BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/MC/RM/2021-22/14795]

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 –

Lovely Vincom Private Limited (PAN: AACCL2162M) having address at 200 Bangure Avenue Kolkata West Bengal 700055

In the matter of Illiquid Stock Options at BSE.

BACKGROUND

1. The Securities and Exchange Board of India (hereinafter referred to as "***SEBI***"), conducted an investigation into the trading activity in illiquid Stock Options at Bombay Stock exchange (hereinafter referred to as "**BSE**") for the period between April 1, 2014 to September 30, 2015 (hereinafter referred to as, "**Investigation Period** after observing large scale reversal of trades in Stock Options segment of the BSE.

2. Pursuant to investigation, it was observed that during the investigation period, a total of 2,91,643 trades comprising 81.38% of all the trades executed in BSE Stock Options Segment were trades which involved reversal of buy and sell positions by the clients and counterparties in a contract. The reversal trades involved squaring off transactions, but with significant difference in the sell value and buy value of the transactions. The aforesaid reversal trades allegedly led to generation of artificial volumes.

3. Lovely Vincom Private Limited ("**the Noticee**") was one such client whose reversal trades involved squaring off transactions with significant difference in the sell value and buy value of the transactions. The aforesaid reversal trades allegedly resulted into generation of artificial volumes, leading to allegations that the Noticee had violated Regulation 3(a),(b),(c),(d)and Regulation 4(1), 4(2)(a) of SEBI (Prohibition of Fraudulent and Unfair Trading Practices related to Securities Markets) Regulations, 2003 (hereinafter, referred to as "**PFUTP Regulations, 2003**").

APPOINTMENT OF ADJUDICATING OFFICER

4. SEBI initiated adjudication proceedings and appointed the undersigned as Adjudicating Officer (hereinafter referred to as "**AO**") under section 15-I(1) of the SEBI Act read with rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter be referred to as the "**Adjudication Rules**") vide order dated June 21, 2021 to inquire into and adjudge under Section 15HA of the SEBI Act, the alleged violations of the aforesaid provisions of the PFUTP Regulations, 2003, by the Noticee. The appointment of the AO was communicated vide order dated July 27, 2021.

SHOW CAUSE NOTICE, REPLY AND HEARING

5. Show Cause Notice No. EAD5/MC/RM/25170/2021 dated September 22, 2021 (hereinafter be referred to as, the "**SCN**") was issued to the Noticee under Rule 4 of the Adjudication Rules read with section 15I of the SEBI Act, to show cause as to why an inquiry should not be held and penalty be not imposed against the Noticee under Section 15HA of the SEBI Act for the alleged violations of Regulations 3(a), (b), (c), (d) and 4(1), (2)(a) of the PFUTP Regulations.

6. The allegations levelled against the Noticees in the SCN are summarized as below:

a) The Noticee was one of the entities which indulged in reversal trades which allegedly created false and misleading appearance of trading, generating artificial volumes in the Stock Options Segment of BSE during the investigation period.

b) The Noticee is alleged to have engaged in 10 such reversal trades in 5 unique contracts, which led to generation of artificial volume of 296000 units. These trades of the Noticee involved reversal with the same counterparty on the same day, but at different prices.

c) The trades entered by the Noticee were reversed on the same day 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.

d) A summary of dealings of Noticee in 5 Stock Options contracts in which Noticee allegedly executed reversal trades during the investigation period, provided in the SCN is reproduced below:

S. No.	Contract Name	Avg. Buy Rate (Rs.)	Total Buy Volume (no. of units)	Avg. Sell Rate (Rs.)	Total Sell Volume (no. of units)	Total vol 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	RCOM15SEP50.00CEW2	11	56000	8.05	56000	336000	100	33.33
2	SOIB15SEP24.00PEW2	4.25	9000	2.8	9000	18000	100	100
3	SYND15AUG90.00CEW3	17.8	40000	10.3	40000	396000	100	20.2
4	TISC15SEP215.00CEW2	17.85	14000	6.4	14000	28000	100	100
5	VEDL15SEP90.00CEW2	10.35	18000	5	40000	288000	45	12.5

7. Noticee by indulging in execution of aforesaid non-genuine reversal trades, was alleged to have violated Regulation 3(a),(b),(c),(d), 4(1), 4(2)(a) of PFUTP Regulations, which are reproduced as follows:

*"**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"

8. A time period of 14 days from the date of receipt of the SCN was granted to the Noticee to present its reply to the SCN. Noticee submitted reply dated October 05, 2021 to the SCN.

