

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. EAD/SR/PP/AO/77/2019-20]

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

In respect of

Sourabh H. Bora

(Address: Flat No. 61, 4th Floor, Gaya Building 109,
Yusuf Meherali Road, Mandvi, Mumbai - 400003)

(PAN: ADIPB7693R)

In the matter of dealings in illiquid stock options at BSE

FACTS OF THE CASE IN BRIEF

1. A department (hereinafter referred to as **OD**) of 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 Limited (hereinafter, referred to as **BSE**) for the period April 01, 2014 to September 30, 2015 (hereinafter referred to as **Investigation period / IP**). Investigating Authority (hereinafter, referred to as **IA**) observed that majority of volume generated in BSE's stock option segment was artificial volume which was created by execution of reversal trades.
2. IA observed that a total of 2,91,643 trades comprising 81.38% of all the trades executed during IP in Stock Options Segment of BSE were non-genuine /reversal trades. The said non-genuine trades resulted into creation of artificial volume to the tune of 826.21 crore units i.e. 54.68% of the total market volume in Stock Options segment of BSE during the investigation period. It was further observed by IA that Sourabh H. Bora (hereinafter, referred to as **Noticee**) was one of the several entities which indulged in execution of reversal trades in Stock Options Segment of BSE during the investigation period. The Noticee was thus alleged to have violated the provisions of regulations 3(a),(b),(c) & (d), 4(1) and 4(2)(a) of SEBI (Prohibition of Fraudulent and Unfair Trading Practices related to Securities Markets) Regulations, 2003 (hereinafter, referred to as **PFUTP Regulations, 2003**).



APPOINTMENT OF ADJUDICATING OFFICER

3. In this matter, OD of SEBI initiated Adjudication Proceedings against the Noticee and SEBI appointed the undersigned as an Adjudicating Officer, under section 15-I of The Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **the SEBI Act, 1992**) read with (r/w) rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as **AO Rules, 1995**) to inquire into and adjudge under section 15HA of the SEBI Act, 1992 the alleged violations of provisions of regulations 3(a),(b),(c) & (d),4(1) and 4(2)(a) of PFUTP Regulations, 2003. The same was conveyed vide communique dated May 29, 2018.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. A show cause notice dated October 25, 2018 (hereinafter referred to as **SCN**) was issued to the Noticee under rule 4 of the AO Rules, 1995 to show cause as to why an inquiry should not be held against it and why penalty under section 15HA of the SEBI Act, 1992 be not imposed on it for the violations alleged in the said SCN. The SCN was sent through the speed post acknowledgment due (SPAD). The said SCN was received by the Noticee.
5. The allegations levelled against the Noticee in the said SCN are summarised as under:
- (a) That 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) That the Noticee engaged in 226 such reversal trades in 34 contracts, which led to generation of artificial volume of 1,33,45,000 units, during the IP.
 - (c) That the trades entered by the Noticee were reversed on the same day with same counterparties at a substantial price difference without any basis for significant change in the contract price which indicates that these trades are artificial and non-genuine in nature.
 - (d) A summary of dealings of the Noticee in the 34 Stock Options contracts in which the Noticee allegedly executed non-genuine / reversal trades during the Investigation Period, provided to the Noticee in the said SCN is reproduced below-



