BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/VV/JR/2019-20/5555]

UNDER SECTION 15 I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995

In respect of:

Vinayaka Finlease Private Limited

PAN: AAACV3161E

In the matter of dealing in Illiquid Stocks Options at BSE

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI'), observed large scale reversal of trades in Illiquid Stock Options (hereinafter referred to as "ISO") segment of Bombay Stock Exchange (hereinafter referred to as "BSE") leading to creation of artificial volume. Reversal trades were considered those trades in which an entity reverse its buy or sell positions in a contract with subsequent sell or buy position with the same counter party 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 and allegedly lead to false or misleading appearance of trading in terms of generation of artificial volume, hence were deceptive and manipulative. Whereas the artificial volume was 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.

2. SEBI conducted an investigation into the trading activities of certain entities in ISO, BSE for period April 1, 2014 to September 30, 2015 (hereinafter referred to as "Investigation Period"/IP"). Pursuant to investigation, it was observed that during IP, total 2,91,643 trades comprising substantial 81.38% of all the trades executed in Stock Options of BSE were non-genuine trades. The aforesaid non-genuine trades resulted in 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 IP. It was also noted that said non-genuine trades were not restricted to any specific contract or between any specific set of entities.

3. It was alleged that Vinayaka Finlease Private Limited (hereinafter referred to as "Noticee") was one of the entities who had indulged in creating artificial volume of 48,97,500 units through 484 non-genuine trades in 27 stock option contracts. Following is noted from the dealings of Noticee in aforesaid 27 contracts at BSE

    a. Of the 488 trades executed by the Noticee on BSE Stock option segment, 484 trades were non-genuine.
    b. Number of non-genuine trades of Noticee has significantly contributed to the total number of trades from the market in the said 27 contracts.
    c. A substantial 4% to 100% of volume generated by the Noticee in each of the 27 contracts was artificial volume, and further, artificial volume generated by him also contributed to significant upto 100% of the total volume of the market in above contracts.
    d. In all of the above contracts, alleged non-genuine trades executed by Noticee had significant difference in buy rates and sell rates. The difference in buy/sale price of the trades executed by the Noticee was in the range of 1.52 times to 11.1 times of previous trade executed in the same contract on the same day and with the same counter party and in a gap of few seconds to few minutes. For example in the contract 'LICH15MAR450.00PE, the Noticee bought 15000 units at ₹12 per unit

from DB (Intl) Own Trading at 12:34:33 and this order was reversed at ₹6 per unit on the same day between same counter parties at 12:34:45.

4. In view of the foregoing, it was alleged that the Noticee has entered into reversal trades in BSE ISO and these reversal trades were non-genuine in nature and have created false and misleading appearance of trading in terms of artificial volume in Stock Options and therefore alleged to be manipulative, deceptive in nature. The Noticee was alleged to have violated regulations 3(a), (b), (c) and (d), 4(1), 4(2)(a) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as "PFUTP Regulations").

APPOINTMENT OF ADJUDICATING OFFICER

5. Vide an order of the Competent Authority, SEBI, dated April 3, 2018, Mr. Sahil Mailk was appointed as the Adjudicating Officer under Section 15-I of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "SEBI Act") read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as "Adjudication Rules") to inquire and adjudge under section 15HA of SEBI Act.

6. On transfer of Mr Sahil Malik, the undersigned has been appointed as the Adjudicating Officer vide order dated August 13, 2019.

SHOW CAUSE NOTICE, REPLY AND HEARING

7. Based on the findings by SEBI, Show Cause Notice dated October 1, 2018 (hereinafter referred to as 'SCN') was issued to the Noticee under Rule 4(1) of Rules to show cause as to why an inquiry should not be held and penalty should not be imposed on him for the alleged violations.

8. The Noticee vide letter dated October 13, 2018 sought inspection of documents. SEBI, vide email dated February 13, 2019 informed the Noticee that an opportunity of inspection of documents is given to it on February 27, 2019. As no one appeared on the scheduled date, another opportunity of inspection of documents was provided to the Noticee on May 28, 2019. Yet, no one appeared on the scheduled date.

