BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/AA/MG/2019-20/4144]

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

Airspace Infrastructure Private Limited

(PAN: AAHCA3195L)

In the matter of Trading in Illiquid Stock Options on BSE

BACKGROUND OF THE CASE

1. The Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") observed large scale reversal of trades in the stock options segment of the Bombay Stock Exchange (hereinafter referred to as "**BSE**") thus leading to creation of artificial volume at BSE. In view of the same, the SEBI conducted an investigation into the trading activities of certain entities in the illiquid stock options at the BSE for the period April 01, 2014 to September 30, 2015 (hereinafter referred to as "**Investigation Period / IP**").

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

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

APPOINTMENT OF ADJUDICATING OFFICER

3. Shri Suresh B. Menon was appointed as the Adjudicating Officer vide order dated April 03, 2018, under section 19 read with section 15I(1) of the SEBI Act, 1992 (hereinafter referred to as "**SEBI Act**") and Rule 3 of SEBI(Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as "**Adjudication Rules**") to conduct the adjudication proceedings in the manner specified under Rule 4 of the Adjudication Rules read with section 15I(1) and (2) of SEBI Act, and if satisfied that penalty is liable, impose such penalty deemed fit in terms of Rule 5 of the Adjudication Rules and Section 15HA of the SEBI Act. Pursuant to the posting of Shri Suresh B. Menon to another department of the SEBI, the undersigned was appointed as the Adjudicating Officer vide order dated March 18, 2019.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. A Show Cause Notice SEBI/HO/EAD/25052/2018 dated August 27, 2018 (herein after referred to as '**SCN**') was issued to the Noticee under Rule 4(1) of the

Adjudication Rules to show-cause as to why an inquiry should not be initiated against the Noticee and why penalty should not be imposed upon the Noticee under Section 15HA of the SEBI Act for the violations alleged to have been committed by the Noticee.

5. It was *inter alia* alleged in the SCN that the Noticee had executed 113 non-genuine trades in thirty (30) Stock Options contracts which resulted in creation of artificial volume of total 16,52,500 units. The Noticee registered a negative close out difference of ₹ 3,05,65,000 by executing non-genuine trades during the IP. The summary of dealings of the Noticee in thirty (30) Stock Options contracts, in which the Noticee allegedly executed non-genuine trades during the IP, is as follows:

Table - A

S. No.	Contract Name	Avg. Buy Rate (Rs.)	Total Buy Volume (no. of units)	Avg. Sell Rate (Rs.)	Total Sell Volume (no. of units)	% of Non Genuine trades of Noticee in the contract to Noticee's Total trades in the Contract	% of Non Genuine trades of Noticee in the contract to Total trades in the Contract	% of Artificial Volume generated by Noticee in the contract to Noticee's Total Volume in the Contract	% of Artificial Volume generated by Noticee in the contract to Total Volume in the Contract
1	ABNV15MAY1770.00CE	38.68	31000	12.97	31000	100%	60%	100%	51%
2	ABNV15MAY1830.00CE	27.00	10000	7.00	10000	100%	25%	100%	13%
3	ABNV15MAY1890.00CE	21.00	10000	11.00	10000	100%	100%	100%	100%
4	BAJT15MAY1920.00PE	41.67	30000	14.67	30000	100%	33%	100%	33%
5	BATA15MAY1140.00CE	84.00	10000	54.00	10000	100%	100%	100%	100%
6	BATA15MAY1170.00CE	61.40	25000	21.40	25000	100%	27%	100%	19%
7	BATA15MAY1230.00CE	36.00	45000	9.33	45000	100%	38%	100%	34%
8	BATA15MAY1260.00CE	27.00	35000	8.14	35000	100%	67%	100%	83%
9	BOSH15MAY24000.00PE	499.00	1000	99.00	1000	100%	100%	100%	100%
10	CESC15MAY640.00CE	30.50	40000	7.50	40000	100%	40%	100%	36%
11	COLG15APR2070.00CE	76.50	40000	38.00	40000	100%	100%	100%	100%
12	COLG15MAY1980.00PE	54.00	40000	23.00	40000	100%	100%	100%	100%
13	DIVI15MAY1740.00PE	39.50	40000	16.50	40000	100%	100%	100%	100%
14	DRRL15MAY3350.00PE	67.50	10000	24.50	10000	100%	29%	100%	20%
15	DRRL15MAY3400.00PE	89.00	10000	19.00	10000	100%	100%	100%	100%

