BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/KS/AA/2019-20/4419]

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

Sarwottam Ispat Limited,
(PAN: AAECS4392N)

In the matter of Trading in Illiquid Stock Options on BSE

BACKGROUND OF THE CASE

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

2. Pursuant to 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 Sarwottam Ispat Limited (hereinafter referred to as the "**Noticee**") was one of the various entities which indulged in 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 created false or misleading appearance of trading in terms of artificial volumes in stock options and therefore alleged to be manipulative, 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. The undersigned was appointed as the Adjudicating Officer vide order dated April 3, 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 adjudication proceedings in the manner specified under Rule 4 of 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 Adjudication Rules and Section 15HA of SEBI Act.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. A Show Cause Notice dated September 21, 2018 (hereinafter 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 72 non genuine trades in 35 Stock Options contracts which resulted in artificial volume of total 15,09,000 units. The Noticee made a profit of approx. Rs. 1,92,06,500 by executing non genuine trades during the I.P. Summary of dealings of the Noticee in 35 Stock Options contracts, in which the Noticee allegedly executed non genuine trades during the I.P, is as follows:

S. No.	Contract Name	Avg. Buy Rate (Rs.)	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 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	ADEL15APR560.00CEW1	46.40	23500	163.75	23500	100%	50%	100%	48%
2	ADEL15MAY520.00CE	51.65	12000	92.00	12000	100%	50%	100%	41%
3	AMBC15APR210.00CEW4	28.40	17000	46.95	17000	100%	33%	100%	21%
4	AMBC15MAY210.00CE	30.20	38000	50.20	38000	100%	15%	100%	30%
5	APLT15MAY140.00CE	14.60	34000	25.95	34000	100%	100%	100%	100%
6	ARVI15MAY230.00CE	24.25	30000	41.50	30000	100%	25%	100%	29%
7	ASPL15APR760.00CEW3	33.10	12000	59.00	12000	100%	100%	100%	100%
8	ASPL15APR760.00CEW4	33.25	15000	61.00	15000	100%	50%	100%	43%
9	AXIS15APR520.00CE	24.75	17000	49.00	17000	100%	33%	100%	22%
10	AXIS15MAY500.00CE	37.60	15000	74.00	15000	100%	50%	100%	60%
11	BHEL15APR210.00CE	17.35	30000	30.40	30000	100%	33%	100%	28%
12	BHRT15APR330.00CE	32.35	12500	54.50	12500	100%	50%	100%	74%
13	BHRT15APR340.00CE	28.00	15000	54.90	15000	100%	100%	100%	100%
14	CARN15MAY200.00CE	12.95	50000	24.50	50000	100%	100%	100%	100%
15	CESC15APR540.00CE	33.75	10000	65.55	10000	100%	100%	100%	100%
16	CESC15APR560.00CE	23.30	26000	52.15	26000	100%	33%	100%	12%
17	CESC15APR560.00CEW3	26.05	20000	49.00	20000	100%	100%	100%	100%

18	CESC15JUN540.00CE	39.65	66500	85.05	66500	100%	100%	100%	100%
19	CIPL15APR640.00CEW4	39.65	12000	60.10	12000	100%	100%	100%	100%
20	CIPL15MAY640.00CE	42.33	21000	74.64	21000	100%	67%	100%	60%
21	COAL15APR310.00CE	36.95	12000	58.90	12000	100%	33%	100%	10%
22	COAL15APR330.00CEW4	24.95	20000	42.85	20000	100%	100%	100%	100%
23	CRGL15MAY145.00CE	12.80	40000	23.10	40000	100%	25%	100%	41%
24	DABU15APR230.00CEW3	24.40	15000	42.00	15000	100%	50%	100%	52%
25	DABU15MAY220.00CE	29.95	12000	61.00	12000	100%	50%	100%	39%
26	ENGI15APR155.00CE	32.85	10000	55.50	10000	100%	50%	100%	38%
27	GAIL15MAY340.00CE	25.65	17000	45.50	17000	100%	50%	100%	53%
28	HAIL15APR260.00CEW4	25.65	10000	44.50	10000	100%	50%	100%	40%
29	ONGC15APR270.00CE	28.40	20000	46.95	20000	100%	100%	100%	100%
30	PFCL15MAY230.00CE	29.75	15000	51.30	15000	100%	33%	100%	30%
31	PLNG15MAY155.00CE	15.50	40000	26.40	40000	100%	50%	100%	74%
32	TITA15MAY350.00CE	27.40	30000	47.80	30000	100%	25%	100%	38%
33	UBRL15APR920.00CEW4	29.55	12000	65.45	12000	100%	100%	100%	100%
34	UPHL15APR370.00CEW2	30.85	12000	53.15	12000	100%	100%	100%	100%
35	VOLT15APR230.00CEW4	27.85	13000	52.30	13000	100%	50%	100%	57%

