BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. EAD-9/ AO/SM/ 237 /2018-19]

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 BY ADJUDICATING OFFICER) RULES, 1995

In respect of:

Umesh Hemnani

PAN: ABIPH7583E

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 Umesh Hemnani (hereinafter referred to as "Noticee") was one of the entities who had indulged in creating artificial volume of 12163000 units through 265 non-genuine trades in 80 stock option contracts. Following is noted from the dealings of Noticee in aforesaid 61 contracts at BSE

    a. Of the 319 trades executed by the Noticee on BSE Stock option segment, 265 trades were non-genuine.
    b. No. of non-genuine trades of Noticee has significantly contributed to the total no. of trades from the market in the said 80 contracts.
    c. A substantial 1% to 100% of volume generated by the Noticee in each of the 80 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 1.32 times to 39 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 'ADPW14NOV48.00CE, the Noticee sold 80000 units at ₹ 1.5 to one Riddhisiddhi Bullions Limited at 15:09:55 and this order was reversed at

₹ 0.35 at 15:16:46 on the same day between same counter parties within less than 7 minutes.

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, the undersigned has been 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 by Adjudicating Officer) Rules, 1995 (hereinafter referred to as "Adjudication Rules") to inquire and adjudge under section 15HA of SEBI Act.

SHOW CAUSE NOTICE, REPLY AND HEARING

6. Based on the findings by SEBI, Show Cause Notice dated September 17, 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. The Noticee did not reply to the SCN.

7. In order to comply with the principles of natural justice an opportunity of personal hearing was given to the Noticee on January 18, 2019 vide notice dated December

17, 2018. The Noticee appeared on the scheduled date of hearing and vide letter dated January 18, 2019 submitted, inter alia, the following:

- *The trades were executed on the online platform provided by BSE exchange with due compliance and following all the rules and regulations of the exchanges.*
- *Since there is no disclosure of counter party and counter member on the trading platform, hence there is no question of collaboration with the counter party .*
- *At no point of time was there any warning or any observation about the script's / stocks which were executed by me.*
- *The observations regarding the stocks being illiquid is incorrect as they are traded in very high volume in cash segment.*
- *The trades in question were in the normal course of business trading.*
- *None of the trades are deceptive in nature or have any impact on the investors or their investment decision as these were traded in the options.*
- *The trades done are not one way trades I'd made profit as well as suffered loss in the same pattern of trading.*
- *The trades in question were not single point or short tenure based trading they were executed around the year and with various counter parties.*
- *Going through the data provided by your good office found that the counter parties are majorly private limited & limited companies. Being a small individual there is no question/possibilities of collobrating with so many companies. Further the counter parties are trading through different members which even I dont know.*
- *As alleged by sebi ,of creating artificial volume , If it has been like artificial then Why will I pay such charges such as STT, Stamp duty, TOT, SEBI fee, brokerage, service tax etc for doing trade on the platform. What benefit will it make for me to create an artificial volume and pay all charges. It may please be explained.*
- *BSE nor SEBI has not published any list of illiquid scripts for not to trade in the banned scripts or illiquid scripts.*
- *Trades were done in the price range/ filter limits as permitted by the exchange.*
- *With respect to observation that I have dealt in stock options contracts which are illiquid in nature, I submit that if I observe the underlying script's in which I traded are highly liquid. I traded in contracts of script's such Adani, Coal, HDFC, BHEL, Carin, Dish TV, IDBI, IDEA etc. Sir, please note that underlying stock of most of said contracts consists of companies which forms index of Bombay Stock Exchange. Thus, to allege that I deliberately traded in only those options which were illiquid in nature is unfair.*

- *Apparently, SEBI has alleged that I transacted in 'illiquid options' on the basis that my trades were far from the strike prices and hence there are few participants in were trading in far strike rates. However, in that case, it may also be concluded that said trades could have had no effect on other investors or market at large and that such illiquidity would be* *reason for volatility and since variations in option price would be highly volatile if the chosen strike price is thinly traded.*