16	DRRL15MAY3650.00CE	97.43	35000	54.86	35000	100%	25%	100%	25%
17	GRSM15APR3450.00PE	54.00	10000	14.00	10000	100%	11%	100%	3%
18	GRSM15APR3700.00CE	89.00	10000	24.00	10000	100%	13%	100%	4%
19	GRSM15MAY3350.00PE	54.00	10000	19.00	10000	100%	33%	100%	53%
20	HDBK15MAY1110.00CE	27.00	10000	15.00	10000	100%	33%	100%	29%
21	JUST15APR1470.00CE	74.00	20000	19.00	20000	100%	100%	100%	100%
22	LNTL15APR1560.00PE	18.00	20000	8.00	20000	100%	100%	100%	100%
23	LNTL15APR1740.00CE	36.00	20000	9.00	20000	100%	100%	100%	100%
24	LNTL15MAY1770.00CE	59.00	10000	9.00	10000	100%	100%	100%	100%
25	SIEM15MAY1410.00CE	70.67	15000	30.67	15000	100%	50%	100%	27%
26	STAC15JUN1260.00CE	74.39	59000	16.58	59000	100%	40%	100%	57%
27	STAC15MAY1230.00CE	66.45	110000	21.27	110000	100%	100%	100%	100%
28	STAC15MAY1290.00CE	45.00	90000	12.70	90000	100%	75%	100%	90%
29	SUNP15MAY1000.00PE	36.00	10000	16.00	10000	100%	100%	100%	100%
30	WOCK15MAY1920.00CE	140.50	20000	45.00	20000	100%	100%	100%	100%

6. From the above table, the following was noted with respect to the dealings of the Noticee:
   (a) The Noticee has executed non-genuine trades in thirty (30) contracts, and all the trades of the Noticee in all these contracts were non-genuine trades.
   (b) These non-genuine trades of the Noticee have significantly contributed to the total number of trades in the market in the above contracts, as much as 11% to 100% of the trades that took place in the aforementioned contracts were due to the non-genuine trades executed by the Noticee.
   (c) The entire volume of 16,52,500 units generated by the Noticee in all of the above contracts due to its alleged non-genuine trades was artificial and further, this alleged artificial volume, generated by the Noticee also contributed significantly to the extent of 3% to 100% of the total volume in the said contracts in the market.
   (d) These alleged non-genuine trades, executed by the Noticee in the above contracts had significant differential in buy rates and sell rates, considering that the trades were reversed on the same day.

7. The SCN issued to the Noticee was duly delivered. The Noticee vide letter dated December 26, 2018 requested for inspection of documents. Request of the Noticee was acceded to and vide letter dated June 10, 2019, the Noticee was granted an opportunity of inspection of documents which was completed on June 26, 2019. In the interest of principles of natural justice, the Noticee was granted an opportunity of personal hearing on August 08, 2019 vide hearing notice dated July 18, 2019. In the aforesaid hearing notice, the Noticee was also advised to submit its reply by August 06, 2019. The Noticee vide letter dated August 02, 2019 submitted the reply to the SCN. In its reply dated August 02, 2019 the Noticee *inter alia* made the following submissions:

i. *The Noticee denied all the allegations and observations against them in the Show Cause Notice.*

ii. *Noticee submitted that SEBI has not provided any evidence or proof to show that their trades were fraudulent. None of the ingredients of the said PFTUP Regulations are attracted in the present case essentially because:*
    a. *The trades were executed on the floor of the exchange with due compliance with all the rules and regulations of the exchanges;*
    b. *At no point of time was there any warning or any observation about the scrips / stocks which were executed by Noticee:*
    c. *The observations regarding the stocks being illiquid is incorrect;*
    d. *Even assuming the stocks were illiquid, then any small quantity or volumes would look significant as there are no active traders in the stock;*
    e. *For the transaction to be termed fraudulent, as per the definition of "fraud", there has to be an "inducement" and SEBI has not even alleged inducement:*
    f. *There is no nexus, directly or indirectly with the counter party brokers or the clients in the present matter and SEBI has not even alleged this;*
    g. *The trades in question were in the normal course of business and there is*

nothing amiss in the trades executed by Noticee;

h. *None of the trades are deceptive in nature or have any impact on the investors or their investment decision which is a sine qua non of* "fraud".