Sr. No.	SCRIPNAME	Average Buy rate	Buy Quantity	Average Sell rate	Sell Quantity	% of Non Genuine trades of Entity in the contract to Entity's Total trades in the Contract	% of Non Genuine trades of Entity in the contract to Total trades in the Contract	% of Artificial Volume generated by Entity in the contract to Entity's Total Volume in the Contract	% of Artificial Volume generated by Entity in the contract to Total Volume in the Contract
1	ADEL15MAR660.00CEW1	23.05	250000	39.96	250000	100%	16%	100%	15%
2	ADEL15MAR700.00CEW1	7.50	28000	29.00	28000	100%	4%	100%	5%
3	AMTK15MAR140.00CEW1	12.05	150000	21.53	150000	100%	22%	100%	24%
4	APLT15FEB165.00CE	10.80	152000	21.29	152000	100%	71%	100%	43%
5	APLT15MAR155.00CEW1	14.50	150000	27.66	150000	100%	27%	100%	28%
6	ARVI15FEB290.00CE	11.50	118000	21.66	118000	100%	80%	100%	73%
7	ARVI15MAR300.00CEW1	12.20	160000	21.85	160000	100%	56%	100%	72%
8	BHEL15MAR300.00PEW1	22.53	148000	36.00	148000	100%	100%	100%	100%
9	BIOC15FEB430.00CE	7.00	150000	17.57	150000	100%	25%	100%	38%
10	BOIL15FEB220.00CE	8.80	152000	19.11	152000	100%	55%	100%	52%
11	BOIL15MAR235.00PE	11.20	427000	22.51	427000	100%	44%	100%	45%
12	CANB15MAR410.00CEW2	8.40	402000	21.00	402000	100%	100%	100%	100%
13	CANB15MAR460.00PEW1	19.48	200000	42.40	200000	100%	100%	100%	100%
14	CESC15APR660.00PEW1	53.00	14500	86.20	14500	100%	32%	100%	3%
15	COAL15MAR410.00PEW1	15.60	148000	34.87	148000	100%	100%	100%	100%
16	DABU15FEB250.00CE	13.67	150000	24.20	150000	100%	43%	100%	37%
17	DABU15MAR240.00CEW1	24.47	92000	14.10	92000	100%	25%	100%	20%
18	DLFL15MAR145.00CEW1	11.23	110000	6.40	110000	100%	100%	100%	100%
19	EXID15MAR155.00CEW1	13.50	202000	25.18	202000	100%	38%	100%	57%
20	EXID15MAR160.00CEW1	29.20	102000	18.59	102000	100%	42%	100%	19%
21	FEDB15MAR160.00PE	22.38	120000	12.30	120000	100%	44%	100%	45%
22	HAIL15FEB255.00CE	10.80	161000	22.16	161000	100%	100%	100%	100%
23	HAIL15MAR250.00CEW1	17.80	148000	36.36	148000	100%	38%	100%	59%
24	IRBI15MAR225.00CEW2	10.80	552000	20.67	552000	100%	100%	100%	100%
25	KARB15MAR125.00CEW1	12.93	132000	20.20	132000	100%	56%	100%	90%
26	KARB15MAR160.00PEW1	12.40	120000	21.74	120000	100%	50%	100%	48%
27	ONGC15MAR290.00CE	19.62	420000	31.60	420000	100%	67%	100%	91%
28	PFCL15MAR260.00CEW2	17.90	202000	29.60	202000	100%	100%	100%	100%
29	SUNT15MAR440.00PEW1	14.92	204000	25.40	204000	100%	100%	100%	100%
30	SYND15MAR95.00CEW2	11.20	502000	20.11	502000	100%	53%	100%	78%
31	TCHM15MAR450.00CEW2	9.92	360000	24.40	360000	100%	100%	100%	100%



Sr. No.	SCRIPNAME	Average Buy rate	Buy Quantity	Average Sell rate	Sell Quantity	% of Non Genuine trades of Entity in the contract to Entity's Total trades in the Contract	% of Non Genuine trades of Entity in the contract to Total trades in the Contract	% of Artificial Volume generated by Entity in the contract to Entity's Total Volume in the Contract	% of Artificial Volume generated by Entity in the contract to Total Volume in the Contract
32	VOLT15APR240.00CEW1	22.10	243000	32.31	243000	100%	15%	100%	21%
33	VOLT15FEB250.00CE	6.00	83000	12.94	83000	100%	100%	100%	100%
34	VOLT15MAR260.00CEW 1	10.97	120000	18.60	120000	100%	67%	100%	88%

(e) From the above table, the following was alleged as regards dealings of the Noticee:

- i. All the trades executed by the Noticee in the said contracts were non-genuine trades.
- ii. Percentage of non-genuine trades of the Noticee in stock options contracts to total trades in the contracts were in the range of 4% to 100%. The non-genuine trades of the Noticee have significantly contributed to total trades in the market in the above contracts.
- iii. Percentage of artificial volume generated by the Noticee in the contract to the total volume in the contract was in the range of 3% to 100%. Therefore, substantial volume generated by the Noticee in each of the above contracts were artificial volume.
- iv. Non-genuine trades executed by the Noticee in above contracts had varied buy rates and sell rates considering that the trades were reversed on same day.

