BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/KS/AA/2019-20/7087]

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

Salute Advisory LLP

(PAN: ABXFS7031F)

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 Salute Advisory LLP (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 32 non genuine trades in 12 Stock Options contracts which resulted in artificial volume of total 63,17,000 units. The Noticee made a loss of approx. Rs. 1,04,61,700by executing non genuine trades during the I.P. Summary of dealings of the Noticee in 12 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	EXID15JUL150.00CE	4.80	140000	1.20	140000	100%	14%	100%	28%
2	FEDB15JUL155.00CE	4.50	50000	2.50	50000	100%	50%	100%	53%
3	GMRI15JUL12.00PE	1.20	663000	0.10	663000	100%	9%	100%	23%
4	IDBI15JUL50.00PEW3	1.20	704000	0.05	704000	100%	33%	100%	53%
5	MFSL15JUL290.00PE	12.00	30000	2.00	30000	100%	100%	100%	100%
6	PFCL15JUL260.00CEW4	8.70	75000	2.00	75000	100%	100%	100%	100%
7	SAIL15AUG50.00PEW1	2.41	404000	0.10	404000	100%	17%	100%	34%
8	SAIL15JUL50.00PEW3	2.51	404000	0.05	404000	100%	22%	100%	25%
9	TATP15JUL55.00PEW4	1.54	344000	0.08	344000	100%	36%	100%	50%
10	UCOB15JUL45.00PEW3	2.45	80000	0.05	80000	100%	5%	100%	3%
11	YESB15APR800.00PE	19.50	176500	2.50	176500	100%	20%	100%	31%
12	YESB15APR840.00CE	29.50	88000	8.00	88000	100%	100%	100%	100%

6. From the above table, following was noted as regards to dealings of the Noticee:

(a) The Noticee has executed non genuine trades in 12 contracts, wherein all trades of the Noticee in the said 12 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 5% 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 3% 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. Thereafter, the Noticee vide its letter dated October 08, 2018 inter alia requested for inspection and copies of 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 October 19, 2018. Thereafter, the concerned department of SEBI informed that two opportunities of inspection of documents were provided to the Noticee, which the Noticee failed to avail of. In view of the same and in the interest of natural justice, the Noticee was granted an opportunity of hearing in the matter on August 21, 2019, vide hearing notice dated August 09, 2019. However, the Noticee again requested for inspection of documents in the matter, vide its letter dated August 23, 2019. In view of the same, the request of the Noticee was again forwarded to the concerned department of SEBI vide letter dated September 20, 2019. It is noted from available records that the AR of the Noticee Ms. Khyati Bhandari, Advocate, took inspection of documents relied

in the matter by the Adjudicating Officer on January 30, 2020. 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.

8. In view of the principles of natural justice, the Noticee was again granted an opportunity of hearing in the matter on February 17, 2020 vide hearing notice dated February 03, 2020. On the scheduled date of hearing, Ms. Ayushi Anandpara, Shri Jitendra Sharda and Ms. Khyati Bhandari, Advocates, appeared for hearing on behalf of the Noticee and submitted a letter dated February 14, 2020 on behalf of the Noticee and reiterated the contents of the said letter. In the said letter dated February 14, 2020, the following submissions were *inter alia* made:

"…….

4. At the outset, it is submitted that the Noticee does not accept or admit anything stated in the Notice except where the same is expressly admitted by the Noticee in this reply. Nothing stated therein shall be deemed to be admitted by Noticee merely on account of non-traverse and unless the same is specifically admitted by it herein.

5. At the further outset, the Noticee submits that all the allegations mentioned in the Notice, are baseless, bald, sweeping, vague, unfounded, misconceived and speculative, based on assumptions, surmises and conjectures and are completely contrary to factual position on record.

6. *Further, the Noticee denies that, they have violated any of the provisions of SEBI Act, Regulation 3 and 4 of the PFUTP Regulations and there is no basis/ material for the same. It is further submitted that the Noticee has not indulged in any fraudulent and unfair trade practices relating to the securities so as to warrant any kind of directions under provisions of SEBI Act, 1992.*
7. *Before going into the detailed reply, Noticee brief background as under:*
    - *(a) The Noticee having its Registered Office in Bhayander, Thane. The LLP is incorporated on May 4th, 2011.*
    - *(b) The main object of the LLP is to carry on the business to render advisory and consultancy in all matters related to capital market, both domestic and international, offering financial services and consultancy in various fields relating to finance, investment, portfolio, etc.*
    - *(c) The Noticee is engaged in the activities like trading in Equity and Commodity Market. Our Company trades on various Stock Exchanges recognized by the SEBI and FMCG. Our Company trades through the well known broking houses.*
    - *(d) The broker of Noticee issued completely valid contract notes as per the requirements of SEBI / Exchanges for the alleged trades which were also subjected to various charges and taxes on the transactions inter alia including Brokerage, Service Tax, SIT, SEBI Charges and Stamp Duty etc.*
    - *(e) The Noticee humbly submits that its trading at BSE is genuine, bonafide and executed in complete compliance with all the requirements of SEBI and Exchanges.*

I. LAPSES IN THE SHOW-CAUSE NOTICE

a) The Noticee would like to point out that the said Notice suffers from serious latches. There has been a Jong and unexplained delay in the initiation of proceedings against it. It is a fact on record that the adjudicating officer was appointed only on May 29, 2018 and the Notice was issued only on September 21, 2018, i.e., after a lapse of nearly four years from the date of execution of the alleged trades. Moreover, the Notice is not forthcoming with any reason or explanation for the inordinate and unwarranted delay in the issue of the Notice. A chronology of events leading to SCN is given below:

Date	*Particulars*
April 01, 2014 to September 30, 2015	*Investigation Period as per SCN*
March 11, 2015 to August 07, 2015	*Execution of Noticee's allegedly non-genuine trades in Stock Options Segment of BSE. During this period -* • *Stock Option contracts would be settled weekly (every Thursday) - Premiums would decrease very fast* • *No alert/ caution received at the relevant time from BSE in respect of such trades.*

	• *No price bands/reverse trade prevention mechanism/ price reasonability check existed for options*
March 31, 2015	*Financial year ended.*
August 20, 2015	*SEBI’s ex-parte ad-interim order u/s 11(1), 11(4) and 11B of SEBI Act in the matter of illiquid stock options (on BSE) against 59 entities.*
January 18, 2016	*Price Reasonability Check (PRC) introduced - BSE's notice no. 20160113-2 dated 13.01.2016*
February 17, 2016	*SEBl's ex-parte ad-interim order u/s 11(1), 11(4) and 11B of SEBI Act in respect of Trading members in the matter of illiquid stock options (on BSE) against 22 Brokers.*
March 04, 2016	*Weekly options contracts discontinued- BSE's notice no. 20160218- 27 dated 18.02.2016*
March 14, 2016	*Introduction of Reversal Trade Prevention Check (RTPC) - BSE's notice no. 20160308- 33 dated 08.03.2016.*
March 31, 2016	*Financial year ended.*
August 12, 2016	*Disposal Order (to order dated 17.02.2016) against 22 Brokers.*
August 22, 2016	*Confirmatory Order (to order dated 20.08.2015) against 58 entities*

March 31, 2017	*Financial year ended.*
March 31, 2018	*Financial year ended.*
April 03, 2018	*Executive Director, SEBI appointed Adjudicating Officer*
April 05, 2018	*WTM's order against 59 entities disposing all proceedings initiated vide order dated 20.08.2015 - SEBI appointed Adjudicating Officers to enquire into alleged irregularities in illiquid options trading on BSE against 14,720 entities - in Phase I, against 567 entities.*
May 29, 2018	*Order of SEBI communicating appointment of AO sent with Notice dated August 27, 2018 as Annexure-A to us.*
September 21, 2018	*Show Cause Notice for adjudication proceeding after nearly 4 years from the settled trades issued to us.*
October 08, 2018	*The Noticee vide its letter has requested documents/ information which has been relied by your good self.*
January 14, 2020	*Your goodself vide its letter had accepted the request for inspection of the documents.*
January 30, 2020	*Inspection of documents was carried out by the Authorized representatives of the Noticee.*

February 03, 2020	*Vide the said letter, your goodself has granted opportunity of hearing before the Adjudicating Officer in the present matter.*

b) In this regard, Noticee would like crave to rely on the order HB Stockholdings Limited Versus Securities and Exchange Board of India dated 27.08.2013, in which the Hon'ble Securities Appellate Tribunal was observed as under:

