BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO.: ORDER/GR/KG/2019-20/3419]

ORDER UNDER SECTION 15-I OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992, READ WITH RULE 5 OF THE SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995, IN THE ADJUDICATION PROCEEDINGS INITIATED AGAINST ENPAR FORTUNE PRIVATE LIMITED (PREVIOUSLY KNOWN AS FORTUNE INVESTMENTS AND FINANCE INDIA PRIVATE LIMITED) [PAN: AAACF1615K] IN THE MATTER OF ITS DEALINGS IN ILLIQUID STOCK OPTIONS AT THE BSE LIMITED.

BACKGROUND

1. Securities and Exchange Board of India (hereinafter be referred to as, the "SEBI") conducted investigation into the trading activity in illiquid stock options on BSE Limited (hereinafter be referred to as, the "BSE") for the period April 01, 2014 to September 30, 2015 (hereinafter be referred to as, the "**Investigation Period**") after observing large scale reversal of trades in the Stock Options segment of the BSE. Pursuant to the said investigation, SEBI initiated adjudication proceedings against ENPAR Fortune Private Limited (previously known as Fortune Investments and Finance India Private Limited) (hereinafter referred to as **"Noticee"**) for the alleged violation of the provisions of Regulation 3 (a), (b), (c), (d) and 4 (1), 4 (2) (a) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as **"PFUTP Regulations"**) by carrying out alleged reversal of trades in illiquid stock options at BSE with same entities on the same day. It was alleged that these reversal

of trades of the Noticee were non-genuine in nature and had created false and misleading appearance of trading in terms of artificial volumes in the stock options segment of BSE.

2. Investigation revealed that during the Investigation Period, a total of 2,91,643 trades comprising 81.38% of all the trades executed in the BSE Stock Options Segment were trades which involved reversal of buy and sell positions by the clients and counterparties in a contract. The Noticee was one such client whose reversal trades involved squaring off open positions with a significant difference without any basis for such change in the contract price. The aforesaid reversal trades allegedly resulted into generation of artificial volumes, leading to allegations that the Noticee had violated Regulation 3(a), (b), (c), (d) and Regulation 4(1), 4(2) (a) of the PFUTP Regulations.

APPOINTMENT OF ADJUDICATING OFFICER

3. Initially, Shri Biju. S was appointed as the Adjudicating Officer **(AO)** by SEBI, under Section 19 read with Section 15-I (1) of the SEBI Act, 1992 (hereinafter, referred to as **"SEBI Act"**) and Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter, referred to as **"SEBI Adjudication Rules 1995"**) to conduct adjudication proceedings inter-alia in respect of the Noticee, in the manner specified under Rule 4 of the SEBI Adjudication Rules, 1995 read with Section 15-I (1) and (2) of the SEBI Act, and if satisfied that penalty is liable, to impose such penalty deemed fit in terms of Rule 5 of the SEBI Adjudication Rules 1995 and Section 15HA of the SEBI Act. Subsequently, Shri Satya Ranjan Prasad was appointed as the AO by SEBI, on July 06, 2018, in the place of Shri Biju. S. Thereafter, the undersigned was appointed the AO in the instant matter, communicated vide order dated May 22, 2019. These proceedings are therefore been carried forward where they had been left off by the previous AO, and an opportunity of personal hearing was grated as detailed hereinafter.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. Show Cause Notice dated September 24, 2018 (hereinafter referred to as **"SCN"**) was issued to the Noticee in terms of Rule 4 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as **"Adjudication Rules"**) read with Section 15-I of the SEBI Act, to show cause as to why an inquiry should not be initiated and penalty should not be imposed under Section 15HA of the SEBI Act, on the Noticee for the alleged violation of Regulation 3 (a), (b), (c), (d) and 4 (1), 4 (2) (a) of PFUTP Regulations. The allegations levelled against the Noticee in the SCN are summarized as below:

a) That the Noticee was one of the entities which indulged in reversal trades which allegedly created false and misleading appearance of trading, generating artificial volumes in Stock Options segment of the BSE during the Investigation Period.

b) That the Noticee traded in 9 unique contracts executing 55 non genuine trades which led to generation of artificial volume of total 56,31,500 units in these contracts.

c) The trades entered by the Noticee were reversed on the same day with same counterparties at a substantial price difference without any basis for significant change in the contract price which indicates that these trades are artificial and are non-genuine in nature.

d) A summary of dealings of the Noticee in in 9 Stock Options contracts in which it allegedly executed non genuine trades during the investigation period, is as follows:

