock Broker</u>
   i) Copy of filled KYC form in the name of Krishna Trading Company, propretorAvijit Saha filled by Noticee at the time of induction, dated 24/03/2015.
   ii) Copy of PAN card and Voter ID card of Avijit Saha
   iii) Copy of certificate of enrolment ref. no. ECC0559148 issued by Joint Commissioner, Profession Tax, Kolkata Region to Krishna Trading Company, proprietor Avijit Saha, and copy of Challan issued under West Bengal State Tax on Processions, Trades, Callings and Employements Act, 1979 to Krishna Trading Company, proprietor Avijit Saha.
   iv) Copy of certificate of enlistment issued by Kolkata Municipal Corporation to Krishna Trading Copany for trade viz, supplier of non food items , textile Goods, and name Avijit Saha its Proprietor.

16. Vide e-mail dated 31/10/2018 sent to Noticee, following was communicated:
   a) Scanned copies of his KYC documents maintained with Stock Brokers viz, Odyssey Securities and Concord Vinimay.
   b) Reminded about non submission of reply to SCN, and information and records sought from him in view of his claim, and was advised his reply on immediate basis.
   c) Provided with an opportunity of hearing on November 20, 2018.

d) In case of failure to reply and avail hearing, matter will be concluded with material already on record.

17. Under Rule 4(6) of SEBI Adjudicaiton Rules, 1995, vide e-mail dated 31/10/2018 to Odyssey Securities and Concord Vinimay, Stock Brokers of Noticee (under intimation to BSE with request to ensure delivery), were advised to nominate their authorised representative to be personally present on November 20, 2018 to provide following information and records (along with supporting information / records) related to Noticee (being their client):

a) Contact Details of your client Avijit Saha.
b) Details of due diligence followed for inducting Avijit Saha as client, and due diligence followed for execution of trades / orders for Avijit Saha.
c) Information about manner and process followed to do the in person verification of Avijit Saha before inducting him as your client.
d) Details of person(s) placing order on behalf of Avijit Saha, mode of placement of order, contact details of person placing the order.
e) Ledger details of all the dealings of Avijit Saha through you during April 2014 to September 2015.
f) Details of the Bank Account along with Name of the account holder, used for pay-in and pay-out of funds for trading undertaken by Avijit Saha.

18. BSE also forwarded the aforesaid e-mails to Odyssey Securities and Concord Vinimay on November 1, 2018, and extended further assistance in soliciting response from them.

19. Vide e-mail dated November 15, 2018 to Noticee, he was reminded about the scheduled hearing on November 20, 2018 and advised to avail the same. Further, it was also pointed out to him that reply and information sought from him in e-mail dated October 3, 2018 has not been received, and in this regard he was advised to submit the same on immediate basis and latest before the date of hearing.

20. Concord Vinimay, vide its e-mail and letter dated November 15, 2018, requested to allow to exempt from personal appearance at Mumbai, and to allow the appearance in Kolkata through video conference, and to make the required submissions in writing. In this regard, vide e-mail dated November 15, 2018 to Concord Vinimay, it was advised to submit in writing all the information and documents sought from it on aforementioned 6 points. Further, it was also advised to designate its one responsible official to be present at the Kolkata office of SEBI at specified time on November 20, 2018 to reply to further queries through telecom.

21. Concord Vinimay, vide its letter and e-mail dated November 17, 2018 made following submissions and nominated its official for hearing through teleconference from SEBI's Kolkata Office:

Sl.	***Particulars of Query***	***Reply of Concord Vinimay***
1.	*Contact details of the Client Avijit Saha*	*Our client Avijit Saha is the proprietor of M/s Krishna Trading and Krishna Trading was registered as client with us. His mobile no. as registered with us is 7059127271. His address registered with us based on the POA is 18B, Biplabi Trillakya Maharaj Sarani, Kolkata – 700001.*
2.	*Details of Due Diligence followed for inducting Avijit Saha as Client and for execution of trades / orders for Avijit Saha*	*Due diligence followed while opening the trading account was that the relevant identity and address proof were collected and verified with original. Further, In Person Verification was conducted at the address as recorded in the KYC Form. Further, the client Avijit Saha had placed orders for the trades which was verified by asking the Date of birth and PAN number and only then the orders were placed in the terminals. Avijit Saha has traded only twice and the total trade period was 27/03/2015 to 10/08/2015 and thereafter the balance in the client account was paid by us on 31.03.2016.*
3.	*Information about manner and process followed to do the in person verification of Avijit Saha before inducting him as your client*	*In person verification was conducted at the address as mentioned in the KYC form and after verifying the same the account was opened for trading.*
4.	*Details of persons placing order on behalf of Avijit Saha through you during April 2014 to September 2015.*	*Avijit Saha over telephone through his mobile number as registered with us which is 7059127271*
5.	*Ledger details of all the dealings of Avijit Saha through you during April 2014 to September 2015*	*Ledger details for the trade period as mentioned is attached as Annexure-1*
6.	*Details of bank account along with name of the account holder used for pay in and pay out of funds for trading undertaken by Avijit Saha*	*01900210017630 Savings Account – UCO Bank*

