

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/SR/SM/2019-20/4167/106]

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

Shristi Cement Ltd

(Address: G8, Mangalpur Industrial Estate, P.O. Raniganj,
Dist. Burdwan, West Bengal - 713347)

(PAN: AAGCS5094M)

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 Shristi Cement Ltd. (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 22, 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) and e-mail at SHRISTI.CEMENT@GMAIL.COM. The said SCN was received by the Noticee as seen from record.
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 110 such reversal trades in 21 contracts, which led to generation of artificial volume of 1,49,23,280 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 21 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 | BOBL15FEB160.00CE | 17.41 | 356250 | 24.35 | 356250 | 100% | 67% | 100% | 74% |
| 2 | CARN15MAR255.00CEW2 | 0.70 | 375000 | 8.15 | 375000 | 100% | 100% | 100% | 100% |
| 3 | DISH15FEB90.00CE | 0.10 | 568000 | 1.85 | 568000 | 100% | 42% | 100% | 44% |
| 4 | DISH15MAR65.00CEW1 | 13.40 | 288000 | 22.08 | 288000 | 100% | 40% | 100% | 75% |
| 5 | GOIL15FEB320.00PE | 0.10 | 140140 | 7.20 | 140140 | 100% | 100% | 100% | 100% |
| 6 | HAIL15MAR260.00CEW2 | 10.30 | 250000 | 22.99 | 250000 | 100% | 100% | 100% | 100% |
| 7 | HDIL15MAR120.00CEW2 | 0.10 | 272000 | 3.78 | 272000 | 100% | 11% | 100% | 10% |
| 8 | HXTL15FEB255.00PE | 0.48 | 100000 | 6.44 | 100000 | 100% | 100% | 100% | 100% |
| 9 | IDBI15MAR60.00PEW2 | 0.05 | 432000 | 2.37 | 432000 | 100% | 33% | 100% | 40% |
| 10 | INCM15MAR115.00CEW3 | 0.05 | 302000 | 3.35 | 302000 | 100% | 100% | 100% | 100% |
| 11 | JSWE15MAR105.00PEW1 | 0.15 | 464000 | 2.20 | 464000 | 100% | 33% | 100% | 52% |
| 12 | LNTF15MAR50.00CEW2 | 10.75 | 500000 | 17.51 | 500000 | 100% | 100% | 100% | 100% |
| 13 | NTPC15MAR140.00CEW1 | 9.61 | 282000 | 17.19 | 282000 | 100% | 78% | 100% | 93% |
| 14 | OBNK15MAR235.00PEW1 | 0.10 | 215000 | 9.35 | 215000 | 100% | 100% | 100% | 100% |
| 15 | ONGC15FEB340.00CE | 1.40 | 174000 | 12.80 | 174000 | 100% | 24% | 100% | 56% |
| 16 | PNBK15MAR140.00CEW2 | 12.90 | 191250 | 23.83 | 191250 | 100% | 60% | 100% | 93% |
| 17 | RCOM15MAR80.00CEW2 | 0.05 | 582000 | 1.75 | 582000 | 100% | 21% | 100% | 27% |
| 18 | RCOM15MAR85.00CEW2 | 0.06 | 782000 | 2.14 | 782000 | 100% | 88% | 100% | 80% |
| 19 | RCOM15MAR90.00CEW2 | 0.05 | 712000 | 1.98 | 712000 | 100% | 29% | 100% | 61% |
| 20 | TMCL15MAR290.00CEW2 | 1.15 | 195000 | 10.60 | 195000 | 100% | 100% | 100% | 100% |
| 21 | UPHL15MAR420.00CEW2 | 9.85 | 281000 | 15.92 | 281000 | 100% | 100% | 100% | 100% |

(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 11% 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 10% 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. The said SCN was sent through SPAD and the said SCN was delivered to the Noticee as seen from record. The delivery proof is on record. The said SCN was also sent through e-mail at “SHRISTI.CEMENT@GMAIL.COM”. An opportunity of hearing was granted to the Noticee on January 21, 2019 vide hearing notice dated January 03, 2019. In the said hearing notice, Noticee was advised to submit its reply to the SCN by January 15,

