BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

ADJUDICATION ORDER NO. Order/PM/NS/2021-22/14404

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) RULES, 1995

In respect of:

Rajeev Kansal

PAN: AAGHR0927R

In the matter of *Dealings in Illiquid Stock Options at the BSE*

A. BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") conducted an investigation into the trading activity in illiquid stock options on BSE Limited (hereinafter referred to as "**BSE**") for the period April 01, 2014 to September 30, 2015 (hereinafter referred to as the "**Investigation Period**"**)** after observing large scale reversal of trades in the stock options segment of the BSE.

2. The investigation revealed that during the Investigation Period, a total of 2,91,643 trades comprising 81.38% of all the trades executed in the BSE stock options segment were trades which involved reversal of buy and sell positions by the clients and counterparties in a contract. It was observed that Rajeev Kansal (hereinafter referred to as the "**Noticee**") was one such entity whose reversal trades involved squaring off open positions with a significant price difference without any basis for such change in the contract price. The aforesaid reversal trades allegedly resulted into generation of artificial volumes, leading to

allegations that the Noticee had violated the provisions of regulations 3(a), (b), (c), (d) and regulation 4(1) and 4(2) (a) of the SEBI (Prohibition of Fraudulent and Unfair Trading Practices relating to Securities Markets) Regulations, 2003 (hereinafter referred to as the "**PFUTP Regulations**").

B. APPOINTMENT OF ADJUDICATING OFFICER

3. SEBI initiated adjudication proceedings and appointed the undersigned as the adjudicating officer under section 15-I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the "**SEBI Act**") read with rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as the "**SEBI Adjudication Rules**") *vide* order dated April 20, 2021 to inquire into and adjudge under section 15HA of the SEBI Act, against the Noticee for the alleged violation of the aforesaid provisions of PFUTP Regulations. The appointment of the adjudicating officer was communicated *vide* communiqué dated April 26, 2021.

C. SHOW CAUSE NOTICE, REPLY AND HEARING

4. A show cause notice dated August 06, 2021 (hereinafter referred to as "**SCN**") was served upon the Noticee under rule 4(1) of the SEBI Adjudication Rules to show cause as to why an inquiry should not be held and penalty not be imposed against him under section 15HA of the SEBI Act for the alleged violation of the provisions of regulations 3(a),(b),(c),(d) and 4(1) and 4(2)(a) of the PFUTP Regulations.

5. The allegations levelled against the Noticee in the SCN are summarized below as follows:

   (i) The Noticee was one of the entities which had indulged in reversal trades which allegedly created false and misleading appearance of trading,

generating artificial volumes in stock options segment of the BSE during the Investigation Period.

(ii) The Noticee had engaged in 4 instances in 2 unique contracts which led to generation of artificial volume in the aforesaid unique contracts.

(iii) In the 2 unique contracts, the trades entered by the Noticee were reversed with the same counterparty at a substantial price difference without any basis for significant change in the contract price, which indicates that these trades were artificial and non-genuine in nature.

(iv) A summary of dealings of the Noticee in 2 stock option contracts in which the Noticee executed non-genuine reversal trades during the Investigation Period is as under:

Table 1: Summary of trading of the Noticee in illiquid stock options on BSE

#	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 the Noticee in the contract to total trades in the contract	% of Artificial volume generated by Noticee in the contract to total volume in the contract
1	IBHF15APR540.00CEW2	16.1	15000	26.5	15000	100	100
2	JSPL15APR165.00CEW2	12.15	24000	22.1	24000	100	100

(v) By indulging in execution of the aforesaid non-genuine reversal trades, the Noticee has violated regulations 3(a),(b),(c),(d) and 4(1), 4(2)(a) of the PFUTP Regulations, text of which is reproduced as under:

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 [1][manipulative], fraudulent or an unfair trade practice in [2][markets].

[3][Explanation–For the removal of doubts, it is clarified that any act of diversion, misutilisation or siphoning off of assets or earnings of a company whose securities are listed or any concealment of such act or any device, scheme or artifice to manipulate the books of accounts or financial statement of such a company that would directly or indirectly manipulate the price of securities of that company shall be and shall always be deemed to have been considered as manipulative, fraudulent and an unfair trade practice in the securities market]

(2) Dealing in securities shall be deemed to be a [4][manipulative] fraudulent or an unfair trade practice if it involves [5][any of the following]:—

(a) [6][knowingly] indulging in an act which creates false or misleading appearance of trading in the securities market;

*[1] Inserted vide the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) (Amendment) Regulations, 2018 w.e.f. February 01, 2019 ("**PFUTP 2018 Amendment Regulations**").*

[2] Ibid.

[3] Inserted vide Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) (Second Amendment) Regulations, 2020 w.e.f. October 19, 2020.

[4] Ibid.

[5] Substituted vide the PFUTP 2018 Amendment Regulations. Before the substitution the words read as: "fraud and may include all or any of the following, namely".

