BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER Ref No.: Order/AP/AS/2019-20/7257]

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) RULES, 1995.

In respect of:

Mr. Alok Bhargave
(PAN: AAAPA3997N)
New No. 60, Old No. 121,
Sterling Road, Nungambakkam,
Chennai – 600034 (Tamil Nadu)

In the matter of dealing in Illiquid Stock Options at BSE

1. Securities and Exchange Board of India ('SEBI') observed large scale reversal of trades in the Stock Options Segment of the BSE Limited (hereinafter be referred to as 'BSE') and, pursuant to this, it conducted investigation into the trading activities of certain entities in illiquid Stock Options at the BSE for the period April 01, 2014 to September 30, 2015 (hereinafter be referred to as 'Investigation Period'). Investigation revealed that during the Investigation Period, a total of 2,91,643 trades (comprising 81.38% of all the trades executed in the Stock Options Segment of BSE) involved reversal of buy and sell positions by the clients and counterparties in a contract.

2. The reversal trades are considered as 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. These alleged non genuine trades resulted into creation of artificial volume to the tune of 826.21 crore units or 54.68% of the total market volume in Stock Options segment of BSE during the Investigation Period. It was further noted that said alleged non genuine trades were not restricted to any specific contract or between any specific set of entities. Mr. Alok Bhargave (hereinafter referred to as 'the Noticee') was one of the several entities which were indulged in execution of such alleged non-genuine trades.

3. It was observed from the trade log that the Noticee that it had executed total 180 trades in 50 unique Stock Option contracts during the Investigation Period, out of which 166 reversal trades in 44 unique contracts had been found to be non-genuine trades which allegedly led to creation of artificial volume

of total 1,85,25,000 units. It is further observed that the Noticee, by executing non genuine trades during the relevant period, registered a negative close out difference of ₹1,00,57,500/- approx. The trades entered by the Noticee were reversed on the same day within a very short span of time with same counterparty at a substantial price difference without any basis for significant change in the contract price which indicates that these trades are artificial and are non-genuine in nature. The summary of dealings of Noticee in such 44 Stock Options contracts is as follows:

Table 1 – Summary of dealings of the Noticee in contracts wherein he executed non-genuine trades

S. No.	Contract Name	Avg. Buy Rate (₹)	Total Buy Volume (no. of units)	Avg. Sell Rate (₹)	Total Sell Volume (no. of units)	% of Non Genuine trades of Noticee in the contract to Noticee's Total 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	ACCL15APR1530.00CE	100.00	73500	66.00	73500	100%	20%	100%	29%
2	ACCL15APR1590.00PE	50.00	62500	10.00	62500	100%	8%	100%	10%
3	ACCL15MAR1620.00CE	17.50	88250	0.50	88250	100%	4%	100%	20%
4	ALBK15MAR110.00PE	3.70	428000	0.20	428000	100%	20%	100%	58%
5	ALLD15FEB75.00CE	1.35	720000	1.15	720000	100%	67%	100%	83%
6	AMBC15MAR250.00PE	2.30	250000	0.30	250000	100%	100%	100%	100%
7	AXIS15APR540.00PE	11.60	50000	1.60	50000	100%	20%	100%	23%
8	AXIS15APR620.00CE	7.50	200000	2.00	200000	100%	100%	100%	100%
9	AXIS15APR660.00PE	94.00	42000	74.00	42000	100%	100%	100%	100%
10	AXIS15MAR620.00CE	18.50	64500	3.00	64500	100%	50%	100%	23%
11	BAJT15MAR2100.00CE	92.00	7000	35.00	7000	100%	25%	100%	11%
12	BAJT15MAR2160.00CE	50.00	1500	10.00	1500	100%	20%	100%	4%
13	BAJT15MAR2220.00PE	123.00	15000	90.00	15000	100%	50%	100%	53%
14	BHRT15APR410.00PEW3	22.00	180000	12.00	180000	100%	100%	100%	100%
15	BOBL15MAR185.00CE	6.00	181250	0.50	181250	100%	10%	100%	16%
16	CARN15APR210.00CE	10.80	54000	3.40	54000	100%	33%	100%	36%
17	CARN15MAR250.00CE	3.90	257000	0.20	257000	100%	50%	100%	66%
18	CENT15MAR640.00CE	8.00	200000	3.00	200000	100%	100%	100%	100%
19	DLFL15MAR150.00PE	1.40	900000	0.40	900000	100%	25%	100%	40%
20	DLFL15MAR170.00CE	3.30	300000	0.40	300000	100%	50%	100%	15%
21	EXID15MAR175.00PE	3.20	332000	0.20	332000	100%	5%	100%	8%
22	FEDB15MAR150.00PE	6.20	238000	2.00	238000	100%	29%	100%	27%
23	HDIL15MAR110.00PEW3	3.45	352000	0.60	352000	100%	8%	100%	9%
24	HDIL15MAR120.00CEW2	1.62	236000	4.99	236000	100%	11%	100%	9%
25	IDBI15MAR75.00CEW3	2.45	212000	0.10	212000	100%	100%	100%	100%

