BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. RA/JP/ 189 - 192 /2017]

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

In respect of:

(1) Vankars Gems & Jewelleries Private Limited (PAN: AADCV6467A)
(2) Sadhiv Mercantile Private Limited (PAN: AAPCS0583G)
(3) Sarvin Mercantile Private Limited (PAN:AARCS1698C)
(4) Inventure Growth and Securities Limited (PAN- AAACI2044K)

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as **"SEBI"**) conducted investigation in the trading/dealing in the shares of Gitanjali Gems Limited (**GGL**) to find out any possible violation of securities laws for the period November 01, 2011 to June 30, 2013 (hereinafter referred to as "**Investigation period)**. Investigation *prima facie* revealed that (1) Vankars Gems & Jewelleries Private Limited, (2) Sadhiv Mercantile Private Limited (3) Sarvin Mercantile Private Limited and (4) Inventure Growth and Securities Limited (hereinafter referred to as '**the Noticees'** collectively or as **"Noticee No. 1 - 4"** respectively) had traded / indulged into repeated self-trades at National Stock Exchange of India Ltd. (**NSE**).

APPOINTMENT OF ADJUDICATING OFFICER

2. SEBI initiated adjudication proceedings and appointed the undersigned as Adjudicating Officer under section 15 I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **'SEBI Act'**) read with rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer)

Rules, 1995 (hereinafter referred to as '**Adjudication Rules'**) vide order dated April 23, 2015 to inquire into and adjudge under section 15 HA and 15 HB of the SEBI Act against the Noticee(s) for the alleged violation of regulation 3 (a) to (d), 4 (1) & 4 (2) (a) & (g) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as '**PFUTP Regulations'**) and clause A (2) of the Code of Conduct under Schedule II read with regulation 7 of the SEBI (Stock Brokers and Sub Brokers) Regulations, 1992 (hereinafter referred to as '**Stock Brokers Regulations')**. The proceedings of appointment of undersigned as Adjudicating Officer was communicated to the undersigned vide communiqué dated October 30, 2015.

SHOW CAUSE NOTICE, REPLY AND HEARING

3. Show Cause Notices No. E&AO/RA/JP/1286/2016, E&AO/RA/JP/1288/2016, E&AO/RA/JP/1285/2016 and E&AO/RA/JP/1287/2016 dated January 13, 2016 (hereinafter referred to as **" SCN / SCNs"**) were served upon the Noticees respectively under rule 4(1) of the Adjudication Rules to show cause as to why an inquiry should not be held and penalty be not imposed under sections 15HA and 15HB of the SEBI Act.

4. It was alleged in the SCN that the Noticees had traded / indulged into repeated fraudulent self-trades (viz. the trades where the seller and the buyer in a trade remains the same person and no actual beneficial ownership of shares is changed in such type of transactions) in the scrip of GGL. It was alleged that the Noticee No. 1 to 3 (being client) had traded such self-trades through the Noticee No. 4 (stock broker). The details of self-trades traded/executed by the Noticees at NSE were shown in the Compact Disc (CD) which was enclosed along with SCN as Annexure II.

5. In view of the trading into such multiple self-trades, it was alleged that the Noticee No. 1 to 3 had fraudulently traded and created misleading appearance of trading in the securities market without an intention to change the ownership of such shares and thereby had violated the regulation 3 (a) to (d), 4 (1) & 4 (2) (a) & (g) of the PFUTP Regulations; and the Noticee No. 4 (being the stock broker) had failed to

adopt due care/diligence while executing self-trades on behalf of its aforesaid clients / Noticee No. 1-3 and thereby had violated clause A (2) of the code of conduct under Schedule II of the Stock Broker Regulations.

6. The aforesaid provisions of law alleged to have been violated by the Noticees are mentioned below;

FUTP Regulations

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 thereunder;

(c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a 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 thereunder.

4. Prohibition of manipulative, fraudulent and unfair trade practice

(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;

(g) entering into a transaction in securities without intention of performing it or without intention of change of ownership of such security;

Schedule II under Stock Brokers Regulations

A(2) Exercise of due skill and care : A stock-broker shall act with due skill, care and diligence in the conduct of all his business.

a) It was stated in the SCN that the aforesaid alleged violations, if established, would make the Noticee No. 1 to 3 liable for monetary penalty under section 15 HA of the SEBI Act and would make the Noticee No. 4 liable for monetary penalty under section 15 HB of the SEBI Act, which reads as under:

15HA. Penalty for fraudulent and unfair trade practices.
If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher.

