BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER/SS/AS/2019-20/4157]

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 respect of:

Greencrest Financial Services Limited
(PAN: AACCM1906E)
8, Ganesh Chandra Avenue,
1st Floor, "Saha Court",
Kolkata – 700013 (WB)

In the matter of Dealing in Illiquid Stock Options at the BSE

1. Securities and Exchange Board of India ('SEBI') observed large scale reversal of trades in the stock options segment of the BSE Limited (hereinafter be referred to as 'BSE') and, pursuant to this, it conducted investigation into the trading activities of certain entities in illiquid stock options at the BSE for the period April 01, 2014 to September 30, 2015 (hereinafter be referred to as 'the Investigation Period'). Investigation revealed that during the Investigation Period, a total of 2,91,643 trades (comprising 81.38% of all the trades executed in the stock options segment of BSE) involved reversal of buy and sell positions by the clients and counterparties in a contract. These alleged 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 further noted that said alleged non genuine trades were not restricted to any specific contract or between any specific set of entities. Greencrest Financial Services Limited (hereinafter be referred to as, 'the Noticee" or "GFSL") was one of the several entities which were indulged in execution of such alleged non genuine trades.

2. It was observed from the trade log that the Noticee had executed total 10 reversal trades during Investigation Period in 5 unique contracts. Out of these 10 trades of the Noticee, 8 trades in the 4 unique contracts were alleged to be non-genuine reversal trades. A summary of trades of the Noticee in said 4 stock options contracts in which the Noticee allegedly executed 8 non-genuine reversal trades during the Investigation Period is given in the following table:

Table 1: Trades of the Noticee in the 4 contracts on March 30, 2015

Sl.	Buyer	Seller	Buy Order Time	Sell Order Time	Trade Time	Trade Rate (₹)	Trade Quantity
1. KOTB15APR1350.00PE							
1	Pumarth Commodities Private Limited	GFSL	12:06:24	12:06:25	12:06:25	24	135000
2	GFSL	Pumarth Commodities Private Limited	12:11:42	12:11:42	12:11:42	62	135000
2. LICH15APR430.00CE							
1	Kaushal Power And Steel Pvt Ltd	GFSL	13:22:50	13:22:50	13:22:50	4.40	125000
2	GFSL	Kaushal Power And Steel Pvt Ltd	13:23:19	13:23:19	13:23:19	20	125000
3. IIBK15APR900.00PE							
1	Rajbanshi Trading	GFSL	13:38:16	13:38:16	13:38:16	12	125000
2	GFSL	Rajbanshi Trading	13:40:05	13:40:05	13:40:05	32	125000
4. MARU15APR3800.00CEW4							
1	GFSL	Binani Metals Limited	14:03:37	14:03:37	14:03:37	61	50000
2	Binani Metals Limited	GFSL	14:03:44	14:03:44	14:03:44	31	50000
Total							**8,70,000**

3. The trades entered by the Noticee in 4 stock option contracts were reversed on the same day within a period ranging from 06 seconds to 5 minutes 17 seconds with same counterparty with whom buy/ sell transaction was executed and at a substantial price difference in the range of ₹15.60 - ₹38 for trades executed during inspection period, without any basis for significant change in the contract price. Further, out of 8 trades there were 4 trades which were reversed within 30 seconds. The above indicates that these trades are artificial and are non-genuine in nature.

4. The Noticee, by executing such non genuine trades in 4 stock option contracts during the Investigation Period, registered a negative close out difference of ₹1,10,80,000. Summary of dealings of Noticee in 4 stock options contract in which it had allegedly executed non genuine trades during the relevant period is as follows:

Table 2 – Summary of dealings of the Noticee in contracts wherein he executed non genuine trades

S. No.	Contract Name	Avg. Buy Rate (₹)	Total Buy Volume (no. of units)	Avg. Sell Rate (₹)	Total Sell Volume (no. of units)	% of Non Genuine trades of Noticee in the contract to Noticee's Total	% of Non Genuine trades of Noticee in the contract to Total trades in	% of Artificial Volume generated by Noticee in the contract to Noticee's	% of Artificial Volume generated by Noticee in the contract to

						trades in the Contract	the Contract	Total Volume in the Contract	Total Volume in the Contract
1	IIBK15APR900.00PE	32.00	125000	12.00	125000	100%	17%	100%	27%
2	KOTB15APR1350.00PE	62.00	135000	24.00	135000	100%	100%	100%	100%
3	LICH15APR430.00CE	20.00	125000	4.40	125000	100%	50%	100%	89%
4	MARU15APR3800.00CEW4	61.00	50000	31.00	50000	100%	33%	100%	33%