2019. The hearing notice was sent through SPAD and the delivery proof is on record. However, the Noticee neither replied to the SCN nor attended the hearing as scheduled on January 21, 2019. A final opportunity of hearing was granted to the Noticee on July 12, 2019, vide hearing notice dated June 26, 2019 and in the said hearing notice, Noticee was advised to submit reply to the SCN by July 05, 2019. The said hearing notice was sent through SPAD and the same was delivered to the Noticee as seen from record. On the scheduled date of hearing i. e. July 12, 2019, the authorised representative attended the hearing on behalf of the Noticee and requested to provide the copy of the SCN since the SCN misplaced by the Noticee. Acceding to the request, The AR was provided a copy of SCN alongwith Annexures and advised to submit reply to the SCN By July 29, 2019. The hearing minutes are on record. The Noticee vide letter dated July 26, 2019 submitted its reply to the SCN. Another final opportunity of hearing was granted to the Noticee on August 20, 2019 vide hearing notice dated August 01, 2019 and the said hearing notice was delivered to the Noticee as seen from website of India Post office. The AR attended hearing August 20, 2019 and reiterated the submissions made by the Noticee. During the proceedings of hearing, it was clarified to the Noticee that the documents sought by the Noticee in its reply were provided during the issuance of the SCN. Hearing minutes are on record. Submissions of the Noticee are summarized as under:

- a) The Noticee denies the non-genuine reversal of trades in the BSE Stock Options Segment leading to creation of artificial volume. In this regard, no data/documents with have been provided such as the investigation report. Noticee stated that it has not indulged in execution of any illegal, non-genuine, reversal or fraudulent trades as alleged in SCN. All the trades executed by the Noticee in the BSE have been genuine and fair and the trades were a result of free play of market forces in an anonymous trading system and were not orchestrated. Further, the fact that majority of the trades in the options segment were at variance with the LTP shows that the volatility in the segment was high and there was nothing artificial about the trades in options segment.
- b) Noticee submitted that SCN only considers details of sell trades executed on the Stock Option Segment of BSE Ltd. by it during the Investigation Period and the details of buy trades and the details of trades of any other entity have not been provided, which makes the allegation of creating false and misleading appearance of trading in the market in the captioned notice baseless. Also there is no evidence whatsoever on record to reflect upon the conduct and the manner in which the alleged trades were executed. When the allegation is that an entity has traded in a

particular scrip and created artificial volume in that scrip then the details of complete trades executed in that particular scrip should be provided to the said entity. However in the present case only selective information has been provided by SEBI.

- c) Noticee submitted that in order to allege violation of any PFUTP Regulation or specifically with respect to creation of false and misleading appearance of trading in the market, it is imperative to show that two counterparties to a trade are connected in any manner or have a common intention or objective of creating such false and misleading appearance of trading. There has to be collusion or meeting of minds between such entities to allege that the intention was to execute non-genuine reversal trades to create false and misleading appearance of trading in the market. In the SCN, there is no evidence to suggest that it was connected to or had any relation with the counterparties of its trades. In order to execute such alleged reversal trades there has to be prior meeting of minds between the parties and without such meeting of minds there cannot be execution of such alleged reversal trades because the trading by any entity is done on the screen-based trading platform of the exchange and any buyer or seller is completely unaware about the identity of its counterparty to such trades.
- d) Noticee submitted that it made margin payment and funding of its trading account through bank transaction to the broker and even the payouts from the trading profit was made through bank transfers from the broker. Thus there was no dealing with the counterparty at all. A serious charge of violation of the alleged PFUTP Regulation cannot be levelled merely on the basis of reversal trades. There has to be some collusion / connection / nexus / prior meeting of minds to be shown so as to substantiate such trading between the entities. Noticee submitted that such trades were done in its normal course of business and are devoid of any *mala fide* intentions. In this regard, Noticee cited some case laws like ***R.K. Global vs. SEBI*** (Appeal No. 158 of 2008, Date of decision 16th September, 2010), ***M/s. Jagruti Securities Ltd. Vs. SEBI*** (Appeal No. 102 of 2006, Date of decision 27th October, 2008), ***S.P.J. Stock Brokers Pvt. Ltd. vs. SEBI*** (Appeal No. 52 of 2013, Date of decision 04th September, 2013).
- e) Noticee submitted that the trades carried out by it in the BSE Stock Options Segment were it in the normal course of business devoid of any fraudulent intentions. Also, Noticee stated that derivatives are permitted only those stock and indices which are very liquid and there is a robust risk handling mechanism in the derivatives segment which has been in existence since year 2000. Thus, there cannot be anything wrong in the derivatives segment and it traded on the basis of the said notion. There was no reason to doubt credibility of the platform provided by the exchange as approved by SEBI and therefore it is appropriate to trade on the stock options segment without any intention to create any false or misleading appearance of trading in the market. These were business/financial calls taken by

it which eventually resulted in Company making profits on the BSE's Stock Options Segment.