Table – Summary of dealings of Noticee in contracts wherein he executed non genuine trades

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 Entity 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	EXID15MAR165.00CEW3	11.30	262000	20.98	262000	100%	62%	100%	74%
2	GAIL15MAR400.00PEW3	14.96	750000	26.85	750000	100%	100%	100%	100%
3	HNZL15MAR195.00PEW3	19.25	312000	34.00	312000	100%	33%	100%	71%
4	INCM15MAR120.00PEW3	21.74	178000	35.60	178000	100%	19%	100%	11%
5	IRBI15MAR260.00PEW3	22.65	324000	37.60	324000	100%	100%	100%	100%
6	ONGC15MAR290.00CEW3	11.60	310000	22.42	310000	100%	50%	100%	62%
7	PNBK15MAR190.00PEW3	12.80	223750	24.30	223750	100%	78%	100%	93%
8	TITA15MAR430.00PEW3	19.00	145000	39.20	145000	100%	100%	100%	100%
9	UBIL15MAR150.00CEW3	12.10	311000	20.18	311000	100%	29%	100%	31%

e) By indulging in execution of aforesaid non-genuine reversal trades, the Noticee has violated Regulations 3(a),(b),(c),(d) and 4(1), 4(2)(a) of the PFUTP Regulations.

5. Noticee, vide its reply dated November 12, 2018, *inter alia* refuted the allegations contained in the SCN and further sought a list of documents, including a copy of the investigation report. According to the notice, all such documents were essential for it to formulate its reply to the allegations contained in the said SCN.

6. Pursuant to the transfer of these proceedings, after considering the facts and circumstances of the case, the undersigned granted an opportunity of personal hearing to the Noticee on June 13, 2019 vide Notice of Hearing dated May 31, 2019. Vide the said notice of hearing, the Noticee was *inter alia* informed that all the documents relied upon including trade and order logs for the alleged non-genuine trades have already been provided along with the SCN and no documents shall be relied upon unless it is given a copy thereof and also given opportunity to explain the circumstances appearing against it. Thereafter, on June 13, 2019, the Noticee was represented before the undersigned by Mr. Pulkit Sharma and Mr. Jitendra Sharda, Advocates. The representatives of the Noticee made oral submissions as well as filed a detailed written submissions dated June 11, 2019. The submissions of the Noticee are summarized as follows:

a. The submissions made vide earlier replies were reiterated to state that the trades of the Noticee did not cause any prejudice to the investors at large, primarily due to the fact the Noticee itself had contributed 100% of the trades in some of the stock option contracts.

b. The definition of "fraud" under the PFUTP Regulations contains "inducement" as an important factor and also there is no evidence of any person(s) being induced by the Noticee's trades.

c. All documents pertaining to the large scale reversal of trades in the stock options segment of BSE, as alleged in the SCN have not been provided to the Noticee including the investigation report of SEBI in the matter.

d. There is no basis for arriving at the conclusion that the Noticee had created artificial volume in the stock options segment.

e. The SCN does not make out a case as to how the Noticee was connected to the counter parties to its trades in order to carry out the alleged non-genuine trades. Trades were carried out *bona fide* on the anonymous electronic trading system of the stock exchange and the Noticee had no means to know who the counter parties were.

f. The trades executed by the Noticee, even if held to be synchronized, is not illegal *per se* for being so. In this regard the judgments of the Hon'ble Securities Appellate Tribunal (hereinafter referred to as "SAT") in *Jagruti Securities* and *Vintel Securities* have been cited to establish that synchronized trades are not *per se* illegal.

g. SEBI has charged only the Noticee for the alleged trades and not the counter parties to the trades of the Noticee who are equally responsible for the said transactions.

h. The Noticee had traded in the options without any fraudulent intentions.

i. The quantum of trades executed by the Noticee was too small to affect the volume of trades in the options segment. Further, there is no evidence to suggest that any prejudice has been caused to the investors by the trades executed by the Noticee.

j. The judgment of the Hon'ble Supreme Court in *Rakhi Trading* case is not applicable to the instant case inasmuch as the Noticee in the instant case has not continued to trade despite suffering losses but on the contrary, has actually earned profit from the trades which is constitutes a sound economic rationale for executing such trades.

It is important to note that the Noticee in its aforesaid submissions (at page number 33) has expressly admitted that it had carried out the alleged trades.