26	LUPL15MAR1860.00PE	22.20	85500	1.20	85500	100%	50%	100%	36%
27	MFSL15MAR250.00CE	3.30	135000	10.65	135000	100%	14%	100%	13%
28	RANB15MAR800.00PE	9.00	100000	2.00	100000	100%	13%	100%	17%
29	SBIL15MAR310.00CE	8.50	138750	1.30	138750	100%	17%	100%	30%
30	SYND15MAR115.00CE	4.80	888000	2.10	888000	100%	40%	100%	69%
31	TCSL15APR2500.00PE	28.00	27000	8.00	27000	100%	33%	100%	14%
32	TCSL15APR2550.00PE	45.82	61000	27.70	61000	100%	60%	100%	23%
33	TCSL15APR2750.00CE	40.00	24000	15.00	24000	100%	25%	100%	11%
34	TCSL15APR2800.00CE	28.00	30000	8.00	30000	100%	20%	100%	17%
35	TCSL15APR2850.00CE	19.00	42750	5.00	42750	100%	50%	100%	52%
36	TCSL15APR2900.00CE	16.43	140000	6.43	140000	100%	100%	100%	100%
37	TISC15MAR320.00CE	16.30	150000	8.30	150000	100%	3%	100%	25%
38	UCOB15FEB70.00PE	1.80	1468000	0.10	1468000	100%	12%	100%	81%
39	VOLT15MAR290.00CE	2.20	150000	0.20	150000	100%	40%	100%	25%
40	VOLT15MAR300.00CE	1.15	300000	0.15	300000	100%	22%	100%	41%
41	YESB15MAR780.00CE	74.86	106500	44.86	106500	67%	50%	9%	5%
42	YESB15MAR800.00PE	10.50	30000	0.50	30000	100%	15%	100%	8%
43	YESB15MAR860.00CE	13.00	23000	0.20	23000	100%	29%	100%	11%
44	YESB15MAR860.00PE	38.50	15000	18.50	15000	100%	25%	100%	5%

4. From the above table it was observed that: -
   a. The alleged non-genuine trades have contributed significantly when compared with the total number of trades from the market in the above contracts. The non-genuine trades of the Noticee ranged: -
      i. from 3% to 100% of the total trades that had happened in the aforementioned contract; and
      ii. from 67% to 100% of the total trades of the Noticee that had happened in the aforementioned contract.
   b. The whole volume of 1,85,25,000 generated by the Noticee in all of the above contracts due to its non-genuine trades were artificial volume, and further this artificial volume, generated by the Noticee, also contributed significantly to the extent of 4% to 100% of the total volume in said contracts in the market.
   c. These alleged non genuine trades, executed by Noticee in above contracts, had significant differential in buy rates and sell rates considering that the trades were reversed on same day.
   d. The Noticee has allegedly engaged in the non-genuine transactions in the option segment of BSE for the purpose creating false appearance of trading.
5. Based on above findings of the investigation, the competent authority in SEBI *prima facie* felt satisfied that there are sufficient grounds to inquire and adjudicate the alleged violations of the provision of