“Allowing matters to go on and on for years together by the Respondent serves no purpose, rather it risks loss of evidence such as important documents which may get destroyed while the issue gathers dust. Such systemic failures occur to the disadvantage of all parties concerned and lead to consequences such as genuine violators being allowed to function normally in the capital market for years together, whereas I some situations the reputation of innocent entities gets tarnished as they wait for the wheels of justice to tum a bit faster than the pace at which they seem to be going."

c) Further, the Noticee would rely on the order passed by the Hon'ble Securities Appellate Tribunal in the case of Khandwala Securities Vs. SEBI dated 07.09.2012 in Appeal no. 19 of 2012, where the Ld. Bench observed as under:

"This Tribunal has held in several cases including Subhkam Securities Private Limited. vs. Securities and Exchange Board of India decided on July 25, 2012 Appeal no.73 of 2012, Aditi Dalal vs. Securities and Exchange Board of India decided on November 28, 2011 Appeal no.143 of 2011 that

proceedings under the Securities and Exchange Board of India Act require finalization within a reasonable period of time. Delay defeats justice and the very purpose for which proceedings are initiated."

d) *Furthermore, in the case of Subhkam Securities Private Limited. vs. Securities and Exchange Board of India (Appeal no. 73 of 2012) the Hon'ble Securities Appellate Tribunal in the case of where the Ld. Bench observed as under:*

"Inordinate delay in conducting inquiries and in punishing the delinquent not only permits market manipulator to operate in the market, it also has demoralizing effect on the market players who are ultimately 'not found guilty' but Damocles' sword of inquiry keeps hanging on them for years together from the date of starting investigation by the Board to the date of completion of inquiry proceedings. Precisely for this reason, regulation 28(2) of the intermediary regulations also provides that the designated member should pass appropriate order after considering reply as expeditiously as possible and endeavor shall be made to pass order within one hundred and twenty days from the date of receipt of reply of the notice or hearing. A market player has a right that if proceedings are initiated against him by the Board for violation of any rules and regulations, the proceedings against him, are also concluded expeditiously and he is not made to undergo mental agony when these are unnecessarily prolonged without any fault on his part in delaying the proceedings."

e) *In the light of aforementioned, the Noticee submits that such a delaved proceeding will cause prejudice to "them" in as much as it is likely to not* *remember the antecedents, and be unable to dilate on the factual position emerging from the options trades that took place in year 2015. In this regard, the Noticee humbly submits that on account of the unnatural and unexplained delay of almost 5 years.*

f) The proceedings are, therefore, liable to be quashed on the ground of such a long and un-explained delay of 5 years in initiating of proceeding after investigation was completed.

II. LACK OF EVIDENCE IN SUPPORT OF THE CONTENTS OF THE NOTICE

a) The Noticee denies and disputes that SEBI observed large scale reversal of shares in stock options segment of BSE Ltd. leading to creation of artificial volume. It is submitted that no data or documents with regard to the same has been provided to the Noticee and it is therefore presumed that no such data or documents exist in the file of the Adjudicating Officer.

b) It is humbly submitted that the complete materials/ documents in support of the aforesaid allegations have not been made available to the Noticee. Due to the unavailability of all such documents/material based on which the allegations have been levelled against the Noticee, it renders the Noticee ill- equipped to effectively defend the charges levelled against upon in the Notice. Failure to provide such complete material to the Noticee is bad in law and contrary to the settled principles of natural justice.

c) *In this context, it is submitted that vide letter dated October 08, 2018, the Noticee had requested certain documents/ materials/ statements which were referred to and relied upon by SEBI in issuance of the Notice. Hereto marked and annexed as "Annexure A" is a copy of the letter dated October 08, 2018.*

d) *It is further submitted that the following documents / materials / statements, were sought from your goodself's in order to file a complete and appropriate reply to the Notice:*

  i. *Copy of Investigation Report.*

  ii. *Copy of the complete order log and trade log for the trades executed by Noticee in all the scrips/ options during financial year 2014-15 in both NSE and BSE.*

  iii. *Complete details of the options in which Noticee had traded during the financial year 2014-2015 in both BSE and NSE.*

  iv. *Price movement with time stamps in all the scrips in which trades have been executed by Noticee during the financial year 2014-2015 in both NSE and BSE.*

  v. *Noticee relationship with counter parties broker/counter party client in the alleged transactions executed by Noticee.*

  vi. *Records/recording of order placement by Noticee with the concerned broker.*

  vii. *Order book maintained by the Broker for Noticee.*

  viii. *Communication exchanged with the Income Tax Department.*

  ix. *Any other documents/material relied upon while issuing the Notice for the alleged violation in the captioned matter.*

x. File notings by which the action was approved in the instant matter.

xi. Volatility index in the underlying scrips of the options in which trades have been executed by Noticee during the financial year 2014-2015 in both NSE and BSE.

e) In response to the aforesaid letter dated October 08, 2019, your goodself had replied vide the letter dated October 19, 2019 vide which it was informed to the Noticee that an opportunity of inspection of documents relied upon while issuing the captioned Show Cause Notice has been granted to him and further advised to address further communication, if any, in this regard to EFD1-DRA I. Thereafter, the Noticee vide letter dated September 30, 2019 has requested EFD1-DRA I department of SEBI, to make available all the documents, so as to enable the Noticee to prepare an appropriate reply to the captioned Notice. In response to the Noticee's letter dated September 30, 2019, your goodself vide letter dated January 14, 2020 has granted opportunity for inspection of documents in the captioned matter on January 30, 2020. Hereto marked and annexed as "Annexure B" is a copy of the letterdated January 14, 2020.

f) Thereafter, the authorised representative of the Noticee has attended the schedule inspection the present matter. It is humbly submitted that during the inspection, the authorised representative requested abovementioned documents. It is submitted that the said documents were not provided to *the authorized representatives. Hereto marked and annexed as "Annexure C" is a copy of minutes of inspection dated January 30, 2020.*

g) *Thereafter, your goodself vide its letter dated February 03, 2020 has granted opportunity of hearing in the present on February 17, 2020. Hereto marked and annexed as "Annexure D" is the copy of hearing notice dated February 03, 2020.*

h) *It is submitted that the aforesaid pending documents/information with SEBl shows that the data provided by SEBI in the Notice is just the tip of the iceberg and various relevant information and data remains undisclosed by SEBI. Thus, it is submitted that it would not be possible for the Noticee to present a comprehensive submission without the aforesaid information. The same is a gross violation of Natural Justice, and therefore the entire SCN should be quashed and set aside on this ground alone.*

i) *The Noticee is therefore limiting its submissions strictly on the basis of the documents available on record and requests the Ld. Adjudicating Officer not to rely upon any data / documents / averment / statements beyond the material which is available on record as provided to the Noticee. Since the documents sought for by the Noticee have not been provided their cannot be a determination on the following:*

   i. *Any reference to investigation*
   ii. *Any reference to Artificial / non-genuine / reversal trades*
   iii. *Any reference to trades of various other entities and / or the overall trading in the BSE Stock Options segments.*

iv. Any reference to the price variation/ price movements/ facts affecting the price on the options traded by the Noticee.

v. Connection/ relation of the Noticee with its counterparty brokers / counterparty clients/.

vi. The manner in which the orders were placed by the Noticee with his broker and the manner in which the trades were executed by the broker on behalf of Noticee.

vii. The manner in which action was approved against the Noticee in the present matter.

j) A statement is made in the paragraph no. 3 of the Notice that "it may be noted that reversal trades are considered non genuine trades if it involves 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." However, the Notice does not justify the basis of this alleged definition of reversal trades and which authority has been relied on in this context. No documents in this regard have been provided.

k) With regard to the allegation in the Notice that "these option contracts were illiquid in nature, having very small volume in the trading, the Noticee allegedly created artificial volumes in stock options which was manipulative and deceptive in nature." it is submitted that the basis of arriving at the definition of artificial volume is done without any disclosure. There is no material on record in the present proceedings to uphold the aforesaid *definition of artificial volume. It is submitted that there appears to be no sound legal reasoning, whatsoever which justifies the definition of artificial volume/reversal trades non- genuine trades as in the Notice. Had there been any law/precedent the same would have formed a part of records of present proceedings. In absence of any such materials the statements made in the Notice are without any basis and therefore denied and disputed.*

l) The Noticee submits that along with the Notice the details of only few trades of Noticee have been provided and the data along with the Notice does not provide the details of trades of any other entity, which makes the allegations of the Notice baseless and therefore cannot be relied upon by the Ld. Adjudicating Officer while conducting the present proceedings. In the present matter there is no material evidence or proof to reflect upon the conduct and the manner in which the alleged trades were executed.