- *I submit that BSE and SEBI have themselves allowed and permitted trading in options for near months/far months at different strike price which are at large variance to current market price. The fact that such parameters are laid down is clearly indicative of fact that options will always be 'in the money' and 'out of money' and since regulators have themselves permitted trading in same, no adverse inference be drawn against me in this regard.*
- *I did not act in syndicate or in influence of anyone and nor was I part of any other member or group or connected with anyone for the purpose of trading or influencing market or price range or for any other activity. It is an admitted position that there is no connection whatsoever between me and counter parties.*
- *I submit that all my trades were as per prescribed norm of the BSE and as per guidelines as prescribed by regulator (SEBI). At the relevant time, none of my trades were questioned by the brokers who are SEBI registered intermediaries and exchange / regulator's surveillance departments. At the initial stage If I'd been cautioned by the broker or stock exchange as a normal individual trader/investor I would have stopped trading in the pattern practiced.*

CONSIDERATION OF ISSUES AND EVIDENCE

8. I have carefully perused the charges levelled against the Noticee in the SCN, his 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?

9. 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;

10. I note from the documents on record that the Noticee was one of the entities who had indulged in creating artificial volume of 12163000 units through 265 non-genuine trades in 80 stock option contracts during IP.

11. 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
ADEL15APR640.00PEW2	6000	6000	2	2	2	12000	12000	12000	100%	100%	100%	100%
ADPW14NOV48.00CE	80000	80000	2	2	2	160000	160000	160000	100%	100%	100%	100%
AHEL15APR1470.00PEW3	3250	3250	2	2	4	6500	6500	10500	100%	50%	100%	62%
AHEL15APR1470.00PEW4	3000	3000	2	2	2	6000	6000	6000	100%	100%	100%	100%
ALLD15APR75.00PEW3	48000	48000	2	2	2	96000	96000	96000	100%	100%	100%	100%
AMBC15MAR225.00CE	220000	220000	3	3	9	440000	440000	752000	100%	33%	100%	59%
ANBK14NOV90.00CE	8000	8000	4	4	4	16000	16000	16000	100%	100%	100%	100%
ARVI15MAR280.00CE	15000	15000	2	2	68	30000	30000	12043000	100%	3%	100%	0%
BHEL15APR260.00PEW1	15000	15000	2	2	6	30000	30000	240000	100%	33%	100%	13%
BOIL14DEC300.00PEW1	18000	18000	3	3	18	36000	36000	126000	100%	17%	100%	29%
BOIL15FEB250.00PEW3	80000	80000	6	6	6	160000	160000	160000	100%	100%	100%	100%
BOIL15JUN175.00CEW1	140000	140000	5	5	5	280000	280000	280000	100%	100%	100%	100%
BOSH15MAY27800.00CE	750	750	2	2	8	1500	1500	7000	100%	25%	100%	21%
BPCL15APR800.00PEW3	5000	5000	2	2	2	10000	10000	10000	100%	100%	100%	100%
CANB15FEB390.00CEW3	115000	115000	10	10	10	230000	230000	230000	100%	100%	100%	100%
CARN15APR195.00CEW1	296000	296000	4	4	4	592000	592000	592000	100%	100%	100%	100%
CARN15FEB230.00CEW2	84000	84000	4	4	4	168000	168000	168000	100%	100%	100%	100%
CARN15MAR210.00CEW2	208000	208000	2	2	18	416000	416000	602000	100%	11%	100%	69%
CARN15MAR215.00CE	15000	15000	2	2	8	30000	30000	744000	100%	25%	100%	4%
CENT15APR680.00PEW2	5000	5000	2	2	5	10000	10000	19000	100%	40%	100%	53%
CENT15MAR540.00CE	9000	9000	2	2	28	18000	18000	1015000	100%	7%	100%	2%