22. Odyssey Securities, vide e-mail dated November 19, 2018 and through telecom on the same date, was reminded about information and records sought from them, and were advised to provide information sought from them, in writing through e-mail and also, designate its one responsible official to be present at SEBI's Kolkata office on November 20, 2018 to reply to further queries in the matter. Subsequent, to the same, vide e-mail dated November 19, 2018, Odyssey Securities made following submissions to the queries:

We were unable to reply immediately to your mail as we have surrendered our membership in the year 2015, and have also left all our staff , therefore we do not open this mail on a regular basis.

We would like to give all the above information asked by you regarding our client Mr Avijit Saha. We have followed all the regulations and guidelines stated by SEBI , duly signed and approved by him before inducting him as a client in our broking firm.

As per asked by you we will give all the details regarding this client and also are attatched the documents taken from him as per SEBI guidelines.

Sl.	Particulars of Query	Reply of Odyssey Securities
1.	*Contact details of the Client Avijit Saha*	*Company address: 18B, Biplabi Trailakya Maharaja Sarani, P.S. Subdiv : Hare St, Kolkata 700001* *Correspondence address: 7, Uttar Basudeb pur, Madhya Pally, Kamarhati, Belghoriaq, North 24 parganas, Kolkata 700056.* *Mobile No : 7059127271* *Email add : office@rediffmail.com*
2.	*Details of Due Diligence followed for inducting Avijit Saha as Client and for execution of trades / orders for Avijit Saha*	*As per SEBI guidelines we have filled out the KYC form and have taken all the original documents for verification from him.*
3.	*Information about manner and process followed to do the in person verification of Avijit Saha before inducting him as your client*	*Mr Avijit Saha used to personally conduct his trades*
4.	*Details of persons placing order on behalf of Avijit Saha through you during April 2014 to September 2015.*	
5.	*Ledger details of all the dealings of Avijit Saha through you during April 2014 to September 2015*	*Ledger is attatched with this mail.*
6.	*Details of bank account along with name of the account holder used for pay in and pay out of funds for trading undertaken by Avijit Saha*	*UCO Bank Kolkata A/c No : 01900210017630*

23. Odyssey Securities, vide its subsequent e-mail dated November 19, 2018, informed about its inability to avail the telecom hearing scheduled on November 20, 2018 as its compliance officer / Director was out of Kolkata and they have no staff left which used to work in 2014-15, and requested for another date for telecom hearing.

24. Noticee did not avail the opportunity of personal hearing granted to him on November 20, 2018, and also he did not submitted information and records sought from him till this date.

25. As regards, to telecom scheduled for Concord Vinimay from SEBI's Kolkata office, official of Concord Vinimay failed to reach the Kolkata office on time, and subsequently, through e-mail sent on the same day, sought another opportunity of telecom hearing.

26. It is on record that ample opportunities were given to Noticee to make his submissions, and he was consistently advised to provide certain information and records which were important for verifying his claim that he has not traded in securities as alleged in the SCN. Despite the same, no reply or information was forthcoming from the Noticee. In this regard, present proceedings are continued further, based on material on record in terms of Rule 4(7) of the SEBI Adjudication Rules, 1995.

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

21. On perusal of the material available on record and giving regard to the facts and circumstances of the case and submissions of the Noticees, following issues require consideration in the present matter:

a) Whether the Noticee has violated the provisions of Regulations 3(a),(b),(c),(d), 4(1), 4(2)(a) of PFUTP Regulations 2003?

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

c) If so, what quantum of monetary penalty should be imposed on the Noticee taking into consideration the factors mentioned in Section 15J of the SEBI Act read with rule 5 (2) of the SEBI Adjudication Rules, 1995?