9. In its reply dated October 05, 2021 the Noticee submitted the following: -

10. Charges in the Notice are based on trading done by Noticee in the various scrip codes as mentioned in the Annexure — 2 of notice during the period from April 1, 2014 to September 30, 2015 ("Investigation Period") wherein it has been alleged that Noticee were involved in generating artificial volume which was created by execution of reversal trades. It is hereby denied that Noticee were involved in generating artificial volume which was created by execution of reversal trades.

11. It is submitted that all trades by Noticee in the scrips were bona-fide and in the ordinary course of business, de-hors sinister intent or design. In the said notice it has been specifically alleged that Noticee were one of the entities which indulged in reversal trades which allegedly created false and misleading appearance of trading, generating artificial volumes in the Stock Options Segment of BSE during the investigation period. Noticee have been alleged in particular to have engaged in 24 reversal trades in 11 unique contract which led to the generation of alleged artificial volume.

12. Noticee hereby re-iterate that all the allegations made against Noticee are baseless, false and expressly denied upon.

13. Noticee transacted in the said scrip through a SEBI registered Share Broker Destiny Securities Limited and for all the scripts that are listed on BSE Ltd. Neither transacting through a SEBI Registered Stock Broker is illegal/prohibited nor, transacting in a scrip that is listed on BSE Ltd is illegal/prohibited.

14. The said transaction was done through an online terminal provided by the exchange where knowing the counterparty of the transaction is impossible. Alleging that Noticee have generated artificial volume in the said scrip is baseless.

15. That Noticee have no relation or connection with the counterparty as mentioned in the annexure/trade details provided in the SCN. It is only after the notices served by you, Noticee became aware about the counterparty in the said transaction.

16. At the relevant time Noticee were not aware of other persons/entities including the entities/individuals as given in Annexure 2 who were trading in the scrip and the same is of no concern to Noticee. Based on their trading no adverse inferences can be drawn against Noticee.

17. That in the said notice SEBI has erroneously clubbed Noticee with the other parties, and drawn adverse inferences against it. It is reiterated that Noticee do not have any link/ connection /nexus with the counterparties.

18. That Noticee have paid the necessary brokerages and transaction charges of the said transactions as levied on it.

19. That controlling volume of any scrip are beyond our control and farthest possibility.

20. That Noticee are bona-fide investor and any transaction entered into by Noticee are genuine and devoid of any mala-fide intention.

21. The charge of violation of PFUTP Regulations is a serious charge and there has to be strong evidence for the same. In this context, Noticee draw attention to:

    a) *the matter Jagruti Securities (2008 SCC online SAT 184) and S.P.J Stockbroker Pvt Ltd (2013 SCC Online SAT 67) wherein it was held that such trades cannot be treated as illegal per se unless there is some cogent connection between the counterparties or there is "mischievous meeting of minds amongst certain parties".*

    Noticee submit that such element is completely absent in the present case.

22. In order of Hon'ble Supreme Court in the case of Varanasaya Sanskrit Vishwa Vidyalaya & Anr. Vs. Dr. Rajkishore Tripathi and Anr, has inter alia been held that "*using strong language not sufficient. Proof required. It is not enough to state in general terms that there was collusion "without more particulars. General allegations are insufficient even to amount to an averment of fraud or which only court ought to take notice, however strong the language in which they are couched may be, and the same applies to undue influence and coercion*".
Noticee submit that such element is completely absent in the present case.

23. In Mr. Babubhai Desai v Securities and Exchange Board of India (SAT Order dated 15.02.2016, Appeal No. 81 of 2014) the following observations made by the Hon'ble Securities Appellate Tribunal; "*There has to be unambiguous and clear evidence in respect of the connection sought to be established among the ten appellants by the learned adjudicating officer in the impugned order. The guilt or culpability of each of the appellants has to be analyzed and established separately before holding them guilty of forming an alleged group to manipulate the price or volume in a given case. Mere common landline number or that of the accountant of the appellants would not by itself convert certain entities into a group or concert who could have jointly traded in a design. It is a serious charge and hence cogent and convincing evidence is required to be brought on record before the said charge could be proved against the appellants*".
Noticee submit that such element is completely absent in the present case.

24. In Smitaben N. Shah vs. Securities and Exchange Board of India: SAT Order dated 30.072010; "*We cannot lose sight of the fact that a serious charge like fraudulent trading cannot be established on the basis of this tenuous and farfetched connection. In this view of the matter, we have no hesitation to hold that the appellants did not act in tandem with any of the entities referred to in Annexure 2 as alleged in the show cause notice and found by the whole time member*."
Noticee submit that such element is completely absent in the present case.

25. Based on above, it is apparent that Noticee was not involved in any 'modus operandi' or manipulations while dealing in option segment of BSE. There is enough material on record to suggest that no further enquiry is required in the matter. Therefore, it is requested that the SCN be dropped without imposing any monetary penalty on Noticee.