5. It was observed that:

    a. The alleged to be non-genuine trades of the Noticee have contributed from 17% to 100% of the total trades that had happened in the aforementioned contracts in the market.

    b. The whole volume of 8,70,000 generated by the Noticee in the above 4 contracts due to its alleged non genuine trades was artificial volume, and further this alleged artificial volume, generated by the Noticee, also contributed 27% to 100% of the total volume in said contracts in the market.

    c. These alleged non genuine trades, executed by the Noticee in above contracts, had significant differential in buy rates and sell rates considering that the trades were reversed within 5 minutes 17 seconds on same day.

    d. The Noticee had allegedly engaged in the non-genuine trades in the option segment of BSE for the purpose of creating false appearance of trading.

6. In view of the above, it was alleged that the Noticee, by indulging in execution of aforesaid reversal trades in stock options at stock options segment of BSE with same entity with whom buy/ sell trade was executed on the same day, which were non-genuine in nature, had created false or misleading appearance of trading in the aforementioned contracts traded in the stock option segment of BSE. Therefore, the Noticee is alleged to have violated the provisions of Regulation 3(a), (b), (c), (d), 4(1) and 4(2)(a) of the SEBI (Prohibition of Fraudulent and Unfair Trading Practices related to Securities Markets) Regulations, 2003 (hereinafter be referred to as, the "PFUTP Regulations"). The text of these provisions of PFUTP Regulations are as under:

<u>PFUTP Regulations</u>

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.

7. The competent authority in SEBI *prima facie* felt satisfied that there are sufficient grounds to inquire and adjudicate the alleged violations of the provision of Regulation 3(a), (b), (c), (d), 4(1) and 4(2)(a) of the PFUTP Regulations by the Noticee and appointed Shri Biju S., Chief General Manager as Adjudicating Officer vide order dated May 29, 2018 to inquire and adjudge under Rule 5 of SEBI (Procedure for Holding Inquiry and imposing penalties by Adjudicating Officer) Rules, 1995 and under section 15HA of the SEBI Act, the alleged violations by the Noticee. Thereafter, the matter has been transferred to Shri Satya Ranjan Prasad, Chief General Manager (erstwhile AO) vide order dated July 06, 2018 upon transfer of earlier AO Shri Biju S.

8. Subsequently, by a common *communication - order* dated May 22, 2019, this case has been transferred to me with advise that except for the change of the Adjudicating Officer the other terms and conditions of the original orders *'shall remain unchanged and shall be in full force and effect'* and that the "*Adjudicating Officer shall proceed in accordance with the terms of reference made in the original orders"*. The records of this matter were received from erstwhile AO on June 14, 2019. On receipt of records, it was noted that the erstwhile AO had issued notice to show cause no. EAD-4/ADJ/SRP/HKS/OW/P/29068/2018 dated October 17, 2018 ('the SCN') to the Noticee. Vide letter dated October 27, 2018, the Noticee had requested for providing all the documents/ material relied upon in the matter along with copy of the Investigation Report of SEBI, statements of the alleged counter parties to its trades recorded by SEBI and statements of the brokers recorded by SEBI during the course of investigation. From the available records, it was noted that no further communication from the erstwhile AO have been done with regard to the aforesaid request of the Noticee.

9. Therefore, on considering the aforesaid requests of the Noticee it was noted that the Annexures **B, C** and **D** of the SCN are the only documents relied upon by SEBI in these proceedings. **Annexure B** is integrated trade log of all the trades of the Noticee in stock option segment of BSE during the investigation period; **Annexure C** is integrated trade log of all the non-genuine trades of the Noticee in stock option segment of BSE during the investigation period; and **Annexure D** is the summary of its dealings in stock option contracts in which it allegedly executed non genuine trades during the investigation period. Further, SCN has been based upon the findings of the investigation that are basis of charge against. Hence, no prejudice is caused if copy of investigation report is not provided to the Noticee. This view also finds support from the following judgment of Hon'ble SAT on the similar

issue with regard to adjudication proceedings in the case of *Manoj Gaur Vs. Securities and Exchange Board of India, in Appeal Number* 64 of 2012 decided on October 03, 2012: -