22. It is appropriate to refer to the aforesaid provisions alleged to have been violated by the Noticees. The same read as follows:

PFUTP Regulations 2003

> ***3. Prohibition of certain dealings in securities***
> *No person shall directly or indirectly—*
> ***(a)*** *buy, sell or otherwise deal in securities in a fraudulent manner;*
> ***(b)*** *use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;*
> ***(c)*** *employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;*
> ***(d)*** *engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.*
>
> ***4. Prohibition of manipulative, fraudulent and unfair trade practices***
> *(1) Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.*
> *(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:—*
> *(a) indulging in an act which creates false or misleading appearance of trading in the securities market;*

Issue a) - Whether the Noticee has violated the provisions of Regulations 3(a),(b),(c),(d), 4(1), 4(2)(a) of PFUTP Regulations 2003?

23. As recorded in above paras, SCN was delivered to Noticee through Speed post on September 10, 2018. As time given in SCN for submission of reply was already lapsed, vide an e-mail dated September 26, 2018, Noticee was advised to submit its reply on immediate basis and herewith, scanned copy of the SCN with the annexures in excel files were also enclosed. It is noted that though an appropriate reply was expected from the Noticee, however, Noticee in his response which promptly came within 15 minutes of receipt of aforesaid e-mail by him, though admitted that the SCN correctly mentions his name and PAN no., however, he denied having any knowledge about SEBI, trades, illiquid stocks and claimed to have zero knowledge

about trade and stocks and also being a normal salaried person. Additionally, Noticee urge to know what is going on.

24. In view of the above, in subsequent e-mail dated September 28, 2018 to Noticee, he was once again informed explicitly about the gravity of adjudication proceedings against him and the consequences of penalty upto Rs. 25 Crores, if charges against him are established. In response, which also came promptly, within 90 minutes, Noticee inter-alia stated that upon perusal of information provided to him in the notice, he is sure that his PAN no. is used by someone for doing all these work, and somebody is duplicating his identity proof, and he also requested SEBI to cross check as he is sure that there is a huge scam running of this kind of work.

25. It is noted that Noticee had clearly denied the wrongdoings alleged on his part in the SCN without providing anything to support his claim. Noticee though admitted that it is his PAN no. and Name which is attributed in the notice issued to him, however, denial for ownership of his alleged trades surprisingly claim that he was not the beneficiary of the alleged trades executed using his PAN no. and identity. In this regard, information and records were sought from Noticee so as to verify his claim, Noticee stopped responding to Notices and reminders sent to him, and he has not responded till the current date. In the interest of natural justice, Noticee was also given opportunity of personal hearing, however, Noticee did not availed the same.

26. Given the above, it is pertinent to note that Noticee, who was initially prompt in replying to the SCN with s bland claim of denial of all trades, suddenly stopped replying to relevant queries when his claims were required to be substantiated with the supporting evidence. Over and above that there was a deliberate attempt by Noticee to withhold information being sought from him under these proceedings.

27. It is noted from the records that Noticee has traded in F&O segment of BSE during the I.P. through his two trading accounts, each maintained with Stock Brokers viz, Odyssey Securities in February 2015 and March 2015, and through Concord Vinimay in October 2015. From the information obtained from above two stock brokers regarding KYC and due diligence done by them regard Noticee, following is noted:
    a) Noticee i.e, Avijit Saha had trading account in the name of Avijit Saha with the Odyssey Securities, and he had trading account with Concord Vinimay in the name of "Krishna Trading Company", which is his proprietorship firm. Both the trading accounts carry pan no. of Avijit Saha.
    b) KYC form registered with the said two stock brokers, confirms that it is Avijit Saha who has opened both the trading account, and same were signed by him in his own individual capacity and for his proprietorship firm viz, "Krishna Trading Company".

c) All the supporting documents with the KYC form, are signed by Avijit Saha as an individual or as proprietor of Krishna Trading Company.
d) In person verification was done before opening of trading accounts, and all the orders were placed by Avijit Saha over telephone.
e) As regards to Krishna Trading Company, various supporting documents affirms that Avijit Saha was its single proprietor, and this firm was registered with Tax authorities and Municipal Corporation in Kolkata.

28. From the above documents it is observed that the KYC documents at both the broker are consistent with each other and thus it can be concluded that these accounts are of the same person i.e the noticee.

29. The KYC documents obtained from Stock Brokers, were forwarded to Noticee at the time of issuing notice of hearing on October 31, 2018. It is on record that Noticee has not responded to information and records presented to him, and also not responded to the information and records sought from him in view of his claim denying the alleged trades.