- f) Noticee submitted that the trading done by the Company is so minuscule viz. 0.000027% (out of the total market volume in stock options segment) that it cannot be construed to have created any false or misleading appearance of trading in the Stock Options Segment of BSE Ltd. These trades were executed on the anonymous platform of the Exchange, without any knowledge of counter party, at price ranges that were permitted by the Exchange and SEBI and the obligations arising out of it have been settled through the clearing mechanism of the Exchange and hence the trades are genuine. Noticee submitted that on majority of occasions it had placed order on the basis of counter orders available in the system.
- g) Noticee submitted that the thumb rule of trading in stock market is to buy shares at low price and sell them at higher price. In the instant case, it had sold the units of contracts at high price and had bought back at a lower price and vice versa. This exhibits a very normal market behaviour and upholds the economic rationality. The rationale for such transactions entered by it were genuine and legitimate. During the 1.5 years of investigation period, its trades have taken place only on 28 days. Had the Company intended to create artificial volume and create a false and misleading appearances of trading, frequency of such trades would have been much higher. No one can achieve the alleged goals by such infrequent trades. Company had executed only 80 trades out of the total 2,91,643 trades executed on the Stock Options Segment of BSE Ltd. could not have in any manner induced any other entity to trade and therefore the trades executed by the Company cannot be alleged to fraudulent as done in the captioned notice and in this regard Noticee cited the case laws of **KSL & Industries Ltd. vs. SEBI** (Appeal No. 9 of 2003, Date of decision 30th September, 2003), **Vintel Securities Pvt. Ltd. vs. SEBI** (Appeal No. 219 of 2009, Date of decision 23rd November, 2009).
- h) Noticee stated that the trade log and order log that it received in the form of a CD only contained the trade and order log pertaining to 80 sell trades executed by it. However SCN alleged that 110 trades executed by the Company were non-genuine and false. The company had traded in 21 unique stock option contracts and executed 80 sell trades during the investigation period. On perusal of the sell trade logs, it can be observed that all the contracts belong to scrips which are highly traded scrips on stock exchanges and there is no reason to believe that the meagre trades of the Company could have, have affected its volume in a way so as to warrant the charge of creating a false and misleading appearance of trading in the market. In this regard, Noticee submitted that options are mere derivatives which derive their values from the underlying scrip and therefore for the allegation of fraud with respect to creating false and misleading appearance of trading, has to be proved and shown in the underlying scrip. But as aforesaid, it is reiterated that all

the scrips in whose options it traded during the Investigation Period were extremely liquid.

- i) Noticee submitted that no loss of any kind has been caused to any investor because of the trades executed by it on the stock exchange.
- j) Noticee submitted that pricing of options is a complex arithmetical calculation based on several variables most of which are subjective and presumptive thus making a huge range of price to be completely valid and genuine. The price of an option is derived based on complex formulae dealing with price of the underlying, time to expiry, expected volatility, rate of Interest etc., all of which are dynamic thus resulting in exponential increase in the lower and upper valid prices of options as a result of which SEBI and Exchanges in their wisdom did not stipulate any price band for options. After having failed to put in place a mechanism for such a complex product in spite of having infinite wherewithal with SEBI and Exchanges, it cannot be expected of common investors and traders to know the correct range of option prices and therefore we submit that the trades of the Company and the prices at which the trades were placed were absolutely genuine and no fault can be found with them.
- k) Noticee submitted that the facts of the present matter are distinguishable from the matter of **SEBI V/s. Rakhi Trading Pvt. Ltd. (2018 SCC Online SC 101)** which dealt in trading in the Stock Option Segment having non-genuine trade on the ground that in Rakhi Trading one party intentionally booked gains and the other party had booked losses and it was held that a party trading intentionally for loss is per se not a genuine dealing in securities market, pre-planned trades, rapid reversal trades, not intend to transfer beneficial ownership etc.
- l) Noticee requested that the present proceedings be quashed since no primary violation of any PFUTP Regulations is made out against it and the trades are genuine.