"The investigation report is not the evidence on which reliance was placed by the adjudicating officer. Since the adjudicating officer has complied with the statutory requirements, there is no legal obligation on the Board to furnish the entire investigation report to the appellants. Learned counsel for the parties have relied on certain case law relating to principles of natural justice. We do not consider it necessary to refer to all those details in view of the fact that regulation 9 of the Regulations makes it obligatory to communicate the findings in the investigation report and not the whole report. It is nobody's case that such findings were not made available. If the procedure laid down in the regulations has been followed by the adjudicating officer, the grievance of violation of principles of natural justice is without any foundation."

10. In view of above, undersigned has found the aforesaid request of the Noticee not reasonable and such exercise will delay the proceedings apart from being futile exercise. Hence the request for additional documents was declined and communicated to the Noticee vide notice for personal hearing dated July 17, 2019. In the interest of principles of natural justice read with Rule 4(3) of Adjudication Rules, the opportunity of hearing was granted to the Noticee on August 02, 2019 and it was allowed to file its reply on or before the hearing. The Noticee availed the opportunity of hearing on said date, when Mr. K C Jacob, Advocate, Corporate Law Chambers India, authorized representative of the Noticee appeared before me and tendered the copy of reply of the Noticee dated July 30, 2019. He reiterated the submissions made in the said written reply. The replies /submissions of the Noticee are *inter alia* as follows:

    a. It trade in the securities market through various brokers in the ordinary course. It has been dealing in the stock market since a considerable period of time and it has never defaulted in meeting its payment or delivery obligations on any occasion. Over the years it has absolutely clean track record in Capital Market.

    b. It has not been provided with the copy of the *'Investigation Report'* based on which the present Notice has been issued.

    c. In any event, it has not indulged in any reversal trades or created any artificial volumes or created false and misleading appearance of trading or generated artificial volumes as alleged. All of its trading were genuine, *bona fide* and in the ordinary course of business *dehors* fraudulent/ manipulative intent or design.

    d. Admittedly, all the impugned trades have been executed by it through its broker on the platform of the stock exchange within the permissible price bands. Post execution of the trades the same have been settled as per the norms of the exchange and the broker has issued contract note for the impugned trades.

    e. All the trades in the stock options were settled in cash through the stock exchange mechanism. Unlike the Cash segment, there is no physical delivery of shares. Therefore, the alleged trading in the stock options cannot be alleged to have created any false or misleading appearance of trading in stock options.

f. It is submitted that when the alleged trades took place there was nothing in the public domain about anything amiss in the trades done by it. Further, neither BSE nor SEBI had raised any grievance in public domain about the execution of reversal trades and non-genuine trade in the option segment at that point in time.

g. At the relevant time it was not aware that its trades were in the nature of reversals as alleged. At no point of time, it was aware of any counterparty to its trades, or the trades of any other entities. All trades were in the anonymous order matching system of the exchange, wherein it is impossible to know the identity of the counterparties. The alleged matching with the counter parties is by coincidence and not by design. Significantly, there is a huge time gap between buy and sell orders, clearly demonstrating that there was no intention to match/reverse the trades. The orders were languishing in the system for quite a long time and anybody in the market could have picked them up.

h. It may be noted that it is not related or connected in any manner whatsoever to the alleged counter party. It does not have any link/nexus/relationship/connection/dealing/collusion/ arrangement/agreement with the counter party. Even there is nothing in the Notice, to even remotely connect us to the alleged counter parties to its trades. It is well settled that in order to establish the allegation of reversal trades nexus between the parties has to be brought on record. Unless some connection between the parties is established, it cannot be alleged that the alleged reversal trades were carried out with a view to generate artificial volume in the market.

i. With regard to alleged reversal trades it relied on the Hon'ble Securities Appellate Tribunal (SAT) order in the matter of *Saroj & Co. proprietor Sanjay Agrawal vs. SEBI (SAT Order dated 18.05.2012 Appeal No. 213 of 2011)* wherein it was inter alia observed as follows:-