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)
COAL15MAR350.00CEW2	350000	350000	4	4	6	700000	700000	720000	100%	67%	100%	97%
DISH14NOV65.00CE	8000	8000	2	2	4	16000	16000	52000	100%	50%	100%	31%
DISH15APR60.00CEW2	40000	40000	3	3	32	80000	80000	3120000	100%	9%	100%	3%
DISH15FEB55.00CEW2	148000	148000	5	5	5	296000	296000	296000	100%	100%	100%	100%
ENGI15MAR190.00CE	481000	481000	4	4	4	962000	962000	962000	100%	100%	100%	100%
FEDB14DEC130.00CEW1	100000	100000	12	12	12	200000	200000	200000	100%	100%	100%	100%
GLPL15APR720.00CEW2	5000	5000	2	2	2	10000	10000	10000	100%	100%	100%	100%
GMRI14NOV18.00CE	100000	100000	2	2	2	200000	200000	200000	100%	100%	100%	100%
HDFC15APR1200.00CEW3	4000	4000	3	3	5	8000	8000	12000	100%	60%	100%	67%
HDFC15APR1230.00CEW2	3000	3000	2	2	4	6000	6000	12000	100%	50%	100%	50%
HXTL15APR290.00PEW1	32000	32000	3	3	3	64000	64000	64000	100%	100%	100%	100%
HXTL15MAR250.00CE	238000	238000	6	6	8	476000	476000	572000	100%	75%	100%	83%
HXTL15MAR255.00CEW2	302000	302000	6	6	12	604000	604000	688000	100%	50%	100%	88%
IDBI14NOV75.00CE	12000	12000	2	2	13	24000	24000	480000	100%	15%	100%	5%
IDEA14NOV185.00PE	50000	50000	2	2	2	100000	100000	100000	100%	100%	100%	100%
IDEA15APR165.00CEW3	24000	24000	2	2	2	48000	48000	48000	100%	100%	100%	100%
IDEA15APR175.00PEW3	30000	30000	2	2	2	60000	60000	60000	100%	100%	100%	100%
IDEA15APR180.00PEW1	30000	30000	2	2	12	60000	60000	548000	100%	17%	100%	11%
IDEA15APR190.00PEW3	22000	22000	2	2	8	44000	44000	192000	100%	25%	100%	23%
IDFC15APR175.00PEW2	30000	30000	2	2	4	60000	60000	72000	100%	50%	100%	83%
IFCI14NOV36.00CE	18000	18000	2	2	2	36000	36000	36000	100%	100%	100%	100%
INCM15APR95.00PEW2	34000	34000	2	2	2	68000	68000	68000	100%	100%	100%	100%
INCM15MAR120.00PEW2	302000	302000	3	3	19	604000	604000	1428000	100%	16%	100%	42%
JAIA14NOV36.00CE	56000	56000	2	2	3	112000	112000	152000	100%	67%	100%	74%
JAIA15SEP10.00CE	400000	400000	2	2	2	800000	800000	800000	100%	100%	100%	100%
JPPW14NOV16.00CE	60000	60000	2	2	4	120000	120000	300000	100%	50%	100%	40%
JSPL15APR160.00PEW3	28000	28000	2	2	2	56000	56000	56000	100%	100%	100%	100%
JSWE15JUN90.00CEW1	114000	114000	5	5	9	228000	228000	460000	100%	56%	100%	50%
JSWE15MAR115.00CE	48000	48000	2	2	42	96000	96000	8448000	100%	5%	100%	1%
JSWE15MAR125.00PE	32000	32000	2	2	6	64000	64000	136000	100%	33%	100%	47%