ISSUES FOR CONSIDERATION AND FINDINGS

7. Before proceeding with the consideration of issues, I note that there is a preliminary objections raise by the Noticee which ought to be settled. The issue relates to supply of documents and the Noticee has submitted that in the interest of natural justice such documents as sought in its reply dated November 12, 2018 must be given to it. I note that the SCN included various annexures which indicated that total trading of the Noticee on BSE Stock option segment, the details of alleged reversal trades and a summary of the aforesaid reversal trades. In a matter like the current one, wherein the allegation originates

from reversal of trades in illiquid stock options, the only material to be relied on is the reversal trading done by the Noticee in the options segment. The relevant extracts of the investigation report are also included in the SCN and no reliance has been placed on any other material. I see no purpose of the documents sought by Noticee as the primary trade data is crucial information on which the entire case is based.

8. I have carefully perused the SCN, the documents / material available on record and submissions of the Noticee. The issues that arise for consideration in the present case are:

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

2) Whether the Noticee is liable for imposition of monetary penalty under Section 15HA of the SEBI Act?

3) If yes, then what should be the quantum of monetary penalty?

9. It is pertinent to mention here the relevant provisions of Regulation 3 (a), (b), (c), (d) and 4 (1), 4 (2) (a) of PFUTP Regulations, allegedly violated by the Noticee :-

Regulation 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."

Regulation 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. I note that the allegations levelled in the SCN are mainly to the effect that the Noticee has created false and misleading appearance of trading in terms of artificial volumes in the stock options segment of BSE by way of reversal of trades in illiquid stock options earning a profit of Rs. 3,47,33,900/- (approx.) and thereby the Noticee violated the provisions of Regulation 3 (a), (b), (c), (d) and 4 (1), 4 (2) (a) of PFUTP Regulations.

11. Reversal trades have been considered as those trades in which an entity reverses it's 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 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, are 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.

12. Pursuant to investigations, it was observed that during the investigation period, 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 investigation period.

13. Further, it was observed that said non-genuine trades were not restricted to any specific contract or between any specific set of entities. It was observed that the Noticee was one of the various entities which were allegedly indulged in execution of non-genuine trades in Stock Options Segment of BSE during the investigation period. As regards all the dealings of the Noticee in the Stock Options segment of BSE during the investigation period, it was observed that the Noticee had traded in total 9 unique contracts, from which it allegedly executed 55 non-genuine trades in 9 contracts, which resulted in artificial volume of total 56,31,500 units earning a profit of Rs. 3,47,33,900/- approximately.

14. Summary of dealings of the Noticee in the said 9 Stock Options contracts, in which it executed non-genuine trades during the investigation period, is as follows:

S. No.	**Contract name**	**Average Buy rate**	**Buy Quantity**	**Average Sell rate**	**Sell Quantity**	**Number of non genuine trades executed by Entity in the Contract**	**Total number of trades executed by the Entity in the Contract**	**Total number of trades executed in the contract**	**Artificial volume generated by Entity in the Contract**	**% of Non Genuine trades of Entity in the contract to Entity's Total trades in the Contract**	**% of Non Genuine trades of Entity in the contract to Total trades in the Contract**	% of Artificial Volume generated by Entity in the contract to Entity's Total Volume in the Contract	% of Artificial Volume generated by Entity in the contract to Total Volume in the Contract
1	EXID15MAR165.00CEW3	11.30	262000	20.98	262000	8	8	13	524000	100%	62%	100%	74%
2	GAIL15MAR400.00PEW3	14.96	750000	26.85	750000	7	7	7	1500000	100%	100%	100%	100%
3	HNZL15MAR195.00PEW3	19.25	312000	34.00	312000	3	3	9	624000	100%	33%	100%	71%
4	INCM15MAR120.00PEW3	21.74	178000	35.60	178000	7	7	37	356000	100%	19%	100%	11%

S. No.	Contract name	Average Buy rate	Buy Quantity	Average Sell rate	Sell Quantity	Number of non genuine trades executed by Entity in the Contract	Total number of trades executed by the Entity in the Contract	Total number of trades executed in the contract	Artificial volume generated by Entity in the Contract	% of Non Genuine trades of Entity in the contract to Entity's Total trades in the Contract	% of Non Genuine trades of Entity in the contract to Total trades in the Contract	% of Artificial Volume generated by Entity in the contract to Entity's Total Volume in the Contract	% of Artificial Volume generated by Entity in the contract to Total Volume in the Contract
5	IRBI15MAR260.00PEW3	22.65	324000	37.60	324000	3	3	3	648000	100%	100%	100%	100%
6	ONGC15MAR290.00CEW3	11.60	310000	22.42	310000	4	4	8	620000	100%	50%	100%	62%
7	PNBK15MAR190.00PEW3	12.80	223750	24.30	223750	7	7	9	447500	100%	78%	100%	93%
8	TITA15MAR430.00PEW3	19.00	145000	39.20	145000	9	9	9	290000	100%	100%	100%	100%
9	UBIL15MAR150.00CEW3	12.10	311000	20.18	311000	7	7	24	622000	100%	29%	100%	31%