> "…….*nexus between the parties for establishing reversal trades has not been brought on record in the present case. The reference to mere matching of a few trades may not necessarily point to fraudulent intention of the appellant. Screen based trading functions on the basis of anonymity and sometimes orders may get matched when trades are executed keeping in mind price, time and volume. But it is important to establish the nexus between the parties, especially so in the case of a broker since he acts according to the directions of the client. Even though a detailed analysis of the trades is part of the adjudication order, the adjudicating officer has not been able to establish a pattern of wrong doing aimed at fraudulent practices in the market. The appellant has been able to analyse each trade which took place during the impugned period of 35 days and show that orders were placed in the normal course of business. The adjudicating officer has not established with sufficient supporting material that the appellant was a party to a handful of matching trades which have taken place in the course of the trading as directed by the appellant. So, considering the detailed explanations offered by*

the appellant and the nature of the transactions we are not able to uphold the charge of reversal/ circular trades in the present case."

j. Further, in the matter of *S.P.J. Stock Brokers Pvt. Ltd. vs SEBI (SAT Order dated 04.09.2013 Appeal No. 52 of 2013)* the Hon'ble SAT has *inter alia* observed that:

"….Penalty under impugned order is imposed upon appellant solely on ground that almost all trades in shares of Adani Exports Ltd. effected by appellant during investigation were found to be synchronized and those trades were with only one group. It is well established by various decisions by this Tribunal that synchronized trade is per se not illegal. Synchronized transaction would be illegal if it is executed with a view to manipulate the market, is dubious in nature and is executed with a view to avoid regulatory detection, does not involve change of beneficial ownership or is executed to create false volumes resulting in upsetting market equilibrium etc.

13. In this case, save and except recording that trades executed by appellant with one group were synchronized, no other particulars are set out in the impugned order. Neither names of persons forming group with whom appellant had traded nor has their connection with appellant been set out in the impugned order. Unless some connection between appellant and counterparties with whom appellant traded is established, it is difficult to hold that trades in question were carried out with a view to manipulate market by creating false volumes resulting in upsetting market equilibrium.

14. Mere fact that buy and sell orders between appellant and one group (with whom no connection is attributed) within a time gap of one minute with negligible or no price difference cannot ipso facto lead to conclusion that the trades in question were executed with a view to manipulate the scrip. In absence of any circumstantial evidence to suggest that synchronised trades were executed for purpose of upsetting market equilibrium or to manipulate market, it cannot be inferred that appellant was guilty of violating PFUTP Regulations or Broker Regulations."

k. It is submitted that merely because the contribution of its trades resulted in 27%-100% of total market volume no adverse inferences can be drawn against it. It is reiterated that it was trading in the ordinary course and all of its trading is in *bona fide* manner. Further, merely because others were not trading in particular stock options on the day when, it's trading resulting in the volume being 100% cannot be a ground for drawing adverse inference. The alleged *'reversal'* and *'volume'* has to be appreciated in the said backdrop.

l. While levelling allegation with regard to alleged creation of false and misleading appearance of trading, it has been totally ignored and overlooked that there is no allegation in the Notice that, as a result of its trading in stock options, it has increased or depressed the price of the underlying shares in the Cash Segment. For instance its dealing in the contract *viz.* LIC Housing Finance Ltd (LICH) on April, 2015 had not made any impact on the price of the underlying shares in the Cash Segment.

m. With regard to trading in the option segment, it may be pointed out that according to the website of BSE, they have full proof surveillance system in place and according to information given on their website the functions of the surveillance department are - (a) Monitoring price and volume movement (volatility) as well as by detecting potential market abuses (fictitious/artificial transactions, circular trading, false and misleading impression, insider trading etc.) at the nascent stage, with a view to minimize the ability of market participants to influence the price of any Security in the absence of any meaningful information; and (b) Taking timely actions to manage default risk. The website further provides that BSE having three cells under its surveillance department *viz*. Price monitoring, Investigation and Position monitoring. Further, in addition to full proof surveillance mechanism at BSE, they have power under Byelaw No. 1.46 of derivatives segment to annul the trades in future and option segment wherever they observe that the trades were executed for fraud and/or willful misrepresentation. All the option trades executed by it were genuine and in accordance with the Rules, Regulations and Byelaws of BSE, so same were cleared by surveillance mechanism of BSE and also not investigated by BSE under Byelaw No. 1.46 (a) and (b) of derivative for annulment.