Regulation 3(a), (b), (c), (d), 4(1) and 4(2)(a) of SEBI (Prohibition of Fraudulent and Unfair Trading Practices related to Securities Markets) Regulations, 2003 (hereinafter be referred to as, the "PFUTP Regulations") by the Noticee and appointed Shri Suresh B. Menon, Chief General Manager as Adjudicating Officer ('erstwhile AO') vide *communication order* dated May 29, 2018 to inquire and adjudge under Rule 5 of SEBI (Procedure for Holding Inquiry and imposing penalties by Adjudicating Officer) Rules, 1995 (hereinafter be referred to as, the "Adjudication Rules")and under section 15HA of the SEBI Act, the alleged violations by the Noticee. Thereafter, vide *communication order* dated March 25, 2019, Shri Santosh Shukla, Chief General Manager was appointed as Adjudicating Officer pursuant to transfer of erstwhile AO. Subsequently, vide *communication order* dated January 07, 2020, this case has been transferred to me with advise that except for the change of the Adjudicating Officer the other terms and conditions of the original orders *'shall remain unchanged and shall be in full force and effect'* and that the "*Adjudicating Officer shall proceed in accordance with the terms of reference made in the original orders".* The text of these provisions of PFUTP Regulations are as under

PFUTP Regulations

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.

6. After receipt of records of these proceedings, it was noted that the erstwhile AO had issued the notice to show cause no. SEBI/HO/EAD/25086/2018 dated August 27, 2018 ('the SCN') to the Noticee in terms of Rule 4(1) of the Adjudication Rules read with section 15I of the SEBI Act to the Noticee calling upon it to show cause as to why an inquiry should not be held against it in terms of rule 4 of the Adjudication Rules and penalty be not imposed under Section 15HA of the SEBI Act for the aforesaid alleged violations. Vide letter dated October 31, 2018, the Noticee's authorized representative Joby Mathew & Associates denied all the allegation and charges made in the SCN and requested for copies and inspection of the originals of all documents and records that have been relied upon in the SCN including, investigation report, trade and order logs, statement recorded by SEBI of the stock brokers and any other documents relied upon for issuance of SCN. Accordingly, vide letter dated December 07, 2018, the erstwhile AO granted inspection to the Noticee and forwarded request for inspection of documents to Enforcement Department.

7. Thereafter, matter has been forwarded to Adjudicating Officer Shri Santosh Shukla. On October 10, 2019, the Enforcement Department informed about completion of inspection of documents by the Noticee's authorized representative Mr. Ramesh Gagawat, Advocate and Ms. Rekha Jatkar, Advocate on May 30, 2019.

8. Subsequently, the matter has been transferred to undersigned as detailed above and it is noted from the record that post inspection of documents also, no reply to the SCN had been filed by the Noticee. Therefore, in the interest of principles of natural justice an opportunity of hearing was granted to the Noticee on January 27, 2020 in terms of Rule 4(3) of the Adjudicating Rules. Thereafter, vide letter dated January 22, 2020, Joby Mathew and Associates filed reply to the SCN on behalf of the Noticee. On the scheduled date, Mr. Somsekhar S, Advocate, Mr. Abhishek Venkat Raman and Mr. Nikhil Shah appeared before me and made submissions on the lines of the aforesaid written reply of the Noticee in this matter.

9. The replies/submissions of the Noticee *inter alia* are as follows:

   a. Despite several requests, copies of all the relevant documents, which have been relied upon by SEBI to make the allegations against the Noticee in the said SCN; specifically, investigation report, which formed the basis for the present proceedings against him; in the course of the inspection held has not been provided to him. The Noticee has thus been denied an opportunity to adequately address the allegations and charges made against him.

   b. The SCN does not set out the exact penalty that is proposed to be imposed on the Noticee for the alleged violations mentioned therein. In this regard, the Noticee relied upon the judgment of the

Hon'ble Supreme Court in the case of *Gorkha Security Services vs. Government (NCT of Delhi) and others* (2014 (9) SCC 105), wherein, the Court set out the two requirements that a show cause notice should meet to fulfill the requirements of principles of natural justice *viz*.:

i. The material/ grounds to be stated which according to the department necessitates an action.

ii. Particular penalty/action which is proposed to be taken.