15HB.Penalty for contravention where no separate penalty has been provided.
Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees.

7. No reply was received from Noticee No. 1-3 in respect of SCN. The Noticee No. 4 replied towards the SCN vide letter dated February 01, 2016 and made submissions that all the trades were executed by it (being stock broker) as per instruction of the clients and same were in ordinary course of its business. Noticee No. 4 also stated that had the Exchange intimated it, then, we would have immediately stopped trading on behalf of such clients.

8. The Hon'ble Supreme Court of India vide judgment dated November 26, 2015 in the case of *SEBI vs. Roofit Industries Ltd*. held that Adjudicating Officer has no discretion in deciding quantum of penalty under Chapter VI A (except in u/s 15F (a) and 15HB of the SEBI Act). The issue involved in *Roofit* case was differently interpreted in case of *Sidharth Chaturvedi* (decided on March 14, 2016) and accordingly, the legal issue / matter was pending for Larger Bench of Hon'ble Supreme Court of India. Meantime, as per "The Finance Act 2017" (Notified for Part VIII of Chapters VI came into effect from April 26, 2017) following has been *inter - alia* clarified in respect of adjudication under SEBI Act-

147. In section 15J of the principal Act, the following Explanation shall be inserted, namely:-

"Explanation- For the removal of the doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under section 15A to 15E and clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section."

9. Consequent to the clarity brought into the Finance Act, 2017, opportunity of hearing was provided to the Noticees on May 08, 2017 vide notice of hearing dated April 21, 2017. The said notice was served through digitally signed e-mail to all the Noticees. The Noticee No. 1-3 had neither appeared for the hearing nor filed

any reply/communication. The hearing on May 08, 2017 was attended by Noticee No. 4 and reiterated as stated in its aforesaid reply. It was also submitted by Noticee No. 4 that trades were done as per instructions of client and the quantity involved in such self-trades is very minimal. Thereafter, the Noticee No. 4 vide letter dated May 12, 2017 forwarded summary of trades carried out for its clients.

10. After taking into account the allegations, submission on records and other evidences / material available on records, I hereby proceed to decide the case on merit.

CONSIDERATION OF ISSUES AND FINDINGS

11. The issues that arise for consideration in the present case are :

a) Whether the Noticee No. 1-3 had indulged into self-trades with an intention to create misleading appearance of trading without any change in beneficial ownership of such securities and whether such indulgence by the Noticee(s) are in violation of regulation 3 (a) to (d), 4 (1) & 4 (2) (a) & (g) of the PFUTP Regulations and whether Noticee No. 4 while executing such self-trades had failed to adopt due diligence / care / caution and whether the same is in violation of clause A (2) of the Code of Conduct under Schedule II read with regulation 7 of the Stock Brokers Regulations?

b) If yes, then, does the violations on the part of the Noticee(s) attract monetary penalty under sections 15 HA and 15HB of the SEBI Act?

c) If yes, then, what would be the monetary penalty that can be imposed upon all the Noticees taking into consideration the factors mentioned in section 15J of the SEBI Act read with rule 5 (2) of the Adjudication Rules?

ISSUE NO. 1

Whether the Noticee No. 1-3 had indulged into self-trades with an intention to create misleading appearance of trading without any change in beneficial ownership of such securities and whether such indulgence by the Noticee(s) are in violation of regulation 3 (a) to (d), 4 (1) & 4 (2) (a) & (g) of the PFUTP Regulations and whether Noticee No. 4 while executing such self-trades had failed to adopt due diligence / care / caution and whether the same is in violation of clause A (2) of the Code of Conduct under Schedule II read with regulation 7 of the Stock Brokers Regulations?

12. The facts of trading as alleged in the SCNs, are not in dispute by the Noticees. Here, it is relevant to depict as to what the "self trades" or “wash trades” are? Self trades are those trades where the seller and the buyer in a trade remains the same person and in such type of transactions, no actual beneficial ownership of contracts is changed. It is not out of place to mention that in respect of self-trading, the Hon'ble Securities Appellate Tribunal (**Hon’ble SAT**) in the matter of ***Shankar Sharma Vs. SEBI (Appeal No. 14 of 2009 decided on October 28, 2009)***, observed as follows-

> “ ….. …. It is thus *clear that the appellant was on both sides. He was the buyer as well as the seller. The buy and sell orders were put into the system at almost the same time. Such trades have been executed in large quantities while dealing with the shares of different companies. We have no hesitation to hold that these trades were fictitious as there was no change in the beneficial ownership of the shares traded and it was the appellant on both sides of the trades. How can a person buy from himself and sell to himself. Such trades are only meant to create artificial volumes and they disturb the market equilibrium”. Therefore, taking in to consideration the above position of law, I am of the firm opinion that the Noticee had indulged in the said fictitious trades which are per se illegal and only meant to artificially create the volumes in the scrip".*