n. It is submitted that based on the surveillance system existing at BSE and as claimed by them, no trade, which is fraudulent / manipulative etc. can be done by any investor, as according to their claim all trades which are manipulative/ fraudulent come to their knowledge and by using the power they annual the trades. Admittedly, all our option trades were cleared not only by BSE surveillance system but were also cleared by SEBI surveillance system, otherwise BSE would have acted on the basis of provisions of byelaw no 1.46 (a) and (b) of derivative segment and would have annulled its option trades. The decision of BSE to allow trades and complete pay-in/ pay-out of funds by levying SEBI Fees, Service Tax, STT and Stamp duty etc., clearly establish genuineness of its options transactions.

o. It has denied that it has violated the provisions of Sections 3(a), 3(b), 3(c), 3(d), 4(1) and 4(2)(a) of PFUTP Regulations as alleged and indulged in execution of non-genuine reversal trades in stock options with the same entities on the same day as alleged or that it had created any false/ misleading appearance of trading in stock options as alleged.

p. It is submitted that in the facts of the case no penalty under Section l5HA of the SEBI Act is warranted. Further, while considering its submissions, following factors be taken into consideration:

   i. The price in the options segment has not impacted or influenced the price of the scrip in the Cash Segment;
   ii. All the impugned trades were executed through the stock exchange and settled in cash through stock exchange mechanism, therefore, the impugned trades cannot be said to be artificial trades creating a misleading appearance of trading;

iii. The alleged violations, if any, are not deliberate and intentional and in contumacious disregard of provisions of law;
iv. The alleged violations have not caused any loss to any investor and have also not adversely affected the investors or the securities market in any manner. Further, it may be noted that there are no investor complaints in this regard;
v. As result of alleged violations it has not made any unfair gain or gained any unfair advantage. In fact, it has made losses due to the alleged trades.

q. Without prejudice to the aforesaid, following mitigating factors be also taken into consideration:-

i. As a result of systemic changes introduced by the BSE, execution of reversal/non-genuine on its exchange platform has become a thing of the past. The same is evident from the SEBI order dated April 05, 2018 in the matter of Ill-liquid Stock Option, wherein it is recorded that pursuant to passing of interim order in the matter, BSE had taken various measures to prevent occurrence of such reversal / non-genuine.

ii. It is only now, after the impugned trades, BSE had taken steps to prevent occurrences of reversal / non-genuine trades on its exchange platform. Currently, as a result of systemic changes introduced by BSE, occurrence of such reversal/ non-genuine trades has become a thing of the past. Thus, the impugned trades which are *inter alia* off-shoot of systemic default, are no longer possible in light of systemic changes made by BSE in its systems.

r. In the facts and circumstances, any imposition of penalty on it would be unjustified and unwarranted. In view of the foregoing submissions, it is humbly prayed that the Notice be discharged and no penalty be imposed.

11. I have considered the allegation levelled in the SCN, reply / submissions of the Noticee and the relevant material brought on record. The Noticee has again contended that SEBI has not provided it with a copy of "*Inspection Report*". I have already dealt with request and had rejected with reasons as given hereinabove. I do not find any reason to hold any different view as the documents relied upon and findings of investigation have already provided along with / in the SCN. In this regard, I note that the allegation that the trades carried out by the Noticee were reversal trades is directly supported from the trade log containing records of all trades and reversal trades carried out by it in the Stock Options segment of the BSE during the Investigation Period. SEBI has relied upon only the trade logs which had been provided to Noticee along with the SCN being the only relevant material. Further, the SCN clearly describes the facts and circumstances leading to the allegation against the Noticee for execution of alleged non genuine reversal trades resulting into generation of artificial volume in the said 4 Stock Option contracts. Therefore, the Noticee's contentions in this regard are not acceptable.

12. The trades that are the basis of allegations in the SCN are admitted by the Noticee. However, the Noticee has contended that its reversal trades were *bona fide* being undertaken on stock exchange and that it had no nexus with the counter party, etc. It is pertinent to mention that reversal trades are considered non-genuine if they involve an entity reversing its buy or sell positions in a contract with subsequent sell or buy positions with the same counterparty during the same day. In this regard, artificial volume is considered as the volume (no. of units) reversed in non-genuine trades, comprising both original volume and reversed volume while keeping out the volume which is not reversed. In this regard, it is matter of common knowledge that a stock option contract has to respond to genuine demand and supply principle so as to indicate genuine trading and/or price discovery. An option contract that cannot be easily sold or converted to cash quickly at the prevailing market price will always be treated as illiquid option that has very low or no open interest.