15. From the details in the above table, following is noted as regards to dealings of the Noticee in said 9 contracts:

a) In all the above 9 contracts, all the trades executed by Noticee were non-genuine trades.

b) No. of non-genuine trades of Noticee has significantly contributed to the total no. of trades from the market in the above contracts, as a substantial 19% to 100% of the trades happened in the said 9 contracts were due to non-genuine trades executed by the Noticee.

c) A substantial 100% of volume generated by the Noticee in all the said 9 contracts was artificial volume, and the artificial volume generated by the Noticee contributed to significant 11% to 100% of the total volume from the market in said 9 contracts.

d) 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.

16. For the purpose of understanding, the trading pattern of the Noticee in the aforementioned 9 contracts in respect of non-genuine trades and artificial volume created by the Noticee, are illustrated through the dealings of the Noticee in the contract viz, **"IRBI15MAR260.00PEW3"** as under:

a) During the investigation period, total 3 trades for 6,48,000 units were executed in the said contract on 19/03/2015, wherein Noticee was party to all the said trades.

b) While dealing in the said contract on 19/03/2015, Noticee at 13:44:37 hrs entered into 1 sell trade with counter party viz, ALTIS PROPERTIES for 3,24,000 units at rate of Rs. 37.60 per unit. Thereafter, on the same day, within 23 minutes from the above trade, Noticee, during 14:07:28 hrs to 14:07:37 hrs entered into 2 buy trades with same counterparty for total 3,24,000 units at average rate of Rs. 22.65 per unit.

c) From the above, it is noted that while dealing in the said contract during the investigation period, Noticee executed total 3 reversal trades (2 buy trades + 1 sell trade) with same counterparty viz, ALTIS PROPERTIES on the same day and with significant price differential in buy and sell rate.

d) Thus, Noticee, through its dealing in the contract viz, "IRBI15MAR260.00PEW3" during the investigation period, executed 3 non genuine trades which is 100% of the total trades from the market in the said contract during the investigation period, and thereby, Noticee generated artificial volume of 6,48,000 units which is 100% of the volume traded in the said contract from the market during the investigation period.

It is pertinent to note that the Noticee in its written submissions dated June 11, 2019, has expressly admitted the execution of the aforementioned trades.

17. From the above trading pattern of the Noticee, I note that the Noticee had bought and sold option contracts with the same counter parties and also reversed its trades on the same day, from its earlier buy / sell trades, at substantial price difference without any actual basis for the same. The non-genuineness of these transactions executed by the Noticee is evident from the fact that there was no commercial basis as to why, within a short span of time, the Noticee reversed the position with its counterparties with significant price difference. I note from the trade log of the Noticee that the time taken by the Noticee for reversing its non-genuine trades ranged from 81 seconds to 23 minutes. Such pattern of dealings suggests that they were not driven by the market parameters like underlying stock price, volatility, etc.

18. The aforementioned reversal trades were carried out by the Noticee in an illiquid Stock Options contracts where there was no participation of public. Reversal trades were undertaken by the Noticee with his counterparty 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. In this context, the observation of the Hon'ble Supreme Court in ***SEBI vs. Rakhi Trading Private Ltd***., in Civil appeals no., 1969 of 2011 with Civil Appeal Nos., 3174-3177 of 2011 and Civil Appeal No., 3180 of 2011 decided on February 8, 2018 (hereinafter referred to as "Rakhi Trading case") case is reproduced herein below with respect to the genuineness of trades in the securities market:

"*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.*" [Emphasis supplied]

19. Investigation has shown amount of profit / loss of the counterparties to the trades as a result of such non-genuine trades. Considering that the violation by the Noticee is creation of artificial trading volumes by trading between two counterparties and wider market is not involved in the trades, the trades are such that one of the counterparty books a profit while the other counterparty books a loss. Hence, it would be appropriate to consider the impact of these transactions between the counterparties in totality. When the impact of artificial volumes created by the two counterparties is seen as a whole, the making loss or profit is immaterial as the charge in this case is of creating false or misleading appearance of trading in the aforementioned contract.