The SCN does not set out the particular penalty which is proposed to be imposed and therefore, the SCN does not fulfill the requirements of the principles of natural justice and therefore, ought to be withdrawn.

c. With regard to trades done in the Noticee's account with Geometry Vanijya Pvt. Ltd ("stock broker" / "the Trading Member"), a stock broker registered with SEBI and a trading member of the BSE during the investigation Period, the Noticee submitted that:

i. The Noticee was approached by representatives of the stock broker and promised that by trading in the derivative segment of BSE, he could make a profit within a short time and offered to do so, if it was provided with a certain sum of money. Based on the said promise of the stock broker, he placed a sum of around ₹ 520 lakhs over a period of 2 months (February and March, 2015) with the stock broker.

ii. The Noticee is a consultant and was not familiar with the intricacies of trading in derivative contracts or stock options, he trusted its stock broker to act in a legal and proper manner and could afford to invest the said sum of around ₹ 520 lakhs with the understanding that the said investment/trades may result in erosion of capital but could also result in a substantial profit. Since he was not familiar with derivatives trading, he did not give any specific instruction to the stock broker regarding trades and left the same to the discretion of the stock broker.

iii. The Noticee trading in stock options did not bring any profits to him; rather it caused substantial losses. Therefore, in and around April 2015, he directed the stock broker to cease trading in his account. The losses suffered by him on account of the aforesaid trading were duly accounted for and also mentioned in Income Tax Returns filed by him.

iv. The Noticee was not aware of the identity of the counter party; if at all, only the stock broker could have been so aware. Furthermore, the said SCN does not allege any connection or relation between him and the counter parties to his orders so as to infer a meeting of minds / synchronization.

v. The stock broker, who placed the orders is not a party to the present proceedings, even though the stock broker alone can explain the reason and motive for the orders being placed in the manner they were. In the absence of the stock broker and its explanations regarding the trades, the Noticee ought to be given the benefit of the doubt and discharged from the proceedings.

d. The impugned trades took place in the Financial Year 2014-15 and until the Noticee received the said SCN in October 2018 i.e. almost 4 years later, he was never informed by any regulatory authority including SEBI and/or the BSE that there were irregularities in the trades done by the stock broker in his account. In the meanwhile, he closed his trading account with the stock broker and is no longer able to obtain details or records relating to the said trades or able to seek the explanation of the stock broker regarding the same. Thus, the unexplained delay in initiation of proceedings has greatly prejudiced him and the present proceedings ought to be terminated on this ground alone.

e. The contract notes and bills issued by the Noticee's stock broker did not indicate that the trades were matched with a particular counterparty or that these were reversed with the same counter party. In the absence of such knowledge and in the absence of instructions to the stock broker, he may not be held liable for any irregularity in the trades.

f. The details of total trades in stock options on the BSE during the relevant period are not known to the Noticee and it is also not set out in the SCN or annexures thereto how and in what manner 81.38% of such trades have been considered as non-genuine. Evidently, reversal trades are only one species of non-genuine trades and therefore, it is not specified whether all the said alleged non-genuine trades were reversal trades or otherwise and no details or particulars have been provided to him. Similarly, no details or particulars of the purported artificial volume created on account of the said alleged non genuine trades have been brought on record or provided to him.

g. The Noticee denied that he was involved in execution of alleged reversal trades in stock options on the BSE and therefore, deny that he has acted in a deceptive or manipulative manner or that he has violated Regulation 3(a), (b), (c), (d) and 4(1), 4(2)(a) of the PFUTP Regulations or any other provision of law in force. In view of his submissions, he submits that no penalty is imposable on him under the provisions of Section l5HA of the SEBI Act or any other provision of law as falsely alleged or otherwise.

10. I have considered the allegation levelled in the SCN, reply / submission of the Noticee and the relevant material brought on record. The Noticee has contended that SEBI has not provided it with all the relevant documents, reports and had not provided inspection of the said documents. In this regard, I