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)
JUST15APR1410.00CE	3500	3500	2	2	2	7000	7000	7000	100%	100%	100%	100%
KARB15MAR110.00CEW2	556000	556000	4	4	12	1112000	1112000	1740000	100%	33%	100%	64%
MCRS15JUN260.00PEW1	110000	110000	2	2	2	220000	220000	220000	100%	100%	100%	100%
MIND15APR1290.00CEW1	3000	3000	2	2	2	6000	6000	6000	100%	100%	100%	100%
MIND15SEP1500.00CE	9250	9250	10	10	10	18500	18500	18500	100%	100%	100%	100%
MSSL15APR520.00PEW2	7000	7000	2	2	4	14000	14000	20000	100%	50%	100%	70%
NHPC14NOV22.00CE	60000	60000	2	2	5	120000	120000	6768000	100%	40%	100%	2%
PFCL15MAR300.00PE	10000	10000	2	2	15	20000	20000	626000	100%	13%	100%	3%
PNBK15JUN140.00CEW1	56250	56250	2	2	2	112500	112500	112500	100%	100%	100%	100%
PTCI15APR80.00PEW2	96000	96000	4	4	4	192000	192000	192000	100%	100%	100%	100%
SAIL15JUN90.00PEW1	84000	84000	2	2	4	168000	168000	280000	100%	50%	100%	60%
SMIL15APR450.00PEW3	14000	14000	2	2	6	28000	28000	40000	100%	33%	100%	70%
STAC15APR1140.00PEW3	4000	4000	2	2	2	8000	8000	8000	100%	100%	100%	100%
STAC15APR1170.00PEW3	5000	5000	2	2	8	10000	10000	19000	100%	25%	100%	53%
SUNP15APR1080.00PEW2	9000	9000	2	2	2	18000	18000	18000	100%	100%	100%	100%
SUNT15APR440.00PEW2	31000	31000	4	4	4	62000	62000	62000	100%	100%	100%	100%
TCHM14DEC420.00CEW1	72000	72000	13	13	13	144000	144000	144000	100%	100%	100%	100%
TMCL14DEC250.00PEW1	50000	50000	7	8	10	98000	100000	102000	88%	70%	98%	96%
UCOB15MAR65.00PEW3	88000	88000	4	4	88	176000	176000	23336000	100%	5%	100%	1%
UNIT14NOV18.00CE	170000	170000	2	2	6	340000	340000	476000	100%	33%	100%	71%
VOLT14DEC290.00PEW1	75000	75000	12	12	12	150000	150000	150000	100%	100%	100%	100%
WOCK15APR1800.00CEW2	4000	4000	2	2	2	8000	8000	8000	100%	100%	100%	100%
WOCK15APR1800.00CEW4	4000	4000	2	2	2	8000	8000	8000	100%	100%	100%	100%
WOCK15APR1860.00CEW3	3500	3500	2	2	4	7000	7000	11000	100%	50%	100%	64%
WOCK15APR1890.00PEW2	3000	3000	2	2	8	6000	6000	58000	100%	25%	100%	10%
WOCK15APR1890.00PEW3	5000	5000	2	2	2	10000	10000	10000	100%	100%	100%	100%
WOCK15APR1920.00PEW2	4000	4000	2	2	4	8000	8000	16000	100%	50%	100%	50%
WOCK15APR1950.00PEW4	3000	3000	2	2	2	6000	6000	6000	100%	100%	100%	100%

ZEEL15MAY380.00PE	68000	68000	10	10	10	136000	136000	136000	100%	100%	100%	100%

12. To illustrate, on March 25, 2015 the Noticee entered into 1 sell trade for 6000 units at the rate of ₹ 63.4 per unit at 14:42:37 with the counterparty Indra Narayan Jhalani for the contract named "ADEL15APR640.00PEW2". Thereafter, on the same day, Noticee, at 14:48:50 entered into 1 buy trade with same counterparty for 6000 units at rate of ₹ 33 per unit. It is noted that while dealing in the said contract during the I.P., Noticee executed total 2 reversal trades (1 sell trade + 1 buy trade) with same counterparty viz, Indra Narayan Jhalani on the same day and with significant price differential in buy and sell rate. Thus, Noticee, through its dealing in the contract viz, "ADEL15APR640.00PEW2" during the I.P, executed 2 non-genuine trades which is 100% of the total market trades in the said contract during the I.P and thereby, Noticee generated artificial volume of 12000 units which is 100% of the market volume traded in the said contract during the I.P. Also, counterparty to these trades, Indra Narayan Jhalani had sold at ₹ 33 per unit and within 6 minutes 13 seconds it bought the same at ₹ 63.4 per unit which indicate that this trade was definitely non-genuine trade.