9. In order to comply with the principles of natural justice an opportunity of personal hearing was given to the Noticee on September 5, 2019 vide letter dated August 21, 2019. However, no one appeared on the scheduled date. Another opportunity of personal hearing was given to the Noticee on September 23, 2019. The Noticee attended the personal hearing and reiterated the submissions made vide letter dated February 20, 2019. The Noticee appeared on the scheduled date of hearing and submitted reply dated September 18, 2019 stating, inter alia, the following:

10. The Noticee, vide letter dated February 20, 2019 replied to the SCN stating, inter alia, the following:

i. *It is further pertinent to mention that our Trades in option segment of BSE were only in well-known Companies. All the trades in option segment of BSE were executed on anonymous screen based trading platform provided by BSE wherein identity of the counterparties remain undisclosed. Hence, the question of any non-genuine trade does not arise at all unless it is proved that such trades were executed in connivance with any counterparty. However, all the counterparty whose names have been disclosed now in your SCN were completely unknown to us.*

ii. *We further wish to submit that BSE has a sophisticated surveillance system and if there had been any reversal of trade, the system could have alarmed BSE to take corrective measures to restrain any non-genuine trades happening in its trading platform. However, we have not received any warning or caution letter from BSE for any of our trade in its option segment during the period of our trading and any period thereafter during the investigation period. Thus, the allegation of execution of non-genuine trades by our Company in option segment of BSE which purportedly resulted into creation of artificial volume is totally farfetched and is based on presumptions, assumptions, surmises and conjectures.*

iii. *It is further submitted that it is a matter of common knowledge that the option trading platform of the BSE has not been as vibrant as NSE. In such a situation it is just coincidence that the Orders placed by our Company might have been matched. However, nowhere in the entire SCN it is alleged that our Company or its Directors* *had any connection/ association/ relationship with any of the counterparties. We have heard their names for the first time after receipt of captioned SCN. In absence of any such connection/ association/ relationship with any of the counterparties. We have heard their names for the first time after receipt of captioned SCN. In absence of any such connection/ association/ relationship with any of the counter party to our trades, whose names we have come to know only after receipt of the captioned SCN, it is totally illogical and irrational to allege that our trades with the said Counter Parties were non-genuine trades which resulted into creation of any artificial volume.*

iv. *It is submitted that the trades executed by our Company in the BSE Stock Option Segment were in the normal course of business devoid of any fraudulent intentions. In the derivative segment, only those stock and indices are permitted which are very liquid and there is a robust risk mitigation mechanism is in place. Since our Company had traded in the Options of very well-known Company which has tradeable position in the market, there was no reason to doubt credibility of the platform provided by the Exchange as approved by SEBI. The allegation of trades being non-genuine has no basis as your goodself has failed to provide any evidence to prove that there was a misleading appearance created in the market by the trades executed by the Company.*

CONSIDERATION OF ISSUES AND EVIDENCE

11. I have carefully perused the charges levelled against the Noticee in the SCN, its reply and the material / documents available on record. In the instant matter, the following issues arise for consideration and determination:-

    I. Whether the Noticee has violated regulations 3(a), (b), (c), (d), 4(1), 4(2)(a) of PFUTP Regulations?

    II. Do the violations, if any, on the part of the Noticee attract monetary penalty under section 15HA of SEBI Act?

    III. 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?

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

Relevant provisions of PFUTP Regulations

Regulation 3. 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 recognised stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made thereunder;

(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 recognised 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 recognised stock exchange in contravention of the provisions of the Act or the rules and the regulations made thereunder.

Regulation 4 Prohibition of manipulative, fraudulent and unfair trade practices

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

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

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

13. I note from the documents on record that the Noticee was one of the entities who had indulged in creating artificial volume of 48,97,500 units through 484 non-genuine trades in 27 stock option contracts during IP.