13. In the instant case, admittedly, the Noticee had indulged in 8 such reversal trades in 4 unique contracts on March 30, 2015 with same counterparty with whom it had executed buy/ sell transaction, in less than 5 minutes 17 seconds in a synchronized manner. It is noted from the trade log that the Noticee and its counter parties had placed their respective sell-buy and buy–sell orders in same time i.e. within 0 or 1 second time gap. Further, each trade involved matching of time, price and quantity of units. For example, in respect of the 2 trades in contract "KOTB15APR1350.00PE", it is noted that –

    a. The Noticee, at 12:06:25 hrs placed a sell order for 1,35,000 units of call option of said contract at a price of ₹24. This sell order of the Noticee got matched with the buy order of another entity named Pumarth Commodities Private Limited, which had placed a buy order for same quantity i.e.1,35,500 units, at the same price i.e. ₹24 one second earlier i.e. 12:06:24 hrs.

    b. Thereafter, the Noticee, at 12:11:42 hrs placed a buy order for 1,35,000 units of call option of the said contract at a price of ₹62. This buy order of the Noticee got matched with the sell order of Pumarth Commodities Private Limited, which had placed a sell order for 1,35,000 units at the same price i.e. ₹62 at same time i.e. 12:11:42 hrs.

    c. Thus, the sell order placed by the Noticee at ₹24 was reversed with the same counterparty at ₹62, within 5 minutes 17 seconds and artificial volume generated through such non genuine trades was for 2,70,000 units of the said contract.

14. Similar pattern on trading was observed in respect of other 6 trades executed by the Noticee in other 3 illiquid stock options contracts, wherein trades were reversed in the range of 06 seconds to 1 minutes 49 seconds and buy-sell or sell-buy orders were placed with no time gap. In total 3 buy orders placed by the Noticee were matched with 3 sell orders of counterparties and 1 sell orders placed by the Noticee were matched with 1 buy orders of counterparties in terms of number of units and price and placed within a time gap of 0 or 1 second. Thus, the total volume generated through such non genuine trades was 8,70,000 units of the 4 stock options contracts. Such reversal of trades in quick

succession with substantial price difference indicate towards employing of a manipulative device in connection with its dealing in said illiquid stock options contracts.

15. It is noted that the percentage of alleged trades of the Noticee in 4 contracts was in range of 17% to 100%, to total trades in that particular contract in the market on respective dates. The artificial volume created by these non-genuine trades of the Noticee in the said 4 contracts was in range of 27% to 100%, to the total market volume in the respective contract on respective dates. It is further noted that the Noticee had traded in the 5 unique contracts during the reference period and reversal trades in 4 unique contracts out of said 5 contracts had resulted in contribution in the artificial volume generated out of its non-genuine trades. Thus, the Noticee had significantly generated artificial volume in the said contracts on respective dates.

16. The Noticee has contended that it is not related or connected in any manner whatsoever to the alleged counter parties and does not have any link/nexus/relationship/connection/dealing/collusion/ arrangement/agreement with the counter party. Further, the alleged trades were in the anonymous order matching system of the exchange, wherein it is impossible to know the identity of the counterparties. The alleged matching with the counter parties is by coincidence and not by design. In this regard, the Noticee has placed reliance upon Hon'ble SAT order dated May 18, 2012 in the matter of *Saroj & Co. proprietor Sanjay Agrawal vs. SEBI (SAT Order Appeal No. 213 of 2011)*. In this regard, I note that, it is not mere coincidence that the Noticee could match its trades with the same counterparty with whom it had undertaken first leg of the respective trades. Further, in this case, the Noticee has executed all the alleged trades in one day i.e. on March 30, 2015, unlike the case referred, wherein alleged trades were executed in a time frame of 35 days. Also, Noticee has submitted that - significantly, there is a huge time gap between buy and sell orders, clearly demonstrating that there was no intention to match/reverse the trades. However, there is no time gap between placing of the buy/sell or sell/buy order and there is huge difference in price of the reversal order, for example, - *in stock option contract "MARU15APR3800.00CEW4", the sell order has been placed by the Noticee on 14:03:37 hrs. at price of ₹61/- and at same time buy order has been placed by counterparty Binani Metals Limited; and within 6 seconds the aforesaid trade has been reversed by the Noticee by placing a buy order at 14:03:43 hrs. at significant low price of ₹31/- and at the same time the same counterparty placed sell order at same price of ₹31/-, which proves that the claim of the Noticee of huge time gap is false.* Further, no justification for the wide variation in prices of the same contract within seconds, has been provided by the Noticee while reversing the trade.