iii. *The Noticee submitted that serious allegation is made against Noticee that they have committed "'fraud" in securities market without even providing the investigation report or any cogent evidence in this regard. They crave leave to file further submissions as and when required during the course of present proceedings.*

iv. *That underlying stock of the stock options in which Noticee traded are highly liquid in nature i.e. frequently traded in market and most of which make index of BSE. Thus, to allege that Noticee deliberately traded in only those options which were illiquid in nature is unfair.*

v. *That the trades in illiquid stock options had no effect on other investors or market at large and that such illiquidity was the reason for volatility and alleged 'reversed' transactions since variations in option price was dramatic as the chosen strike price was thinly traded.*

vi. *That BSE and SEBI have allowed trading in options for 'far months' with a strike price which are at large variance to current market price. Since, regulators have themselves permitted trading in options, no adverse inference be drawn against Noticee in this regard.*

vii. *That the stock exchanges regularly come out with list of illiquid scrips in cash segment. However, no such list is issued by exchanges or regulator for dealing in stock options contracts. Thus, to fasten the responsibility or allege a single individual entity that it traded in* illiquid *option is unwarranted and unfair.*

viii. *That in most cases their trades were low percentage of market. Thus, it is erroneous to allege that Noticee trades created artificial volume on BSE. The impugned trades constituted only 0.04% of the total alleged artificial trades during investigation period.*

ix. *That there was no major movement in price of underlying scrip which itself proves that Noticee's trades had no impact on market. Thus, Noticee's transactions neither distorted the equilibrium in market nor caused any loss or prejudice to investors at large.*

x. *That any kind of alleged fictitious / manipulative trade in cash segment may create distorted impression in minds of investors that price of scrip is rising/falling who may invest/divest from the scrip. However, in case of option segment there is no such effect since each contract expires at the end of contract period and for every party who makes profit there is counter party who makes a loss. There is no question of transfer of beneficial ownership in option segment since at the end of settlement cycle only net loss/profit is adjusted. Therefore, allegation of creation of* 'artificial' *or* 'reversal' *trade is of no consequence in option segment of exchange.*

xi. *That the Noticee did not act in concert or in collusion with anyone and nor were they part of any group or connected with anyone for the purpose of influencing price or for any manipulative activity as alleged or otherwise.*

xii. *That all transactions have been carried out on the floor of stock exchange. Undisputedly, in case of screen-based trading, the automated system itself matches orders on a price time priority basis and hence, it is not possible for anybody to have access over identity of counter party. Since, the counter party identity is not displayed; one can never have any choice with whom it wants to deal or not to deal.*

xiii. *The Noticee cited the order passed in the matter of* ***Jagruti Securities*** *(2008 SCC online SAT 184) and* ***S.P.J Stockbroker Pvt Ltd*** *(2013 SCC Online SAT 67) wherein Hon'ble SAT held that such alleged trades cannot be treated as illegal* per se *unless there is some cogent connection between the counterparties or there is* "mischievous meeting of minds amongst certain parties". *Such element is completely absent in the present case.*

xiv. *The Noticee also cited Order dated May 18, 2012 passed by the Hon'ble SAT in matter of* ***Sanjay Agrawal vs. SEBI*** *wherein Hon'ble SAT observed that in order to establish an allegation of reversal trade between parties a cogent evidence or connection between the parties needs to be established. In the present case, no such connection is established in Show Cause Notice since none exist.*

xv. *That all the trades in option segment were within prudential norms of exchange and as per procedures and guidelines as prescribed by regulator (BSE). At the relevant time, none of the trades were questioned by the brokers who are SEBI registered intermediaries and frontline gate-keepers of stock exchange.*

xvi. *That there was nothing in the public domain that there is anything amiss in the matter. In fact, the surveillance system BSE could have annulled the trades at that point in time only in case it considered that the trades were fraudulent. However, this was not the case, which means that the trades executed by Noticee were genuine and fair.*

xvii. *That BSE, only recently vide Notice No. 20160308-33 dated March 08, 2016, announced that it has introduced measure for prevention of reversal trades in Equity Derivative Segment with effect from March 14, 2016. Merely because on-line preventive measure and check & balance did not exist at relevant point of time to avoid inadvertent reversal trades no adverse inference can be drawn against Noticee in this regard.*

