BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER No.: ORDER/SS/SK/2019-20/5549]

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:

Hi-Tech Chemicals Private Limited
White House, 4th Floor, Block-D,
119, Park Street,
Kolkata – 700016.

In the matter of:
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 'the Investigation Period'). Investigation revealed that during the Investigation Period, a total of 2,91,643 trades (comprising 81.38% of all the trades executed in the Stock Options Segment of BSE) involved reversal of buy and sell positions by the clients and counterparties in a contract. These alleged non genuine trades resulted into creation of artificial volume to the tune of 826.21 crore units or 54.68% of the total market volume in Stock Options segment of BSE during the Investigation Period. It was further noted that said alleged non genuine trades were not restricted to any specific contract or between any specific set of entities.

2. Hi-Tech Chemicals Private Limited (hereinafter be referred to as 'the Noticee') was one of the several entities which had indulged in execution of such alleged non genuine trades. It was observed that it had allegedly entered into non-genuine trades in 3 unique contracts in the Stock Options segment of BSE during the relevant period wherein it executed a total of 8 non-genuine trades which allegedly led to creation of artificial volume of total 45,00,000 units in those unique contracts. It was further observed that the Noticee, by executing non genuine trades during the relevant period, registered a profit of ₹ 2,00,00,000/- (approx.). The trades entered by the Noticee were reversed on the same day within few minutes 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 3 Stock Options contracts is as follows:

<u>Summary of dealings of the Noticee in contracts wherein it executed non- genuine trades</u>

S. No.	Contract Name	Avg. Buy Rate (Rs.)	Total Buy Volume (no. of units)	Avg. Sell Rate (Rs.)	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	ITCL15MAR320 00CE	4.50	1000000	9.50	1000000	100%	50%	100%	92%
2	RELI15MAR840.00CE	3.00	1000000	13.00	1000000	100%	4%	100%	61%
3	STAC15MAR1100.00CE	3.00	25000	23.00	25000	100%	13%	100%	46%

3. It was observed that:-

   a. The Noticee has allegedly executed non genuine trades in the aforesaid 3 contracts, wherein all the trades that had been executed by the Noticee were allegedly non-genuine trades.

   b. No. of non-genuine trades of Noticee has significantly contributed to the total no. of trades from the market in the above contracts, as a substantial 4% to 50% of the trades happened in aforementioned contracts were due to alleged non-genuine trades executed by the Noticee.

   c. A substantial 100% of volume generated by the Noticee in said 3 contracts was artificial volume, and further artificial volume generated by the Noticee also contributed to significant 46% to 92% of the total volume from the market in said 3 contracts.

   d. 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.

4. In view of the above, it was alleged that the Noticee, by indulging in execution of aforesaid reversal trades in Stock Options at Stock Options Segment of BSE with same entity on the same day, which were non-genuine in nature, had created false or misleading appearance of trading in the aforementioned contract traded in the Stock Option Segment of BSE. In view of the fact that these options contracts were illiquid in nature, having very small volume in trading, the Noticee allegedly created artificial volumes in Stock Options which was manipulative and deceptive in nature. Therefore, the Noticee is alleged to have violated the provisions of Regulation 3(a), (b), (c), (d), 4(1)

and 4(2)(a) of the SEBI (Prohibition of Fraudulent and Unfair Trading Practices related to Securities Markets) Regulations, 2003 (hereinafter be referred to as, the "PFUTP Regulations"). The text of these provisions of PFUTP Regulations are as below:

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

5. The competent authority in SEBI *prima facie* felt satisfied that there are sufficient grounds to inquire and adjudicate the alleged violations of the provision of Regulation 3(a), (b), (c), (d), 4(1) and 4(2)(a) of the PFUTP Regulations by the Noticee and appointed Shri Satya Ranjan Prasad, Chief General Manager as Adjudicating Officer (erstwhile AO) vide an order dated July 06, 2018 to inquire and adjudge under Rule 5 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as 'the Adjudication Rules') and under section 15HA of the SEBI Act, the aforesaid alleged violations by the Noticee.

6. Subsequently, by a common *communication-order* dated May 22, 2019, this case has been transferred to the undersigned with an 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"*.

7. On receipt of records of these proceedings, it was noted that the notice to show cause no. EAD-4/ADJ/SRP/HKS/OW/P/29080/1/2018 dated October 17, 2018 ('the SCN') was issued by the erstwhile AO to the Noticee in terms of Rule 4 (1) of the Adjudication Rules read with section 15I of the SEBI Act and the said SCN was duly served. It was also noted that in response to the SCN, the Noticee had filed its reply vide letters dated October 29, 2018 and December 18, 2018. Vide notice dated July 29, 2019, the Noticee was granted an opportunity of hearing on August 13, 2019. The Noticee sought adjournment of hearing citing travelling concerns vide its e-mail dated August 09, 2019. Considering the request of the Noticee, the Notice was granted another opportunity of hearing on September 03, 2019 vide e-mail dated August 20, 2019 wherein it was also clearly indicated that in case of failure to appear for the hearing, the case would be decided on the basis of the material available on record. However, there is no response from the Noticee to the second opportunity of hearing granted to it. I am, therefore, of the view that in terms of rule 4(7) of the Adjudication Rules, the matter can be proceeded *ex-parte* on the basis of material available on record.