13. It is noted that of the 319 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 265 trades.

14. It is also noted that the Noticee in abovementioned 80 contracts, has reversed his trades within a short span of time. The details of 5 such contracts as per following table:

Date	Stock Option Contract	Buyer	Seller	Trade Time	Rate	Traded Quantity	Time Difference
19/11/2014	ANBK14NOV90.00CE	RIDDISIDDHI BULLIONS LIMITED	UMESH HEMNANI	14:08:30	1.9	4000	00:00:23
19/11/2014	ANBK14NOV90.00CE	UMESH HEMNANI	RIDDISIDDHI BULLIONS LIMITED	14:08:53	0.3	4000	
19/11/2014	ANBK14NOV90.00CE	RIDDISIDDHI BULLIONS LIMITED	UMESH HEMNANI	14:39:42	1.8	4000	00:14:00
19/11/2014	ANBK14NOV90.00CE	UMESH HEMNANI	RIDDISIDDHI BULLIONS LIMITED	14:53:42	0.3	4000	
19/11/2014	IFCI14NOV36.00CE	RIDDISIDDHI BULLIONS LIMITED	UMESH HEMNANI	14:44:51	6	18000	00:14:37
19/11/2014	IFCI14NOV36.00CE	UMESH HEMNANI	RIDDISIDDHI BULLIONS LIMITED	14:59:28	3.6	18000	
26/03/2015	BPCL15APR800.00PEW3	UMESH HEMNANI	AJIT DEEPCHAND JAIN	12:53:20	71	5000	00:04:29
26/03/2015	BPCL15APR800.00PEW3	AJIT DEEPCHAND JAIN	UMESH HEMNANI	12:57:49	32	5000	
27/03/2015	GLPL15APR720.00CEW2	UMESH HEMNANI	AJIT DEEPCHAND JAIN	12:37:18	99	5000	00:02:19
27/03/2015	GLPL15APR720.00CEW2	AJIT DEEPCHAND JAIN	UMESH HEMNANI	12:39:37	45.5	5000	
30/03/2015	WOCK15APR1920.00PEW 2	ARIHANT LIFESPACE INFRA DEVELOPERS LIMITED	UMESH HEMNANI	13:10:21	118	4000	00:05:39
30/03/2015	WOCK15APR1920.00PEW 2	UMESH HEMNANI	ARIHANT LIFESPACE INFRA DEVELOPERS LIMITED	13:16:00	65	4000	

15. The Noticee adopted similar modus operandi on November 19, 21, December 2, 3, 2014 and February 12, 19, March 9,11, 16, 17, 18, 20, 23, 24, 25, 26, 27, 30, 31, May 26, June 1, 2, 3, 4, September 23, 24, 2015 i.e. 26 days. In fact, it can be observed from the table that mostly all the trades executed by the Noticee in these 80 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 profit to the Noticee.

16. It is not mere coincidence that Noticee could match his trades consistently with the same counterparties with whom he 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."

17. It is noted that direct evidence is not forthcoming in the present matter as regards to meeting of minds or collusion with other entities inter-alia the counterparties or agents / fronts. However, trading behavior and other scenarios as noted above make it clear that aforesaid non-genuine trades could not have been possible without meeting of minds at some level. In this regard, reliance is placed on judgment of Hon'ble Supreme Court in the matter in respect of SEBI v Rakhi Trading Private Limited Civil Appeal Nos. 1969, 3174-3177 and 3180 of 2011 decided on February 8, 2018, which interalia states 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….."*

18. There is no justification for such synchronization apart from pre-determination. It seems pretty obvious that the Noticee and the counterparties had a prior meeting of mind and had executed the trades at a particular rate.