note that all the relied upon copies of the documents in the matter were provided to the Noticee along with the SCN. Therefore, the contention of the Noticee is not acceptable and hence rejected. Moreover, in this context, it is a settled position of law that only the relied upon documents has to be provided for inspection to the Noticee and the same position has been upheld by the Hon'ble Supreme Court in the matter of *Kanwar Natwar Singh v. Directorate of Enforcement [(2010) 2 SCC 497], Chandrama Tewari Vs. Union of India, Through General Manager, Eastern Railways, (1988) 1 SCR 1102* and *M/s Haryana Financial Corporation vs. Kailashchand Ahuja* [2008(9) SCC31], Hon'ble Delhi High Court Delhi High Court in its order dated 30.08.18 in the matter of *PRAR Holding Private Limited Vs. SEBI* and also by the Hon'ble SAT in number of its rulings. In the recent ruling of Hon'ble SAT in the case of *Shruti Vora Vs. Securities and Exchange Board of India, in* Appeal Number 28 of 2020 decided on February 12, 2020 held that *"…The contention that the appellant is entitled for copies of all the documents in possession of the AO which has not been relied upon at the preliminary stage when the AO has not formed any opinion as to whether any inquiry at all is required to he held cannot be accepted. 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…"*

11. Further, with regard to the Noticee's contention of not providing Investigation Report and its inspection to the Noticee during the instant proceedings, I note that the basis of the allegations as made in the investigation report has been mentioned in the SCN and it is the findings of the investigation that are basis of charge against the Noticee and are relied upon in these proceedings. Also, Hon'ble SAT in its aforesaid order dated February 12, 2020 held that "*….In the instant case, the show cause notice relies upon certain documents which have been made available. Thus the investigation report is not required to be supplied."* I am, therefore, of the view that since the copies of the relevant and relied upon material which is the trade log containing the trades of the Noticee were given to him along with the SCN, no prejudice is caused to him on this account. I, therefore, do not find any merit in the contentions of the Noticee.

12. From the reply of the Noticee, I note that the he has put onus on his stock broker for the alleged trades, thus, he has not disputed the execution and subsequent reversal of trades as alleged in the SCN. According to the him, he was not familiar with the intricacies of trading in derivative contracts or stock options. Since he was not familiar with derivatives trading, he did not give any specific instruction to the stock broker regarding trades and left the same to the discretion of the stock broker and the stock broker alone can explain the reason and motive for the alleged trades. In this regard, I note that, a client and a stock broker while dealing in securities market acts like a principal and agent, wherein, generally client act as principal and a stock broker act as an agent, unless stated otherwise. Thus, a client places an order

to a stock broker and a stock broker being an agent of client executes the said order and provides contract notes of executed order to a client. In the instant case, the Noticee being a client has tried to place all of his responsibilities of placing alleged non genuine trades on stock broker, which, I found is an afterthought by the Noticee. I further note that the Noticee has not brought on record anything to substantiate his submission with respect to stock broker. Therefore, I reject such contentions of the Noticee and note that he is responsible for placing his orders in alleged 166 trades in 44 illiquid stock options contracts.

13. With regard to the merit of allegation it is worth mentioning that reversal trades are considered non-genuine if they involve an entity reversing its buy or sell positions in a contract with subsequent sell or buy positions with the same counterparty during the same day. In this regard, artificial volume is considered as the volume (no. of units) reversed in non-genuine trades, comprising both original volume and reversed volume while keeping out the volume which is not reversed. Admittedly, the Noticee had indulged in 166 such reversal trades in 44 unique contracts during the Investigation Period involving reversal of trades with same entity with whom it had done buy/ sell transaction, in short span of time, respectively, in a synchronized manner. It is noted from the trade log relied upon in the matter that the Noticee and counterparty (ies) both had placed their respective sell-buy and buy–sell orders in same time i.e. within 0 to 2-minute time gap. Further, each trade involved matching of time, price and quantity of units. For example, in respect of the 2 trades in contract "CARN15APR210.00CE" dated March 31, 2015. The trades of the Noticee are detailed in the following table:

Table 2: Trades of the Noticee in the contract of "CARN15APR210.00CE"

Sl.	Date	Buyer	Seller	Buy Order Time	Sell Order Time	Trade Time	Trade Rate (₹)	Trade Quantity
1	31/03/2015	Anurag Poddar Huf	Alok Bhargave	12:00:49	12:00:48	12:00:49	3.4	54000
2	31/03/2015	Alok Bhargave	Anurag Poddar Huf	12:00:53	12:00:53	12:00:53	10.8	54000
Total								**1,08,000**

14. It is observed from the above that –

a. The Noticee, at 12:00:48 hrs placed a sell order for 54,000 units of call option of the said contract at a price of ₹3.40. This sell order of the Noticee got matched with the buy order of another entity named Anurag Poddar Huf, which itself had placed a buy order for 54,000 units in the same contract at 12:00:49 hrs. i.e. almost at the same time when the sell order placed by the Noticee.

b. Thereafter, the Noticee, at 12:00:53 hrs placed a buy order for 54,000 units of call option of the said contract at a price of ₹10.80. This buy order of the Noticee got matched with the sell order of same entity Anurag Poddar Huf, which itself had placed a sell order for 54,000 units in the same contract at 12:00:53 hrs i.e. almost at same time when the buy order placed by the Noticee.