6. From the above table, following was noted as regards to dealings of the Noticee:
   (a) The Noticee has executed non genuine trades in 35 contracts, wherein all trades of the Noticee in the said 35 contracts were non genuine trades.
   (b) No. of non genuine trades of the Noticee has significantly contributed to the total no. of trades from the market in the above contracts, as a substantial 15% to 100% of the trades that happened in the aforementioned contracts were due to non-genuine trades executed by the Noticee.
   (c) A substantial 100% of volume generated by the Noticee in each of the above contracts was artificial volume, and further artificial volume generated by the Noticee also contributed to significant 10% to 100% of the total volume from the market in said contracts.
   (d) 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 on same day.

7. The SCN issued to the Noticee was sent via Speed Post Acknowledgement Due and via a digitally signed email. The Noticee vide its letter dated October 17, 2018 *inter alia* requested for copies and inspection of certain documents in the matter. In view of the same, the request of the Noticee was forwarded to the concerned department of SEBI vide letter dated November 14, 2018. The concerned department of SEBI provided an opportunity of inspection of documents to the Noticee and the AR of the Noticee viz. Shri Mahipal Gupta, Advocate, took inspection of documents relied in the matter by the Adjudicating Officer on May 29, 2019. From the available records, I am convinced that the inspection of documents, which have been relied in the matter, has been given to the Noticee. I further note from available records that the documents / information relied in the present matter have been provided to the Noticee as annexures to the SCN.

8. Meanwhile, the Noticee vide its letter dated January 14, 2019 *inter alia* made the following submissions:

"…….

1. <u>Preliminary Submissions</u>

1.1. It is herein submitted that our Company is based in Telangana and in manufacturing sector. That we are not a regular trader in the securities market and sometimes trade in the market, with the available surplus funds.

1.2. That Abans Securities Private limited was the broker of our Company and not being a regular Trader in the securities market, the Company relied upon the advice of the Introducer and the broker.

1.3. The Company has had no experience in trading in stock options and was not aware of the nitty gritty of the stock options segment and hence had relied on the broker.

1.4. The trades so executed by us were with bona-fide intention and there was no intention of the Company to engage in any fraudulent or manipulative practice as alleged in the SCN.

1.5. Herein it is also put forth that as informed to us, the transactions executed in stock options segment are contract based and delivery of asset does not *happen like in the capital market. That the person entering into the contracts in option segment squares off its position to book his profit. As per the definition of 'Option Contract' specified in Regulation 1.38 of bye-laws of BSE Limited (Futures and Options Segment) the person is permitted to exercise his right within or at the end of a specified period. The relevant provision is re-iterated herein below for your reference:*

<u>Option Contract</u>

'Option Contract' is a type of Derivatives Contract which gives the buyer/holder of the contract the right (but not the obligation) to buy/sell the underlying security at a predetermined price within or at the end of a specified period. The option contract which gives a right to buy is called a Call Option and the option contract that gives a right to sell is called a Put Option.

Hence, we executed trades to book the profit before the expiry of the contract which is permissible under the bye-laws of BSE. That the trades so executed by us were not in any way different from the trading that happens in normal course in the stock options segment.

2. <u>Para-wise submissions vis-a-vis SCN</u>

In addition to afore-said preliminary submissions, we herein making Para-wise submissions with respect to SCN issued by your good office and present our case before your goodself:

2.1. W.r.t. contents of Para 1 of the SCN, we vehemently deny the allegations made in the said Para as the trades so executed were in normal course with the intent to invest the surplus funds of the Company and had not carried any non-genuine trade. We, having limited knowledge of stock option segment relied on the Broker for dealing in stock options.