III. NO CONNECTION WITH ANY PERSON/ ENTITY IN THE NOTICE

a) In order to allege the creation of artificial volume in the market, it is imperative to show that parties carrying out the trades (alleged to be in the nature of artificial trades) were connected to each other or at least shared a common objective of creating artificial volume. With this common objective they carried out trades which were not genuine or which did not intend real trading.

b) Therefore it is necessary to prove that two contracting parties had struck a deal beforehand, i.e. there was meeting of minds between the two contracting parties. It is submitted that the Noticee was completely unaware of the identity of the actual seller and counter party broker, there cannot be *any question of meeting of minds. In fact no evidence or averments has been put forth in the SCN to suggest that the Noticee had any prior consensus or there existed a meeting of minds with the counter party.*

c) *The Noticee would further like to cite the Order of the Hon'ble SAT in the case of M/s Nishith M. Shah HUF v/s SEBI whereby it has been held that:*

"if trading in miniscule amount leads to an increase in the price of the scrips one can presume or infer that the trading in manipulative but such trading cannot happen unilaterally. There_must be_evidence to show collusion between the buyer and the seller. In the instant case there is none. The principle of preponderance of probability cannot be exercised in the absence of any connection between the seller and buyer"

d) *The Noticee would like to submit that even in his case no connection has been drawn between him and the counterparty in the SCN or the investigation report and therefore the allegation qua him should be dropped. Hereto marked and annexed as "Annexure E" is a copy of the order in the matter of M/s Nishith M. Shah HUF v/s SEBI.*

e) *Further it is almost impossible to know the identity of the parties in a screen-based transaction. The position has been accepted and affirmed by SEBI before the Joint Parliamentary Committee (JPC) on Stock Market Scam and matters relating thereto, 2001, which tabled its report in the Parliament in December, 2002. In the report it has, inter alia, been stated:*

"SEBI has also confirmed that in the screen based trading that is prevalent in the stock exchange now, the buyer or the broker will not be aware of the identity of the seller or the broker."

f) *The SCN alleges the trades with counter parties in the nature of reversal of trades which essentially involves synchronization of trades. It is submitted that synchronization is ipso facto not illegal even under the SEBI Act and SEBI Regulations. SEBI had before JPC, inter alia, stated:*

"SEBI has since confirmed that synchronized deals are ipso facto not illegal."

g) *The aforesaid position is also clear from the fact that SEBI itself recommends several kinds of transactions, which would be capable of synchronizing as valid and legitimate stock market transactions. For instance, SEBI recognizes the concept of negotiated deal i.e. a deal which is struck between the buyer and the seller outside the mechanism of the Stock Exchange, wherein the buyer and seller agree upon the quantity, the price and the terms of the settlement. In this regard it will be pertinent to advert to SEBI Circular No. SMDRP/POLICY/CIR-32/99 dated September 14, 1999 pertaining to Negotiated Deals. In the said Circular, it was inter alia stated that:*

"All negotiated deals (including cross deals) shall not be permitted in the manner prescribed in circulars mentioned above and all such deals shall be executed only on the screens of the exchanges in the price and order matching mechanism of the exchanges just like any other normal trade.

Provided, however, that Foreign Institutional Investors (FIIs) can avail of the provisions of the special bargains on the exchanges in accordance with their bye-laws or obtain suitable exemptions from exchanges for purchases or sales between Flls in such companies where the ceiling of Fll investment of24 % or 30 % as the case may be, has been reached.

The above decision was taken as negotiated deals avoid transparency requirements, do not contribute to price discovery and some investors do not have benefit of the best possible price and militate against the basic concept of stock exchanges, which are meant to bring together a large number of buyers and sellers in an open manner."

h) *Thus in terms of the said Circular, there is no bar on executing the negotiated deals but once a negotiated deal is struck, SEBI obliges that the same be notified to the concerned Stock Exchanges. It is submitted that when a negotiated deal is entered into on the trading screen, there will be meeting of minds of both the Buyer and the Seller, who would simultaneously be aware of the fact that the transaction is being entered on the trading screen in terms of their agreement. Therefore, it necessarily implies that, both buyer and seller would simultaneously enter their sell and purchase transaction at the agreed price on the screen in order to conclude the transaction. This transaction would necessarily be a synchronized transaction. Thus, SEBI itself permits synchronized trading.*

i) *It is further submitted that the Noticee did not have any relation/ connection with the entities/persons mentioned in the Notice or with any of the counter parties to Noticee's trades. The trades were done in normal course devoid of any malafide intentions and knowledge of any such alleged scheme as carved out in the Notice.*

j) *The Notice has failed to appreciate that the anonymous systems of the Exchange do not allow a transacting party to know the details of the counter party and therefore the allegation of executing reversal trades cannot hold good. It is submitted that the Noticee never knew that the trades are in the* *nature of reverse trades before receiving the Notice and scrutinising the Annexures thereto.*

k) *It is thus submitted that assuming whilst denying that even if any such scheme as described in the Notice was being executed, the Noticee did not have any knowledge about the same and was merely trading in normal course of business. Apart from that the Noticee has absolutely no connection/ relation with any other person/ entity alleged in the Notice.*

l) *It is further submitted that, the Notice has also failed to bring out any connection between the Noticee and the other persons/ entities mentioned in the Notice, including the counter party broker or the counter party client. Therefore, by no stretch of imagination, it can be presumed that, the Noticee had any relationship/nexus/prior meeting of mind with any entities involved in the said trades in options.*

m) *A serious charge of fraud and manipulation cannot be levelled merely on the possibility of reversal. There has to be some collusion / connection / relation / nexus / prior meeting of minds to be shown so as to substantiate such trading between the entities.*

n) *Thus, it is submitted that the trades in question, by the Noticee were carried out devoid of any connection with the respective counter parties or any other person/ entity alleged in the Notice.*

o) *There was no nexus or consensus between the Noticee and the counter-parties to the said orders, which is a necessary pre-requisite for any allegation of artificial volume.*

p) *It is further submitted that, in order to establish charges of fraudulent trading or violation of PFUTP Regulations, it is a settled principle of law that there* *must exist some collusion between the parties to the trades. In this context you goodself's attention is invited to the following judgments rendered by the Hon'ble Securities Appellate Tribunal:*

q) *In the matter of M/s. Jagruti Securities Ltd Vs. Securities Exchange Board of India has clearly held that:*

"...we are of the view that in an artificial trade there has to be collusion between the buyer and the seller and in absence of any collusion, the trade cannot be termed as artificial."(Emphasis Supplied)

Hereto marked and annexed as "Annexure F" is a copy of the order in the matter of M/s. Jagruti Securities Ltd vs. Securities Exchange Board of India.

r) *Further in the judgement of Vintel Securities Pvt. Ltd Vs. SEBI, Appeal No. 219/2009 order dated November 23, 2009 the Hon'ble tribunal went on to state that:-*

"….A serious charge of fraudulent and unfair trade practice has been established against the appellant without dealing with the trades executed by it. The adjudicating officer has given no reason whatsoever in support of his conclusion. He has found the Appellant guilty...without showing as to how it was acting in tandem with others. This is not the way in which such charges are established. It is not enough to say that that appellant is guilty of charge. The impugned order must show how the charge stands established. The least that was required was that the adjudicating officer should have dealt with the trades executed by the Appellant and demonstrated as to how the scrip in question was manipulated and the role which the Appellant played in the manipulation. It is not in dispute that it was only the appellant but several other entities were also involved in the

manipulation. In absence of any specific finding in regard to the manner in which the Appellant traded in the scrip in question we cannot uphold the impugned order. Consequently the same is set aside..." (Emphasis Supplied)

Hereto marked and annexed as "Annexure G" is a copy of the order in the matter of Vintel Securities Pvt. Ltd Vs. SEBI, Appeal No. 219/2009 dated November 23, 2009.