Observation: Thus the sell order placed by the Noticee at ₹3.40 was reversed with the same counterparty at ₹10.80, within 4 seconds on same day and artificial volume generated through such 2 non genuine trades was for 1,08,000 units of the said contract.

15. Similar pattern on trading was observed in respect of other 164 trades executed by the Noticee in other 43 illiquid Stock Options contracts, wherein trades were reversed in short span of time and buy-sell or sell-buy orders were placed within a time gap of 0 to 2 minutes. The buy orders placed by the Noticee were matched with sell orders of counterparties and sell orders placed by the Noticee were matched with buy orders of counterparties in terms of number of units and price and time. Thus, the total volume generated through such non genuine trades was 1,85,25,000 units of the 44 Stock Options contracts. Such reversal of trades in quick succession with substantial price difference indicate towards employing of a manipulative device in connection with its dealing in said illiquid Stock Options contracts.

16. The Noticee has contended that the SCN does not set out the exact penalty that is proposed to be imposed on the Noticee for the alleged violations mentioned therein. In this regard, the Noticee placed reliance upon the judgment of the Hon'ble Supreme Court in the case of *Gorkha Security Services vs. Government (NCT of Delhi) and others* (2014 (9) SCC 105). In this regard, I note that, the instant proceedings are not mechanical in nature, wherein, at upfront exact penalty amount to be imposed can be decided at the stage of issuing the SCN itself. The adjudicating authority in these proceedings decides penalty amount after considering records and evidences available on record regarding alleged violations, reply/submissions of the Noticee, factors provided under section 15J of the SEBI Act and penalty prescribed under the relevant section(s) of the SEBI Act, in this case, section 15HA of the SEBI Act. It is to be noted that the provisions of penalty mentioned under section 15HA of the SEBI Act has been specifically mentioned in the SCN also. Further, the material/ grounds on the basis of which instant proceedings has been initiated has been mentioned in the SCN and relevant relied upon documents has been provided to the Noticee along with the SCN. Considering the same, I am of the view, that placing of reliance upon aforesaid judgement of the Supreme Court in this case is out of place, as the principles of natural justice has been followed in the instant proceedings and thus, I reject such contentions of the Noticee.

17. The Noticee has contended that he was not aware of the identity of the counter party and the SCN does not allege any connection or relation between him and the counter parties to his orders so as to infer a meeting of minds / synchronization. I am of the view 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 it counter parties in the stock options segment of BSE and the same were non-genuine trades. I also note that, it is not mere coincidence that the Noticee could match its trades with the same counterparty with whom it had undertaken first leg of the respective trades. Although direct evidence is not available in the present matter as regards to meeting of minds or collusion of the Noticee with other entities. The genuineness of trading has to be determined based upon circumstantial evidence involving multiple factors such as trading pattern, liquidity and volatility in the scrip /contract, etc. In this context, the Hon'ble SAT vide its order dated July 14, 2006, in the case of Ketan Parekh vs. SEBI (Appeal no. 2/2004) observed that- *"The nature of transactions executed, the frequency with which such transactions are undertaken, the value of the transactions, the conditions then prevailing in the market are some of the factors which go to show the intention of the parties. This list of factors, in the very nature of things, cannot be exhaustive. Any one factor may or may not be decisive and it is from the cumulative effect of these that an inference will have to be drawn."*