6. By indulging in execution of aforesaid non-genuine reversal trades, the Noticee is alleged to have violated regulations 3(a),(b),(c) & (d), 4(1) and 4(2)(a) of the PFUTP Regulations, 2003, text of which has been reproduced below:-

PFUTP Regulations, 2003

"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"

7. In terms of AO Rules, 1995, the Noticee was granted time to submit its reply to the said SCN. The Noticee vide letter dated November 12, 2018 requested six week time for filing of reply. Thereafter, Noticee vide letter dated March 26, 2019 filed its reply and *interalia* submitted as under-

- a. On August 20, 2015, WTM SEBI had passed common *ex-parte* order under section 11(1), 11(4) and 11B of SEBI Act, 1992 in the matter of Illiquid Stock Options against the various persons/entities, including me, *inter alia* restraining me from buying, selling or dealing in the securities markets, either directly or indirectly, in any manner, till further directions. Thereafter, on April 05, 2018 SEBI passed the Final Order *inter alia* disposing of the proceedings initiated vide *ex-parte* order and confirmatory order.
- b. As a result of said proceedings I have already undergone/ suffered a ban of around 3 years and also suffered both reputationally and financially.
- c. Now after a period of around 3 years, another proceeding has been initiated against me on the same set of facts and trades and I have been served with the captioned notice.
- d. It is denied that I have indulged in any reversal trades which allegedly created false and misleading appearance of trading or generating artificial volume as alleged.
- e. Based on my dealing in the contract of COAL15MAR wherein I had sold at a higher price and bought at a lower price no adverse can be drawn against me. Further, it may be noted that there was huge time gap between my "sell trade" and "buy trade".
- f. All my trading was genuine, bonafide and in the ordinary course of business de hors fraudulent/ manipulative intent or design. I am not related or connected in any manner whatsoever to the alleged counter party.
- g. There is no allegation in the Notice that as a result of my trading in stock options, I have increased or depresses the price of the underlying shares in the Cash Segment.

8. Vide hearing notice dated May 28, 2019, sent by SPAD Noticee was given an opportunity of personal hearing on June 13, 2019. Noticee attended the hearing through his Authorised Representatives (ARs). AR reiterated the submissions made in the said reply. ARs submitted copies of adjudication order nos. MC/CB/2018-19/3028 and



KS/AA/2019-20/3330 for reference during the course of hearing. Hearing minutes are on record.

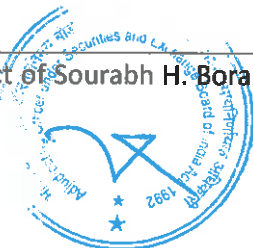
9. After taking into account, the allegations levelled in the SCN, reply of the Noticee and other material on record, I hereby proceed to decide the case on merit.

CONSIDERATION OF ISSUES, EVIDENCES AND FINDINGS

10. The issues arising for consideration in the instant proceedings before me are:-
- a. **Whether the Noticee has violated the provisions of regulations 3(a), (b), (c), & (d), 4(1), and 4(2)(a) of the PFUTP Regulations, 2003?**
 - b. **If yes, whether Noticee is liable for imposition of monetary penalty under section 15HA of the SEBI Act, 1992?**
 - c. **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, 1992 read with rule 5(2) of the AO Rules, 1995?**

Issue a: Whether the Noticee has violated the provisions of regulations 3(a), (b), (c), & (d), 4(1) and 4(2)(a) of the PFUTP Regulations, 2003?