s) *As seen herein above the charge of creation of artificial volume necessarily involves the meeting of minds, implying thereby that two parties colluded with each other for creation of artificial volumes. An individual entity/ person cannot create any volume that would result into an artificial volume in the market. It is submitted that the literal meaning of the word 'collusion' as per the Black's Law Dictionary (St. Paul, Minn. West Publishing Co., 1990, Sixth Edition) is "an agreement between two or more persons to defraud a person of his rights by the form of law, or to obtain an object forbidden by law". The term "Collusion" is also defined as "conspiracy; agreement formed with the intent to defraud (Law)".*

t) *From the above it can be concluded that following are the ingredients that needs to prove for alleging the charge of collusion:*

- *There should be an agreement among two or more than two people.*
- *The agreement should be secretive.*
- *The agreement should be made with an intent of doing something illegal such as defrauding or doing something for disadvantage of others orfor something, which is not permitted by law.*

u) *Further, in this connection, it is relevant to note the observation of the Administrative Law Judge of US Securities Exchange Commission in the case of Carole. L. Haynes, that in order to establish the liability for collusion, one has to establish that:*

- *the existence of primary violation;*
- *"knowledge" requirement. i.e., the parties colluding had general awareness that his role was part of overall activity that was improper and*
- *that the parties colluding had substantially assisted the principal violation.*

v) *It is a humble submission of the Noticee that nothing of the sort, as is required in terms of the settled principles for alleging the charge of collusion, has been established in the Notice. It is submitted that when viewed from the said legal position, there is nothing on record to show that:*

- *Any prior understanding/agreement with the entities mentioned in the Notice, who allegedly adopted such modus operandi, which was prima facie illegal.*
- *Agreement to defy the law or to cause harm to anyone or to carry out any illegal object.*
- *Most importantly, the Notice fails to bring out any evidence, which could possibly prove any connection between the Noticee and other persons/entities to the alleged manipulative scheme.*

w) *Therefore, from the above it can be fairly concluded that nothing has been shown in the Notice to make good the allegation of collusion against the Noticee. The Noticee submits that the Notice fails to produce the requisite* *evidence in support of the charge and the same demolishes the very basic premise of the Notice and hence the directions mentioned therein deserve to be vacated against the Noticee.*

IV. *ALLEGATIONS AGAINST THE NOTICEE IN VIOLATION OF PRINCIPLE OF EQUITY*

a) *It is submitted that the presumption which can be drawn from the Notice is that all the said trades are premeditated and were carried out in connivance with each other i.e. the brokers and the clients at both the ends of a transaction were acting in concert with each other to carry out these alleged irregular trades.*

b) *If so be the case, all the entities/persons which/who have executed trades in the said options during the examination period along with their respective brokers should have been made a party to the Noticee. In this regard, it is pertinent to point out here that interestingly, SEBI has in the Notice taken action against the Noticee who had allegedly made profit or loss, and ignoring the very counter parties of the Noticee.*

c) *Further, complete details of the said trades have not been provided to the Noticee in spite repeated request. However, on perusal of the limited data (which is only pertaining to the Noticee) provided in the aforesaid CD, it can be observed that during the examination period, the Noticee had traded with distinct counter parties out of which none of them are alleged in the Notice. There is no mention of the other persons/entities anywhere in the Notice.*

d) *Now, if any person/entity is alleged to have carried out fraudulent/reversal trades, its counter party in such trades should also be alleged with the same* *charges. In the entire scheme of reversal trading, both the parties are to be alleged and if the allegation is levied merely one trading party, such allegation does not hold ground.*

- e) *Therefore, SEBI only took action against selected/shortlisted persons/entities and not against all of them who were allegedly involved in the entire scheme of the said options during the examination period. If the allegation of SEBI were correct then allegation would also have been levelled against all of them, failing which the Notice needs to be withdrawn.*
- f) *Further, no reasons for such specific inclusions and exclusions were given by SEBI in the Notice. If any allegations were to be levelled on a selective set of entities and not on all those who were involved, proper reasons for the same should be given to justify the same. Thus, it is submitted that without supplying any valid reason, SEBI cannot resort to such discriminatory acts.*
- g) *Thus, it is humbly submitted that, such proceedings where only selected persons/entities are alleged are strictly against the principle of justice, equity and good conscious and thus is liable to be set aside.*

V. *TRADE LOG AND ORDER LOG ANALYSIS*

- a) *It is reiterated that in the aforesaid letter seeking documents the Noticee had sought from your goodself documents/materials that were imperative for it to understand the allegations and make appropriate defence. The same included a complete trade log and order log for the examination period. It is further reiterated that the trade log and order log that the Noticee received during the aforesaid inspection in form of a CD only contained trade log and order log pertaining to the Noticee's trades. Kindly note complete trade log and order log of all the trades in* *options during the examination period is imperative for the purpose of giving an appropriate reply/defence to the Notice.*

b) *However, on basis of the incomplete trade and order log provided to the Noticee's, following observations can be deduced:*

i. *The Noticee had traded only in 12 distinct options during the Investigation period.*

ii. *On perusal of the logs, it can be observed that all the contracts belong to scrips which are highly traded scrips on stock exchanges and there is no reason to believe that the meagre trades of the Noticee could have, in anyway affected its volume so as to warrant the charge of artificial volume as alleged in the Notice. In this regard, it is submitted that Options are mere derivatives which derive their values from the underlying scrip and therefore for the allegation of fraud with respect to generating artificial volume which is levelled, has to be proved, and shown in the underlying scrip. But as aforesaid, it is reiterated that all the scrips in whose options the Noticee traded in the examination period are extremely liquid and the Noticee's contribution to the same is a meagre quantity.*

iii. *From the data given to us it is apparent that the counter parties to all the trades executed by the Noticee are different. Furthermore the Noticee has traded in various contracts over the period of Investigation and therefore it is impossible to say that the trades executed by the Noticee were manipulative and/ or could create any artificial volumes in the market. It is submitted that out of these trades, the Noticee had executed only 32 trades which is amounting to 0.008% of all the trades were executed in stock options segment of BSE where these trades were non-genuine trades in toto during the investigation period and this could not possibly have any impact on the underlying scrip of the option segment.*

c) In view of the aforesaid observations out of the incomplete trade and order log, it is submitted that the aforesaid allegations against us are baseless, unjustified and prejudiced and are liable to be vacated.

VI. TRADES CARRIED OUT ARE LEGAL AND THE SAME ARE NOT UNDER A FRAUDULANT SCHEME

a) It is submitted by the Noticee that the said trades were carried out in the normal course of business devoid of any fraudulent intentions and the Noticee is in no way part of the alleged scheme which is carved out by your goodself in the Notice. Without prejudice to the aforesaid, even if it is assumed for the sake of argument that the Noticee was involved with other persons/entities mentioned in the Notice in the alleged scheme of option trading, it is submitted that there is nothing fraudulent or illegal about the same.

b) It is stated in the Notice that a total of 2,91,643 trades comprising substantial 81.38% of all the trades were executed in stock options segment of BSE where these trades were non-genuine trades. While denying and disputing the aforesaid figures only on prejudicial basis and assumption further the Noticee reiterates the submission that of these trades, the Noticee had executed only 32 trades which amounts to 0.008% of all the trades executed in stock options segment of BSE where these trades were non-genuine trades in toto during the investigation period and this could not possibly have any impact on the underlying scrip of the option segment.

c) As per the Notice, the Noticee has indulged in an act that has created a misleading appearance of trading in the securities market. It is submitted that every action has an equal and opposite reaction. Assuming without admitting, the Noticee had created a misleading appearance of trading in the market, but the reaction that the *market gave to such an act does not exist. SEBI has not provided any instances of any effect of the volume or price on the options and has also not provided complete order log and trade log in order to determine the same.*

d) *Further, the Hon'ble Securities Appellate Tribunal in the matter of Ketan Parekh Vs. SEBI (SAT Appeal No 2 of2004) has while dealing with the issue of synchronized deals has inter alia held that:*