8. The reply / submission of the Noticee *inter alia* are as follows:

   a) It used to trade in the Stock Market i.e. cash and derivatives etc. However, it faced heavy loss in FY 2010-11 and thereafter, it stopped trading activity in the Stock Market. It use to trade in securities market based on news, market rumors, research and its understanding of the market.

   b) It instructed its broker to enter the orders on the anonymous trading platform of the stock exchanges and by no stretch of imagination it was aware about the counter party. Further, the brokers looking at the trend in the market, orders available in the system etc. enter the orders in the electronic trading platform of the stock exchange and no wrong can be attributed to it so as to warrant any kind of violation. No action has been taken by SEBI against the brokers who have misguided and who are supposed to be first level regulators.

   c) It executed trades independently based on commercial wisdom in the ordinary course of business and the amount received from stock market operations was always been used in the ordinary course of business.

   d) No justification/ reason has been given in the SCN for selection of the total investigation period during which it had carried out trading in only 2 days. Thus, the SCN is vague, unclear, baseless and erroneous and conclusions have been drawn on the basis of surmises and conjectures.

e) It had dealt in stock options on the anonymous and electronic trading platform of the stock exchange where the order matching mechanism is provided by stock exchange and approved by SEBI. The platform of the electronic trading is designed in such a manner that the trade will happen when a buy order and sell order matches on price time priority which has happened in the instant case also. Hence, the allegation that its trade matched with same entity by design and not as per the trading mechanism is illogical, arbitrary and against the principles on which the electronic trading was started.

f) No alert/ warning/ caution etc. of any sort was issued by BSE/SEBI at the time of carrying out such trades despite BSE & SEBI having state of the art surveillance system. It is SEBI's own case that such kind of trades were carried out for a period of nearly one and a half years and it is quite surprising that no alert of any kind was generated with any regulatory authorities to warrant any kind of action at that time.

g) SEBI has failed to show any nexus between it and counter party and therefore the criteria on the basis of which SCN is issued is arbitrary, subjective, illogical, random, without any basis and prejudiced. This is gross violation of principles of natural justice, equity and fair play.

h) The Noticee deny that it was a part of any scheme, plan device; artifice employed in any case and further deny that it have committed a fraud on the securities market. It further deny that it have used and employed a pre-mediated manipulative device or contrivance while dealing in securities market and indulged in non-genuine and deceptive transactions.

i) The electronic trading platform of the stock exchange provides for order matching mechanism when buy and sell quotes are available at the screen and one or two entities cannot influence the trading. Further, the anonymous systems of the Exchange do not allow a transacting party to know the details of the counter party as the identity of the buyer and seller is not known and kept secret and it deny that there was any pre-mediated plan wherein the orders were matched. It also submitted that it never knew that its trades were in the nature of reverse trades before receiving the SCN and scrutinizing the Annexures thereto.

j) It submitted that by its trading, market integrity has not been effected, no harm has been caused to any investor and has also not adversely affected any market participant or the securities market in any manner as it had not indulged in any act which has the effect of creating false or misleading appearance of trading in securities market, market equilibrium has not been disturbed etc. Further, as result of alleged violation, it had not made any gain or gained any unfair advantage and the same has not been even alleged. Further, the alleged violation is also not repetitive in nature.

k) Its trades have all traits of being genuine and therefore cannot be categorized as non-genuine. 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 the obligations arising out of it have been settled through the clearing mechanism of the Exchange.

l) The SCN does not provide an iota of evidence as to how it was related to the counter parties and without the theory of conspiracy between two parties established, the allegations of the SCN do not hold water. It deny that it was part of any scheme, plan, device, artifices employed in any case and further deny that it had committed a fraud on the securities market.

m) It also placed reliance on the following case laws:

   i. In Jagruti Securities vs SEBI. (2008 SCC On Line SAT 184: 2008 SAT 184), the Hon'ble SAT has gone ahead to record in para 4 *"… we are of the view that in an artificial trade there has to be collusion between the buyer and the seller and in the absence of any collusion, the trade cannot be termed as 'artificial'."*

   ii. S.P.J. Stock Brokers Pvt. Ltd. vs Securities and Exchange Board of India [2013 SCC On Line SAT 67: [2013] SAT 17] *"…Unless some connection between appellant and counter panties with whom appellant traded is established, it is difficult to hold that trades in question were carried out with a view to manipulate market by creating false volumes resulting in upsetting market equilibrium."*

   iii. HB Stockholdings Limited vs SEBI [2013 SCC On Line SAT 56 : [2013J SAT 44] *". ... It may be noted that synchronization of trades is not per se illegal. It is actionable on/y if it is illegitimate and is the outcome of a mischievous meeting of minds among certain parties. For this purpose, the counter party, namely, Gloria Investment Limited has already been exonerated by the Respondent. Moreover, no cogent and convincing reasons are forthcoming from a reading of the DCN or the Impugned order to sustain such a charge of synchronization or creation of artificial volumes against the Appellants."*