19. The manner of placing buy and sell orders in a synchronized manner within few seconds to few minutes of each other, reversal of the trades within a short time on the same day, and wide variation in prices of the trades in the same contract in a short time without any basis for such wide variation, all indicate that the trades executed by the Noticee were not genuine trades and being non-genuine, created an appearance of artificial trading volumes in respective contracts. In view of the above, I find that the allegation of violation of regulations 3(a), (b), (c) and (d), 4(1), 4(2)(a) of PFUTP Regulations by the Noticee stand established.

20. 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*…".

21. The above violation make the Noticee liable under section 15HA of SEBI Act, which 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.

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

> ***Section 15J - Factors to be taken into account by the adjudicating officer*** *While adjudging quantum of penalty under section 15, 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.*

23. Though the records available before me does mention about amount of gain/loss of the entities involved in the non-genuine trades including the Noticee. However

it is worth considering that entities involved in these non-genuine trades have either booked gains or loss and the gains or loss appears to be of notional in nature. It is further noted that the trading in illiquid stock option contracts there was nil or negligible participation by the public. Hence, the impact of these non-genuine trade has been considered. When the impact of artificial volume created by the two counterparties is seen as a whole, it is not possible from the material on record to quantify the amount of disproportionate gain or unfair advantage resulting from the artificial trades between the counter parties or the consequent loss caused to investors as a result of the default.

24. Here, Noticee has pleaded that due to his trades in illiquid stock option he has incurred loss. However, from the pattern of the trades, it is clear that the Noticee had entered into non-genuine reversal trades with prior meeting of mind with the counterparties. This pattern of trades continued for 14 days. Hence, it can be said that it repetitive in nature.

ORDER

25. In view of the above, after considering all the facts and circumstances of the case and the factors mentioned in the provisions of section 15-J of the SEBI Act, I, in exercise of the powers conferred upon me under section 15-I (2) of the SEBI Act read with Rule 5 of the SEBI Adjudication Rules, conclude that the proceedings against the Noticee stands established in terms of the provisions of the SEBI Act. Hence, in view of the charges established under the provisions of the SEBI Act, I, hereby impose monetary penalty under section 15HA of SEBI Act of ₹ 15,00,000 (Rupees Fifteen Lakh only) for violation of regulations 3(a), (b), (c) and (d), 4(1), 4(2)(a) of PFUTP Regulations

26. The Noticee 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 (EFD), Division of Regulatory Action - II [EFD-DRA-2] SEBI Bhavan, Plot No.C4-A,' G' Block, Bandra Kurla Complex (BKC), Bandra (East), Mumbai – 400 051 OR 2) through e-payment facility into Bank Account, the details whereof are given as below :-

Account No. for remittance of penalty (ies) levied by Adjudication Officer:-

Bank Name	State Bank of India
Branch	Bandra-Kurla Complex
RTGS Code	SBIN0004380
Beneficiary Name	SEBI – Penalties Remittable To Government of India
Beneficiary A/c No.	31465271959

27. The Noticees shall forward the said Demand Drafts or the details / confirmation of penalty so paid through e-payment to the Division Chief of the aforesaid Enforcement Department (EFD) of SEBI.

28. The format for forwarding details/confirmations of e-payments shall be made in the following tabulated form as provided in SEBI Circular No. SEBI/HO/GSD/T&A/CIR/P/2017/42 dated May 16, 2017 and details of such payment shall be intimated at e-mail ID- tad@sebi.gov.in:

Date	
Department of SEBI	

Name of Intermediary/other Entity	
Type of Intermediary	
SEBI Registration Number (if any)	
PAN	
Amount (in Rs.	
Purpose of payment (including the period for which payment was made e.g Quarterly, annually)	
Bank Name and Account Number from which payment is remitted	
UTR No	

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

Date: January 25, 2019
Place: Mumbai

SAHIL MALIK
ADJUDICATING OFFICER