"Para 21

A synchronized transaction even on the trading screen between genuine parties who intend to transfer beneficial interest in the trading stock and who undertake the transaction only for that purpose and not for rigging the market is not illegal and cannot violate the regulations. As already observed 'synchronisation' or a negotiated deal ipso facto is not illegal. A synchronised transaction will, however, be illegal or violative of the Regulations if it is executed with a view to manipulate the market or if it results in circular trading or is dubious in nature and is executed with a view to avoid regulatory detection or does not involve change of beneficial ownership or is executed to create false volumes resulting in upsetting the market equilibrium. Any transaction executed with the intention to defeat the market mechanism whether negotiated or not would be illegal. Whether a transaction has been executed with the intention to manipulate the market or defeat its mechanism will depend upon the intention of the parties which could be inferred from the attending circumstances because direct evidence in such cases may not be available. The nature of the transaction executed, the frequency with which such transactions are undertaken, the value of the transactions, whether they involve circular trading and whether there is real change of beneficial ownership, 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." (emphasis supplied)*

Hereto marked and annexed as "Annexure H" is a copy of the order in the matter of Ketan Parekh Vs. SEBI (SAT Appeal No 2 of2004).

e) This allegation of fraudulent trading has no basis as your goodself has failed to provide any evidences to prove that there was a misleading appearance created in the market by the Noticee or had any other impact on the market.

f) It has been alleged in the Notice that the Noticee has significantly contributed to the total no. of trades in the market in the above contracts and that these trades were in the range of 5% to 100% of the trades that happened in the aforementioned contracts. The Noticee submits that the allegation is merely an eyewash as it does not take into consideration the no. of trades and volumes generated in the complete options segment in BSE in a particular scrip on a particular day. It may be noted that the stock exchange platform at the relevant point of time gave an option to write different options as per the suitability of the trader. What has been considered in the SCN is only a particular option and not the total trading in option segment in a particular scrip at the relevant point of time. Thus the percentages shown in the SCN are misleading and cannot be relied upon.

g) The SCN further alleges that non-genuine trades executed by the Noticee had significant difference in buy rates and sell rates, in this regard it is submitted that the pricing of an option depends on various factors which are taken into consideration by the option writer. The pricing of option is determined by the parties to the contract considering host of factors like price of the underlying scrip, *movement of the market, the no. of trades in other options, the volatility index prevailing etc. Since none of these details have been provided to the Noticee in spite of them being sought for by the Noticee it is impossible for the Noticee to explain as to why the Noticee had dealt in a particular option at a particular price at a particular time. The Noticee therefore states that the Ld. Adjudicating Officer needs to ignore the allegations based on pricing.*

h) The Noticee submits that they had traded in total 12 unique contracts, from which it allegedly executed 32 non genuine trades in 12 unique contracts of as many as 10 underlying scrips at BSE Stock Options during the IP. Further, the Noticee had traded only 8 days in said option contracts in BSE Stock Options, out of 1.5 years of the investigation period. In this regard, the Noticee would like to submits that If they intended to carry out artificial volume and create a false and misleading appearance of trading or execute manipulative and deceptive trade, their frequency of such trades in the said option contracts at BSE Stock Options would have been higher or their trading in the particular scrip should have been higher. The Noticee's trading in as many as 10 underlying scrip in the present case and the frequency of trades in the said option contracts is very miniscule. Hence, the allegations of the generation of the artificial volume is not sustainable in law.

i) Upon the perusal of the SCN, it can be seen that the SCN alleged that the Noticee has executed as many as 3% to 100% of the total trade volume in various contracts on a particular day or total volume of the said contract. In this regard, it is imperative to bring to your notice that since the Noticee has executed trades only on one side of the transaction and accordingly the entire 44% to 100% of the volume cannot be contributed to the Noticee when there was a separate counter party to all its trades. The Noticee has either contributed to the buy volume or the *sell volume of the trade and not to the total volume of the day or the contract. Hence the allegation of generating artificial volume 100% is wrongly calculated and the said charge cannot be sustained against the Noticee.*

j) *The Noticee submits that they executed 32 trades for 63,17,000 units in 12 stock option contracts during the IP, which amounts to 0.01% of total reversal trades executed in BSE Stock Options segment during the IP as per the data provided in the present Notice. Further, the Noticee submits that 32 trades for 63,17,000 units in 12 stock option contracts amounts to 0.01% of the total trades executed in BSE Stock Option during the IP. Which is very minuscule to have an impact on the overall volume of the entire BSE Stock Options segment. Hence the allegation of generating artificial volume in 12 stock option contracts in BSE Stock Options segment during the investigation period is not sustainable in law.*

k) *It is submitted that there is no price impact on the underlying scrips of the 12 unique option contracts due to the trading of the Noticee. Further, it can be clearly seen there is no allegation of impact on the price in said underlying scrips has been alleged in the Notice.*

l) *Further, the Noticee reiterates its submission that the said trades were executed on screen based system where it is not possible for transacting party to know the details of the counter party, Further, the Notice has failed to provide any connection or connivance with the counter party nor provided any evidence, document, record on the same. Hence, the allegation of the violation of PFUTP Regulation is not sustainable in law.*

m) *Further, the Noticee submits that the as per clauses 1.2 and 1,3 of Risk Disclosure Document (RDD), which deals with Risk of low liquidity and Risk of wider, it can be construed that SEBI is well aware of the possible losses due to lower liquidity* *and wider spreads. The SCN also records that the contracts in which we dealt were illiquid. It is not disputed that liquidity in the contracts recorded in the SCN was low and spreads were bound to be wide so we were constrained to square off their trades at a price difference, which is also appreciated by the RDD issued by SEBI. Hereto marked and annexed as "Annexure I" is a copy of Risk Disclosure Document (RDD) issued by SEBI.*

VII. WITH REGARD TO VIOLATION OF REGULATION 3(a), (b), (c) & (d) AND 4(1) & (2)-(a) OF THE PFUTP REGULATION

a) The allegation levied against the Noticee is that it has violated the provisions of SEBI (Prohibition of Unfair and fraudulent trade practices) Regulations, 2003. The extract of the relevant provisions are reiterated herewith:

"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;"

b) *The Noticee further denies that it has violated the provisions of Regulation 3 and 4 of PFUTP Regulations. In this context it is submitted that:*

i. *It has neither directly or indirectly bought nor sold or otherwise dealt in the securities in any fraudulent manner. The Noticee was trading in the options in the normal course devoid of any fraudulent intentions.*

ii. *It has not either directly or indirectly used or employed, 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.*

iii. *The Noticee has not either directly or indirectly employed 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.*

iv. *It has not either directly or indirectly engaged 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.*

v. *The Noticee has not dealt in securities in a fraudulent manner or indulged in an unfair trade practice, involving fraud.*

vi. *The Noticee has not indulged in any act which creates false or misleading appearance of trading in securities market.*

c) *The Noticee further submits that though the allegation have been alleged in the SCN, no evidence has been placed on record to show that the action of the Noticee were in any way fraudulent. Here the definition of the term 'Fraud' as defined in the PFUTP Regulations needs to be referred, which states that any act, expression, omission or concealment committed should have induced another person to deal in the securities market. In this regard, it is submitted that if the table in the SCN is to be considered to be true, than in as many as 3 out of 12 contracts, the Noticee has contributed 100% of the volume in the said contract. In such a case, it can be fairly concluded that the Notice has not induced any other entities to trade in these contracts.*

d) *It is further submitted that the trading of the Noticee has not in any way induced any person to trade in the said Options as can be seen from the fact that the options has remained illiquid after his trades. It is further submitted that the trading in the Options has also not induced any person from abstaining from trading in the Options as the option was illiquid prior to the trading of the Noticee and at has also not impacted the trades subsequently. The Noticee reiterates that trades executed by him were executed in the ordinary course of business and had no intention what* *so ever to dealing in the Options which would lead to violations of the provisions of PFUTP Regulations.*

e) In this regard, Noticee would like to refer the in the matter of Securities and Exchange Board of India Vs. Kanaiyala Baldevbhai Patel, the Hon'ble Supreme Court of India observe that:

"A person can be said to have induced another person to act in a particular way or not to act in a particular way if on the basis of facts and statements made by the first person the second person commits an act or omits to perform any particular act. The test to determine whether the second person had been induced to act in the manner he did or not to act in the manner that he proposed, is whether but for the representation of the facts made by the first person, the latter would not have acted in the manner he did. This is also how the word inducement is understood in criminal law. The difference between inducement in criminal law and the wider meaning thereof as in the present case, is that to make inducement an offence the intention behind the representation or misrepresentation of facts must be dishonest whereas in the latter category of cases like the present the element of dishonesty need not be present or proved and established to be present. In the latter category of cases, a mere inference, rather than proof, that the person induced would not have acted in the manner that he did but for the inducement is sufficient. No element of dishonesty or bad faith in the making of the inducement would be required."