11. It has been alleged that the Noticee had indulged in execution of reversal of trades in Illiquid Stock Options with same entities on the same day. Such trades are non-genuine in nature and have created false or misleading appearance of trading in terms of artificial volume in stock options and therefore alleged to have been manipulative, deceptive in nature.
12. I note that reversal trades have been considered as those trades including in which an entity reverses its buy or sell positions in a contract with subsequent sell or buy positions with the same counterparty during the same day. The said reversal trades are non-genuine trades as they are not executed in normal course of trading, lacks basic trading rationale and lead to false or misleading appearance of trading in terms of generation of artificial volume, hence are deceptive and manipulative. Artificial volume is considered to be the volume (no. of units) reversed in both legs of said trades while keeping out the volume, if any, which is not reversed.

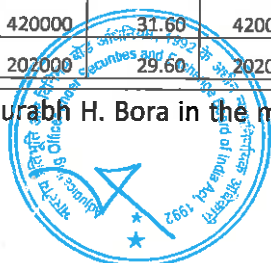


13. I note from data provided to the Noticee as Annexures B to D of the SCN that the Noticee had executed 226 non-genuine trades in 34 unique contracts on nine trading days between February 20, 2015 to March 27, 2015.

a. The details of non-genuine trades executed by the Noticee are furnished hereunder.

Sr. No.	SCRIPNAME	Average Buy rate	Buy Quantity	Average Sell rate	Sell Quantity	% of Non Genuine trades of Entity In the contract to Entity's Total trades in the Contract	% of Non Genuine trades of Entity In the contract to Total trades in the Contract	% of Artificial Volume generate d by Entity in the contract to Entity's Total Volume in the Contract	% of Artificial Volume generate d by Entity in the contract to Total Volume in the Contract
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Adjudication Order in respect of Sourabh H. Bora in the matter of dealings in Illiquid Stock Options at BSE



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31	TCHM15MAR450.00CEW2	9.92	360000	24.40	360000	100%	100%	100%	100%
32	VOLT15APR240.00CEW1	22.10	243000	32.31	243000	100%	15%	100%	21%
33	VOLT15FEB250.00CE	6.00	83000	12.94	83000	100%	100%	100%	100%
34	VOLT15MAR260.00CEW1	10.97	120000	18.60	120000	100%	67%	100%	88%

b. Details of one of the instances of alleged non-genuine trades executed by Noticee is given in the following table:

Contract name: "COAL15MAR410.00PEW1"

Sr. No.	Client name	CP client name	Trade time	Order time	CP order time	Quantity	Trade rate
1	SOURABH H BORA	ADARSH CREDIT CO OP SOCIETY LIMITED	11:32:14.078601	11:32:13.559869	11:32:14.078601	148000	15.6
2	ADARSH CREDIT CO OP SOCIETY LIMITED	SOURABH H BORA	12:04:04.747215	12:04:04.747215	12:04:04.320962	48000	34.4
3	ADARSH CREDIT CO OP SOCIETY LIMITED	SOURABH H BORA	12:11:01.428912	12:11:01.428912	12:11:00.944841	40000	36
4	ADARSH CREDIT CO OP SOCIETY LIMITED	SOURABH H BORA	12:23:41.189629	12:23:41.189629	12:23:40.543112	60000	34.5

(i) I note from the above table that during the investigation period, total two trades for 20,000 units were executed in the "COAL15MAR410.00PEW1" contract on March Adjudication Order in respect of Sourabh H Bora in the matter of dealings in Illiquid Stock Options at BSE



03, 2015 wherein the Noticee was party to all of the said trades. While dealing in the said contract on March 03, 2015, the Noticee at 11:32:14 hrs entered into one buy trade with counter party viz, Adarsh Credit Co Op Society Limited for 1,48,000 units at rate of Rs. 15.6 per unit. Thereafter, on the same day, within minutes from the above trade, the Noticee, entered into sell trades with same counterparty for 48,000 units at rate of Rs. 34.4 per unit, 40,000 units at rate of Rs. 36 and 40,000 units at Rs. 34.5 per unit, thereby selling back 1,48,000 units bought at 11:32:14 hours by 12:23:41.

