BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM : PRASHANT SARAN, WHOLE TIME MEMBER

ORDER

Under section 15-I (3) read with section 19 of the Securities and Exchange Board of India Act, 1992

In the matter of Bharatiya Global Infomedia Limited

In respect of Adroit Financial Services Private Limited and AKG Securities and Consultancy Limited

---

Date of hearing : August 14, 2014

Appearance:

For **Adroit Financial Services Private Limited** : Mr. Ankit Lohia, Advocate, Mr. Aditya Bhansali, Consultant and Mr. Nikhil Raj Gupta, Vice President.

For **AKG Securities and Consultancy Limited** : Mr. Ankit Lohia, Advocate and Mr. Aditya Bhansali, Consultant.

For the **Securities and Exchange Board of India** : Mr. B. Rajendran, General Manager, Ms. Anitha Anoop, Deputy General Manager, Mr. C. Sugadev, Assistant General Manager and Mr. T. Vinay Rajneesh, Assistant General Manager.

---

1. The Securities and Exchange Board of India (hereinafter referred to as "SEBI") had conducted an investigation into the affairs pertaining to the Initial Public Offer ("IPO") of Bharatiya Global Infomedia Limited ("the Company" or "BGIL") and the trading in the scrip on the stock exchanges on the listing day i.e., July 28, 2011. In the investigation, SEBI *inter alia* noticed that Adroit Financial Services Pvt. Ltd. (hereinafter referred to as "Adroit") had traded in the shares of BGIL on the first day of trade (listing day) for its client, AKG Securities and Consultancy Limited (hereinafter referred to as "AKG") and had allegedly executed fictitious trades i.e., self-trades for AKG for a quantity of 1,09,014 shares on the Bombay Stock Exchange Limited ("BSE") and 320 shares on the National Stock Exchange of India Limited ("NSE"). It was further noticed that Adroit had executed 42 self-trades for AKG from the same trading terminal for 29,924 shares on BSE. AKG was alleged to have created

artificial volumes in the scrip and that Adroit was alleged to have aided and abetted its client, i.e., AKG in creation of artificial volumes in the scrip of BGIL on the listing day.

2. In view of the alleged violations observed in the investigation in respect of Adroit and AKG, SEBI referred the matter for adjudication proceedings under the provisions of the Securities and Exchange Board of India Act, 1992 ("the SEBI Act") read with the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 for making an inquiry. Adroit and AKG were alleged to have contravened the provisions of section 12A(a), (b) and (c) of the SEBI Act read with regulations 3(a), (b), (c) & (d), 4(1) and 4(2)(a) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 ("the PFUTP Regulations"). In addition to the above alleged violations, Adroit, being a stock broker and registered intermediary of SEBI, was also alleged to have contravened Clause A of the Code of Conduct for Stock Brokers under Schedule II of the SEBI (Stock Brokers and Sub-brokers) Regulations, 1992 ("the Stock Broker Regulations") read with regulation 7 thereof.

3. The Adjudicating Officer ("the AO"), who conducted the inquiries in respect of Adroit and AKG, passed separate Orders dated April 30, 2014, wherein he had made the following observations:

Observations and findings of the AO in respect of Adroit:

"……

19. *As submitted by the Noticee, AKG had authorized 8 of its employees / authorized individuals for instructing around 39 traders / dealers of the Noticee to punch in orders in the scrip of BGIL on the day of listing. I note that the buy orders and sell orders were being placed by different traders from different terminals. Further, I also note that only 11 shares have been traded in a fictitious manner from the same terminal culminating out of 11 trades. I find merit in the submissions of the Noticee that the total volumes traded in the scrip of BGIL on the listing day were high and therefore, the percentage contribution of the alleged self trades is very meager which was only 0.58% of BSE's and 0.0012% of NSE's of the total market volume in the scrip of BGIL on July 28, 2011 if calculated inter-ID wise. Further, I also find merit in the submission of the noticee and upon perusal of the trading details that the 11 shares which were matched from the same user ID constitute only 0.000048% of the exchange's total market volume in the scrip of BGIL. However, the Noticee should look into this aspect and remedial steps should be taken for avoiding such instances.*

20. *Further, I note from the submission of the Noticee that it executes trades for its client on the instructions of the authorized employees of AKG on arbitrage basis so as to get the benefit from the price difference on the stock exchanges and due to the nature of trading there is high volume involved and the turnover is very high. I have noted the submissions of the Noticee that in such market situations the matching of trades from different terminals is inevitable and there may not be any meeting of minds. However, with respect to the matching of trades which were executed from the same terminal,*

I note that it is a serious charge. But looking into the quantity of shares matched i.e. 1 share in 1 trade constituting total 11 shares in 11 trades, I am of the view that a lenient view can be taken as such trades cannot be said to have contributed in the creation of artificial volumes in the scrip of BGIL and therefore, the Noticee cannot be held guilty of aiding and abetting its client in creation of artificial volume.