14. The summary of trades is given below:

Stock Option Contract	Buy Quantity	Sell Quantity	Number of non genuine trades executed by Entity in the Contract	Total number of trades executed by the Entity in the Contract	Total number of trades executed in the contract	Artificial volume generated by Entity in the Contract (B+C)	Total volume generated by Entity in the Contract	Total volume in the Contract	% of Non Genuine trades of Entity in the contract to Entity's Total trades in the Contract = (D/E)	% of Non Genuine trades of Entity in the contract to Total trades in the Contract = (D/F)	% of Artificial Volume generated by Entity in the contract to Entity's Total Volume in the Contract = (G/H)	% of Artificial Volume generated by Entity in the contract to Total Volume in the Contract = (G/I)
A	B	C	D	E	F	G	H	I	J	K	L	M
ACCL15MAR1620.00CE	102500	102500	22	22	52	205000	205000	897750	100%	42%	100%	23%
ACCL15MAR1680.00CE	22000	22000	6	6	6	44000	44000	44000	100%	100%	100%	100%
ACCL15MAR1680.00PE	37500	37500	13	13	13	75000	75000	75000	100%	100%	100%	100%
ADEL15MAR580.00CE	39500	39500	9	9	20	79000	79000	169000	100%	45%	100%	47%
BHEL15MAR250.00CE	45000	45000	6	6	12	90000	90000	362000	100%	50%	100%	25%
BHEL15MAR250.00PE	165000	165000	20	22	45	300000	330000	2785000	91%	44%	91%	11%
BHEL15MAR260.00PE	29000	29000	10	10	44	58000	58000	4740000	100%	23%	100%	1%
CESC15MAR600.00PE	256000	256000	52	52	59	512000	512000	1102000	100%	88%	100%	46%
CESC15MAR620.00CE	30000	30000	4	4	20	60000	60000	1959000	100%	20%	100%	3%
CIPL15MAR700.00CE	29500	29500	4	4	12	59000	59000	979000	100%	33%	100%	6%
CIPL15MAR720.00PE	39500	39500	13	13	30	79000	79000	687000	100%	43%	100%	11%
IDFC15MAR170.00PE	50000	50000	15	15	25	100000	100000	2012000	100%	60%	100%	5%
INFY15MAR2250.00CE	70000	70000	16	16	16	140000	140000	140000	100%	100%	100%	100%
INFY15MAR2250.00PE	69750	69750	23	23	23	139500	139500	139500	100%	100%	100%	100%
LICH15MAR440.00CE	55000	55000	14	14	37	110000	110000	394000	100%	38%	100%	28%
LICH15MAR450.00PE	30000	30000	4	4	4	60000	60000	60000	100%	100%	100%	100%
LICH15MAR460.00PE	255000	255000	34	34	34	510000	510000	510000	100%	100%	100%	100%
ONGC15MAR310.00CE	120000	120000	16	16	115	240000	240000	2038000	100%	14%	100%	12%
RCAP15MAR440.00CE	31500	31500	9	9	47	63000	63000	698000	100%	19%	100%	9%
RELI15MAR840.00CE	65750	65750	17	17	94	131500	131500	3294500	100%	18%	100%	4%
RELI15MAR880.00PE	70250	70250	17	17	70	140500	140500	710000	100%	24%	100%	20%
RLNF15MAR440.00CE	106500	106500	26	26	34	213000	213000	1289000	100%	76%	100%	17%
SBIL15MAR290.00PE	245000	245000	36	36	110	490000	490000	2795000	100%	33%	100%	18%
TAMO15MAR540.00PE	135000	135000	16	18	19	240000	270000	285000	89%	84%	89%	84%
TAMO15MAR560.00PE	137000	137000	27	27	60	274000	274000	864000	100%	45%	100%	32%
TGBL15MAR160.00CE	66000	66000	10	10	13	132000	132000	1136000	100%	77%	100%	12%
TISC15MAR320.00CE	176500	176500	45	45	69	353000	353000	1209000	100%	65%	100%	29%