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

CONSIDERATION OF ISSUES, EVIDENCES AND FINDINGS

9. 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?

10. 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.
11. 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.
12. I note from data provided to the Noticee as Annexures B to D of the SCN that the Noticee had executed 110 non-genuine trades in 21 unique contracts on 12 trading days from February 13, 2015 to March 10, 2015. In this regard, Noticee replied that it has made 80 sell trades in 28 days. However, as seen from the Annexure C and D it is observed that Noticee was buyer/seller in 110 trades in the said contacts and hence reply of the entity is not acceptable. Further, Noticee in its reply stated that the selective documents were provided and in this regard Noticee was clarified during the proceedings of hearing that the documents made available to and relied upon by the undersigned have already been provided to the Noticee during the issuance of the SCN.

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 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 | BOBL15FEB160.00CE | 17.41 | 356250 | 24.35 | 356250 | 100% | 67% | 100% | 74% |
| 2 | CARN15MAR255.00CEW2 | 0.70 | 375000 | 8.15 | 375000 | 100% | 100% | 100% | 100% |
| 3 | DISH15FEB90.00CE | 0.10 | 568000 | 1.85 | 568000 | 100% | 42% | 100% | 44% |
| 4 | DISH15MAR65.00CEW1 | 13.40 | 288000 | 22.08 | 288000 | 100% | 40% | 100% | 75% |
| 5 | GOIL15FEB320.00PE | 0.10 | 140140 | 7.20 | 140140 | 100% | 100% | 100% | 100% |
| 6 | HAIL15MAR260.00CEW2 | 10.30 | 250000 | 22.99 | 250000 | 100% | 100% | 100% | 100% |
| 7 | HDIL15MAR120.00CEW2 | 0.10 | 272000 | 3.78 | 272000 | 100% | 11% | 100% | 10% |
| 8 | HXTL15FEB255.00PE | 0.48 | 100000 | 6.44 | 100000 | 100% | 100% | 100% | 100% |
| 9 | IDBI15MAR60.00PEW2 | 0.05 | 432000 | 2.37 | 432000 | 100% | 33% | 100% | 40% |
| 10 | INCM15MAR115.00CEW3 | 0.05 | 302000 | 3.35 | 302000 | 100% | 100% | 100% | 100% |
| 11 | JSWE15MAR105.00PEW1 | 0.15 | 464000 | 2.20 | 464000 | 100% | 33% | 100% | 52% |
| 12 | LNTF15MAR50.00CEW2 | 10.75 | 500000 | 17.51 | 500000 | 100% | 100% | 100% | 100% |
| 13 | NTPC15MAR140.00CEW1 | 9.61 | 282000 | 17.19 | 282000 | 100% | 78% | 100% | 93% |
| 14 | OBNK15MAR235.00PEW1 | 0.10 | 215000 | 9.35 | 215000 | 100% | 100% | 100% | 100% |
| 15 | ONGC15FEB340.00CE | 1.40 | 174000 | 12.80 | 174000 | 100% | 24% | 100% | 56% |
| 16 | PNBK15MAR140.00CEW2 | 12.90 | 191250 | 23.83 | 191250 | 100% | 60% | 100% | 93% |
| 17 | RCOM15MAR80.00CEW2 | 0.05 | 582000 | 1.75 | 582000 | 100% | 21% | 100% | 27% |
| 18 | RCOM15MAR85.00CEW2 | 0.06 | 782000 | 2.14 | 782000 | 100% | 88% | 100% | 80% |
| 19 | RCOM15MAR90.00CEW2 | 0.05 | 712000 | 1.98 | 712000 | 100% | 29% | 100% | 61% |
| 20 | TMCL15MAR290.00CEW2 | 1.15 | 195000 | 10.60 | 195000 | 100% | 100% | 100% | 100% |
| 21 | UPHL15MAR420.00CEW2 | 9.85 | 281000 | 15.92 | 281000 | 100% | 100% | 100% | 100% |