13. Also, the similar findings were made by the Hon'ble SAT in the case of ***Krupa Soni & Ors. v/s SEBI*** (Appeal No. 32/2013) decided on January 24, 2014 holding that-

> *“On perusal of pleadings and hearing the oral submissions, we note that the self trades are fictitious in nature as there is no transfer of actual beneficial ownership of share and because the buyer and seller are the same person. Such trades are injurious to a healthy market and result in the creation of artificial volumes in the scrip. This in turn gives a totally wrong signal to the members of the public who may invest in the hope of making some gains but ultimately land up with losses. The argument advanced by the learned counsel for the Appellant Shri J.J. Bhatt, who appears with Ms. Rinku Valanju that such self trades were executed through several brokers, in no way mitigates the charge of violation of the PFUTP Regulations. This Tribunal has taken a consistent view that a few instances of self trades in themselves would not, ipso facto, amount to an objectionable trades. However, in the case in hand a number of shares have been dealt with by executing self trades, albeit, through several brokers. Details in this regard have been supplied by the learned AO in paragraphs 17 and 18 of the impugned order. Both the Appellants have executed such self trades through various brokers at least on many occasions during the period in question”.*

14. As per aforesaid case of *Krupa Soni and Sanjay Soni*, the total executed self-trades by the appellant were to the extent of 1,82,942 shares which constituted 7.60% of Krupa Soni Group's trades and 3.26% of the total market volume in the scrip**.** In other words, the self trades which are around 3% of the total market volumes in particular scrip have been considered as substantial having impact upon volumes in the scrip. Here, I am also inclined to refer to a judgment of the Hon'ble SAT in case of *Angel Broking Pvt. Ltd. V/s SEBI (Appeal No. 46/2014) decided on October 01, 2014* whereby penalty was upheld for execution of only 4 self trades involving 9866 shares executed by the appellant in just 2 days.

15. Before going to further examine the instant case, I have noted that the SEBI policy on self-trades emphasizes upon 'intent' and while assessing the manipulative intent, the volume transacted may also be considered in addition to other factors. It is necessary to mention here that for the allegation of fraudulent activities, it is settled law by the Hon'ble SAT and well as Supreme Court of India that higher the serious allegation (involving the fraudulent / manipulative activities) is there, stricter the degree of proof is required to prove the allegations and same cannot be concluded merely on the preponderance of probabilities. It is important here to mention that to find out the "intention" behind indulgence into any manipulative / unfair / fraudulent trades/activities, the Hon'be SAT in case of *Ketan Parekh Vs. SEBI* (Appeal No. 2 of 2004) decided on July 14, 2006 had categorically held that- *in order to find out whether a transaction has been executed with the intention to manipulate the market or defeat its mechanism, will depend upon the intention of the parties which could be inferred from the attending circumstances of the cases, because direct evidence in such cases may not be available*.

16. Now, after taking into account various judgments of the Hon'ble SAT and the current Policy of SEBI on self-trades, it is clear that incidental self-trades or the mere execution of self-trades, are not *per - se* manipulative/fraudulent; and to hold a person liable for the charge of manipulative self-trades creating misleading appearance of trading in securities market, two important criteria viz. (a) the manipulative intention needs to be examined; and (b) to prove such manipulative intention, the attending circumstances of the case or the modus operandi (which

may include viz. frequency, timing, number of self-trades / volumes / percentage of self-trades towards total market or own trading percentage / frequency of trades / proprietary trading or cliental trading etc.) needs to be looked into. In other words, the manipulative intent can only be derived from the circumstance / modus operandi used by the person in case specific.

17. Now, to deal with the issue of 'intent' and the 'attending manipulative circumstances' of the case, the trading pattern of the Noticees while executing self-trade in the scrip of GGL, is being examined hereunder.

18. It is noted that the Noticee No. 1 had traded into such self-trades for 2, 38, 784 shares in 228 trades for 11 days during the period from November 22, 2011 to February 29, 2012. The Noticee No. 2 had traded into such self-trades for 3,86,102 shares in 298 trades for 11 days during the period from November 01, 2011 to February 09, 2012. The Noticee No. 3 had traded into such self-trades for 1,30, 578 shares in 294 trades for 23 days from October 26, 2012 to February 21, 2013.