9. I have considered the allegation levelled in the SCN, reply / submission of the Noticee and the relevant material brought on record. I note that the Noticee has not disputed the execution and subsequent reversal of trades as alleged in the SCN. From the trade log, it is noted that the trades executed by the Noticee in the contracts were squared up within a short span of time with the same counterparty. To illustrate, total 4 trades for 21,84,000 units were executed in the contract

"ITCL15MAR320.00CE", wherein Noticee was party to 2 of the said 4 trades for 20,00,000 units and in all these instances trading happened only on March 24, 2015. The Noticee at 10:58:32 hrs placed a buy order for 10,00,000 units at a price of ₹ 4.50 per unit. This buy order of the Noticee got matched with the sell order of same entity *viz.* SANJAY CHHABRA. Thereafter, on the same day, within 25 minutes from the above trade, Noticee, at 11:23:52 hrs entered into 1 sell trade with same counterparty for 10,00,000 units at rate of ₹ 9.50 per unit. It is noted that while dealing in the said contract during the investigation period, Noticee executed total 2 reversal trades (1 buy trade + 1 sell trade) with the same counterparty *viz,* SANJAY CHHABRA on the same day and with significant price difference in buy and sell rate. Thus, the Noticee, through its dealing in the contract viz, "ITCL15MAR320.00CE" during the investigation period, executed 2 non genuine trades which is 50% of the total trades from the market in the said contract during the investigation period, and thereby, Noticee generated artificial volume of 20,00,000 units which is 92% of the volume traded in the said contract from the market during the investigation period.

10. A similar *modus operandi* was adopted by the Noticee in its trades in the other 2 unique contracts. It is observed from the trading of the Noticee that in most of the trades the buy order and sell order has been entered in quick succession of each other. In all the 8 trades of the Noticee, the time taken by the Noticee for reversing its non-genuine trades within a span of few minutes. The Noticee has contended that it had traded in stock options on anonymous and electronic trading platform of stock exchange, which is provided by stock exchange, and its orders were matched in normal course and moreover SEBI has failed to show any nexus between it and counter party. 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 or no participation of public 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. Therefore, the Noticee’s contentions are not acceptable.

11. It is noted that Noticee had indulged in reversal trades with its counter parties in the stock options segment of BSE. 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. It is pertinent to note that the scrip or stock option has to respond to genuine demand and supply principle so as to

indicate genuine trading and/or price discovery. An option contract that cannot be easily sold or converted to cash quickly at the prevailing market price will always be treated as illiquid option that has very low or no open interest. It is to be noted that reversal trades are considered non-genuine trades 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.

12. Admittedly, the Noticee had indulged in 8 such reversal trades in 3 unique contracts on the same day involving reversal of trades with 2 different entities within a gap of few minutes in a synchronized manner. It is noted from the trade logs relied upon in the matter that the Noticee and other 2 entities have placed their respective sell-buy and buy–sell orders mostly in and around the same time. Further, each trade involved matching of time, price and quantity of units. Thus, the volume in the said contract on the same day was created from the said reversal trades orders of the Noticee. Such trading pattern in illiquid Stock Options cannot occur just by accident or coincidence. Such synchronization as found in this case in an illiquid market with anonymous trading indicates a prior meeting of minds and arrangement with a view to execute the reversal trades at a pre-determined price for non-genuine purposes.

13. The Noticee has contended that SEBI has failed to show any nexus between it and counter party and therefore the criteria on the basis of which SCN is issued is arbitrary, subjective, illogical, random, without any basis and prejudiced. In this case, it is noted that the allegation that the trades carried out by the Noticee were reversal trades are directly supported with evidence from the trade log containing records of all trades and reversal trades carried out in the Stock Options segment of the BSE by it during the reference period. It cannot be mere coincidence that Noticee would match its trades with the same counterparties with whom it had undertaken first leg of the respective trades. I note that though direct evidence is not available in the present matter as regards to meeting of minds or collusion of the Noticee with other entities. The genuineness of trading has to be determined based upon circumstantial evidence involving a bundle of factors such as trading pattern, liquidity and volatility in the scrip /contract, etc. In this context, I deem it appropriate to refer to the Hon'ble SAT order dated July 14, 2006, in the case of *Ketan Parekh vs. SEBI (Appeal no. 2/2004),* wherein the Hon'ble SAT has observed that - *"The nature of transactions executed, the frequency with which such transactions are undertaken, the value of the transactions, the conditions then prevailing in the market are some of the factors which go to show the intention of the parties. This list of factors, in the very nature of things,*

cannot be exhaustive. Any one factor may or may not be decisive and it is from the cumulative effect of these that an inference will have to be drawn."