15. To illustrate, on March 9, 2015 the Noticee entered into 2 buy trades for 5000 units and 2000 units at the rate of ₹55 and ₹56 per unit at 14:53:53 hrs and 14:54:35 hrs with DB (Intl) Own Trading for the contract named "ACCL15MAR1680.00CE". Thereafter, on the same day, Noticee, at 14:54:08 hrs and 14:55:34 hrs entered into 2 sell trades with same counterparty for 5000 units and 2000 units at ₹20 per unit and ₹20.5 per unit respectively. Subsequently, on March 10, 2015 the Noticee entered into 1 buy trade for 15000 units at the rate of ₹40 per unit at 13:04:18 hrs with DB (Intl) Own Trading for the contract named "ACCL15MAR1680.00CE". Thereafter, on the same day, Noticee, at 13:04:31 hrs entered into 1 sell trade with same counterparty for 15000 units at ₹10 per unit. It is noted that while dealing in the said contract during the I.P., Noticee executed total 6 reversal trades (3 buy trade + 3 sell trade) with same counterparty viz, DB (Intl) Own Trading on the same day and with significant price differential in buy and sell rate. Thus, Noticee, through its dealing in the contract viz, "ACCL15MAR1680.00CE" during the I.P, executed 6 non-genuine trades in the said contract and thereby, Noticee generated artificial volume of 44000 units which is 100% of the market volume traded in the said contract during the I.P.

16. It is noted that of the 488 trades executed by the Noticee during the IP in stock option segment of BSE, Noticee indulged in reversal of trades on the same day with same counter party with substantial price difference in sell rates over the buy rates and vice versa in 484 trades.

17. It is also noted that the Noticee in abovementioned 27 contracts, has reversed his trades within a short span of time. The details of 3 such contracts as per following table:

Date	Stock Option Contract	Buyer	Seller	Trade Time	Rate	Traded Quantity	Time Difference
09/03/2015	BHEL15MAR250.00CE	VINAYAKA FINLEASE PRIVATE LIMITED	DB (INTL) OWN TRADING	12:43:22	29	15000	00:00:41
09/03/2015	BHEL15MAR250.00CE	DB (INTL) OWN TRADING	VINAYAKA FINLEASE PRIVATE LIMITED	12:44:03	13	15000	
10/03/2015	BHEL15MAR250.00CE	VINAYAKA FINLEASE PRIVATE LIMITED	DB (INTL) OWN TRADING	13:07:21	14.75	15000	00:00:14
10/03/2015	BHEL15MAR250.00CE	DB (INTL) OWN TRADING	VINAYAKA FINLEASE PRIVATE LIMITED	13:07:35	6	15000	
10/03/2015	BHEL15MAR250.00CE	VINAYAKA FINLEASE PRIVATE LIMITED	DB (INTL) OWN TRADING	13:07:54	13.5	15000	00:00:21
10/03/2015	BHEL15MAR250.00CE	DB (INTL) OWN TRADING	VINAYAKA FINLEASE PRIVATE LIMITED	13:08:15	7.5	15000	
09/03/2015	ACCL15MAR1680.00CE	VINAYAKA FINLEASE PRIVATE LIMITED	DB (INTL) OWN TRADING	14:53:54	55	5000	00:00:14
09/03/2015	ACCL15MAR1680.00CE	DB (INTL) OWN TRADING	VINAYAKA FINLEASE PRIVATE LIMITED	14:54:08	20	5000	
09/03/2015	ACCL15MAR1680.00CE	VINAYAKA FINLEASE PRIVATE LIMITED	DB (INTL) OWN TRADING	14:54:35	56	2000	00:00:59
09/03/2015	ACCL15MAR1680.00CE	DB (INTL) OWN TRADING	VINAYAKA FINLEASE PRIVATE LIMITED	14:55:34	20.5	2000	
10/03/2015	ACCL15MAR1680.00CE	VINAYAKA FINLEASE PRIVATE LIMITED	DB (INTL) OWN TRADING	13:04:18	40	15000	00:00:13