Hereto marked and annexed as "Annexure J" is a copy of the order in the matter of Securities and Exchange Board of India Vs Kanaiyala Baldevbhai Patel.

f) In the light of the aforesaid observation of the Judgment, The Noticee would like to submits that the Noticee have not made any suggestion as to a fact which is not *true or which it does not believe it to be true which would have induces any entity to trades in the BSE Stock Option. The Noticee has neither concealed any facts after having knowledge or belief of the fact which would have induced any entity to trades in the BSE Stock Option. In the present case, there is no suggestion of facts of inducement. As per above judgment it can be observed that the inducement is cannot be a mere presumption that someone may have been induced, the Supreme Court clearly specified that the inducement needs to be established by the way of the facts and in the present case the, the Notice failed to established any facts that the Noticee induced any person in the captioned matter.*

g) *Further with regards to the other contracts, the Noticee submits that since the complete copy of the Order Log and Trade Log is not provided, from the details available on record, it cannot be determined whether the trading of the Noticee has in any way induced any entity to deal in the contract. It if further imperative to point out that no reference or allegation that the trading of the Noticee had induced any entity to deal in those contracts has also been made in the SCN. This shows that the allegations levied against the Noticee are bald, baseless and frivolous and on this very basis the present SCN should be quashed against the Noticee.*

h) *The Noticee has not made any misrepresentation of truth or concealed any material fact known to him which could have induced any person to act to his detriment.*

i) *The Noticee has not made any suggestion as to a fact which is not true or which it does not believe it to be true which would have induced any entity to trades in the BSE Stock Option. The Noticee has neither concealed any facts after having* *knowledge or belief of the fact which would have induced any entity to trades in the BSE Stock Option.*

j) *The Noticee has also not made any promises to any parties without any intention of performing it which would have induced any entity to trades in the BSE Stock Option.*

k) *The Noticee has not made any representation in a reckless and careless manner whether true or false which would have induced any entity to trades in the BSE Stock Option.*

l) *The Noticee has not carried out any such act or omission which any other law specifically declares to be fraudulent which would have induced any entity to trades in the BSE Stock Option,*

m) *The behaviour of the Noticee was not deceptive in may manner which would have deprived another of informed consent or full participation and which could have induced such person to trade in the BSE Stock Option.*

n) *The Noticee has not made any false statement without reasonable ground for believing it to be true which would have induced any entity to trades in the BSE Stock Option.*

o) *The Noticee has not issued any securities where in misinformation that affects the market price of the security, resulting in investors being effectively misled even though they did not rely on the statement itself or anything derived from it other than the market price, p) In light of the aforesaid the Noticee cannot be alleged to have been indulged in the fraudulent trade practices*

VIII. *NO LOSS TO THE INVESTORS AND THE TRANSACTIONS WERE GENUINE*

a) *The words "artificial" and "non-genuine" are not defined in PFUTP Regulations or any of the Acts / Regulations of SEBI. This leaves us to rely on dictionary meanings* *of these words to test whether their trades fall under the categories of artificial volume or non-genuine trades. The term "artificial" is defined as "produced by human art or effort, not originating naturally, made or done in imitation of the natural; affected or insincere". The term "non-genuine" is opposite of "genuine" which is defined as "really coming from its reputed source etc., not sham; properly so called; pure bred."*

b) *The Noticee submits that their trades have all the characteristics of being genuine trades and cannot be categorised as non-genuine trades. These trades were executed on the anonymous platform of the Exchange, without any knowledge of counter party, at price ranges that were permitted by the Exchange and SEBI and the obligations arising out of it have been settled through the clearing mechanism of the Exchange.*

c) *The next issue for consideration is that whether the Noticee's trading which has been branded as fraudulent by SEBI, has caused any loss to any other market participants. The stand of SEBI is self-defeating on this issue because the whole premise of SEBI issuing a Notice was that the options in which trading was executed by Noticee were illiquid and no trading was taking place in these options. This makes it clear that there was no public involvement in these options and hence, no harm could have been caused to any other market participants.*

d) *It is noteworthy that trading not impacting the investors has been thought as fraudulent by SEBI. Such finding not only defeats the purpose of PFUTP Regulations but also the SEBI Act itself because the regulator has abandoned its primary responsibility of protecting the other market participants. Here it is imperative to bring to your goodself's notice that it is SEBl's case that the trades executed by the Noticee were as high as 100% of some of the days and no loss* *could have been caused to the investors in such a situation. The Noticee fails to understand how trades which do not affect the investors have been termed as fraudulent by the regulator. Further, the Notice characterizes the trades of the Noticee as deceptive. The Noticee is at loss to understand that when it is being said on the one hand that the options were illiquid then to whose deception were these trades being executed.*

e) *The Noticee wishes to submit that its trading was completely genuine and without any ulterior motive as stated in the Notice. In fact, it is not clear how the Notice classifies the trading to be fraudulent since, the Notice does not spell out the basic ingredients to prove that the trading executed by the Noticee was a fraud. It may be noted that on majority of occasions the Noticee had placed orders on the basis of counter orders available in the system. It is not the case of SEBI that the Noticee had entered orders in variation to the best available counter orders in the system. If it were entering orders on the prices available in system, why is the fault being found in Noticee's trading. It is an ironical situation created by the regulator wherein if a person enters orders in great variance to the price available in the system, he is charged with attempting to manipulate the prices and a person who is entering the orders on the basis of best counter orders available in the system is charged with fictitious and manipulative trading. It may be noted that if the Noticee was involved in reversal trading, then all the orders placed by it would have been executed. However, it is not the case and the failure on part of SEBI to provide a complete order log shows that SEBI is not willing to examine the trading done by the Noticee in a holistic manner.*

f) *With respect to the illiquid stock option trading the Hon'ble Supreme 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 (Hereto marked and annexed as "Annexure K" is a copy judgement of SEBI Vs. Rakhi Trading Private Ltd.) had certain ingredients to prove that a transaction was non-genuine and the same have been dealt with herein under:*

SR. No.	*PARTICULARS*	*APPLICABILITY IN THE PRESENT CASE*
	If a party consistently makes losses	*The Noticee had made loss in the present matter.*
	If the transaction was pre-planned	*The Noticee had no knowledge of his counter parties and these trades were done through screen based trading and hence were anonymous. Accordingly, the 32 isolated instances of the Noticee's trading in different option contracts with different counter parties could not be alleged to be pre-planned transactions*
	If the transactions were rapid reversal trades	*The anonymous systems of Exchange do not allow transacting parties to determine the details of the counter party and therefore the allegation of executing reversal trades cannot hold good. The Noticee never knew that the trades are in the nature of reverse trades before receiving the Notice and scrutinising the*

		Annexures thereto. The transactions under scanner in the present Noticee are 32 isolated incidences of trades in different option contracts and therefore the allegation of rapid reversal of trades cannot be levied against the Noticee.
	If the transaction was non-genuine	*The trades were done in normal course which make complete economic sense.*
	If manipulation is established, it is paramount that the investors have been induced to buy or sell	*As far as the Noticee is concerned, the charges are based on surmises and conjectures and on the wild allegations of having carried out collusive trading, the impact of which on securities market has not been shown in the Notice. Had the investors been induced to deal in the same contracts, the Noticee's volume of that particular option contract could not have been 100% at the relevant point of time. Which clearly shows that there was no manipulation.*

IX. NO PENALTY SHOULD BE IMPOSED ON NOTICEE

a) With respect to imposition of penalty under Section 15HA of the SEBI Act, in respect of the alleged violations Noticee humbly submit that while determining the quantum of penalty under the aforementioned provisions, the provisions of Section

15] of the SEBI Act shall be required to be taken into account which reads as under:

15J - F actors to be taken into account by the adjudicating officer;

While adjudging quantum of penalty under section 15-1, 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."