20. Further, the Noticee has also denied any allegation of collusion with the counter party or any knowledge of the counter parties. In this regard, I note that in the screen based trading, the manipulative or fraudulent intent can be inferred from various factors such as conduct of the party, pattern of transactions, etc. Further, in the absence of direct proof of meeting of minds, the conclusion can be derived from various circumstances like volume of trade, period of persistence of trading, particulars of buy and sell orders, proximity of time and such other relevant factors. In this regard, it is 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, Hon'ble SAT has observed that: *"… in order to find out whether a transaction has been executed with the intention to manipulate the market or defeat its mechanism, will depend upon the intention of the parties which could be inferred from the attending circumstances of the cases, because direct evidence in such cases may not be available."*

21. In line with the aforesaid findings of Hon'ble SAT, I note that the trading pattern of the Noticee in terms of volume of reversal trades, proximity of buy/sell and subsequent reversal evidences the indulgence of the Noticee beyond a reasonable doubt of the manipulative intent in creation of artificial volume. The trading behaviour of the Noticee confirms that such trades were not normal and wide variation in prices of the trades in the same contract in a short time without any basis for such wide variation, all indicate

that the trades executed by the Noticee were not genuine trades and being non-genuine, created an appearance of artificial trading volumes in respective contracts. Further, consistent pattern of dealings by Noticee in such options contracts which are illiquid clearly demonstrates that the manipulative intent to use stock exchange platform to carry out non-genuine trades.

22. Further, with respect to the reversal of trades carried out by the Noticee, I note that the Hon'ble Supreme Court in *Rakhi Trading* case had observed that "the price discovery system itself was affected by synchronization and rapid reverse trade, which also had the impact of excluding other investors from participating in the market. The Supreme Court, therefore found that the traders having engaged in a fraudulent and unfair trade practice while dealing in securities, are hence liable to be proceeded against for violation of Regulations 3(a), 4(1) and 4(2)(a) of PFUTP Regulations". The Apex Court also observed that *"considering the reversal transactions, quantity, price and time and sale, parties being persistent in the number of such trade transactions with huge price variations, it will be too naïve 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."*

The Hon'ble Supreme Court had further observed in the said judgment at Paragraph no. 41 that:

"According to SAT, only if there is market impact on account of sham transactions, could there be violation of the PFUTP Regulations. We find it extremely difficult to agree with the proposition. As already noted above, SAT has missed the crucial factors affecting the market integrity, which may be direct or indirect. The stock market is not a platform for any fraudulent or unfair trade practice. The field is open to all the investors. By synchronization and rapid reverse trade, as has been carried out by the traders in the instant case, the price discovery system itself is 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."

Therefore, it is not important to ascertain if any actual prejudice has in fact been caused to any investor(s) due to the deceptive and non-genuine trades executed by the Noticee as long as it can be established that the nature of the trades executed by the Noticee were fraudulent in nature.

23. The observation of the Hon'ble Supreme Court in *Rakhi Trading* case, on whether such reversal of trades as has been detailed above, constitutes "fraud" under PFUTP Regulations, is reproduced herein below:

"Regulation 2(1)(c) defines fraud. Under Regulation 2(1) (c)(2) a suggestion as to a fact which is not true while he does not believe it to be true is fraud. Under Regulation 2(1) (c)(7), a deceptive behaviour of one depriving another of informed consent or full participation is fraud. And under Regulation 2(1)(c)(8), a false statement without any reasonable ground for believing it to be true is also fraud. In a synchronised and reverse dealing in securities, with predetermined arrangement to book loss or gain between pre-arranged parties, all these vices are attracted."

Therefore, as already discussed in details above, the trading pattern of the Noticee squarely meets all the elements of "fraud" under section 2(1)(c) of the PFUTP Regulations as observed by the Hon'ble Supreme Court and cited immediately above. Further in the same case, it was observed (per B. Banumathi, J. at paragraph no. 36) that:

"*If the factum of manipulation is established, it will necessarily follow that the investors in the market have been induced to buy or sell and that no further proof in this regard is required. The market, as already observed, is so widespread that it may not be humanly possible for the Board to track the persons who were actually induced to buy or sell securities as a result of manipulation and the Board cannot be imposed with a burden which is impossible to be discharged.*"

Therefore, having already established that the trades of the Noticee were fraudulent in nature, it is not necessary to establish if such trades have actually induced any investor(s).