26. It is hereby humbly submitted that given the facts and circumstances of the case, any penalty imposed under section 15HA of the SEBI Act is wholly unjustified and unwarranted. In the premises as aforesaid, it is respectfully submitted that the allegations in the Show Cause Notice do not flow out of the factual position and therefore, cannot be legally sustained. In the given circumstances, it is prayed that the charges in the SCN be dropped and no directions as proposed be issued.

27. Vide hearing notice dated November 30, 2021, the Noticee was granted an opportunity of hearing on December 08, 2021, however the Noticee did not avail the opportunity of hearing provided. Noticee vide email dated December 09, 2021 requested for another opportunity of personal hearing. Accordingly another opportunity of personal Hearing was granted to the Noticee vide hearing Notice dated December 13, 2021 on December 14, 2021 through video conferencing. Mr. Nikunj Kanodia, Authroised Representative of the Noticee appeared before the undersigned for personal hearing through video conferencing, and reiterated the submissions made in Noticee’s reply dated October 05, 2021.

CONSIDERATION OF ISSUES AND FINDINGS

28. The issues arising for consideration in the instant proceedings are:-
    I. Whether reversal trades in illiquid Stock options carried out by the Noticee during the Investigation Period were in violation of regulations 3(a),(b),(c),(d), 4(1), 4(2)(a) of the PFUTP Regulations, 2003?
    II. If yes, whether Noticee is liable for imposition of monetary penalty under Section 15HA of SEBI Act?

III. If yes, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5(2) of the Adjudication Rules?

ISSUE I Whether reversal trades in illiquid Stock options carried out by the Noticee during the Investigation Period were in violation of regulations 3(a),(b),(c),(d), 4(1), 4(2)(a) of the PFUTP Regulations, 2003?

29. The allegation against the Noticee is based upon carrying out 10 reversal trades in 5 unique contracts carried out by the Noticee on August 20, 2015, September 08, 2015 and September 09, 2015 as seen from the trade log records in Annexures 2 of the SCN which allegedly led to generation of artificial volumes in the securities market.

30. Noticee in its reply has contended that neither transacting through a SEBI Registered Stock Broker is illegal/prohibited nor transacting in a scrip that is listed on BSE Ltd is illegal/prohibited. This contention is not relevant to the charges alleged. Noticee has further contended that the trades were genuine and it has not engaged in reversal of trades. This contention is directly contradicted by the data on reversal trades done by Noticee as explained below.

31. I note that in Stock option “SOIB15SEP24.00PEW2” on September 09, 2015 Noticee at 13:21:03.27 hrs executed 1 buy trade for 9000 units at rate of Rs.4.25 per unit with counterparty viz, Ajay Goel (HUF). At 13:25:49.71 hrs, after 00:04:46 hrs of the aforementioned buy trade, the Noticee executed a sell trade for 9000 units at a rate of Rs. 2.80 per unit, with the same counterparty. The aforesaid 2 reversal trades (1 buy trade and 1 sell trade) were executed within 5 minutes of each other, generating artificial volumes to the extent of 18,000 units in the said contract. This made up 100% of the total market volume for this contract during the investigation period.

32. Similarly the Noticee also engaged in 8 reversal trades in 4 other unique contracts, wherein the buy and sell trade for a unique contract were for same quantity with same counterparty and were placed within time span of 4 minutes to 28 minutes of each other. These trades in unique contracts were with substantial difference in buy and sell price, generating artificial volumes to the extent of 2,78,000 units in said contracts. These trades made up 12.5% to 100% of the total market volume for respective contract during the investigation period.

33. Noticee has contended, that it is not related or connected to the counterparties and did not know the counterparties of the transactions executed by it, and the trades were done through exchange online terminal, accordingly all the transactions carried out by Noticee are genuine.

34. In this regard, I note that out of the aforesaid 10 trades carried out by Noticee, buy and sell orders of 8 trades involving 2,42,000 units (81.75% of the traded units) by the Noticee were synchronized to within 3 seconds of each other. For the remaining 2 trades for 14,000 units, buy and sell orders of the Noticee and the counterparty were within 5 minutes. Further, the time difference between the buy and sell trades in the 5 unique contracts were in the range of within 5 minutes to 28 minutes. The quantity of the sell/buy orders of the Noticee in each unique contract exactly matched that of respective counter party in that contract. I also note that while synchronized trades may occur by accident in a liquid stock, execution of such synchronized trades in an illiquid market with anonymous trading can only happen if there is prior meeting of minds with a view to execute trades.

35. Further, I note that there is wide variation in the prices of 2 legs of the reversal trades for all the contracts. The sudden wide variation in prices of buy and sell in the contract within short span of time were without any justification.

36. The submissions by the Noticee that the trades were done through exchange terminal implying anonymous matching, and cash settlement through the stock

exchange mechanism, does not establish genuineness of trades or preclude execution of artificial and non-genuine trades.