b) *With regard to Clause (a):- "the amount of disproportionate gain or unfair advantage, whether quantifiable, made as a result of the default": it is submitted that the findings does not lead to the conclusion that there has been disproportionate gain or unfair advantage of Noticee.*

c) *With regard to Clause (b);- "the amount of loss caused to an investor or group of investors as a result of the default" : it is submitted that there are no investor complaints filed at any Stock Exchange or SEBI in respect of the trades executed by Noticee in the scrip and the same has also not been alleged in the SCN. In absence of any direct information, the allegation of causing loss to other investors is baseless.*

d) *With regard to Clause (c):- "the repetitive nature of the default.", it is submitted that Noticee has never been held guilty for any violation of SEBI Laws, and it has been first time the present proceeding have been initiated against the Noticee. Further Noticee submits that they have clean records maintained transparency, integrity,* *honesty and accountability in all its operations and hence there is no question of repetitive nature of default.*

e) *Noticee submits that a bare perusal of the SEBI Act indicates that it is not mandatory for the Adjudicating Officer to impose a penalty every time he come to conclusion that any person /entity has failed to comply with the specified requirement under the Act and/or the Regulations. Even though Section 15HB of the SEBI Act contain the words "shall be liable to a penalty" there is no strict or mandatory obligation on the part of the defaulter to suffer such penalty.*

f) *In this regard, Noticee would like to drawn your goodself's attention on the Judgement passed by the Hon'ble Supreme Court of India in the matter Superintended and Remembrancer Legal Affairs to Government of West Bengal Vs. Abani Maity (1979) 4 SCC 85 held that:*

"Accordingly, the word "liable" occurring in many statutes, has been held as not conveying the sense of an absolute obligation or penalty but merely importing a possibility of attracting such obligation, or penalty, even where this word is used along with the words "shall be”….."

g) *Noticee humbly submits that decision of Hon'ble High Court of Bombay in the matter of SEBI Vs. Cobot International Capital Corporation Limited (Cabot) {2004 51 SCL 307 (BOM)/ to state that where the breach of the regulation is unintentional, not deliberate, technical, minor and based on a bonafide belief, strict enforcement of the regulations may not be warranted. The Hon'ble High Court has stated that the authority may refuse to impose penalty for justifiable reasons*

8. *Further, the Noticee humbly submits that, SEBI has failed to make out a prima facie case against it and therefore the Notice qua it needs to be quashed and set aside in entirety.*

9. *Further, Hon'ble Supreme Court of India in the case of Adjudicating Officer vs. Bhavesh Pabari dated 28th February, 2019 held that Section 15J of the SEBI Act are illustrative in nature and depends from situation to situation:*

   "……This dictum, however, does not mean that factum of continuing default is not a relevant factor, as we have held that clauses (a) to (c) in Section 15-J of the SEBI Act are merely illustrative and are not the only grounds/factors which can be taken into consideration while determining the quantum of penalty."

   Hereto marked and annexed as "Annexure L" is a copy of the judgment in the matter of Adjudicating Officer vs. Bhavesh Pabari dated 28th February, 2019.

h) *In this regard, the Noticee submit following factors should have considered other than the mentioned in Section 15 J of SEBI Act before determining the quantum of penalty, are hereunder:*

   i. *Nature:*

      The nature of violation of the regulation is unintentional, not deliberate, technical, minor and based in a bonafide belief.

   ii. *Gravity:*

      The Noticee reiterate its submission that they executed 32 trades for 63,17,000 units in 12 stock option contracts during the IP, which amounts to 0.008% of total reversal trades executed in BSE Stock Options segment during the IP as per the data provided in the present Notice. Which is very minuscule to have an impact on the overall volume of the entire BSE Stock Options segment. Hence the allegation of generating artificial volume in 12 stock option contracts in BSE Stock Options segment during the investigation period is not sustainable in law.

   iii. *Loss caused to investors:*

The Noticee humbly submit that there is no loss caused to investors.

iv. *Ill-gain drive for the said violation:*

No ill-gain has been made by the Noticee.

v. *Investor Complaint:*

There is no investor complaint against the Noticee.

vi. *Is violation is repetitive?*

The Noticee humbly submit that the violation is not repetitive.

vii. *Doctrine of proportionality*

Further, the Noticee submits the alleged reversal trades executed by the Noticee is very less proportionate to the earlier order passed by Adjudicating Officer, SEBI in similar matter.

Hence, the Noticee humbly submit a lenient view ought to be taken before passing an order in present matter.

10. *The Noticee further submits that the Notice is not substantiated by any evidence or material on record. In so far as the Noticee is concerned, the charges are based on surmises and conjectures and on the wild allegation of having carried out collusive trading, the impact of which on securities market have not been shown in the Notice. It is submitted that on such a charge alone no action can be taken against the Noticee. To make any one liable for any commission or omission to visit adverse consequence, there should be adequate justification and in the absence thereof any punishment meted to him will be unsustainable.*

11. *Therefore, the Noticee submits that such allegations supported by no proof are in gross violation of the principles of natural justice and absolutely uncalled for. In Nandakishore Prasad Vs. State of Bihar (1978) 3 SCC 366, the Hon'ble*

Supreme Court while considering the appeal against the removal of an employee from service based on the findings of a departmental enquiry viewed that

"Before dealing with the contentions canvassed, we may remind ourselves of the principles in point crystallized by judicial decisions. The first of these principles is that disciplinary proceedings before a domestic tribunal are of a quasi-judicial character; therefore, the minimum requirement of the rules of natural justice is that tribunal should arrive at its conclusion on the basis of some evidence, i.e. evidential material which with some degree of definiteness points to the guilt of the delinquent in respect of the charges against him. Suspicion cannot be alloived to take the place of proof even in domestic inquiries."

Hereto marked and annexed as "Annexure M" is a copy of the judgement in the matter of Nandakishore Prasad Vs. State of Bihar (1978) 3 SCC 366.

12. The Hon'ble Supreme Court in Union of India Vs. H. C. Goel (AIR 1964 SC 364) has inter alia held that:

"the principle that in punishing the guilty scrupulous care must be taken to see that the innocent are not punished, applies as much to regular criminal trials as toe disciplinary inquiries held under the statutory rules."

Hereto marked and annexed as "Annexure N" is a copy of the judgement in the matter of Union of India Vs. H. C. Goel (AIR 1964 SC 364).

13. The SAT in its order in case of KSL & Industries Ltd Vs. SEBI (SAT Appeal no. 9/2003 decided on 30.09.2009) has held that:

"I do not find any material on record in support of the said charge. A wild allegation of market manipulation, in particular the charge of fraudulent action unsupported with convincing evidence are not sustained. Fraud cannot survive on mere

conjecture and surmises." Hereto marked and annexed as "Annexure O" is a copy of the judgement in the matter of KSL & Industries Ltd vs. SEBI (SAT Appeal no. 9/2003 decided on 30.09.2009).

14. *Further your attention is drawn to the judgment of R.K. Global Vs. SEBI (Appeal no. 158/1008 Date of Order: September 16, 2010), wherein it was observed by Hon'ble Securities Appellate Tribunal that:*

"...Let us not forget that the Appellant has been charged for executing fraudulent trades which is, indeed, a serious charge and cannot be established on mere suspicion and should have firmer ground to stand upon. A higher degree of probability must exist before such a charge could be found to have been established."... Hereto marked and annexed as ".Annexure P" is a copy of the order in the matter of R.K. Global Vs. SEBI (Appeal no. 158/2008 Date of Order: September 16, 2010).

15. *It is, therefore, the Noticee's humble submission that the allegation levied in the Notice does not corroborate with the corresponding evidence provided in the instant matter.*

16. *Before concluding, we wish to reiterate the submissions made above in a summary:*

   i. *That, the Noticee has not been provided with the complete documents/materials/data to substantiate the allegations levelled against him in the Notice. In view of the same, the Noticee requests the Ld. Adjudicating Officer not to conduct these quasi-judicial proceedings taking in to consideration any material to which the Noticee is not privy. That the trade and order log submitted to the Noticee is incomplete and interalia it does not mention the trades and corresponding order information regarding trades other* *than that of the Noticee during the examination period. Further, on perusal of such incomplete trade and order log, it is submitted that none of the counterparties of the Noticee are alleged in the Notice and the scrips in whose options the Noticee has traded are all liquid and highly traded and thus allegation of artificial volume creation cannot be levelled against the Noticee.*

ii. *That, the Noticee has no relation/ connection with any person/entity alleged in the Notice and the Notice has also failed to bring out any connection between the Noticee and such other persons/entities. Therefore, by no stretch of imagination, it can be presumed that, the Noticee had any relationship/nexus/prior meeting of mind with any entities or groups mentioned in the said Notice.*

iii. *That, it is submitted that entering into the said reversal of trades in Options cannot be termed as fraudulent. Since the trading done by the Noticee in derivatives was not capable of influencing the underlying, SEBI cannot allege that the Noticee has entered into manipulative transactions. Further, it is the case of SEBI that these options were illiquid and hence it can be said that no investor was defrauded or affected by their trading.*

iv. *That there was no loss caused to any investor or any other person/entity as a result of the Noticee's said trading.*

v. *That the allegations and charges against the Noticee are based on surmises and conjectures and on the wild allegation of having carried out collusive trading.*

vi. *That owing to the aforesaid submissions, the Noticee submits that it did not indulge in any fraudulent and unfair trade practice and the trades executed by it were genuine.*

17. Thus, in view of the facts stated, arguments advanced and authorities cited, it is humbly submitted that the current proceedings are illegal and is contrary to principles of natural justice. The Noticee submits that the allegation levied in the Notice does not corroborate with the corresponding evidence provided in the instant matter and needs to be quashed.