21. *Further, there is no allegation against the Noticee that it had indulged in price manipulation while executing these trades for its client. I find that the evidence available on record is insufficient to hold that the trades executed by AKG contributed to the volumes in the scrip in as much as the contribution to the market volume being insignificant to the total volumes traded on the day of listing. Therefore, the charge of aiding and abetting the client in execution of such fictitious trades and thereby, creating artificial volumes in the scrip fails.*

22. *In view of the aforesaid observations and findings, I conclude that the violation of provisions of Section 12A (a), (b) and (c) of the Act read with Regulation 3(a), (b), (c), (d) and 4(1) & 4(2)(a) of the PFUTP Regulations and Regulation 7 read with Clause A as mentioned in Schedule II of the Broker Regulations do not stand established.*

ORDER

23. *In view of the above, after considering all the facts and circumstances of the case and exercising the powers conferred upon me under section 15-I (2) of the SEBI Act, 1992, I hereby conclude that the charges leveled against the Noticee in the SCN do not stand established and the matter is, accordingly disposed of.*

……"

Observations and findings of the AO in respect of AKG:

"……

18. *I note from the submissions made by the Noticee that the Noticee is a company and is basically engaged in arbitrage / jobbing activities in the securities market and carry out these activities on a daily basis. The Noticee was one of the clients, trading through Adroit, who had traded in the scrip of BGIL on both the exchanges on the listing day and had traded in a fictitious manner i.e. executed self trades for a quantity of 109014 shares on BSE and 320 shares on NSE. Further, The Noticee had also executed 42 self trades from the same terminal for 29924 shares on BSE. As submitted by the Noticee, 8 of its employees / authorized individuals were instructing around 39 traders / dealers of Adroit to punch in orders in the scrip of BGIL on the day of listing. I note that the buy orders and sell orders were being placed by different traders from different terminals. Further, I also note that only 11 shares have been traded in a fictitious manner from the same terminal culminating out of 11 trades. I find merit in the submissions of the Noticee that the total volumes traded in the scrip of BGIL on the listing day were high and therefore, the percentage contribution of the alleged self trades is very meager which was only 0.58% of BSE's and 0.0012% of NSE's total market volume in the scrip of BGIL. Further, I also find merit in the submission of the Noticee and after perusal of the trading details that 11 shares which were matched from the same user ID constitute only 0.000048% of the exchange's total market volume in the scrip of BGIL. However, the Noticee should look into this aspect and remedial steps should be taken for avoiding such instances.*

19. *In view of the above, I note from the submission of the Noticee that it executes arbitrage trades so as to benefit from the price difference on the stock exchanges and due to the nature of trading there is high volume involved and the turnover is very high. I have noted the submissions of the Noticee that in such market situations the matching of trades from*

different terminals is inevitable and there may not be any meeting of minds. However, with respect to the matching of trades which were executed from the same terminal, I note that it is a serious charge. But looking into the quantity of shares matched i.e. 1 share in 1 trade constituting total 11 shares in 11 trades, I am of the view that a lenient view can be taken as such trades cannot be said to have contributed in the creation of artificial volumes in the scrip of BGIL.

20. *Further, there is no allegation against the Noticee that it had indulged in price manipulation. I find that the evidence available on record is insufficient to hold that the trades executed by the Noticee contributed to the artificial volumes in the scrip in as much as the contribution of the Noticee to the market volume being insignificant to the total volumes traded on the day of listing.*

21. *In view of the aforesaid observations and findings, I conclude that the violation of provisions of Section 12A (a), (b) and (c) of the Act read with Regulation 3(a), (b), (c), (d) and 4(1) & 4(2)(a) of the PFUTP Regulations do not stand established.*

ORDER

22. *In view of the above, after considering all the facts and circumstances of the case and exercising the powers conferred upon me under section 15-I (2) of the SEBI Act, 1992, I hereby conclude that the charges leveled against the Noticee in the SCN do not stand established and the matter is, accordingly, disposed of.*

……"