2.2. That the contents of Para 2 of the SCN is the matter of record and hence entails no comments.

2.3. That the contents of Para 3 of the SCN bears no specific allegation against us hence requires no comments. Although, it is pertinent to note here that out of 547 days of investigation period we had traded in the stock option only for 5 days, which is very miniscule. It is very apparent from the afore-said that by *trading on only 5 days that too in 35 different contracts of 24 different scrips cannot impact the market volume. It is well established that if a person is devising any fraudulent scheme to manipulate the market, it will trade in particular scrip to impact the price/volume of that scrip and not in different contracts of different scrips. Although, in the present case it is evident that we had executed trades in 35 different contracts in 24 different scrips over the period of only 5 days which clearly could not impact the volume/price of any of the 24 underlying scrip. The fact that we had not done any repetitive trading in any of the afore-said 24 scrips shows that the dealing of the Company was genuine and bona-fide.*

2.4. W.r.t. to contents of Para 4 it is herein submitted that for alleging any Reversal Trade to be non-genuine one of the most significant factors is reversing the position at same price thereby creating artificial volume in the market. The afore-said factor has not been considered by your good office while alleging us for a serious charge like "Fraud". In the present case, it is evidently clear that in each of the trades we had squared off our position at differential and even higher price with the intent of generating profit from the said trade. Hence, the difference in buy position and sell position shows the economic sense of the said transactions and cannot be alleged as fraudulent or manipulative.

2.5. That the contents of Para 5 of the SCN bears no specific allegation against us. Although, without prejudice to the contention that the trades so executed were genuine, it is herein submitted that we executed only 72 trades in 35 contracts of 24 different scrips representing 0.02% of the total market trades executed during the investigation period which is so negligible to have any impact over the total market volume. As stated above, we entered into buy contract and sell contract at totally different pricing which further shows the economic sense of the said transaction. Hence, the question of alleging us for creation of artificial volume does not arise.

2.6. W.r.t contents of Para 6 it is herein submitted that your SCN itself says that the trades executed were not to any specific contract or between any specific entities. In this regard, we herein re-iterates the relevant extract of the SCN herein below:

"It is noted that said non genuine trades were not restricted to any specific contract or between any specific entities"

It is apparent from the afore-said that we just like any other normal investor had traded in various contracts and had no collusion with any of the other entities. It is pertinent to note that to device any fraudulent scheme there must be presence of collusion between the opposite parties to impact the volume/ price of a particular contract or scrip.

Although, in the present case the trades executed by us spreads in as many as 35 contracts in 24 different scrips which shows the trades so executed were in normal course. If the intention was to impact the volume of the contract we would have traded in one particular scrip to increase its volume. Moreover, like any other normal trader we have traded in 35 contracts of 24 different scrips over a period of 5 days out of total investigation period of 547 days which corroborated the fact that there was no fraudulent intent behind such trades. It is also pertinent to note here that the Company or its directors/promoters do not have any relation with any of the other parties alleged. Also, the SCN itself does not allege any relation/consensus between the parties which is a pre-determined factor to allege for a serious act like "Fraud" (Reliance is placed on Jagruti Securities Vs. SEBI and S.P.J. Stock brokers Pvt. Ltd. Vs. SEBI discussed in detail in Para 3.1).

2.7. W.r.t. contents of sub-para (b) and (c) of Para 7 of the SCN, it is herein submitted that because of the fact that the said scrip was an illiquid scrip the participation of number of parties was very less, hence the probability of getting the trades executed with the same counter party increased. Hence, execution of the afore-said trade with the same counter party was merely because there was negligible participation in the said contract as there was no relation/ consensus with the counter party neither the same has been alleged in the SCN. Hence, we bought the contract at the lower price and squared off its position at a higher price with the intent to incur legit profit as any prudent man will do.

The afore-said factors clearly demonstrate that the said trades were genuine and it was only because of the nature of the contract that the trades executed in the afore-said contract happened to be with the same counter party. Further, *it is also pertinent to note here that we have executed only 2 trades in the afore-said contract.*

Further, as mentioned in sub-para (a) of Para 7 of SCN, there were in total 2 trades that were executed in the contract "APLT15MAY140.00CE". As the said stock option was illiquid, there was negligible participation in the said contract and hence the total trades executed by us were the only trades executed in the afore-said contract. Hence, when there is no other participant dealing in the afore-said stock option taking percentage as the parameter is an illogical criterion and shall not be made basis for alleging us.

2.8. W.r.t. to contents of Para 8 it is herein submitted that our dealings in the Stock Options Segment was purely genuine. As submitted in Para 2.6, we had traded in as many as 35 contracts of 24 different scrips only on 5 days and had no ingredient of any fraudulent practice as the said trades were executed on the anonymous platform of stock exchange, hence we were not aware at all that who the counter party was, neither your SCN has alleged any relation/ consensus with the other counter parties.