24. Therefore, in view of the judgement of the Hon'ble Supreme Court in *Rakhi Trading* case (relevant portions whereof have already been cited above), I hold that the scheme, plan, device and artifice employed by the Noticee in this case of executing reversal trades in illiquid stock options contracts at irrational, unrealistic and unreasonable prices, tantamount to fraud on the securities market inasmuch as it involves non-genuine/ manipulative transactions in securities and misuse of the securities market mechanism. I also note that the aforesaid trades of the Noticee were non-genuine and have created false or misleading appearance of trading in terms of artificial volume in stock options and therefore manipulative and deceptive in nature. Further, it cannot be ignored that synchronization of trades in pre-determined manner had an adverse impact on the fairness, integrity and transparency in the securities market. The non-genuine and deceptive transactions of the Noticee as discussed herein above were "fraudulent", as defined under regulation 2 (1) (c) of PFUTP Regulation and have violated the provisions of Regulations 3 (a), (b), (c), (d) and 4 (1), 4 (2) (a) of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, Regulations, 2003.

25. At this juncture, reliance is placed upon the Order of the Hon'ble Supreme Court in the matter of Chairman, *SEBI Vs Shriram Mutual Fund* {[2006] 5 SCC 361} where 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…..*"

26. The aforesaid violation of PFUTP Regulations by the Noticee attract monetary penalty under Section 15HA of the SEBI Act, which at the time of the violation committed by the Noticee, *inter-alia* reads as follows:

[**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].

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

"**15J - Factors to be taken into account by the adjudicating officer**

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

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

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

(c) the repetitive nature of the default

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

28. In the instant case, it is not possible from the material on record to quantify the amount of disproportionate gain or unfair advantage resulting from the non-genuine trades between the counter parties or the consequent loss caused to investors as a result of the default. However, it is worth considering that entities involved in these non-genuine trades have either booked gains or loss and the gains or loss appears to be of notional in nature. Generally, there is nil or negligible participation of the public in the trading in illiquid stock option contracts. Investigation has shown amount of profit / loss of the counterparties to

the trades as a result of such non-genuine trades. However, considering that the violation by the Noticee is creation of artificial trading volumes by trading between two counterparties and wider market is not involved in the trades, the trades are such that one of the counterparty books a profit while the other counterparty books a loss. Hence, it would be appropriate to consider the impact of these transactions between the two counterparties in totality. The Noticee had executed trades on total 9 unique contracts, from which it allegedly executed 55 non-genuine trades, which resulted in artificial volume of total 56, 31,500 units. The number of non-genuine trades of Noticee has significantly contributed to the total no. of trades from the market in the above contracts, as a substantial 19% to 100% of the trades happened in the said 9 contracts were due to non-genuine trades executed by the Noticee. A substantial 100% of volume generated by the Noticee in all the said 9 contracts was artificial volume, and the artificial volume generated by the Noticee contributed to significant 11% to 100% of the total volume from the market in said 9 contracts.

ORDER

29. After Taking into consideration the nature and gravity of the charges established in the preceding paragraphs, factors mentioned under 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 SEBI Adjudication Rules, I hereby impose a penalty **of Rs. 5,00,000/- (Rupees Five Lakhs Only)** on the Noticee viz. ENPAR Fortune Private Limited (previously known as Fortune Investments and Finance India Private Limited) in terms of Section 15HA of the SEBI Act, for the violation of the provisions of Regulations 3 (a), (b), (c), (d) and 4 (1), 4 (2) (a) of PFUTP Regulations for indulging in execution of reversal trades in Stock Options with same entities on the same day, thereby creating artificial volume, leading to false and misleading appearance of trading in the illiquid stock options at BSE.

30. The amount of penalty shall be paid either by way of demand draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, or by e-payment in the

account of "SEBI - Penalties Remittable to Government of India", A/c No. 31465271959, State Bank of India, Bandra Kurla Complex Branch, RTGS Code SBIN0004380 within 45 days of receipt of this Order. The said demand draft or forwarding details and confirmations of e-payments made (in the format as given in table below) should be forwarded to "The Division Chief (Enforcement Department-DRA-I), the Securities and Exchange Board of India, SEBI Bhavan, Plot No. C4 – A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051."

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

31. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, SEBI may initiate consequential actions including but not limited to recovery proceedings 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

32. In terms of Rule 6 of the Adjudication Rules, 1995, copy of this Order is sent to the Noticee and also to the Securities and Exchange Board of India.

Date : June 18, 2019 **G. RAMAR**
Place : Mumbai **ADJUDICATING OFFICER**