- (ii) From the above, it is noted that while dealing in the said contract during the investigation period, the Noticee executed reversal trades with the same counterparty viz. Adarsh Credit Co Op Society Limited, on the same day for the same quantity.
- (iii) Thus, the Noticee, through its dealing in the contract viz, "COAL15MAR410.00PEW1" during the investigation period, executed non genuine trades which is 100% of the total trades in the market in the said contract during the investigation period, and thereby, the Noticee generated artificial volume of 148000 units which is 100% of the volume traded in the said contract in the options segment of BSE during the investigation period.
- (iv) The trades entered by the Noticee were reversed on the same day with same counterparties at varied prices without change in price of underlying which indicates that these trades were non-genuine in nature.

c. I further note that a similar *modus operandi* is seen to be adopted by the Noticee in its trades on other days. It is also noted that most of the trades, buy or sell, of the Noticee were reversed within minutes of execution of the first sell / buy trade. Further, the execution of reversal trades by the Noticee is directly supported with evidence from the Annexures B to D provided to the Noticee as an enclosure to SCN which contain the records of all trades and reversal trades carried out by the Noticee in the Stock Options segment of the BSE during the Investigation Period. On perusal of the details of trades carried out by the Noticee, it is observed that the Noticee indulged in 226 reversal trades in 34 unique contracts during the IP.

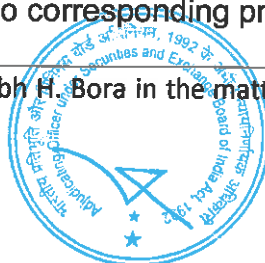
d. I observe from the reversal trades carried out by the Noticee that it had bought / sold and sold / bought illiquid option contracts with the same counter parties and also reversed its trades within minutes from its earlier buy / sell trades, at a varied price difference. The pattern of trading suggests that such trades of the Noticee



were driven by factors exogenous to options market thereby violating the sanctity of market mechanism. Therefore, I conclude that aforesaid trades of Noticee were non genuine and have created false or misleading appearance of trading in terms of artificial volume in stock options and therefore manipulative, deceptive in nature.

e. It is summarized from the above findings that the Noticee had executed non-genuine trades in 34 contracts, wherein percentage of non-genuine trades of the Noticee in stock options contracts to total trades in the contracts were in the range of 4% to 100%. Out of the said 34 contracts, in respect of 11 contracts all the trades of the Noticee contributed to 100% artificial volumes. Further, percentage of artificial volume generated by the Noticee in the contract to the total volume in the contract was in the range of 3% to 100%. Non genuine trades executed by the Noticee in above contracts had significant differential in buy rates and sell rates considering that the trades were reversed on same day. Further, I note that the Noticee generated a total trading volume of 1,33,45,000 units in 34 unique contracts through reversal of trades during the IP, details of which is mentioned above.

14. Regulation 3 of PFUTP Regulations, 2003 prevents any person from buying, selling or dealing in securities in fraudulent manner, use or employ any manipulative or deceptive device in contravention to the provisions of the Act, employ any device, scheme or artifice to defraud in connection with dealing in securities or engage in any act, practice, course of business which operates as fraud or deceit upon any person in connection with any dealing in or issue of securities. Regulation 4(1) of PFUTP Regulations, 2003 provides that no person shall indulge in a fraudulent or an unfair trade practice in securities. Regulation 4(2)(a) of PFUTP Regulations, 2003, prohibits a person from indulging in an act which creates false or misleading appearance of trading in the securities market.
15. I note that derivative contracts by its very nature derives its value from price of underlying asset, among various other factors influencing derivatives trading. However, the transactions of the Noticee as mentioned in above paras clearly demonstrates that option contracts bought / sold were immediately reversed within span of minutes at varied prices, though there was no corresponding price changes in the underlying stock



price thereby marring a price signalling purpose of stock exchange, and probably creating an externality of shifting profit/loss from Noticee to others.