xviii. *That not a single instance or observation on Noticee's specific role in alleged reversal is delineated in the Show Cause Notice. Such an approach is bad in law. The Noticee cited order passed by the Hon'ble Securities Appellate Tribunal in the matter of In the case of Commissioner of Central Excise, Bangalore ns M/s Brindavan Beverages (P) Ltd. and Ors [Civil Appeal 3417 of 2002] decided on June 15. 2007 wherein the Hon'ble Supreme Court observed that "We find that in the show cause notice there was nothing specific as to the* *role of the respondents, if any. The arrangements as alleged have not been shown to be within the knowledge or at the behest or with the connivance of the respondents".*

xix. *The Noticee stated that they acted as bonafide trader and have transacted in stock option segment in normal course of their business activity and their trading in the same was very much within its own financial and risk bearing capacity.*

xx. *That they have an impeccable record of dealing in stock market and no action has ever been taken against Noticee in the past in respect of dealing in securities market.*

xxi. *That they have followed and complied with all the procedures and requirements of capital market while dealing through SEBI registered intermediary. All the pretrade, trade and post trade activities were carried out on the trading, clearing and settlement system of stock exchange which itself has sophisticated online surveillance software and systems in place.*

8. Vide email dated August 08, 2019, the Authorized Representative of the Noticee (hereinafter referred to as '**AR**') sought for adjournment of the hearing. The request of the Noticee was acceded to and the Noticee was granted a final opportunity of hearing on August 19, 2019 vide email dated August 08, 2019. The AR vide email dated August 16, 2019 confirmed the attendance for the hearing. The AR attended the hearing on the scheduled date and reiterated the contents of the Noticee's reply dated August 02, 2019.

CONSIDERATION OF ISSUES

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

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

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

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

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

3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

(a) buy, sell or otherwise deal in securities in a fraudulent manner;

(b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;

(c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;

(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.

4. Prohibition of manipulative, fraudulent and unfair trade practices

(1) Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.

(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:—

(a) indulging in an act which creates false or misleading appearance of trading in the securities market;

11. The allegation against the Noticee is that, while dealing in the stock option contracts at BSE during the Investigation period, it had executed reversal trades which were allegedly non-genuine trades and the same have resulted in the generation of artificial volume in the stock option contracts at BSE. Reversal trades are considered to be those trades in which an entity reverses its buy or sell positions in a contract with subsequent sell or buy positions with the same counterparty during the same day. The said reversal trades are alleged to be non-genuine trades as they are not executed in the normal course of trading, lack basic trading rationale, lead to false or misleading appearance of trading in terms of generation of artificial volumes, and hence are deceptive & manipulative.

12. The Noticee has not disputed the facts of the case. Further, the trade log of the Noticee shows that he had traded in thirty (30) unique contracts in the stock options segment of BSE during the IP. It is observed that the Noticee had executed 113 non-genuine trades in all thirty (30) contracts. It is also seen that the above mentioned trades of the Noticee had resulted in the creation of artificial volume of a total of 16,52,000 units in the said thirty (30) contracts and the said trades have also resulted in a close out difference of approximately ₹ 3,05,65,000 against the Noticee. Summary of the trades of the Noticee is provided in **Table - A** at para 5 above of this order.

13. I note from the trade log that the trades executed by the Noticee were reversed within a short span of time. One of the instances is illustrated in **Table – B**.

Table – B

Sl.	Date	Buyer	Seller	Buy Order Time	Sell Order Time	Trade Time	Trade Rate (₹)	Trade Quantity	Premium Value
1	25/03/2015	Airspace Infrastructure Private Limited	A One Steel And Alloys Private Limited	15:03:42	15:03:41	15:03:42	72	5000	3,60,000
2	25/03/2015	A One Steel And Alloys Private Limited	Airspace Infrastructure Private Limited	15:03:47	15:03:47	15:03:47	22	5000	1,10,000

3	25/03/2015	Airspace Infrastructure Private Limited	A One Steel And Alloys Private Limited	15:03:54	15:03:53	15:03:54	63	5000	3,15,000
4	25/03/2015	A One Steel And Alloys Private Limited	Airspace Infrastructure Private Limited	15:03:58	15:03:58	15:03:58	27	5000	1,35,000
		Total						**20,000**	**9,20,000**

As brought out in the above table, the Noticee on March 25, 2015, at 15:03:42 hrs entered into 1 buy trade with counterparty viz., A One Steel And Alloys Private Limited for 5,000 units each at rate of ₹ 72 per unit in the contract "DRRL15MAY3350.00PE". Thereafter, on the same day, the Noticee at 15:03:47 hrs entered into 1 sell trade with the same counterparty for 5,000 units at the rate of ₹ 22 per unit in the same contract. It is noted that while dealing in the said contract during the IP, the Noticee executed a total of four (4) reversal trades (2 buy trades + 2 sell trades) with the same counterparty viz. A One Steel and Alloys Private Limited, on the same day and with significant price differential in the buy and sell rate. Thus, the Noticee, through his dealing in the contract viz. "DRRL15MAY3350.00PE" during the IP, executed four (4) non-genuine trades which is 29% of the total trades from the market in the said contract during the IP, and thereby, the Noticee generated artificial volume of 20,000 units which is 20% of the volume traded in the said contract in the market during the IP.