18. Further, in *SEBI v Kishore R Ajmera (AIR 2016 SC 1079)*, Hon'ble Supreme Court held that - *"…in the absence of direct proof of meeting of minds elsewhere in synchronized transactions, the test should be one of preponderance of probabilities as far as adjudication of civil liability arising out of the violation of the Act or provision of the Regulations is concerned. The conclusion has to be gathered from various circumstances like that volume of the trade effected; the period of persistence in trading in the particular scrip; the particulars of the buy and sell orders, namely, the volume thereof; the proximity of time between the two and such other relevant factors. The illustrations are not exhaustive...".* The Hon'ble Supreme Court further observed that – "*It is a fundamental principle of law that proof of an allegation levelled against a person may be in the form of direct substantive evidence or, as in many cases, such proof may have to be inferred by a logical process of reasoning from the totality of the attending facts and circumstances surrounding the allegations/charges made and levelled. While direct evidence is a more certain basis to come to a conclusion, yet, in the absence thereof the Courts cannot be helpless. It is the judicial duty to take note of the immediate and proximate facts and circumstances surrounding the events on which the charges/allegations are founded and to reach what would appear to the Court to be a reasonable conclusion therefrom. The test would always be that what inferential process that a reasonable/prudent man would adopt to arrive at a conclusion.*"

19. The trading pattern as found in this case in illiquid Stock Options cannot occur just by accident or coincidence. The trading behavior of the Noticee in this case makes it clear that aforesaid trades of the

Noticee could not have been possible without prior meeting of minds. The synchronized trading by the Noticee with same counterparty at same time for same quantity at same price and reversal of transaction with wide variation in price of the reversed trades in the same contract in a short time without any basis, all indicate that the trades executed by the Noticee were not genuine trades and being non-genuine, created an appearance of artificial trading volumes in the contracts in question. In view of the fact that these options contracts were illiquid in nature, having very small volume in trading, the Noticee created artificial volumes in Stock Options which was manipulative and deceptive in nature. Once the Noticee has been found to have indulged in such reversal transactions in illiquid Stock Options he is liable for his acts and omissions and it is immaterial whether his stock broker who facilitated his trades have been charged or not. Thus, I reject such contentions of the Noticee.

20. I note that the impugned reversal trades were carried out by the Noticee in an illiquid Stock Options Contracts where there was no participation of public. Reversal trades were undertaken by the Noticee with its counterparty with a predetermined arrangement to book profit or losses respectively, and, therefore, the parties to the trades were not trading in the normal sense and ordinary course of business. Such transactions in illiquid Stock Options cannot be taken as genuine one. Such trading was apparently without any economic rationale. Thus, the Noticee claim of non-involvement in execution of alleged reversal trades and not having any specific role in creating artificial volume through alleged trades is not acceptable. Further, with regard to the reversal trades carried out by the Noticee, I note that 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., 31743177 of 2011 and Civil Appeal No., 3180 of 2011 decided on February 8, 2018 had observed that *"the price discovery system itself was affected by synchronization and rapid reverse trade, which also had the impact of excluding other investors from participating in the market. The Supreme Court, therefore found that the traders having engaged in a fraudulent and unfair trade practice while dealing in securities, are hence liable to be proceeded against for violation of Regulations 3(a), 4(1) and 4(2)(a) of PFUTP Regulations".*

21. With regard to reversal transactions, Hon'ble Supreme Court in the matter of *SEBI v Rakhi Trading Private Limited (Supra)*, further held that - "*Considering the reversal transactions, quantity, price and time and sale, parties being persistent in number of such trade transactions with huge price variations, it will be too naive to hold that the transactions are through screen-based trading and hence anonymous. Such conclusion would be over-looking the prior meeting of minds involving synchronization of buy and sell order and not negotiated deals as per the board's circular. The impugned transactions are manipulative/deceptive device to create a desired loss and/or profit. Such synchronized trading is violative of transparent norms of trading in securities…..*" In the same matter, Hon'ble Supreme Court further held that- *"….quantity, time and significant variation of prices, without major variation in the underlying price of the securities clearly*

indicate that Respondent's *trades are not genuine and had only misleading appearance of trading in the securities market*". In view of said Hon'ble Supreme Court judgment, I see no reason to take a different view in the present case. In view of the foregoing, I hold that the Noticee had indulged in execution of reversal trades in Stock Options with same counterparty (ies) on the same day, which are non-genuine in nature and have created false or misleading appearance of trading in terms of artificial volumes.