10/03/2015	ACCL15MAR1680.00CE	DB (INTL) OWN TRADING	VINAYAKA FINLEASE PRIVATE LIMITED	13:04:31	10	15000		
16/03/2015	LICH15MAR450.00PE	VINAYAKA FINLEASE PRIVATE LIMITED	DB (INTL) OWN TRADING	12:34:33	12	15000	00:00:12
16/03/2015	LICH15MAR450.00PE	DB (INTL) OWN TRADING	VINAYAKA FINLEASE PRIVATE LIMITED	12:34:45	6	15000	
16/03/2015	LICH15MAR450.00PE	VINAYAKA FINLEASE PRIVATE LIMITED	DB (INTL) OWN TRADING	12:34:58	11.9	15000	00:00:15
16/03/2015	LICH15MAR450.00PE	DB (INTL) OWN TRADING	VINAYAKA FINLEASE PRIVATE LIMITED	12:35:13	8.5	15000	

18. The Noticee adopted similar modus operandi February 27, March 2, 3, 9, 10, 16, 17, 18, 19, 20, 23, 24, 25, 26, 2015 i.e. 14 days. In fact, it can be observed from the table that mostly all the trades executed by the Noticee in these 27 contracts were not genuine and the same has been reversed on the same day within few seconds to few minutes with the relevant same counterparties with significant difference in price, resulting into significant loss to the Noticee.

19. I note that it is the fact that the Noticee executed non-genuine trades in 27 contracts, wherein it executed total 484 non-genuine trades, which resulted in artificial volume of total 48,97,500 units. The number of non-genuine trades of the Noticee had contributed significantly (in the range of 3% to 100%) to the total number of trades from the market in the said 27 contracts. 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. Considering the fact that all these reversal transactions were carried out through

a screen based trading platform on a segment with different contracts, the repeated sell/buy of illiquid stock options by the Noticee and subsequent reversal trades with the same set of entities for the same quantity, on same day with a significant difference in buy and sell value of stock options, in itself, exhibits abnormal market behavior and defies economic rationality. I note from the above trading pattern of the Noticee that it was deliberately making blatant misuse of trading platform for creating artificial volume to the tune of 48,97,500 units in the 27 stock options and therefore, the rationale for new day-trading strategy is not acceptable.

20. It is not mere a coincidence that Noticee could match its trades consistently with the same counterparty 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."* It was further held 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."

21. I note that derivative contracts by its very nature derives its value from various factors including underlying price. The transactions of the Noticee as mentioned in above paras demonstrate that option contracts bought / sold were immediately reversed on same day at substantially different price, though there was no corresponding price changes in the underlying stock price. Further, analysis of such trades also indicates that price differentials have been deliberately structured for manipulative purposes as one party to the contract had deliberately foregone profitable proposition at the time of executing trade. Such pattern completely runs contrary to economic rationale of any investor to buy at lesser price and sell at higher price. Any rational investor would never deal in the market to deliberately register loss to facilitate buyer to profit at the time of entering trades. Had the counterparties for trades of the Noticee were different, intraday squaring of positions would not have been possible as no genuine counter party investor would ever forego profits. The fact that the counterparties are same, corroborates that the trades were not genuine and executed for manipulative purposes.

22. I am of the view that the scheme, plan, device and artifice employed by the Noticee in this case of executing reversal trades in illiquid stock options contracts at irrational, unrealistic and unreasonable prices, tantamount to fraud on the securities market in as much as it involves non-genuine/ manipulative transactions in securities and misuse of the securities market mechanism. The non-genuine and deceptive transactions of the Noticee are covered under the definition of 'fraud' and the dealings of the Noticee as discussed herein above were "fraudulent", as defined under regulation 2 (1) (c) of PFUTP Regulation and prohibited under the provisions of Regulations 3 (a), (b), (c), (d) and 4 (1), 4 (2) (a) PFUTP Regulations, thereof.