30. Based on the information provided by Stock Brokers of Noticee, it is clear that the trading accounts are in his individual name and in the name of Krishna Trading Company, which is his own proprietorship. KYC records provided by Stock Brokers shows that same carries all the credentials of Noticee, and point him as the beneficial owner of the trading accounts used for executing the alleged trades in the matter.

31. In view of the above it is clear that Noticee has nothing to provide in support of his claim and same appears to have been made to mislead and waylay these proceedings. Given the above, based on the information on record, it is noted that it is Noticee who has dealt in Stock Options contracts at the BSE during the I.P.

32. Now coming to the role of the Noticee, it is alleged to have executed 258 reversal trades in 36 contracts, resulting into artificial volume of total 17043000 units. Summary of alleged non genuine trades of Noticee, is as follows:

Sl.	**Contract Name**	**Avg. Buy Rate (Rs.)**	**Total Buy Volume (no. of units)**	**Avg. Sell Rate (Rs.)**	**Total Sell Volume (no. of units)**	**No. of non genuine trades of Noticee in the contract**	**Artificial Volume generated by Noticee in the contract (No. of units)**	**% of Non Genuine trades of Noticee in the contract to Noticee's Total trades in the Contract**	**% of Non Genuine trades of Noticee in the contract to Total trades in the Contract**	**% of Artificial Volume generated by Noticee in the contract to Noticee's Total Volume in the Contract**	**% of Artificial Volume generated by Noticee in the contract to Total Volume in the Contract**
1	AMTK15FEB145.00CE	8.60	92000	16.37	92000	3	184000	100%	38%	100%	51%
2	APLT15MAR155.00CEW1	11.40	252000	22.72	252000	9	504000	100%	41%	100%	46%
3	AXIS15FEB600.00PE	31.00	200000	63.84	200000	11	400000	100%	33%	100%	37%
4	BHEL15FEB245.00CE	19.18	150000	35.00	150000	9	300000	100%	100%	100%	100%

Sl.	Contract Name	Avg. Buy Rate (Rs.)	Total Buy Volume (no. of units)	Avg. Sell Rate (Rs.)	Total Sell Volume (no. of units)	No. of non genuine trades of Noticee in the contract	Artificial Volume generated by Noticee in the contract (No. of units)	% of Non Genuine trades of Noticee in the contract to Noticee's Total trades in the Contract	% of Non Genuine trades of Noticee in the contract to Total trades in the Contract	% of Artificial Volume generated by Noticee in the contract to Noticee's Total Volume in the Contract	% of Artificial Volume generated by Noticee in the contract to Total Volume in the Contract
5	BIOC15MAR410.00CEW1	10.79	287000	19.93	287000	11	574000	100%	42%	100%	49%
6	BIOC15MAR410.00CEW2	14.10	602000	24.80	602000	9	1204000	100%	60%	100%	87%
7	BIOC15MAR410.00CEW3	10.50	381000	23.63	381000	7	762000	100%	28%	100%	32%
8	BPCL15APR740.00CE	20.00	133000	47.00	133000	4	266000	100%	33%	100%	42%
9	CARN15FEB225.00CE	11.50	150000	21.44	150000	7	300000	100%	100%	100%	100%
10	CARN15MAR230.00CEW1	11.20	125000	19.89	125000	8	250000	100%	42%	100%	25%
11	CESC15APR560.00CE	14.00	97500	34.00	97500	2	195000	100%	33%	100%	46%
12	COAL15MAR360.00CEW1	12.19	230000	27.10	230000	12	460000	100%	86%	100%	94%
13	COAL15MAR380.00PEW3	9.20	612000	17.63	612000	7	1224000	100%	78%	100%	97%
14	DABU15MAR240.00CEW1	14.60	198000	26.79	198000	8	396000	100%	33%	100%	42%
15	DLFL15AUG130.00PEW2	5.90	68000	3.00	68000	2	136000	100%	40%	100%	37%
16	DLFL15MAR135.00CEW1	9.50	210000	21.38	210000	5	420000	100%	71%	100%	91%
17	EXID15AUG160.00PEW2	3.00	50000	1.00	50000	2	100000	100%	100%	100%	100%
18	EXID15MAR205.00PEW2	12.96	402000	26.95	402000	11	804000	100%	73%	100%	47%
19	FEDB15AUG65.00CEW2	4.20	132000	2.70	132000	2	264000	100%	33%	100%	60%
20	FEDB15MAR120.00CEW2	11.40	336000	19.82	336000	7	672000	100%	47%	100%	52%
21	GAIL15FEB390.00CE	9.40	200000	19.60	200000	9	400000	100%	50%	100%	57%
22	GAIL15MAR410.00PEW3	9.80	434000	23.48	434000	8	868000	100%	57%	100%	58%
23	IRBI15MAR265.00PEW3	11.80	372000	25.08	372000	9	744000	100%	100%	100%	100%
24	KARB15FEB150.00PE	10.90	170000	21.02	170000	15	340000	100%	100%	100%	100%
25	KARB15MAR110.00CEW1	11.20	150000	22.28	150000	9	300000	100%	75%	100%	82%
26	KARB15MAR145.00PEW1	13.25	96000	23.00	96000	10	192000	100%	100%	100%	100%
27	MSSL15MAR470.00CEW3	13.20	305000	25.32	305000	6	610000	100%	100%	100%	100%
28	MSSL15MAR510.00PEW2	17.78	365000	31.50	365000	8	710000	89%	73%	97%	95%
29	PNBK15AUG155.00PEW2	2.12	124000	0.10	124000	4	248000	100%	100%	100%	100%
30	PNBK15AUG160.00PEW2	3.90	62000	1.50	62000	2	124000	100%	100%	100%	100%
31	SUNT15MAR400.00CEW1	14.10	180000	23.36	180000	8	360000	100%	44%	100%	47%
32	SUNT15MAR410.00CEW3	15.90	320000	25.43	320000	6	640000	100%	38%	100%	26%
33	SYND15MAR85.00CEW2	16.30	442000	28.58	442000	8	884000	100%	100%	100%	100%
34	TCHM15MAR450.00CEW1	17.68	151000	39.60	151000	10	302000	100%	100%	100%	100%
35	TMCL15MAR260.00CEW3	18.97	301000	32.60	301000	8	602000	100%	26%	100%	39%
36	UCOB15AUG50.00CE	6.60	152000	4.00	152000	2	304000	100%	22%	100%	29%