Further, it is also pertinent to note that in the F&O Segment there is no concept of "change of beneficial ownership" since what is traded in this segment are contracts and not the underlying stock and it is only through cash settlement the trade is concluded and no physical delivery of any asset is involved. Without prejudice to the fact that the said trades were genuine, contracts entered into by us in stock option segment could not have manipulated the market. Also, the trades so executed by us had no impact on the price of the underlying scrips. In addition to afore-said, it is pertinent to note that we had bought at lower price and sold at higher price shows the legitimate nature of the transactions and hence the profit so incurred on such trades are genuine and legit.

2.9. The contents of Para 9 are matter of record and entails no comments.

2.10. W.r.t. to contents of Para 10 and Para 11 we vehemently deny the allegation that the trades so executed by us in the said 35 contracts of 24 different scrips were non-genuine as we had traded in contracts of different scrips and there was no set pattern of trading in any of the scrips which would show that the said trade were executed to manipulate the price/volume of that scrip. It is also pertinent to note here that we had executed merely 2-3 trades in *any particular contract which was very insignificant to impact the volume of the contract of that scrip. As stated above, we had no relation with the counter party and was totally unaware that who the counter party was only because the said stock options were illiquid the afore-said trades happen to be with same counter party which we became aware only after receiving the SCN.*

Without prejudice to the fact that the said trades were genuine, it is herein further submitted that the criteria adopted by your good office in sub-para (b) and (c) to quantify the no. of non-genuine trades vis-a-vis the market trades is not justified. It is much unwarranted of your good office to define such a big range from 15% to 100% as substantial contribution. How can be 15% and 100% both be substantial at the same time.

Similarly, in sub-para (c) your good office is stating 10% as well as 100% to be significant volume generated to the total volume which is again a very illogical criterion to be followed as both 10% and 100% cannot be said substantial at the same time. Out of total 35 contracts the contribution to alleged artificial volume in 15 contracts is even below 50% which shows that the afore-said criteria gives a very disingenuous picture of the trades executed by us.

Moreover, the fact that the scrips mentioned in Para 10 were illiquid, there was very less participation of the public in the said scrip hence even the single trade in the one particular contract turns out to be of larger percentage as compared to total market trades. Hence, depending upon the percentage principal in the illiquid scrip is irrational and unjustified.

Further, w.r.t. content of sub-para (d) it is herein submitted that we had bought the contract at lower price and sold it on higher price which shows the economic sense of the said transaction. We were executing the trades as per the normal market practice and incurred legit profit on the same which again shows that there was no fraudulent or manipulative intent behind executing such trades. (Reliance is placed on SEBI Vs. Rakhi Trading Private Ltd. as discussed below in Para 3.2 of this reply)

2.11. W.r.t. contents of Para 12 we herein again submit that the trades executed by us were genuine as explained in 2.8 and 2.10 above and not repeating here for the sake of brevity. It is pertinent to note here that stock option segment permits the person to square off its position to earn profit either at the date of *expiry of the contract or before the expiry of the contract. Hence, we herein again reiterate that when we had squared off our position before the expiry of the contract which is permissible under the bye-laws of BSE and earned profit on the same how it can be alleged as non-genuine. Without prejudice to afore-said contention, the creation of false or misleading appearance of trades is not even possible in stock option segment as there is no delivery of any asset and hence it cannot manipulate the market.*

2.12. Contents of Para 13 to 16 are matter of record and entails no comments.

3. LEGAL SUBMISSIONS

3.1. No relation/ consensus between the Company and Counter Party established: *As stated in Para 2.6 of this reply the present SCN failed to establish any consensus between our Company and either of the 5 counter parties. Only because the said scrips were illiquid, there was very less number of entities trading in those scrips and hence the probability of same counter parties trading in one contract does increases. Hence, without establishing any collusion between us and the Counter Party alleging the afore-said trade to be fraudulent/ manipulative is baseless. To corroborate the afore-said, we herein placed the reliance on observation made by SAT in Jagruti Securities vs SEBI. [2008 SCC OnLine SAT 184: 2008 SAT 184]:*

"the Hon'ble SAT has gone ahead to record in para 4 "…we are of the view that in an artificial trade there has to be collusion between the buyer and the seller and in the absence of any collusion, the trade cannot be termed as 'artificial'.""

Further, in S.P.J. Stock Brokers Pvt. Ltd. vs Securities and Exchange Board of India [2013 SCC OnLine SAT 67: [2013] SAT 17], SAT again concluded that to allege any trade to be manipulative there shall be some connection established between the two. The extract of the observation made by SAT is re-iterated herein below:

"13. 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."