23. I note that in the screen based trading, the manipulative or fraudulent intent can be inferred from various factors such as conduct of the party, pattern of transactions, etc. Further, in the absence of direct proof of meeting of minds, the conclusion can be derived from various circumstances like volume of trade, period of persistence of trading, particulars of buy and sell orders, proximity of time and such other relevant factors. In this regard, it is appropriate to refer to the Hon'ble SAT Order dated July 14, 2006, in the case of ***Ketan Parekh vs. SEBI (Appeal no. 2/2004)***, wherein, Hon'ble SAT has observed that: *"... in order to find out whether a transaction has been executed with the intention to manipulate the market or defeat its mechanism, will depend upon the intention of the parties which could be inferred from the attending circumstances of the cases, because direct evidence in such cases may not be available."*

24. In line with the aforesaid findings of Hon'ble SAT, I note that the trading pattern of the Noticee in terms of volume of reversal trades, proximity of buy/sell and subsequent reversal evidences the indulgence of the Noticee beyond a reasonable doubt of the manipulative intent in creation of artificial volume. Further, consistent pattern of dealings by Noticee in such options contracts which are illiquid clearly demonstrates the manipulative intent to use stock exchange platform to carry out non-genuine trades with the aim to execute such trades for various manipulative purposes. I note from the trading pattern of the Noticee that it was deliberately making repeated loss through its reversal trades in stock options which does not make any economic sense and it is a blatant misuse of trading platform for creating artificial volume in the illiquid stock options. I note that the rationale for such transactions entered by the Noticee is not genuine and legitimate as the behavior exhibited by the Noticee defies the logic and basic economic sense. I note that no reasonable and rational investor will keep making repeated losses and still continue its trading endeavors.

25. In this regard, reliance is placed upon the judgement of 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**, where Apex Court stated at Para 35 and Para 41 of that said Order that *“The platform of the stock exchange has been used for a non-genuine trade. Trading is always with the aim to make profits. But if one party consistently makes loss and that too in pre-planned and rapid reverse trades, it is not genuine; it is an unfair trade practice”. “The stock market is not a platform for any fraudulent or unfair trade practice. The field is open to all the investors. By synchronization and rapid reverse trade, as has been carried out by the traders in the instant case, the price discovery system itself is affected. Except the parties who have pre-fixed the price nobody is in the position to participate in the trade. It also has an adverse impact on the fairness, integrity and transparency of the stock market.”*

26. Further, with respect to applicability of the aforesaid Order of the Hon’ble Supreme Court in the matter of ***SEBI vs. Rakhi Trading Private Ltd.***, in the instant matter the Noticee has contended that the factual situation of the aforesaid Order is different from the current matter. This contention of the Noticee is not tenable as the repeated buy/sell of illiquid stock options by the Noticee and subsequent reversal trades with the same set of entity for the same quantity, on same day with a significant difference in buy and sell value of stock options, make the instant matter relevant as regard to the observations made by the Hon’ble Supreme Court in the aforesaid Order in the matter of ***SEBI vs. Rakhi Trading Private Ltd*** as *“considering the reversal transactions, quantity, price and time and sale, parties being persistent in the number of such trade transactions with huge price variations, it will be too naïve to hold that the transactions are through screen-based trading and hence anonymous. Such conclusion would be over-looking the prior meeting of minds involving synchronization of buy and sell order and not negotiated deals as per the Board's circular. The impugned transactions are manipulative/deceptive device to create a desired loss and/or profit. Such synchronized trading is violative of transparent norms of trading in securities.”*

27. Keeping in mind the dicta of the Hon’ble Supreme Court as reproduced above, I see no reason to take a different view in the present case. Therefore, I hold that

the Noticee had indulged in execution of reversal trades in Stock Options with same entities on the same day, which are non-genuine in nature and had created false or misleading appearance of trading in terms of artificial volumes.