33. From the above table, it is noted that trading activity of Noticee in the mentioned 36 contracts was predominantly indulging in reversal trades. There was significant price difference between buy and sell trades of Noticee in each of these contract. It is also pertinent to note that Noticee through its reversal trades, has contributed substantially to the total no. of trades (22% to 100%) and volume (25% to 100%) in aforementioned contracts.

34. It is noted from the dealings in aforesaid 36 contracts, Noticee, in 30 contracts dealt during FY 2014-15 (in Feb 2015 and Mar 2015), booked gains by buying at lower prices and selling at significantly higher prices with same counterparties. Noticee dealt in rest 6 contracts during FY 2015-16 (in Oct 2015) viz, UCOB15AUG50.00CE, DLFL15AUG130.00PEW2, EXID15AUG160.00PEW2, FEDB15AUG65.00CEW2 and PNBK15AUG160.00PEW2, and booked losses in all these contracts by buying at higher prices to subsequently sell at significantly lower price.

35. Further, trade-order log of such reversal trades of the Noticee provide clear picture that, reversal trades were carried out in two legs with same counterparties and significant price difference. For example, all trades executed by Noticee in 4 of the said 36 contracts have been quoted in below table:

Sl	Buyer Name	Seller Name	Buy Order Time	Sell Order Time	Trade Time	Trade Rate (Rs.)	Traded Quantity (Units)	Difference of time in placement of orders (hh:mm:ss)	Time Difference in reversal trades (hh:mm:ss)
A	**Dealings in contract viz, AMTK15FEB145.00CE on 26/02/2015**								
1	AVIJIT SAHA	MORGAN FINANCIAL SERVICES PVT LTD	13:56:14	13:56:15	13:56:15	8.6	92000	00:00:01	00:00:08
2	MORGAN FINANCIAL SERVICES PVT LTD	AVIJIT SAHA	13:56:25	13:56:25	13:56:25	16.6	40000	00:00:00	
3	MORGAN FINANCIAL SERVICES PVT LTD	AVIJIT SAHA	13:56:33	13:56:33	13:56:33	16.2	52000	00:00:00	
B	**Dealings in contract viz, APLT15MAR155.00CEW1 on 05/03/2015**								
1	AVIJIT SAHA	CAPONY CONSULTING	10:23:20	10:23:21	10:23:21	11.4	252000	00:00:01	00:01:54
2	CAPONY CONSULTING	AVIJIT SAHA	10:23:28	10:23:28	10:23:28	12.8	2000	00:00:00	
3	CAPONY CONSULTING	AVIJIT SAHA	10:23:31	10:23:31	10:23:31	15.6	2000	00:00:00	
4	CAPONY CONSULTING	AVIJIT SAHA	10:23:34	10:23:34	10:23:34	18.9	2000	00:00:00	
5	CAPONY CONSULTING	AVIJIT SAHA	10:23:55	10:23:55	10:23:55	25	54000	00:00:00	
6	CAPONY CONSULTING	AVIJIT SAHA	10:24:19	10:24:19	10:24:19	23.2	42000	00:00:00	
7	CAPONY CONSULTING	AVIJIT SAHA	10:24:35	10:24:35	10:24:35	22.6	52000	00:00:00	