16. I note that the Noticee in his reply while referring to the SEBI order dated August 20, 2015 mentioned that he has already undergone a ban of around 3 years, and the present adjudication proceedings is initiated on the same set of facts. In this regard, I place reliance on decision of Hon'ble SAT in the matter of **Ms. Sunita Gupta vs. SEBI** (Appeal No. 193/2016) decided on April 24, 2017, wherein tribunal has held- *"6. Where a person violates the provisions contained in the SEBI Act and the regulations made thereunder, then, SEBI is empowered to initiate penalty proceedings against that person under Chapter VIA of SEBI Act and also issue directions in the interests of investors or securities market as it deems fit under Chapter IV of SEBI Act. Thus, the powers conferred on the Board under Chapter IV are independent from the powers to impose penalty under Chapter VIA of SEBI Act. Accordingly, in the present case, since the appellant had indulged in synchronized/ circular trades in gross violation of SEBI Act/ PFUTP Regulations and the same was detrimental to the interests of the investors and securities market, the Board deemed it fit to issue direction under Chapter IV in addition to the penalty imposed under Chapter VIA of SEBI Act. Therefore, in the facts of present case, initiation of proceedings under Chapter IV even after initiating proceedings under Chapter VIA cannot be faulted."*
17. Further, I note that the Noticee has not disputed the execution of trades as mentioned in the SCN. However, the Noticee, in its reply, has contended that the said transactions entered were fair and genuine.
- a. At this juncture, I find it relevant to refer to the decision of the Hon'ble Supreme Court in the matter of **Securities and Exchange Board of India v. Kishore R. Ajmera** [(2016) 6 SCC 368: AIR 2016 SC 1079] wherein, the Supreme Court has held, *"...According to us, knowledge of who the 2nd party / client or the broker is, is not relevant at all. While the screen based trading system keeps the identity of the parties anonymous it will be too naïve to rest the final conclusions on the said basis which overlooks a meeting of minds elsewhere. Direct proof of such meeting of minds elsewhere would rarely be forthcoming. The test, in our considered view, is one of preponderance of probabilities so far as adjudication of civil liability arising*



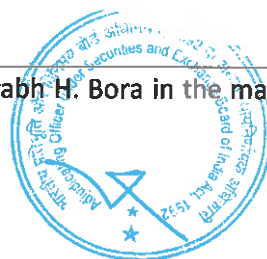
out of violation of the Act or the provisions of the Regulations framed thereunder is concerned....”

- b. I also note that the Hon'ble Supreme Court, in ***Kishore R. Ajmera*** (*supra*) has held that, *“The conclusion has to be gathered from various circumstances like that volume of trade effected; the period of persistence in trading in a particular scrip; the particulars of buy and sell orders, namely the volume thereof; the proximity of time between the two and such relevant factors...”*. Placing reliance of the observation of the Hon'ble Supreme Court in the aforementioned matter, I find it difficult to accept the submission of the Noticee that transactions were genuine on account of them being carried out on an anonymous platform of the exchange wherein, the Noticee had no knowledge of the counterparty.
- c. I also find it relevant to refer to the decision of the Supreme Court 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 dated February 08, 2018) wherein, the Hon'ble Supreme Court while cumulatively analysing the reversal transactions 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.....”*.
- d. Applying the rationale of the Supreme Court in the matter of ***Kishore R. Ajmera*** (*supra*) and ***Rakhi Trading*** (*supra*), I am of the view that there is no justification for the wide variation in prices of the same contract, within minutes and some, even seconds, except for an element of pre-determination in the prices by both counterparties when reversing the trades. Thus, the nature of trading as brought out above clearly indicates an element of prior meeting of minds and therefore, a collusion to carry out trades at pre-determined prices.
- e. I further note that the Supreme Court in the matter of ***Rakhi Trading*** (*supra*), has held that, *“Regulation 2(1)(c) defines fraud. Under Regulation 2(1)(c)(2) a suggestion as to a fact which is not true while he does not believe it to be true is fraud. Under Regulation 2(1)(c)(7), a deceptive behaviour of one depriving another of informed consent or full participation is fraud. And Under Regulation 2(1)(c)(8), a false statement without any reasonable ground for believing it to be true is also fraud. In a reverse dealing in securities, with predetermined arrangement to book*