28. In view of the forgoing, I am of firm opinion that the Noticee by indulging in reversal of trades on the stock exchange platform, which are manipulative / unfair / fraudulent / non-genuine, in nature, had created artificial volumes in the contracts and thereby Noticee had violated the provisions of Regulations 3 (a), (b), (c), (d) and 4 (1), 4 (2) (a) of PFUTP Regulations, 2003.

29. 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*…".

30. The above violation of PFUTP Regulations, make the Noticee liable under section 15HA of SEBI Act, which, *inter-alia* reads as follows:

<u>15HA Penalty for Fraudulent and Unfair trade practices</u>

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.

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

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

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

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

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

(c) *the repetitive nature of the default*

32. As established above, the trades by the Noticee were non-genuine in nature and created a misleading appearance of trading in illiquid stock option contracts. Though the records available before me has shown amount of profit / loss of the counterparties to the trades as a result of the non-genuine trades. However, I note that the Noticee indulged in creation of artificial volumes by way of reversal of trades in illiquid options contracts, where wider market participation was not involved in the trades, and the trades are such that one of the counterparty books a profit while the other counterparty books a loss. Hence, it would be appropriate to consider the impact of these transactions between the two counterparties in totality. 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. It is further noted that there was nil or negligible participation by the public in the trading in illiquid stock option contracts, hence the impact of artificial volume created by the Noticee has been considered. As observed in the preceding paragraphs the Noticee executed non-genuine trades in 27 contracts, wherein it executed total 484 non-genuine trades, which resulted in artificial volume of total 48,97,500 units. This pattern of trades continued for 14 days. Hence, it can be said that it repetitive in nature.

33. Such persistent trading pattern of the Noticee, which was fraudulent and deceptive, affects the normal price discovery mechanism in the securities market. People who indulge in manipulative, fraudulent and deceptive transaction, or abet the carrying out of such transaction which are fraudulent and deceptive should be suitably penalized for such acts of omissions and commissions.

ORDER

34. After taking into consideration the nature and gravity of the charges established in the preceding paragraphs, factors mentioned under Section 15J of the SEBI Act and in exercise of the powers conferred upon me under Section 15-I of the SEBI Act, read with Rule 5 of the SEBI Adjudication Rules, I hereby impose a penalty of ₹ 5,00,000/- (Rupees Five Lakh only) on the Noticee viz. Vinayaka Finlease Private Limited in terms of Section 15HA of the SEBI Act, for the violation of the provisions of Regulations 3 (a), (b), (c), (d) and 4 (1), 4 (2) (a) of PFUTP Regulations for indulging in execution of reversal trades in Stock Options with same entity on the same day, thereby creating artificial volume, leading to false and misleading appearance of trading in the illiquid stock options at BSE.

PENALTY PAYMENT OPTIONS

35. The Noticees shall remit / pay the said amount of penalty within 45 (forty five) days of receipt of this order either by way of Demand Draft (DD) in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai and 1) the said DD should be forwarded to the Division Chief, Enforcement Department 1(EFD), Division of Regulatory Action - I [**EFD 1-DRA-1**] SEBI Bhavan, Plot No.C4-A,' G' Block, Bandra Kurla Complex (BKC), Bandra (East), Mumbai – 400 051 and also send an email to tad@sebi.gov.in with the following details:

Case Name	
Name of the Payee	
Date of payment	
Amount Paid	
Transaction No.	
Bank Details	
In which payment is made for	Penalty

OR

36. Payment can also be made online by following the below path at SEBI website www.sebi.gov.in ENFORCEMENT → Orders → Orders of AO → Click on PAY NOW or at https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html

37. 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.

38. In terms of Rule 6 of the Rules, copy of this order is sent to the Noticee and also to the Securities and Exchange Board of India.

Date : November 18, 2019
Place : Mumbai

VIJAYANT KUMAR VERMA
ADJUDICATING OFFICER