14. The non-genuineness of these transactions executed by the Noticee is evident from the fact that there was no commercial basis as to why, within a short span of time, the Noticee reversed the position with his counterparties with significant price difference. I note from the trade log of the Noticee that the time taken by the Noticee for reversing his non-genuine trades ranged from 4 seconds to 1 minute 5 seconds. The Noticee has further argued that it traded in the stock options on trading platform of the stock exchange which is provided by the stock exchange and approved by SEBI, and its orders were matched in the normal course and not by any deliberate attempt or design. However, the fact that the transactions in a particular contract were reversed consistently with the same counterparties

indicates a prior meeting of mind with a view to execute the reversal trades at a pre-determined price. These trades were done in illiquid option contracts, where there were no other trades and hence, there was no price discovery in the strictest terms. The wide variation in the prices of the said contracts, within a short span of time, is a clear indication that there was pre-determination in the prices by the counterparties while executing the trades. Thus, it is observed that the Noticee had indulged in reversal trades with its counterparties in the stock options segment of BSE and the same were non-genuine trades.

15. The Noticee has inter alia stated that there is no connection established between him and the counter party. In this regard, I note that direct evidence is not forthcoming in the present matter as regards the meeting of minds or collusion of the Noticee with other entities. The Noticee has made reference of certain case laws decided by the Hon'ble Securities Appellate Tribunal (SAT) viz. Sanjay Agrawal vs. SEBI, and also in the matter of Jagruti Securities (2008 SCC online SAT 184) and S.P.J. Stockbroker Pvt. Ltd. (2013 SCC Online SAT 67). However, I note that the trading behaviour of the Noticee makes it clear that the aforesaid non-genuine trades could not have been possible without meeting of minds at some point. In this context, I deem it appropriate to refer to the Hon'ble SAT order dated July 14, 2006, in the case of Ketan Parekh vs. SEBI (Appeal no. 2/2004), wherein the Hon'ble SAT has observed that - *"The nature of transactions executed, the frequency with which such transactions are undertaken, the value of the transactions, the conditions then prevailing in the market are some of the factors which go to show the intention of the parties. This list of factors, in the very nature of things, cannot be exhaustive. Any one factor may or may not be decisive and it is from the cumulative effect of these that an inference will have to be drawn."*

16. The Noticee also cited observation of the Hon'ble Supreme Court in the matter of Commissioner of Central Excise, Bangalore vs. M/s Brindavan Beverages (P) Ltd. and Ors [Civil Appeal 3417 of 2002] wherein the SC has observed

"We find that in the show cause notice there was nothing specific as to the role of the respondents, if any. The arrangements as alleged have not been shown to be within the knowledge or at the behest or with the connivance of the respondents".

In this regard I note that the charges alleged against the Noticee are explicitly mentioned in the SCN, issued to the Noticee and therefore the contention of the Noticee is devoid of any merit.

17. It is not mere coincidence that the Noticee could match his trades consistently with the same counterparties with whom it had undertaken the first leg of the respective trades. This is the outcome of meeting of their minds elsewhere and it was a deliberate attempt to deal in such a fashion. Here I would like to rely on the judgment of Hon'ble Supreme Court in SEBI v Kishore R Ajmera (AIR 2016 SC 1079), wherein it was held that-"…*in the absence of direct proof of meeting of minds elsewhere in synchronized transactions, the test should be one of preponderance of probabilities as far as adjudication of civil liability arising out of the violation of the Act or provision of the Regulations is concerned. The conclusion has to be gathered from various circumstances like that volume of the trade effected; the period of persistence in trading in the particular scrip; the particulars of the buy and sell orders, namely, the volume thereof; the proximity of time between the two and such other relevant factors. The illustrations are not exhaustive..."*

18. The Hon'ble Supreme Court further observed in the same matter that – *"It is a fundamental principle of law that proof of an allegation levelled against a person may be in the form of direct substantive evidence or, as in many cases, such proof may have to be inferred by a logical process of reasoning from the totality of the attending facts and*

circumstances surrounding the allegations/charges made and levelled. While direct evidence is a more certain basis to come to a conclusion, yet, in the absence thereof the Courts cannot be helpless. It is the judicial duty to take note of the immediate and proximate facts and circumstances surrounding the events on which the charges/allegations are founded and to reach what would appear to the Court to be a reasonable conclusion therefrom. The test would always be that what inferential process that a reasonable/prudent man would adopt to arrive at a conclusion."