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

Contract name: HAIL15MAR260.00CEW2

| S.N. | Client name | Counter Party (CP) client name | Trade time | Order time | CP order time | Quantity | Trade rate |
|------|--------------------------------|--------------------------------|-----------------|-----------------|-----------------|----------|------------|
| 1 | Shristi Cement Limited | GKS Properties Private Limited | 13:32:33.981910 | 13:32:32.951859 | 13:32:33.981910 | 250000 | 10.3 |
| 2 | GKS Properties Private Limited | Shristi Cement Limited | 14:16:35.099874 | 14:16:35.099874 | 14:16:34.067839 | 70000 | 22.75 |
| 3 | GKS Properties Private Limited | Shristi Cement Limited | 14:16:50.979820 | 14:16:50.979820 | 14:16:50.068355 | 80000 | 23 |
| 4 | GKS Properties Private Limited | Shristi Cement Limited | 14:17:01.805368 | 14:17:01.805368 | 14:17:00.968822 | 100000 | 23.15 |

- c. I note from the above table that during the investigation period, total four trades for 5,00,000 units were executed in the “HAIL15MAR260.00CEW2” contract on March 09, 2015 wherein the Noticee was party to all of the said trades. While dealing in the said contract on March 09, 2015, the Noticee entered into one buy trade with counter party viz, GKS Properties Private Limited for 2,50,000 units at rate of Rs. 10.3 per unit. Thereafter, on the same day, within few minutes from the above trade, the Noticee entered into three sell trades with same counterparty for the same quantity 5,00,000 units at the price varies from Rs. 22.75 to 23.15 per unit.
- d. From the above, it is noted that while dealing in the said contract during the investigation period, the Noticee executed reversal trades (one buy trade + three sell trades) with the same counterparty viz. GKS Properties Private Limited, on the same day for the same quantity.
- e. Thus, the Noticee, through its dealing in the contract viz, “HAIL15MAR260.00CEW2” 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 5,00,000 units which is 100% of the volume traded in the said contract in the options segment of BSE during the investigation period.

- f. The trades entered by the Noticee were reversed on the same day with same counterparties and price changed in the said contract from Rs. 10.3 to Rs. 23.15 without change in price of underlying which indicates that these trades were non-genuine in nature.
- g. 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 110 reversal trades in 21 unique contracts during the IP.
- h. 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.
- i. It is summarized from the above findings that the Noticee had executed non-genuine trades in 21 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 11% to 100%. Out of the said 21 contracts, in respect of nine contracts, 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 10% 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 1,49,23,280 units in 21 unique

contracts through reversal of trades during the IP, details of which is mentioned above.

13. 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.
14. 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 demonstrate 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.
15. Further, from the reply of the Noticee, 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 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) & (d) and 4(1) and 4(2)(a) PFUTP Regulations, 2003.

16. Considering the reversing of trades within minutes 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*”.
17. 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.*”
18. 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) & (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, 1992?

&

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?

19. Since violation of regulations 3(a), (b), (c) & (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.”

20. 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:

- 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.*

21. 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 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.

22. Therefore, taking into account the facts and circumstances of this matter, I am of the view that a penalty of Rs. 5,00,000/- (Rupees Five Lakh Only) will be commensurate with the violations of regulations 3(a), (b), (c) & (d), 4(1) and 4(2)(a) of the PFUTP Regulations, 2003 committed by the Noticee.

ORDER

23. After taking into consideration all the facts and circumstances of the case, in exercise of powers conferred upon me under section 15I(2) of the SEBI Act, 1992 r/w rule 5 of the AO Rules, 1995, I hereby impose a penalty of Rs. 5,00,000/- (Rupees Five Lakh Only) upon the Noticee, i.e. Shristi Cement Ltd. under section 15HA of the SEBI Act, 1992 for violation of regulations 3(a), (b), (c) & (d), 4(1) and 4(2)(a) of the PFUTP Regulations, 2003.
24. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order by one of following two modes:
- By using the web link <https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html>
 - By way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai
25. Details of Demand Draft made as given in format below shall be sent to "The Division Chief, EFD-DRA-I, Securities and Exchange Board of India, SEBI Bhavan, Plot no. C- 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051." and also to e-mail id :- tad@sebi.gov.in
- Case Name
 - Name of the 'Payer/Noticee'
 - Date of Payment

- d) Amount Paid
- e) Transaction No.
- f) Bank Details in which payment is made
- g) Payment is made for (like penalties/disgorgement / recovery/ settlement amount and legal charges along with order details)

26. 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.
27. 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: August 28, 2019

Place: Mumbai

SANGEETA RATHOD

ADJUDICATING OFFICER