3.2. Legit profit incurred on the trades and there was no set trading pattern: As stated in Para 2 of this reply, we had traded in 35 different contracts, moreover we had traded only on 5 days out of 547 days of the investigation period. Hence, there was no consistency to influence the market volume by any of the contracts. Further, all the trades executed in the afore-said contracts were with rational business economic sense by buying at lower price and squaring off the position at higher price and had incurred the legit profit. The afore-said factors clearly demonstrate that the trades executed by us were genuine, which can further be substantiated from the following observation made by Apex Court in the matter of 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. The extract of the observation made by Apex Court at Para 35 and Para 41 is re-iterated herein below:

"The platform of the stock exchange has been used for a non-genuine trade. Trading is always with the aim to make profits. But if one party consistently, makes loss and that too in a pre-planned and rapid reverse trades, it is not genuine; it is an unfair trade practice". "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."

3.3. Anonymity of Stock Exchange Mechanism: Further, it is imperative to note that the afore-said trades were executed on the anonymous platform of stock exchange and does not let any party to know the details of the counter party. This unique feature of anonymity of the buyer and the seller has been pointed out by Hon'ble SAT in the matter of M/s. Bubna Stock Broking Services Vs. SEBI (Appeal No. 41 of 2009):

"It is pertinent to mention that the trading system of the Stock Exchanges is essentially anonymous and does not enable either party to know the counter party in the trade. When the buyer and seller approach the broker for executing

the trades, it is not always necessary that they shall approach together and in case they were to do that the deal may or may not be a negotiated deal". (Emphasis Supplied).

3.4. Mere suspicion cannot be basis for charging allegation of "Fraud": In the present SCN, your good office had alleged us of Reversal Trades on the basis that the trades were executed with the same counter party. In this regard, it is herein submitted that we had no relation with the other counter parties and the same has not been alleged in the SCN issued by your good office. Further, your good office had not alleged us for any unusual trading which could have showed that we had the mala-fide intention behind executing such trades.

Hence, merely because we had dealt in stock options without knowing at that time that they were illiquid, your good office has alleged us for a serious charge like fraud. No allegation has been made against us to show that we had any kind of consensus with the counter party without which it is not possible to manipulate the volume of the stock options. That only because there was negligible participation in such contracts and the trades happen to be squared off with the same counter party, the trades executed by us cannot be said as fraudulent. The reliance is placed on the following judgments:

In the case of Union of India v. Chatur bhai M. Patel & Co., AIR 1976 SC 712, it was held by the Hon'ble Supreme Court that:
"It is well settled that fraud like any other charge of a criminal offence whether made in civil or criminal proceedings, must be established beyond reasonable doubt. However, suspicious may be the circumstances, however strange the coincidences, and however grave the doubts, suspicion alone can never take the place of proof."

It was also upheld by the Hon'ble SAT in the case of Sterlite Industries v. SEBI Appeal No. 20/2001:
"...in the absence of reasonably strong evidence, even in a civil proceeding, a person cannot be held guilty and awarded punishment. Mere surmise, conjecture or suspicion cannot sustain finding of fault"

The Hon'ble SAT has reiterated the same in the case of Parsoli Corporation v. SEBI, Appeal No. 146/2011:

"...a serious charge like fraud has to be established on preponderance of probabilities and since this charge is serious, higher has to be the degree of probability to establish the same."

4. *Conclusion*

4.1. *As stated in afore-said submissions, we are not an aggressive market trader and had traded in such contracts only to invest the surplus funds for which we had relied on our broker. As a normal trader, we have traded in 35 contracts of 24 different scrips over a period of 5 days out of 547 days of the total investigation period and incurred profit on such trades and hence by trading in contracts of 35 different contracts we could not have impacted the volume of any contract. Even, our total trades w.r.t. total market trades during the investigation period amounts to only 0.02% which is very insignificant and miniscule to manipulate the market in any way.*

4.2. *The fact that the said scrip was illiquid and hence there was negligible participation of the public in the said contracts the probability of getting the position squared off with the same counter party gets highly increased. Moreover, your good office had not established collusion between us and the other counter parties which is a pre-meditated factor to establish that the trades were fraudulent.*

4.3. *The said trades do not contain any ingredient of fraudulent/ manipulative practice. Moreover, the mechanism of stock option segment is anonymous and had we squared off our position on any other day, there were chances that it might have been squared off with same counter party as the stock options were illiquid.*

4.4. *One of the most important factors which alleged a Reversal trade to be fraudulent/ manipulative is executing both buy and sell at the same price which is clearly not present in our case. Squaring off the positions at a profit clearly demonstrated the economic sense present behind executing such transactions.*

4.5. Without prejudice the afore-said, charge of creating artificial volume is baseless as there is no change of beneficial ownership and there is no delivery of physical asset. The same has been submitted in detail in Para 1.5, Para 2.8 and Para 2.10 is not repeated here for the sake of brevity.