17. In view of above, I note that though direct evidence is not available in the present matter as regards to meeting of minds or collusion of the Noticee with other entities. The genuineness of trading has to be determined based upon circumstantial evidence involving a bundle of factors such as trading pattern, liquidity and volatility in the scrip /contract, etc. 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."

18. Further, in *SEBI v Kishore R Ajmera (AIR 2016 SC 1079)*, Hon'ble Supreme Court 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...".* The Hon'ble Supreme Court further observed 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. With regard to reversal transactions, Hon'ble Supreme Court in the matter of *SEBI v Rakhi Trading Private Limited (Civil Appeal Nos. 1969, 3174-3177 and 3180 of 2011 decided on February 8, 2018)*, further held 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…..*" In the same matter, Hon'ble Supreme Court further held that- *"….quantity, time and significant variation of prices, without major variation in the underlying price of the securities clearly indicate that Respondent's trades are not genuine and had only misleading appearance of trading in the securities market*".

20. The Noticee has placed reliance upon *S.P.J. Stock Brokers Pvt. Ltd. vs SEBI (SAT Order dated 04.09.2013 Appeal No. 52 of 2013),* wherein Hon'ble SAT held that synchronized trades *per se* is not illegal. In this regard, I note that, the trading patterns as observed in this case in illiquid stock options cannot occur just by accident or coincidence. The trading behavior of the Noticee makes it clear that aforesaid trades of the Noticee could not have been possible without prior meeting of minds amongst trading parties. Since these trades were done in illiquid option contracts, there was no trading in the said contract and hence, there was no price discovery in the strictest terms. The synchronized trading by the Noticee with same counterparty at same time for same quantity at same price and reversal of transaction with wide variation in price of the reversed trades in the same contract in a short time without any basis, 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 the options contracts in question. In view of the fact that these options contracts were illiquid in nature, having very small or negligible volume in trading, the Noticee created artificial volumes in such stock options which was manipulative and deceptive in nature. Therefore, the contentions of the Noticee in this regard are not acceptable.

21. The Noticee has also contended that all of his trades were genuine, *bona fide* and in the ordinary course of business *dehors* fraudulent/ manipulative intent or design. Further, merely because others were not trading in particular stock options on the day when, it's trading resulting in the volume being 27%-100% of total market volume, cannot be a ground for drawing adverse inference. It is noted that the impugned reversal trades were carried out by the Noticee in illiquid stock options contracts. Reversal trades were undertaken by the Noticee with its counterparties with a predetermined arrangement to book profit or losses respectively, and, therefore, the parties to the trades were not trading in the normal sense and ordinary course of business. Such transactions in illiquid stock options cannot be taken as genuine one. Such trading was apparently without any economic rationale. The investigation has shown amount of profit / loss of the counterparties to the trades as a result of such non-genuine trades. The violation by the Noticee is of creation of artificial trading volumes by trading with the counterparties and when the impact of artificial volumes created by the counterparties is seen as a whole in this case, it only leads to the preponderance of probability of false or misleading, non-genuine and bogus trading in the aforementioned contracts. In view of the same, all these contentions of the Noticee are rejected.

22. The Noticee further contended that the impugned trades have been executed by it through its broker on the platform of the stock exchange within the permissible price bands and same have been settled in cash through the stock exchange mechanism, as per the norms of the exchange and the broker has issued contract note for the impugned trades. In this regard, I note that the Hon'ble Supreme Court in *Rakhi Trading (supra)* case held that such undesirable transactions would certainly include unfair practices in trade and thus, orchestrated trades are a misuse of the market mechanism. It is also noted that the trades by the Noticee generated volumes without any change of beneficial ownership. With regard to such reversal transactions, Hon'ble Supreme Court also held in the *Rakhi Trading case* that - "*From the facts before us, it is clear that the traders in question did not intend to transfer beneficial ownership and therefore these trades are non- genuine*". The Hon'ble Supreme Court further observed that - "*The non-genuineness of these transactions is evident from the fact that there was no commercial basis to suddenly, within a matter of minutes, reverse a transaction when the value of the underlying had not undergone any significant change.*" Therefore, such contentions of the Noticee cannot be accepted as such trades affect market integrity.