8	CAPONY CONSULTING	AVIJIT SAHA	10:24:58	10:24:58	10:24:58	21.9	48000	00:00:00	
9	CAPONY CONSULTING	AVIJIT SAHA	10:25:15	10:25:15	10:25:15	21.6	50000	00:00:00	
C	**Dealings in contract viz, AXIS15FEB600.00PE on 24/02/2015**								
1	AVIJIT SAHA	ACIRA CONSULTANCY	14:30:20	14:30:21	14:30:21	31	200000	00:00:01	00:16:34
2	ACIRA CONSULTANCY	AVIJIT SAHA	14:44:16	14:44:16	14:44:16	35	500	00:00:00	
3	ACIRA CONSULTANCY	AVIJIT SAHA	14:44:22	14:44:22	14:44:22	40	500	00:00:00	
4	ACIRA CONSULTANCY	AVIJIT SAHA	14:44:30	14:44:30	14:44:30	44.85	500	00:00:00	
5	ACIRA CONSULTANCY	AVIJIT SAHA	14:44:36	14:44:36	14:44:36	48.8	500	00:00:00	
6	ACIRA CONSULTANCY	AVIJIT SAHA	14:44:44	14:44:44	14:44:44	52	500	00:00:00	
7	ACIRA CONSULTANCY	AVIJIT SAHA	14:46:04	14:46:04	14:46:04	65	50000	00:00:00	
8	ACIRA CONSULTANCY	AVIJIT SAHA	14:46:18	14:46:18	14:46:18	66	49000	00:00:00	
9	ACIRA CONSULTANCY	AVIJIT SAHA	14:46:32	14:46:32	14:46:32	64	47000	00:00:00	
10	ACIRA CONSULTANCY	AVIJIT SAHA	14:46:44	14:46:44	14:46:44	63	25000	00:00:00	
11	ACIRA CONSULTANCY	AVIJIT SAHA	14:46:55	14:46:55	14:46:55	60	26500	00:00:00	
D	**Dealings in contract viz, BHEL15FEB245.00CE on 26/02/2015**								
1	MORGAN FINANCIAL SERVICES PVT LTD	AVIJIT SAHA	13:39:43	13:39:42	13:39:43	35	150000	00:00:01	00:01:22
2	AVIJIT SAHA	MORGAN FINANCIAL SERVICES PVT LTD	13:39:51	13:39:51	13:39:51	30.2	1000	00:00:00	
3	AVIJIT SAHA	MORGAN FINANCIAL SERVICES PVT LTD	13:39:56	13:39:56	13:39:56	28.9	1000	00:00:00	
4	AVIJIT SAHA	MORGAN FINANCIAL SERVICES PVT LTD	13:40:00	13:39:59	13:40:00	26.1	1000	00:00:01	
5	AVIJIT SAHA	MORGAN FINANCIAL SERVICES PVT LTD	13:40:04	13:40:03	13:40:04	22.8	1000	00:00:01	
6	AVIJIT SAHA	MORGAN FINANCIAL SERVICES PVT LTD	13:40:17	13:40:17	13:40:17	18.8	46000	00:00:00	
7	AVIJIT SAHA	MORGAN FINANCIAL SERVICES PVT LTD	13:40:31	13:40:31	13:40:31	19.8	30000	00:00:00	
8	AVIJIT SAHA	MORGAN FINANCIAL SERVICES PVT LTD	13:40:51	13:40:51	13:40:51	18.5	32000	00:00:00	
9	AVIJIT SAHA	MORGAN FINANCIAL SERVICES PVT LTD	13:41:05	13:41:05	13:41:05	18.9	38000	00:00:00	

36. Following is noted from the above table:

a) Noticee, in intra-day trading have reversed the traded quantity with same counterparty.

b) Noticee and its counterparties have placed their buy and sell orders within 1 seconds of each other, showing clear synchronised efforts to match trades.

c) Noticee after buying/ selling a particular quantity from a counterparty in first leg of trades, sold / bought the same quantity within 17 minutes, at significantly higher / lower prices.