4.6. Having made the above submissions, we submit that it has not violated any of the provisions of SEBI Act, Regulation 3 and Regulation 4 of SEBI PFUTP Regulations.

4.7. Without prejudice to the fact that the said trades were purely genuine, it is herein submitted that the said trades were only 0.02% of the total market trades and hence is of very minor nature. Hence, we request your good office to consider the afore-said facts and circumstances before imposing any penalty, if any…"

9. In view of the principles of natural justice, the Noticee was granted an opportunity of hearing in the matter on July 23, 2019 vide hearing notice dated July 01, 2019. Ms. Deepika Vijay, Advocate, appeared as the AR of the Noticee in the hearing on July 23, 2019. During the course of hearing, the AR reiterated the submissions made by the Noticee in its letter dated January 14, 2019. The AR also relied upon the judgment of Hon'ble SAT in the matter of Piramal Industries Ltd. vs. SEBI (Appeal no. 466 & 467 of 2016).

CONSIDERATION OF ISSUES

10. I have carefully perused the charges levelled against the Noticee, its 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?

11. 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;

12. I note that the allegation against the Noticee is that, while dealing in the stock option contracts at BSE during the Investigation period, the Noticee had executed reversal trades which were allegedly non-genuine trades and the same have resulted in the generation of artificial volume in stock option contracts at BSE. The Noticee has contended that, for a reversal trade to be non-genuine, one of the most significant factors is reversing the position at the same price. However, I note that it is not necessary that non-genuine reversal trades are executed at the same price. 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 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.

13. I note from the trade log of the Noticee that it had traded in 35 unique contracts in the stock options segment of BSE during the investigation period. It is observed that the Noticee had executed 72 non-genuine trades in the said 35 contracts. I further note that the above mentioned trades of the Noticee had resulted in the creation of artificial volume of a total of 15,09,000 units in the said 35 contracts and the said trades have also resulted in a close out difference of approximately Rs. 1,92,06,500 in favour of the Noticee. The Noticee has *inter alia* stated that his contribution in the volume and number of trades in the stock option contracts cannot be termed as substantial / significant. In this respect, I note that a range about the contribution of the Noticee in the volume and the number of trades in the stock option contracts had been stated in the SCN. Further, all the trades of the Noticee in these contracts were non-genuine trades and the contribution of the Noticee in volume and number of trades was 100% in many contracts, which is significant. Summary of non-genuine trades of Noticee is as follows:

S. No.	Contract Name	Avg. Buy Rate (Rs.)	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 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	ADEL15APR560.00CEW1	46.40	23500	163.75	23500	100%	50%	100%	48%
2	ADEL15MAY520.00CE	51.65	12000	92.00	12000	100%	50%	100%	41%