22. The Noticee has contended that the SCN in this case has been issued almost 4 years later and the unexplained delay in initiation of proceedings has greatly prejudiced him. In this regard, I note that, the investigation in this case had been initiated by SEBI upon observing large scale reversal of trades in stock options segment of BSE leading to creation of artificial volume during investigation period. Due to elaborate and extensive investigation process such as - co-ordination with concerned stock exchange in respect of a large number of entities, complexity and extensive analysis of the data/ information, etc., in this case, the final investigation report submission has taken time. Thereafter, on approval of adjudication proceedings in the matter by competent authority, the erstwhile AO has issued the SCN on August 27, 2018, informing the Noticee about the detailed charges/allegations against him. I, therefore, find that there was no delay in issuance of SCN and no prejudice has been caused to the Noticee due to extensive procedure followed for completion of investigation.

23. The Noticee has contended that it has made loss while trading in said 44 stock option contracts at BSE. In this regard, I note that instant case is not dependent on loss or profit made by the entity and rather it deals with the impact of these non-genuine reversal of trades between the counter parties, which creates false or misleading appearance of trading. Further, the charge of artificial volumes created by the two counterparties by entering into non-genuine reversal of trade, is not dependent on making of loss or profit by an entity. Thus, the Noticee's contentions regarding making of loss through his alleged trades, is devoid of any merit and rejected hereby.

24. In totality of the circumstances as observed above it is not acceptable that the Noticee has not employed any manipulative and deceptive device in contravention of the SEBI Act or the rules and the regulations made there under. Further, the non-genuine and deceptive trades as found in this case are covered under the definition of '*fraud*' and dealing of Noticee were '*fraudulent*' as defined under Regulation 2(1)(c) of the PFUTP Regulations. I note that the Hon'ble Supreme Court in the matter of *SEBI vs. Rakhi Trading Private Ltd.* (*supra*), also held that - "*The non-genuineness of these transactions is evident from the fact that there was no commercial basis to suddenly, within a matter of minutes, reverse a transaction when the value of the underlying had not undergone any significant change*".

25. In view of the aforesaid facts and circumstances, it cannot be ignored that synchronization of trades in pre-determined manner as found in this case had an adverse impact on the fairness, integrity and transparency in the securities market. 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. Thus, I hold that the Noticee liable for penalty under Section 15HA of the SEBI Act which reads as under: -

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

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

While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely: -
(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
(b) the amount of loss caused to an investor or group of investors as a result of the default;
(c) the repetitive nature of the default."
Explanation. *—For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section;*

27. Having regard to the factors listed in section 15J, it is noted that it is not possible to determine the consequent loss caused to investors as a result of the default as found in this case. It is worth considering that generally, there is NIL or negligible participation of the public in the trading in such illiquid Stock Option contracts. When the impact of artificial volume created by the 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. However, considering the fact that the trades of the Noticee in 44 Stock Option contracts which resulted into artificial volume in range of 4% to 100%, generated out of the 166 non-genuine trades of the Noticee, I am of the view that such trades had created a misleading appearance of trading in the scrip. In these circumstance, I am of the view that for the market abuse and fraudulent practices by the Noticee monetary penalty needs to be imposed under section 15HA of the SEBI Act.

28. Taking into consideration all the facts and circumstances of the case including the aforesaid 15J factors and exercising the powers conferred upon me under section 15I of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose, a monetary penalty of ₹ 8,30,000/-(Eight Lakh Thirty

Thousand only) upon Mr. Alok Bhargave under section 15HA of the SEBI Act. In my view, the said penalty is commensurate with the violation committed by the Noticee in this case.

29. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order in either of the way of demand draft in favour of "*SEBI - Penalties Remittable to Government of India*", payable at Mumbai, or by following the path at SEBI website www.sebi.gov.in, ENFORCEMENT > Orders > Orders of AO > PAY NOW; OR by using the web link https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html. In case of any difficulties in payment of penalties, the Noticees may contact the support at portalhelp@sebi.gov.in

30. The Demand Draft or details and confirmation of e-payment made in the format as given in table below shall be sent to *"The Division Chief, EFD-DRA-I, Securities and Exchange Board of India, SEBI Bhavan, Plot No. C- 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051."* and also to e-mail id:- tad@sebi.gov.in:

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

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

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

Date: March 17, 2020
Place: Mumbai

Amit Pradhan
Adjudicating Officer