18. In the instant case, since no primary violation of SEBI Act or PFUTP Regulations against the Noticee has been made out and as it has also explained the genuineness of the case, the question of holding an inquiry against it in terms of 4 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 and imposing penalty for the alleged violation does not arise. Therefore it is duly submitted that the Noticee has not committed any wrong and no charge has been established against him even prima facie, to warrant any action.

CONSIDERATION OF ISSUES AND FINDINGS

9. 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?

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

PFUTP Regulations, 2003

3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

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

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

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

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

4. Prohibition of manipulative, fraudulent and unfair trade practices

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

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

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

11. I note that the Noticee has *inter alia* stated that certain documents related to the investigation have not been provided to it. In this respect, I note from available records that the documents / information relied in the present matter including the trade log of the Noticee have been provided to the Noticee as annexures to the SCN. Further, I note from available records that the inspection of documents relied in the present matter have been provided to the Noticee as per policy. It is relevant to note that Hon'ble Supreme Court in the matter of Kanwar Natwar Singh v. Directorate of Enforcement [(2010) 2 SCC 497], while discussing principles of natural justice has held that - *"…Even the principles of natural justice do not require supply of documents upon which no reliance has been placed by the Authority to set the law into motion. Supply of relied on documents based on which the law has been set into motion would meet the requirements of principles of natural justice…".* I further note that Hon'ble SAT in the matter of Shruti Vora vs. SEBI (Appeal (L) No. 28 of 2020, date of decision: 12.02.2020) has observed that: - *"….A bare reading of the provisions of the Act and the Rules as referred to above do not provide supply of documents upon which no reliance has been placed by the AO, nor even the principles of natural justice*

require supply of such documents which has not been relied upon by the AO. We are of the opinion that we cannot compel the AO to deviate from the prescribed procedure and supply of such documents which is not warranted in law. In our view, on a reading of the Act and the Rules we find that there is no duty cast upon the AO to disclose or provide all the documents in his possession especially when such documents are not being relied upon…" In view of the same, I am convinced that the principles of natural justice have been complied with in the present matter.

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. 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 also note that the Noticee has argued that the basis for arriving at the definition of artificial volume or reversal trades have not been provided. In this respect, I find it not necessary that every term should be defined in the law.

Terms that are used based on market conduct have to be construed accordingly. Thus, the arguments of the Noticee in this regard are not convincing.

14. I note that the Noticee has not disputed the trades brought out in the SCN and admitted that the impugned trades in illiquid stock options were done in its account. I note from the trade log of the Noticee that it had traded in 19 unique contracts in the stock options segment of BSE during the investigation period. It is observed that the Noticee had executed 32 non-genuine trades in 12 contracts. I further note that the above mentioned trades of the Noticee had resulted in the creation of artificial volume of a total of 63,17,000 units in the said 12 contracts and the said trades have also resulted in a close out difference of approximately Rs. 1,04,61,700 against the Noticee. 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	EXID15JUL150.00CE	4.80	140000	1.20	140000	100%	14%	100%	28%
2	FEDB15JUL155.00CE	4.50	50000	2.50	50000	100%	50%	100%	53%
3	GMRI15JUL12.00PE	1.20	663000	0.10	663000	100%	9%	100%	23%
4	IDBI15JUL50.00PEW3	1.20	704000	0.05	704000	100%	33%	100%	53%

5	MFSL15JUL290.00PE	12.00	30000	2.00	30000	100%	100%	100%	100%
6	PFCL15JUL260.00CEW4	8.70	75000	2.00	75000	100%	100%	100%	100%
7	SAIL15AUG50.00PEW1	2.41	404000	0.10	404000	100%	17%	100%	34%
8	SAIL15JUL50.00PEW3	2.51	404000	0.05	404000	100%	22%	100%	25%
9	TATP15JUL55.00PEW4	1.54	344000	0.08	344000	100%	36%	100%	50%
10	UCOB15JUL45.00PEW3	2.45	80000	0.05	80000	100%	5%	100%	3%
11	YESB15APR800.00PE	19.50	176500	2.50	176500	100%	20%	100%	31%
12	YESB15APR840.00CE	29.50	88000	8.00	88000	100%	100%	100%	100%

15. It is noted that the Noticee had executed non-genuine trades in 12 contracts, wherein percentage of non-genuine trades of the Noticee in stock options contracts to total trades in the contracts were in the range of 5% to 100%. Out of the said 12 contracts, the trades of the Noticee contributed to 100% of artificial volumes in 3 contracts. Further, percentage of artificial volume generated by the Noticee in the contract to the total volume in the contract was in the range of 3% to 100%. Non-genuine trades executed by the Noticee in the above contracts had significant differential in buy rates and sell rates considering that the trades were reversed on same day.

16. 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 July 07, 2015 at 13:27:05 hrs entered into 1 sell trade with counter party viz. Sweety Holdings Pvt Ltd for 30,000 units at rate of Rs. 2 per unit in the contract "MFSL15JUL290.00PE". Thereafter, on the same day, Noticee at 13:45:50 hrs entered into 1 buy trade with same counterparty for 30,000 units at the rate of Rs. 12 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. Sweety Holdings Pvt Ltd on the same day and with significant price differential in buy and sell rate. Thus, the Noticee, through its dealing in the contract viz. “MFSL15JUL290.00PE” 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 60,000 units which is 100% of the volume traded in the said contract from the market during the I.P.

17. The non-genuineness of these transactions executed by the Noticee is evident from the fact that there was no commercial basis as to why, within a short span of time, the Noticee reversed the position with its counterparties with significant price difference. I note from the trade log of the Noticee that the time taken by the Noticee for reversing its non-genuine trades ranged from 5 seconds to 1 hour, 55 minutes & 38 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. 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. 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.

18. The Noticee has *inter alia* stated that it did not have any prior meeting of minds or consensus with its counterparties and that mere conjectures cannot be basis for charging allegation of fraud. In this regard, I note that 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..."*

19. 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."

20. The Noticee has *inter alia* submitted that its trades are genuine as the Risk Disclosure Document (RDD) issued by SEBI also envisages the possibility of significant price difference and losses / profits due to lower liquidity and wider spreads. In this context, I note that RDD is a document in the nature of general advisory to investors dealing in derivatives markets considering that derivatives products are complex, risky and high leverage products. Such a document in any case does not either implicitly or explicitly permit deliberate structuring of manipulative trades which lack economic rationale and run contrary to the dynamics of price discovery in option trading. Therefore, the contention of the Noticee devoid of any merit.

21. The Noticee has stated that no connection has been made out between itself and the counterparties and relied on the judgement of Hon'ble SAT in the matter of Nishith M. Shah vs. SEBI. I note that the facts of the said matter are

different from the present matter as the Noticee has executed reversal trades in illiquid stock options in the present matter. 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. 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."*

22. 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….."

23. 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…".*

24. 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.***

[1] Inserted by the SEBI (Amendment) Act, 2002, w.e.f.29-10-2002.

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].

25. 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.

[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

26. 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 32 non-genuine transactions in 12 stock option contracts which demonstrates the repetitive nature of the default on its part.

ORDER

27. 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. 5,00,000 (Rupees Five Lakh only) on the Noticee viz. Salute Advisory LLP 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.

28. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order 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. In case of any difficulties in payment of penalties, the Noticee 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 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. Salute Advisory LLP and also to the Securities and Exchange Board of India.

Date: February 28, 2020	**K SARAVANAN**
Place: Mumbai	**CHIEF GENERAL MANAGER &**
	ADJUDICATING OFFICER