3	AMBC15APR210.00CEW4	28.40	17000	46.95	17000	100%	33%	100%	21%
4	AMBC15MAY210.00CE	30.20	38000	50.20	38000	100%	15%	100%	30%
5	APLT15MAY140.00CE	14.60	34000	25.95	34000	100%	100%	100%	100%
6	ARVI15MAY230.00CE	24.25	30000	41.50	30000	100%	25%	100%	29%
7	ASPL15APR760.00CEW3	33.10	12000	59.00	12000	100%	100%	100%	100%
8	ASPL15APR760.00CEW4	33.25	15000	61.00	15000	100%	50%	100%	43%
9	AXIS15APR520.00CE	24.75	17000	49.00	17000	100%	33%	100%	22%
10	AXIS15MAY500.00CE	37.60	15000	74.00	15000	100%	50%	100%	60%
11	BHEL15APR210.00CE	17.35	30000	30.40	30000	100%	33%	100%	28%
12	BHRT15APR330.00CE	32.35	12500	54.50	12500	100%	50%	100%	74%
13	BHRT15APR340.00CE	28.00	15000	54.90	15000	100%	100%	100%	100%
14	CARN15MAY200.00CE	12.95	50000	24.50	50000	100%	100%	100%	100%
15	CESC15APR540.00CE	33.75	10000	65.55	10000	100%	100%	100%	100%
16	CESC15APR560.00CE	23.30	26000	52.15	26000	100%	33%	100%	12%
17	CESC15APR560.00CEW3	26.05	20000	49.00	20000	100%	100%	100%	100%
18	CESC15JUN540.00CE	39.65	66500	85.05	66500	100%	100%	100%	100%
19	CIPL15APR640.00CEW4	39.65	12000	60.10	12000	100%	100%	100%	100%
20	CIPL15MAY640.00CE	42.33	21000	74.64	21000	100%	67%	100%	60%
21	COAL15APR310.00CE	36.95	12000	58.90	12000	100%	33%	100%	10%
22	COAL15APR330.00CEW4	24.95	20000	42.85	20000	100%	100%	100%	100%
23	CRGL15MAY145.00CE	12.80	40000	23.10	40000	100%	25%	100%	41%
24	DABU15APR230.00CEW3	24.40	15000	42.00	15000	100%	50%	100%	52%
25	DABU15MAY220.00CE	29.95	12000	61.00	12000	100%	50%	100%	39%
26	ENGI15APR155.00CE	32.85	10000	55.50	10000	100%	50%	100%	38%
27	GAIL15MAY340.00CE	25.65	17000	45.50	17000	100%	50%	100%	53%
28	HAIL15APR260.00CEW4	25.65	10000	44.50	10000	100%	50%	100%	40%
29	ONGC15APR270.00CE	28.40	20000	46.95	20000	100%	100%	100%	100%
30	PFCL15MAY230.00CE	29.75	15000	51.30	15000	100%	33%	100%	30%
31	PLNG15MAY155.00CE	15.50	40000	26.40	40000	100%	50%	100%	74%
32	TITA15MAY350.00CE	27.40	30000	47.80	30000	100%	25%	100%	38%
33	UBRL15APR920.00CEW4	29.55	12000	65.45	12000	100%	100%	100%	100%
34	UPHL15APR370.00CEW2	30.85	12000	53.15	12000	100%	100%	100%	100%
35	VOLT15APR230.00CEW4	27.85	13000	52.30	13000	100%	50%	100%	57%

14. I note from the trade log that the trades executed by the Noticee in a contract were squared up within a short span of time with its counterparties. To illustrate, the Noticee on March 24, 2015 at 11:49:40 hrs entered into 1 buy trade with counter party viz. Gajanan Enterprises for 34,000 units at rate of Rs. 14.60 per unit in the contract “APLT15MAY140.00CE”. Thereafter, on the

same day, Noticee at 12:09:58 hrs entered into 1 sell trade with same counterparty for 34,000 units at the rate of Rs. 25.95 per unit in the same contract. It is noted that while dealing in the said contract during the I.P., the Noticee executed 2 reversal trades (1 buy trade + 1 sell trade) with same counterparty viz. Gajanan Enterprises on the same day and with significant price differential in buy and sell rate. Thus, the Noticee, through its dealing in the contract viz. "APLT15MAY140.00CE" during the I.P., executed 2 non genuine trades which is 100% of the total trades from the market in the said contract during the I.P., and thereby, Noticee generated artificial volume of 68,000 units which is 100% of the volume traded in the said contract from the market during the I.P.

15. The Noticee has contended that the creation of false or misleading appearance of trades is not possible in stock option segment as there is no delivery of the any asset and hence it cannot manipulate the market. In this respect, I note that delivery of any asset is not a necessary criterion for creation of false or misleading appearance of trading. The non-genuineness of the 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 39 seconds to 25 minutes & 37 seconds. Such a short span of time taken for reversing the trades in an illiquid stock option contract suggests the non-genuineness of these trades executed by the Noticee. 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 wide variation in 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 Noticee

had indulged in reversal trades with its counterparties in the stock options segment of BSE and the same were non-genuine trades.