23. The Noticee raised contention regarding improper surveillance mechanism of BSE in past for dealing with non-genuine reversal trades on its exchange platform and placed reliance on SEBI order dated April 05, 2018, wherein it was mentioned that pursuant to passing of *interim order* (dated August 20, 2015) in the matter, BSE has taken various measures to prevent occurrence of non-genuine reversal trades. In this regard, I note that upgrading/ improving a system/ mechanism by a regulator/

institution is a continuous process and the same cannot be taken as an excuse for any wrongdoing or acting in a fraudulent manner as transpired in this case. Further, in the same order in the next para, Learned Whole Time Member of the SEBI has mentioned that *"…I also note that in light of the Order of Hon'ble Supreme Court in the matter of Rakhi Trading Pvt. Ltd. (C.A. No. 1969 of 2011), a decision has been taken by SEBI to take appropriate action in respect of all 14,720 entities in a phased manner"*. In the same order it is further mentioned that "*In the present case the investigation has found that the entities have indulged in fraudulent and unfair trade practice by virtue of reversal trades. The same, if established, is a serious violation affecting the integrity of securities market and investor confidence. The regulatory objective of investor protection and ensuring market integrity would be served only when such entities indulging in reversal trades are dealt with sternly*." While holding so, Learned Whole Time Member of the SEBI has specifically mentioned that - "*It is further noted that in terms of disgorgement proceedings, SEBI can disgorge only to the extent of illegal profit and interest thereon. In this instance, initiation of Adjudication Proceedings which can result into a more severe monetary penalty, if the violations are established, would act as a strong deterrent on the perpetrators of such unfair trade practices. It would not be out of place to mention that deterrent monetary penalty acts as a continuing safeguard to investors and market integrity because the effectiveness of such deterrence lies in deterring any unfair trade practice in future."* Thus, this reason has not been found relevant for proceeding against the entities who has indulged in such reversal of trades. Therefore, I reject such contentions of the Noticee.

24. These non-genuine and deceptive trades, in my view, are covered under the definition of '*fraud*' and dealing of Noticee were '*fraudulent*' as defined under Regulation 2(1) (c) of PFUTP Regulations. 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. I, therefore, reject these contentions of the Noticee and hold that its trades in question attract the prohibitions contained in the provisions of regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of PFUTP Regulations. I, therefore, find that charges leveled against the Noticee for violation of these provisions of the PFUTP Regulations are established and that the Noticee is liable for penalty under Section 15HA of the SEBI Act which reads as under:-

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

25. While determining whether penalty should be imposed upon the Noticee as per provisions of section 15I of the SEBI Act, it is important to consider the factors stipulated in Section 15J of the SEBI Act which reads as follows:-

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;*

26. It is not possible to determine the consequent loss caused to investors as a result of the default as found in this case. It is worth considering that generally, there is NIL or negligible participation of the public in the trading in such illiquid stock option contracts. When the impact of artificial volume created by the 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. However, considering the fact that the trades of the Noticee in 4 Stock Option contracts which resulted into 27% to 100% artificial volume, respectively, generated out of the 8 non- genuine trades of the Noticee, I am of the view that such fraudulent trades deserve imposition of monetary penalty of the Noticee under section 15HA of the SEBI Act.

27. Considering all the facts and circumstances of the case including the aforesaid mitigating factors and exercising the powers conferred upon me under section 15I of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose, a monetary penalty of ₹5,00,000/- (Rupees Five Lakh Only) on the Noticee *viz*. Greencrest Financial Services Limited under section 15HA of the SEBI Act. In my view, the said penalty is commensurate with the violations committed by the Noticee in this case.

28. The Noticee shall remit / pay the said total amount of penalty within 45 days of receipt of this order by way online payment on SEBI website at following tabs on SEBI website www.sebi.gov.in – ENFORCEMENT -> Orders -> Orders of AO -> Pay Online or by way of using the web link https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html . In case you face any difficulties in payment of penalties, you may contact the support at portalhelp@sebi.gov.in .

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

30. In terms of Rule 6 of the Adjudication Rules, copies of this order are sent to the Noticee and also to SEBI.

Date: August 27, 2019 **Santosh Shukla**
Place: Mumbai **Adjudicating Officer**