37. Noticee has consistently reversed its trades intra-day within short span of time with same counterparties and that too at a significantly different price. It is not mere coincidence that Noticee could match its trades consistently with same counterparties with whom it undertaken first leg of trades, and same have been possible through synchronisation of orders. Further, the facts noted above, that Noticee has been consistent in booking gains in FY 2014-15 and losses in FY 2015-16, cast doubt on the purpose of doing the same. Hence, evidently Noticee deliberately entered into reversal trades in this particular manner. It is clear that such reversal trades are peculiar and do not follow the basic trading sense or rationale usually behind trading in securities, hence it is clear that they are non genuine. Clearly, trading systems of the Stock Exchange have been exploited by the Noticee to execute non genuine trades.

38. It is noted that volume reversed in non-genuine trades executed by the Noticee is artificial volume, as positions were reversed on same day between same counterparties, and this volume has created misleading appearance of genuine trading to unsuspecting investors.

39. In the present matter, trades have been matched with various counter parties in a particular manner mentioned hereinabove. Though direct evidence of meeting of minds or collusion with counterparties or their agents / fronts is not forthcoming in the present matter, however, trading behaviour and other scenarios as noted above make it amply clear that such non genuine trades could not have been possible without meeting of minds at some level. In this regard, reliance is placed on judgement of Hon'ble Supreme Court in the matter in respect of Civil Appeal Nos. 1969, 3174-3177 and 3180 of 2011 decided on 08.02.2018, which inter-alia states that:

"92. Considering the reversal transactions, quantity, price and time and sale, parties being persistent in number of such trade transactions with huge price variations, it will be too naive to hold that the transactions are through screen-based trading and hence anonymous. Such conclusion would be over-looking the prior meeting of minds involving synchronization of buy and sell order and not negotiated deals as per the board's circular. The impugned transactions are manipulative/deceptive device to create a desired loss and/or profit. Such synchronized trading is violative of transparent norms of trading in securities….."

Reliance is also placed upon judgement of hon'ble Supreme Court of India in the matter of SEBI Vs Kishore R. Ajmera in Civil Appeal No. 2818 of 2008 decided on February 23, 2016 wherein it was held that:

"It is a fundamental principle of law that proof of an allegation levelled against a person may be in the form of direct substantive evidence or, as in many cases, such proof may have to be inferred by a logical process of reasoning from the totality of the attending facts and circumstances surrounding the allegations/charges made and levelled. While direct evidence is a more certain basis to come to a conclusion, yet, in the absence thereof the Courts cannot be helpless. It is the judicial duty to take note of the immediate and proximate facts and circumstances surrounding the events on which the charges/allegations are founded and to reach what would appear to the Court to be a reasonable conclusion therefrom.

The test would always be that what inferential process that a reasonable/prudent man would adopt to arrive at a conclusion."

40. In view of the above, it is clear that Noticee indulge in execution of non genuine trades and thereby created artificial volume. Such act of Noticee was deceitful and misleading to other unsuspecting investors, and was an inducement to trade in such contracts. It is clear that by indulging in execution of non genuine trades which have created artificial volume in Stock Option Contracts, Noticee have violated the provisions of Regulations 3(a), (b), (c) and (d) and 4(1) and 4(2)(a) SEBI (PFUTP) Regulations, 2003.

Issue b) – Does the violation, if any, on part of the Noticees attract monetary penalty under Section 15HA of SEBI Act?

41. Given the findings hereinabove, it is clear that the reversal trades undertaken by Noticee were non genuine, resulted into artificial volumes in 36 stock option contracts. It is also noted that Noticee has deliberately acted in this manner. The above conduct of Noticee has therefore violated the provisions of Regulations 3(a), (b), (c) and (d) and 4(1) and 4(2)(a) SEBI (PFUTP) Regulations, 2003.