19. Further, I place my reliance on the judgment of Hon'ble Supreme Court in the matter in respect of SEBI v Rakhi Trading Private Limited (Civil Appeal Nos. 1969, 3174-3177 and 3180 of 2011 decided on February 8, 2018), in which the Hon'ble Supreme Court observed that - *"Considering the reversal transactions, quantity, price and time and sale, parties being persistent in number of such trade transactions with huge price variations, it will be too naive to hold that the transactions are through screen-based trading and hence anonymous. Such conclusion would be over-looking the prior meeting of minds involving synchronization of buy and sell order and not negotiated deals as per the board's circular. The impugned transactions are manipulative/deceptive device to create a desired loss and/or profit. Such synchronized trading is violative of transparent norms of trading in securities….."*

20. The trading behaviour of the Noticee confirms that such trades were not normal and the wide variation in prices of the trades in the same contract in a short time without any basis cumulatively indicate that the trades executed by the Noticee were not genuine trades and created an appearance of artificial trading volumes in respective contracts. In view of the above, I find that the allegation of violation of Regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of PFUTP Regulations by the Noticee stands established. The Hon'ble Supreme Court of India in the matter of SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC) held that - *"In our considered opinion, penalty is attracted as soon as the contravention of the statutory*

obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant…".

21. I note that the Noticee has *inter alia* stated that copies of all the documents including investigation report, sought for by the Noticee, were not provided to it. However, it is seen that the documents relied upon in the instant proceedings with respect to the Noticee, i.e. trade logs depicting the non-genuine trades and the trades of the Noticee in the stock option segment in BSE have already been provided to the Noticee (Annexure 2 & 3 of the SCN).

22. Therefore, I am convinced that it is a fit case for imposition of monetary penalty on the Noticee under the provisions of Section 15HA of the SEBI Act, which reads as under:

<u>SEBI Act</u>

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.

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

Factors to be taken into account by the adjudicating officer.

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

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to an investor or group of investors as a result of the default;

(c) the repetitive nature of the default.

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

24. It is worth considering that entities involved in these non-genuine trades have either booked gains or losses. Hence, it would be appropriate to consider the impact of these transactions between the two counterparties in totality. When the impact of artificial volume created by the two counterparties is seen as a whole, it is not possible from the material on record to quantify the amount of disproportionate gain or unfair advantage resulting from the artificial trades between the counter parties or the consequent loss caused to investors as a result of the default. The Noticee has entered into 113 non-genuine transactions in thirty (30) stock option contracts in violation of the provisions of law, as brought out above, which demonstrates the repetitive nature of the default on its part.

<u>ORDER</u>

25. Having considered all the facts and circumstances of the case, the material available on record, the factors mentioned in Section 15J of the SEBI Act and in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose a penalty of ₹

6,00,000/- (Rupees Six Lakh only) on the Noticee viz. Airspace Infrastructure Private Limited under the provisions of Section 15HA of the SEBI Act.

26. I am of the view that the said penalty is commensurate with the lapse/omission on the part of the Noticee. The amount of penalty shall be paid by way of demand draft in favour of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai, within 45 days of receipt of this order.

27. The said demand draft should be forwarded to “The Division Chief, Division of Regulatory Action-1, Enforcement Department (EFD1 – DRA I), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C – 7, “G” Block, Bandra Kurla Complex, Bandra (E), Mumbai –400 051” along with the details (in the format as given in table below):

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)	

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

29. Payment can also be made online by following the below path at SEBI website www. sebi.gov.in: ENFORCEMENT ->Orders->Orders of AO ->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 being sent to the Noticee viz. Airspace Infrastructure Private Limited and also to the Securities and Exchange Board of India.

Date: August 26, 2019	**Dr. ANITHA ANOOP**
Place: Mumbai	**CHIEF GENERAL MANAGER &**
	ADJUDICATING OFFICER