[6] Inserted vide the the PFUTP 2018 Amendment Regulations.

6. The Noticee submitted his reply to the aforesaid SCN *vide* email dated August 24, 2021 (hereinafter referred to as the "**August Reply**"). The relevant extract from the August Reply is reproduced below verbatim:

"I opened my Trading Account with MSB E-TRADE SECURITIES LTD with DP ID: 12070600 and Trading Client Code: R0108. I gave an advance cheque of Rs. 50,000/- for trading in the securities (IBHF and JSPL). I did my transactions via my broker only and after the purchase and sale of the securities, they paid me the net profit of Rs. 3,94,443.37/- along with my advance of Rs. 50,000/- after deducting their Security Transaction Fees of Rs. 158/- via a cheque amounting to Rs. 4,44,285.37/-. I have also already paid the relevant Income Tax on the profit earned on the same the relevant year."

7. After considering the facts and circumstances of the case, the undersigned granted an opportunity of personal hearing to the Noticee on September 22, 2021 *vide* notice of hearing sent on September 16, 2021. In view of the prevailing circumstances owing to COVID-19, the hearing was scheduled through video conferencing on WebEx platform. However, I note that the Noticee did not avail

the aforesaid hearing opportunity. Further, another hearing opportunity was granted to the Noticee on October 21, 2021 *vide* notice of hearing sent on October 14, 2021, however the Noticee did not appear again. I note that both of the aforesaid hearing notices were delivered by email. In view of the above, I deem it fit to proceed on the basis of material available on record.

D. CONSIDERATION OF ISSUES AND FINDINGS

8. The issues that arise for consideration in the instant matter are:

   I. **Issue No. I**: Whether the trading in illiquid stock options done by the Noticee during the Investigation Period was in violation of regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of the PFUTP Regulations?

   II. **Issue No. II**: If yes, whether the violation, on the part of the Noticee would attract monetary penalty under section 15HA of the SEBI Act?

   III. **Issue No. III**: If the answer to Issue No. II is in affirmative, 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 SEBI Adjudication Rules?

I. Issue No. I: Whether the trading in illiquid stock options done by the Noticee during the Investigation Period was in violation of regulations 3(a), (b), (c), (d) , 4(1) and 4(2)(a) of the PFUTP Regulations?

9. As stated in the preceding paragraphs, the position/trades entered into by the Noticee were squared up within a short span. The striking feature of the trades of the Noticee was that all the positions/trades were squared with the same counterparty with whom the Noticee had originally traded/created position. The squaring up of the position/trade by the Noticee was at a substantial variation of

price from the original position/trade. Thus, it is alleged that the Noticee had indulged in reversal trades. The said allegation is supported with evidence from the trade log containing records of all trades and reversal trades carried out by the Noticee in the stock options segment of the BSE during the Investigation Period and also provided to the Noticee along with the SCN. On perusal of the details of trades carried out by the Noticee, it is observed that the Noticee took positions and then squared it up in 4 instances in 2 unique option contracts during the Investigation Period.

10. To illustrate, on March 19, 2015, the Noticee sold 24000 units of the contract "JSPL15APR165.00CEW2" at 15:13:25 to Kartikey Brokers Private Limited at an average price of Rs 22.10. Thereafter, the Noticee reversed his position by buying 24,000 units from the same counterparty at 15:13:30 at an average price of Rs 12.15. Thus, the position of the Noticee was squared up at an average difference of Rs 9.95. The entire volume of 48,000 units in the said option contract was arising out of the trades done by the Noticee.

11. Similarly, on the same day, the Noticee sold 15000 units of the contract "IBHF15APR540.00CEW2" at 15:11:27 to Kartikey Brokers Private Limited at an average price of Rs 26.5. Thereafter, the Noticee reversed his position by buying 15,000 units from the same counterparty at 15:11:33 at an average price of Rs 16.1. Thus, the position of the Noticee was squared up at an average difference of Rs 10.4. The entire volume of 30,000 units in the said option contract was arising out of the trades done by the Noticee.

12. It is observed from the trading of the Noticee that in all the trades of the Noticee the buy order and sell order have been entered in a matter of seconds of each other. As stated earlier, there is a substantial variation in price in both the legs.

13. From the August Reply, I note that the Noticee has not disputed the execution of the trades in the concerned contracts. At this juncture, I find it relevant to refer to certain judicial pronouncements which are relevant to the facts of the present

matter. In ***SEBI vs. Rakhi Trading Private Limited*** (Civil Appeal Nos. 1969, 3174-3177 and 3180 of 2011) decided on February 8, 2018, the Apex 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."*. Further, in ***SEBI vs. Kishore R. Ajmera*** (Civil Appeal Nos. 2818 of 2008, 8769 of 2012, 6719 of 2013, 252 and 282 of 2014) decided on February 23, 2016, the Apex Court 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 on the above two decisions of the Supreme Court, I find that the manner of placement of the orders in both legs signifies that the orders were entered in a premeditated method and were not genuine in any manner.