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

43. Hence, the Noticee is liable for monetary penalty under Section 15HA of SEBI Act, which states as follows:

*88[**Penalty for fraudulent and unfair trade practices.***
15HA. If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty 89[which shall not be less than five lakh rupees but which may extend to twenty - five crore rupees or three times the amount of profits made out of such practices, whichever is higher].

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88 Inserted by the SEBI (Amendment) Act, 2002, w.e.f.29-10-2002.
89 Substituted for the words ―twenty-five crore rupees or three times the amount of profits made out of such failure, whichever is higher by the Securities Laws (Amendment) Act, 2014, w.e.f. 08-09-2014

Issue c) - If so, what quantum of monetary penalty should be imposed on the Noticee taking into consideration the factors mentioned in Section 15J of the SEBI Act read with rule 5 (2) of the SEBI Adjudication Rules, 1995?

44. While determining the quantum of penalty under section 15HA of SEBI Act, it is important to give consideration to the factors stipulated in section 15J of SEBI Act, which reads as follows:

Section 15J of SEBI Act - Factors to be taken into account by the Adjudicating Officer

While adjudging quantum of penalty under section 15-I of SEBI Act, the adjudicating officer shall have due regard to the following factors, namely:-

(a)the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
(b)the amount of loss caused to an investor or group of investors as a result of the default;
(c)the repetitive nature of the default."

93[Explanation.—For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.]

93 Inserted by Part VIII of Chapter VI of the Finance Act, 2017 vide Gazette Notification No. 7, Extraordinary Prt II Section 1 dated March 31, 2017. This shall come into force from April 26, 2017.

45. Records shows the amount of profit / loss of the entities involved in non genuine trades including the Noticee, however, it is pertinent to note that entities involved in such trades have either booked gains or loss from the dealings. These gain / loss at Stock Exchange thus appears to be notional.

46. It is noted that the trading was in illiquid stock option contracts where there was nil or negligible participation by the public. Hence, the impact of these non genuine trades has been considered. When the impact of artificial volumes created by the two counterparties is seen as a whole, it is not possible from material available on record to quantify the amount of disproportionate gain, or unfair advantage resulting from the artificial trades between the counterparties, or the consequent loss caused to investors as a result of the default.

47. It is on record that Noticee has dealt in total 37 Stock Options Contracts during the I.P., from which findings establishes that he executed non genuine trades in 36 contracts on 12 days. It is also noted that Noticee dominated the trading in said 36 option contracts through its non genuine trades, and therein it contributed to 22% to 100% of the total no. of trades and 25% to 100% of the total volume in said 36 contracts.

ORDER

48. In view of the above, after taking into consideration all the facts and circumstances of the case, violation established as mentioned above, and after considering the factors enumerated in section 15Jof the SEBI Act, following monetary penalty of Rs.9,00,000/- (Rupees Nine Lakh only) is hereby imposed upon Noticee viz, Avijit Saha.

49. The Noticee shall remit / pay the said amounts of penalty within 45 (forty five) days of receipt of this order either by way of Demand Draft (DD) in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, or through e-payment facility into Bank Account, the details whereof are as follows:-

Account No. for remittance of penalties levied by Adjudication Officer	
Bank Name	State Bank of India
Branch	Bandra Kurla Complex

RTGS Code	SBIN0004380
Beneficiary Name	SEBI – Penalties Remittable To Government of India
Beneficiary A/c No.	31465271959

50. The Noticee shall forward the said Demand Draft or the details / confirmation of penalty so paid through e-payment to the Division Chief of the Enforcement Department 1 (EFD1) – Division of Regulatory Action (DRA 1) of SEBI.

51. The format for forwarding details / confirmations of e-payments shall be made in the following tabulated form as provided in SEBI Circular no. SEBI/HO/GSD/T&A/CIR/P/2017/42 dated May 16, 2017 and details of such payment shall be intimated at e-mail ID: tad@sebi.gov.in:

Date	
Department of SEBI	
Name of Intermediary / Other Entity	
Type of Intermediary	
SEBI Registration no. (If any)	
PAN	
Amount (in Rupees)	
Purpose of payment (inluding the period for which payment was made e.g, Quarterly, Annually	
Bank Name and Account Number for which payment is remitted	
UTR No.	

52. In terms of rule 6 of the SEBI Adjudication Rules, copies of this order is being sent to the Noticee and also to the SEBI.

Date: November 30, 2018 **Jeevan Sonparote**
Place: Mumbai **Adjudicating Officer**