19. In order to find out the percentage of volume of the Noticee No. 1-3 towards the total market volume during that period, I have perused investigation report (page 10) and calculated / analysed the percentage of self-trades of the Noticee No. 1-3 towards the total market gross volume which is mentioned below;

Name of Entity	**No. of Share under Self Trades**	**% of self-trades of Entity towards the Total Market Gross Volume**
Vankars Gems & Jewelleries Pvt. Ltd	2, 38, 784 shares	0.08%
Sadhiv Mercantile Pvt. Ltd	3,86,102 shares	0.13%
Sarvin Mercantile Pvt. Ltd.	1,30, 578 shares	0.05%

20. It is also noted that the Noticee No. 4 (being a stock broker) had executed following self-trades on behalf of its clients / Noticee No. 1-3.

Name of the broker (both Buy and Sell trades)	Client's Name	No of Trades	No. of shares (in self-trades
Inventure Growth & Securities Ltd.	Vankars Gems & Jewelleries Pvt. Ltd.	120	27,995
	Sadhiv Mercantile Pvt. Ltd.	56	31,650
	Sarvin Mercantile Pvt. Ltd.	2	33
	Total	**178**	**59,678**

21. From the analysis of investigation report, it is also observed that Noticee No. 4 had executed / indulged into execution of self-trades on behalf of its clients (Noticee No. 1-3) which was only 0.02% of the total market gross volume.

22. From the above, it is noted that the self-trade percentage / volume of the Noticees is less than 1% when compared to the total market volume in GGL during the investigation period / relevant Patch of investigation. Apparently, from such negligible percentage, it is difficult to arrive at the conclusion that these self-trades were executed by the Noticee(s) with an 'intent' to create misleading appearance of trading in the securities market and also difficult to hold liable for any failure of code of conduct of Stock Brokers Regulations which are consequent of said activities.

23. Here, it is very important to highlight that as per aforesaid SEBI Policy, besides other factors, the 'volume' is also considered as very crucial factor in order to find out the 'manipulative intent' behind execution of such self-trades. In this case, as observed above, the volumes of the Noticees are miniscule.

24. Further, I also note that no adverse observations against the Noticees regarding synchronized / reversal / circular trading or executing order away from last traded price or new high price, is there in the investigation report. Also, no fraudulent modus operandi was explained under the investigation report regarding such self-trades.

25. I have also taken in to account a recent order of another Ld. Adjudicating Officer of SEBI dated June 22, 2017 (O*rder Ref. No. EAD/AO-NP/SJ/50/2017)* and observed that the said Adjudicating Officer while following SEBI policy dated May 15, 2017, had exonerated the person charged for self-trades with the observations that gross

buy and sell of the said person in the scrip, was not significant in comparison to the total market buy/sell volume during the investigation period as the volume of self-trade was less than 1% of the total market volume. I have noted that in aforesaid adjudication case/order, the self-traded volume of person charged was 0.94% (6,03,590 shares) at BSE and 0.30% (3,14,576 shares) at NSE as compared to total market volume in that scrip.

26. I cannot loose sight that in term of such miniscule percentage of self trades and in terms of other observations, the present case bears similarities to that of aforesaid order/case dated June 22, 2017. In fact, in the present case, such percentage of self-trades is comparatively less.

27. It would be appropriate to mention that the motive behind executing self trades can be either to artificially raise the volume in a scrip / or to manipulate the price of a scrip by way of creating misleading appearance of trading. After taking into account aforesaid observations, perusal of investigation report and taking into account miniscule volume of self trades as compared to the total market volume during the investigation period, no such malafide intention / motive could be established in the present case.

28. Therefore, considering the fact and circumstance of the case and also taking into account the recent SEBI policy dated May 15, 2017, it is concluded that the violation of regulation 3 (a) to (d), 4 (1) & 4 (2) (a) and 4 (2) (a) & (g) of the PFUTP Regulations and violation of clause A (2) of the code of conduct under Schedule II of the Stock Brokers Regulations, does not stand established against the Noticees.

29. As the violations are not established against the Noticees, therefore, consequent Issue No. 2 and 3 requires no examination.

ORDER

30. Accordingly, taking into account aforesaid observations and in exercise of power conferred upon me under section 15 I of the SEBI Act read with rule 5 of the

Adjudication Rules, I am of the view that no penalty is warranted to be imposed upon the Noticees in the matter and the case / SCN is disposed of accordingly.

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

Date: September 29, 2017 **(RACHNA ANAND)**

Place: Mumbai **GENERAL MANAGER &**

ADJUDICATING OFFICER