14. Further, in the case of ***Rakhi Trading*** *(supra)*, the Hon'ble Supreme Court while cumulatively analyzing the reversal transactions held 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".* The 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 hand only misleading appearance of trading in the securities market…..*".

15. Applying the ratio of the Supreme Court in the matter of ***Rakhi Trading*** *(supra)* and ***Kishore R. Ajmera*** *(supra)*, I am of the view that execution of trades in an illiquid market with such precision in order placement indicates a prior meeting of mind with a view to execute the reversal trades at a pre-determined price. The Noticee has failed to explain the rationale for the trading as mentioned in Table 1 wherein he has taken a position at a particular price and squared it up at significant price difference variation without any substantial in the price of underlying. Since, the option contracts were undertaken in illiquid contracts (as the strike price was far away from the market price of underlying), there was no trading in the said contracts and hence no price discovery. The only reason for the wide variation in prices of the same contracts within seconds was pre-determination of the prices by both the counterparties at the time of executing 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. It is not possible to comprehend the reason for which the Noticee would enter into multiple option contracts with a strike price very far away from the current market price of the underlying except for the fact that he wanted to execute non-genuine trades.

16. Further, it is observed from Table 1 above that the Noticee has on an average contributed 100% of the volume in the aforesaid 2 contracts. The high contribution of the trading of Noticee in the aforesaid contract shows that the general public was not interested in such contract where the strike price was far from the market price of underlying. Thus, the aforesaid contract was easy to manipulate and was chosen by the Noticee to execute non-genuine trades.

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

18. Considering the synchronized manner of placing buy and sell orders and reversing trades within a short span of 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 genuine trading volumes in the contracts. I am of the view that by engaging in such trades, the Noticee has violated the 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 a case involving execution of reversal trades in index options, observed 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 the PFUTP Regulations*."

20. Lastly, I note from the August Reply that the Noticee has submitted that the Noticee has paid income tax on the profit earned from carrying out the trades concerned in the present matter. I find that the aforesaid submission is irrelevant to the instant proceeding as the instant proceeding is concerned with artificial volume generation in violation of the PFUTP Regulations. The trades executed by the Noticee were manipulative and intended to create misleading appearance of trading irrespective of whether such trades were profitable or if taxes were paid pursuant to such profits. Thus, I find that the aforesaid submission of the Noticee is bereft of any merit.

21. In view of the aforesaid findings, I find that the Noticee, by engaging in such non-genuine transactions, created a misleading impression of trading in the aforesaid contracts while dealing in stock options contracts in a fraudulent manner. I am of the considered view that the aforesaid act of the Noticee is in clear violation of the regulations 3(a), (b), (c), (d), 4(1) and 4(2) (a) of the PFUTP Regulations.

II. Issue No. II: If yes, whether the violation, on the part of the Noticee would attract monetary penalty under section 15HA of the SEBI Act?

III. Issue No. III: If the answer to Issue No. II is in affirmative, 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 SEBI Adjudication Rules?

22. Since violation of the regulations 3(a), (b), (c), (d), 4(1) and 4(2) (a) of the PFUTP Regulations 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, text of which is provided below:

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].

**Substituted for the words "twenty-five crore rupees or three times the amount of profits made out of such failure, whichever is higher" by the Securities Laws (Amendment) Act, 2014, w.e.f. 08-09-2014.*

23. While determining the quantum of penalty under section 15HA of the 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.

24. As established in the preceding paragraphs, the 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 public. Investigation has shown the 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 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 the 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.

E. ORDER

25. After taking into consideration all the facts and circumstances of the case, in exercise of powers conferred upon me under section 15-I (2) of the SEBI Act read with rule 5 of the Adjudication Rules, I hereby impose a penalty of Rs 5,00,000/- (Rupees Five Lakhs only) upon the Noticee *i.e.,* Rajeev Kansal under section 15HA of the SEBI Act for violation of regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of the PFUTP Regulations.

26. The said penalty imposed on the Noticee, as mentioned above, is commensurate with the violation committed by the Noticee and acts as a deterrent factor for the Noticee and others in protecting the interest of investors.

27. 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 favor 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

In case of any difficulties in payment of penalties, the Noticee may contact the support at portalhelp@sebi.gov.in.

28. The Noticee shall forward the said demand draft or the details / confirmation of penalty so paid through e-payment to the Division Chief, Enforcement Department-I, DRA-II, SEBI, in the format given in table below:

Case name	
Name of payee	
Date of payment	
Amount paid	
Transaction no	
Bank details in which payment is made	
Payment is made for	Penalty

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

Date: November 30, 2021 **PRASANTA MAHAPATRA**
Place: Mumbai **ADJUDICATING OFFICER**