16. It is not mere coincidence that Noticee could match its trades with the same counterparties with whom it had undertaken first leg of the respective trades. This is the outcome of meeting of 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..."*

17. 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."*

18. The Noticee has argued that its trading in the stock option contracts was done with rational business economic sense by buying at lower price and squaring

off the position at a higher price and that it had incurred legitimate profit. In this respect, the Noticee has relied on the judgment of Hon'ble Supreme Court in the matter of SEBI Vs. Rakhi Trading Pvt. Ltd. These contentions of the Noticee are not acceptable, as the facts bring out that the impugned trades resulted in one party consistently booking profits and the counterparty booking losses in a pre-determined manner. The Hon'ble Supreme Court in the matter of SEBI vs. Rakhi Trading Private Ltd. Civil Appeal Nos. 1969, 3174-3177 and 3180 of 2011 decided on February 8, 2018) has observed that - *"….Trading is always with the aim to make profits. But if one party consistently makes loss and that too in pre-planned and rapid reverse trades, it is not genuine; it is an unfair trade practice…".* I further note that in the aforesaid matter of SEBI vs. Rakhi Trading involving index stock options, the Hon'ble Supreme Court observed that - *"…the traders thus 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…"*

19. The Noticee has *inter alia* stated that its trades had taken place only on 5 days during the 1.5 years of the investigation period and that such trades were miniscule. I am of the view that the argument of the Noticee that it had traded only on 5 days out of 1.5 years of investigation period does not establish that the trades of the Noticee were genuine. The Noticee has also *inter alia* stated that its trading could have impacted the volume/ price of the 24 underlying scrips. In this respect, I note that there is no allegation in the SCN that the Noticee had manipulated the volume/ price of the underlying scrips. Therefore, the Noticee has grossly misunderstood the allegations in the SCN.

20. I note that direct evidence is not forthcoming in the present matter as regards to meeting of minds or collusion of the Noticee with other entities. The Noticee has stated that its trades have matched with 5 different entities and the counterparties were not related to it. The Noticee has made reference of certain case laws decided by the Hon'ble Securities Appellate Tribunal (SAT)

viz. Jagruti Securities Vs. SEBI and SPJ Stock Brokers Pvt. Ltd. Vs. SEBI. However, I note that the trading behaviour of the Noticee makes it clear that aforesaid non-genuine trades could not have been possible without meeting of minds at some level. 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."*

21. The Noticee has argued that it traded in stock options on anonymous and electronic trading platform of stock exchange and has relied on the observations of Hon'ble SAT in the matter of M/s Bubna Stock Broking Services Vs. SEBI. Further, the Noticee has *inter alia* stated that it did not have any prior meeting of minds or consensus with its counterparties and that mere suspicion cannot be basis for charging allegation of fraud. In this respect, the Noticee has relied on the observations of Hon'ble Supreme Court in the matter of Union of India Vs. Chatur Bhai M. Patel & Co. and the observations of Hon'ble SAT in the matters of Sterlite Industries Vs. SEBI and Parsoli Corporation Vs. SEBI. However, the fact that the transactions in a particular contract were reversed with the same counterparties indicates a prior meeting of mind with a view to execute the reversal trades at a pre-determined price. 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….."

22. 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. 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…".*

23. In view of the same, 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:

    [1]*[**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 [2]*[which shall not be less than five lakh rupees but which may extend to twenty - five crore rupees or three times the amount of profits made out of such practices, whichever is higher].*

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

24. 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.

25. Though the records available before me does mention about amount of gain/loss of the entities involved in the non-genuine trades including the Noticee. 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. Hence, the impact of these non-genuine trade has been considered. 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 72 non-genuine transactions in 35 stock option contracts which demonstrates the repetitive nature of the default on its part.

ORDER

26. 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 Rs. 7,00,000 (Rupees Seven Lakh only) on the Noticee viz. Sarwottam Ispat Limited under the provisions of Section 15HA of the SEBI Act. I am of the view that the said penalty is commensurate with the lapse/omission on the part of the Noticee.

27. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of demand draft in favour of "SEBI -Penalties Remittable to Government of India", payable at Mumbai, OR through online payment facility available on the website of SEBI, i.e., www.sebi.gov.in on the following path, by clicking on the payment link: ENFORCEMENT -> Orders -> Orders of AO -> PAY NOW.

28. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to "The Division Chief (Enforcement Department -DRA- I), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C –4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai –400 051.". The Noticee shall also provide the following details while forwarding DD / payment information:
    - (a) Name and PAN of the Noticee
    - (b) Name of the case / matter
    - (c) Purpose of Payment – Payment of penalty under AO proceedings
    - (d) Bank Name and Account Number
    - (e) Transaction Number

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 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 the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticee viz. Sarwottam Ispat Limited and also to the Securities and Exchange Board of India.

Date: September 13, 2019	**K SARAVANAN**
Place: Mumbai	**CHIEF GENERAL MANAGER &**
	ADJUDICATING OFFICER