loss or gain between pre-arranged parties, all these vices are attracted.” I am of the view that the scheme, plan, device and artifice employed by the Noticee in this case of executing reversal trades in illiquid stock options contracts at such varying prices, tantamount to fraud on the securities market in as much as it involves non-genuine/ manipulative transactions in securities and misuse of the securities market. The non-genuine and deceptive transactions of these entities are, prima-facie, covered under the definition of 'fraud' and the dealings of the Noticee as discussed herein above were “fraudulent”, as defined under regulation 2(1)(c) of the PFUTP Regulations, 2003 and prohibited under the provisions of regulations 3(a), (b), (c) and (d) and 4(1) and 4(2)(a) PFUTP Regulations, 2003.

18. Considering the reversing of trades within short time with widely varying prices of the two legs of trade in the same contract without any basis for such wide variation, I find that the reversal trades executed by the Noticee were *non-genuine* in nature and created an impression of artificial trading volumes in respective contracts. I am of the view that by engaging in such trades, the Noticee has violated provisions of Regulation 4(2)(a) of the PFUTP Regulations, which states that dealing in securities will be deemed to be a fraudulent or unfair trade practice if it involves “*indulging in an act which creates false or misleading appearance of trading in the securities market*”.
19. I once again find it relevant to place reliance on the decision of the Supreme Court in ***Rakhi Trading*** (*supra*) wherein, the Supreme Court while deciding upon a case involving execution of reversal trades in index options, observed, “*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),3(b),3(c),3(d), 4(1) and 4(2)(a) of the PFUTP Regulations.*”
20. In view of the aforesaid, I find that the Noticee, by engaging in such non-genuine transactions, created a misleading impression of trading in respective contracts while dealing in Stock Options contracts in a fraudulent manner. I am of the view that the aforesaid act of the Noticee is in violation of regulations 3(a), (b), (c) and (d), 4(1) and 4(2)(a) of the PFUTP Regulations, 2003



Issue b If yes, whether the violation, on the part of the Noticee would attract monetary penalty under section 15HA of the SEBI Act?

&

Issue c 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, 1992 r/w Rule 5 (2) of the AO Rules, 1995?

21. Since violation of regulations 3(a), (b), (c) and (d), 4(1) and 4(2)(a) of the PFUTP Regulations, 2003 by the Noticee is established, I am of the view that the same warrants imposition of monetary penalty upon the Noticee under section 15HA of the SEBI Act, 1992 text of which is produced as under :

The SEBI Act, 1992

“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.”

22. While determining the quantum of penalty under section 15HA of the SEBI Act, 1992 the following factors stipulated in section 15J of the SEBI Act, 1992 have to be given due regard:

The SEBI Act, 1992

Factors to be taken into account by the adjudicating officer

15J :- 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.*

23. As established in the preceding paragraphs, the reversal trades carried out by the Noticee were non-genuine in nature and created a misleading appearance of trading. As brought out earlier, such trades were carried out by the Noticee in illiquid stock options contracts where there was negligible participation by the general public which I construe a mitigating factor while determining the quantum of penalty. Investigation has shown amount of profit / loss of the counterparties to the trades as a result of such non-genuine trades. However, considering that the violation by the Noticee is creation of




27. 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. 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
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. Copies of this Adjudication Order are being sent to the Noticee and also to SEBI in terms of rule 6 of the AO Rules, 1995.

Date: June 19, 2019

Place: Mumbai




SANGEETA RATHOD
ADJUDICATING OFFICER