14. 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 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."*

15. With regard to reversal transactions, Hon'ble Supreme Court in the matter of *SEBI v Rakhi Trading Private Limited (Civil Appeal Nos. 1969, 3174-3177 and 3180 of 2011 decided on February 8, 2018)*, 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"*. The Apex Court also 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…..*" In the same matter, the Apex 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.

16. The trading patterns as observed in this case in illiquid stock options cannot occur just by accident or coincidence. The trading behavior of the Noticee makes it clear that aforesaid trades of the Noticee could not have been possible without prior meeting of minds amongst trading parties. 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 span of 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 contract in question. In view of the fact that these options contracts were illiquid in nature, having very small or negligible volume in trading, the Noticee created artificial volumes in such stock options which was manipulative and deceptive in nature. Therefore, the contention of the Noticee that the volume created on account of its impugned trades is genuine and no fault can be found with it is not acceptable.

17. 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. 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. The investigation has shown amount of profit / loss of the counterparties to the trades as a result of such non-genuine trades. The violation by the Noticee is creation of artificial trading volumes by trading between two counterparties and wider market is not involved in the trades, 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 counterparties in totality. When the impact of artificial volumes created by the two counterparties is seen as a whole, the making loss or profit is immaterial as the charge in this case is of creating false or misleading appearance of trading in the aforementioned alleged contracts. Thus, all these cumulative factors only leads to the preponderance of probability of false or misleading trading in the aforementioned alleged contracts.

18. I note that the Hon'ble Supreme Court in *Rakhi Trading (supra)* case held that such undesirable transactions would certainly include unfair practices in trade and thus, orchestrated trades are a misuse of the market mechanism. It is also noted that the trades by the Noticee generated volumes without any change of beneficial ownership. With regard to such reversal transactions, Hon'ble Supreme Court also held in the *Rakhi Trading case* that - "*From the facts before us, it is clear that the traders in question did not intend to transfer beneficial ownership and therefore these trades are non- genuine*". The Hon'ble Supreme Court further observed that - "*The non-genuineness of these transactions is evident from the fact that there was no commercial basis to suddenly, within a matter of minutes, reverse a transaction when the value of the underlying had not undergone any significant change.*" Thus, the Noticee's contention non-receiving of any warning/ caution from BSE is devoid of any merit and rejected hereby.

19. Further, Hon'ble Supreme Court in the matter of *SEBI vs. Rakhi Trading Private Ltd.* (*supra*), upheld that "*the entities were engaged in a fraudulent and unfair trade practice while dealing in Options and hence were liable for violation of SEBI (PFUTP) Regulations".* In line with the aforesaid judgments of Hon'ble Securities Appellate Tribunal and Hon'ble Supreme Court, I note from the foregoing findings 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 only in such options contracts which are illiquid clearly demonstrates that 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.

20. I note that the Hon'ble Supreme Court in the matter of *SEBI vs. Rakhi Trading Private Ltd.* (*supra*), also held 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."*

21. In view of the aforesaid findings, I reject the contentions of the Noticee. These non-genuine and deceptive trades are covered under the definition of '*fraud*' and dealing of Noticee were '*fraudulent*' as defined under Regulation 2(1) (c) of PFUTP Regulations. Further, it cannot be ignored that synchronization of trades in pre-determined manner had an adverse impact on the fairness, integrity and transparency in the securities market.

22. 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 follows:-

> *"**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."*

23. 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;*

24. 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 8 trades of the Noticee in 3 Stock Option contract which resulted into 46% to 92% artificial volume generated out of the non-genuine trades of the Noticee, I am of the view that such fraudulent trades deserve imposition of monetary penalty of the Noticee under section 15HA of the SEBI Act.

25. Considering all the facts and circumstances of the case and factors as above and exercising the powers conferred upon me under section 15I of the SEBI Act read with Rule 5 of the Adjudication Rules, I am of the view that the findings as aforesaid support imposition of penalty upon Noticee with regard to the violations committed by it. I, therefore, hereby impose the monetary penalty of

₹ 5,00,000/-(Five Lakh only) upon Noticee 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.

26. The Noticee shall remit / pay the said total 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 Noticee may contact the support at portalhelp@sebi.gov.in

27. 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 along with order details)	

28. 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.

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

Date: November 15, 2019
Place: Mumbai

Santosh Shukla
Adjudicating Officer