37. Hence, the manner of placing buy and sell trades in the trades carried by Noticee were in a synchronized manner, executed within 5 to 28 minutes of each other, resulting into reversal of the trades within a short time on the same day, with wide variation in prices of the trades in the same contract in a short time without any basis for such wide variation, all indicate that the trades executed by the Noticee were not genuine trades and being non-genuine, created an appearance of artificial trading volumes in respective contracts.

38. By engaging in such trades, the Noticee violated provisions of Regulation 4(2)(a) of PFUTP Regulations which states that dealing in securities will be deemed to be a fraudulent and unfair trade practice if it involves "indulging in an act which creates false or misleading appearance of trading in the securities market".

39. In regard to the judgments cited by the Noticee, I find it relevant to note here that in the matter of **Securities and Exchange Board of India** v. **Rakhi Trading Private Limited** (Civil Appeal Nos. 1969, 3174-3177 and 3180 of 2011 decided on February 08, 2018), which was a similar case involving execution of reversal trades in index options, the Hon'ble Supreme Court held that "... *the traders thus having engaged in a fraudulent and unfair trade practice while dealing in securities, are hence liable to be proceeded against for violation of Regulations 3(a), 4(1) and 4(2)(a) of PFUTP Regulations*..."

40. In view of the above, I find that the Noticee, by engaging in non-genuine transactions which created a misleading impression of trading in respective contracts, dealt in the stock options contracts in a fraudulent manner in violation of Regulation 3(a) and 4(1) and 4(2)(a) of the PFUTP Regulations, 2003.

Issue II If yes, whether the failure, on the part of the Noticees would attract monetary penalty under Section 15HA of the SEBI Act?

and

Issue III If yes, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5(2) of the Adjudication Rules?

41. Since the violation of Regulation 3(a), 4(1) and 4(2)(a)of PFUTP Regulations has been established against the Noticee, as brought out in the foregoing paragraphs, the Noticee is liable for monetary penalty under Section 15HA of SEBI Act which is reproduced as follows:

SEBI Act: Penalty for fraudulent and unfair trade practices.

15HA. *If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty 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.*

42. While determining the quantum of penalty under Section 15HA of SEBI Act, the following factors stipulated in Section 15J of the SEBI Act have to be given due regard:

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.

43. As established above, the trades by the Noticee were non-genuine in nature and created a misleading appearance of trading. Investigation has not shown the amount of profit/loss of the counterparties to the trades as a result of the non-genuine trades. However, considering that 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 two counterparties in totality. When the impact of artificial volumes created by the two counterparties is seen as a whole, it is not possible from material available on record to quantify the amount of disproportionate gain or unfair advantage resulting from the artificial trades between the counterparties or the consequent loss caused to investors as a result of the default.

44. The Noticee has contributed to artificial volumes in 5 contracts on 3 days during the Investigation Period. I also note that the violation was not repetitive in nature. In regard to the discretion exercisable by the AO for determining penalty depending on facts and circumstances of the case, I note that the discretion by AO can be exercised subject to the minimum penalty prescribed by statute.

45. Therefore, taking into account the facts and circumstances of this matter, and the proportion of trading by the Noticee as compared to the total volume of reversal trades in the market during the Investigation Period, I am of the view that a penalty of Rs.5,00,000 (Rupees Five Lakh only) under Section 15HA of the SEBI Act will be commensurate with the violations committed by the Noticee.

ORDER

46. After taking into consideration all the facts and circumstances of the case, in exercise of powers conferred upon me under Section 15-I of SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose a penalty of Rs.5,00,000/- (Rupees Five Lakh only) on Noticee i.e. Lovely Vincom Private Limited under Section 15HA of the SEBI Act for violation of Regulation 3 (a), 4(1) and 4(2)(a) of PFUTP Regulations.

47. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of “SEBI -Penalties Remittable to Government of India”, payable at Mumbai, OR through online

payment facility available on the SEBI website www.sebi.gov.in on the following path, by clicking on the payment link-

ENFORCEMENT → Orders → Orders of AO → PAY NOW

48. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to the Enforcement Department –Division of Regulatory Action – I of SEBI.

49. The Noticee shall provide the following details while forwarding DD/ payment information:

a) Name and PAN of the entity (Noticee)
b) Name of the case / matter
c) Purpose of Payment –Payment of penalty under AO proceedings
d) Bank Name and Account Number
e) Transaction Number

50. Copy of this Adjudication Order is being sent to the Noticee and also to SEBI in terms of Rule 6 of the Adjudication Rules.

DATE: January 27, 2022 **MANINDER CHEEMA**

PLACE: MUMBAI **ADJUDICATING OFFICER**