4. As the observations of the AO in the matters of Adroit and AKG (collectively referred to as "the noticees") regarding the impugned self-trades were erroneous, the matter was called for examination in terms of the provisions of section 15-I (3) of the SEBI Act and Show Cause Notices dated July 11, 2014 ("the SCN") were issued to the noticees, advising them to show cause as to why appropriate penalty cannot be imposed against it in terms of section 15HA of the SEBI Act for the alleged violations. The SCNs also advised the noticees to submit their reply and informed them of the opportunity of personal hearing fixed on July 17, 2014 in the matter. Pursuant to requests for adjournment of the dates fixed for the personal hearings, the noticees appeared before me on August 14, 2014 through their authorised representatives, Mr. Ankit Lohia, Advocate and Mr. Aditya Bhansali, Consultant. Mr. Nikhil Raj Gupta, Vice President of Adroit was also present in the personal hearing. The learned advocate made oral submissions. As the noticees did not file any reply to the SCNs till then, the advocate sought time of two weeks for filing written submissions along with material in support of the same. The request was allowed. Thereafter, the noticees forwarded their written submissions vide separate e-mails dated September 05, 2014, which are dealt in the subsequent paragraphs.

5. Replies/submissions of Adroit :

Adroit *inter alia* made the following submissions-

(a) It is an entity duly constituted under the Companies Act, 1956 and is registered with SEBI as a stock broker having registration no. INB 230853830. It is engaged in the business of stock broking activities for the last 20 years and has an impeccable track record of Securities Law Compliance and till date has not been held guilty of any securities law violation.

(b) It has a total of 182 (own and sub-brokers' offices) offices across India and has a registered client base of 25,000 clients which includes AKG having its registered office at 3776/309 Nirmal Market, NS Marg, Daria Ganj, New Delhi-110002.

(c) AKG had opened its account with Adroit in the year 2002. Since its registration, AKG has been basically engaged in the business of buying, selling and dealing in stocks and commodities. It has never been held liable by SEBI or any other regulatory authority in relation to its trading/dealing inthe securities market, which clearly shows its impeccable integrity and adherence to statutory norms.

(d) AKG employs jobbing/arbitrage activities in the securities market and carries out the same on a daily basis. Their arbitrageurs and jobbers regularly visit Adroit's office and undertake jobbing transactions looking into the opportunities available to them. It is pertinent to mention that their jobbers regularly carry out transactions of more than Rs. 100 Crores on any given day in multiple scrips depending on the market conditions and availability of arbitrage conditions.

(e) By its very nature, jobbing involves trading at thin margins and capitalizing on anticipated price differences ranging between a few paise to a few rupees. As traders who do jobbing look for profit based on thin margins, the volume of transactions in case of jobbing is quite substantial.

(f) As there are no circuit filters on the first day of trading subsequent to the listing of a scrip, there is huge volatility in the market. This is the best time for jobbers to trade in the market in anticipation of maximum profit. At the same time, the volume of trades conducted by the jobbers during such time is also quite significant. Historic trend would show that on the first day of trading only 15 to 20% of the total trades are delivery based and the balance are intraday trades. This goes to show that various jobbers across the market including AKG do significant trading on the first day of listing.

(g) Jobbing is a recognized form of business in the securities market. For this purpose, on July 28, 2011, AKG had traded through it from 39 terminals and instructions were to undertake

transactions in the nature of jobbing. AKG's total volume of trades on the first day of listing was approximately Rs.21.93 crores, which constituted 4.28% of total market volume on that day. In terms of number of shares, AKG traded in 35,34,702 shares on BSE and 1,08,888 shares on the NSE.

(h) The allegation in the AO's notice was that trades in respect of 1,09,334 shares on BSE and 309 shares on the NSE were in the nature of inter id self trades in as much as such trades were executed for the same client on the buy and sell side. It is alleged that these trades were executed from different terminals. The AO Notice further alleged that in respect of 29,924 shares out of 42 self trades got executed for the same terminal. However, the number of trades and shares in respect of the alleged self trades from the same terminal is incorrect. Based on the documents relied upon, it had submitted to the AO that AKG's alleged self trades from the same terminal were in respect of 11 trades of one share each constituting a total of 11 shares which is 0.000023% of the total market volume.

(i) As regards the inter terminal trade, it had set out in detail the manner in which trades are undertaken from different terminals and on account of the fact that matching of trades on screen base trading is on an anonymous basis, it is impossible for any person to know or find out that orders placed from one terminal have inadvertently matched with counter orders placed from another terminal.

(j) It was submitted before the AO that on account of the fact that 8 different dealers were giving instructions for jobbing transactions to 39 different persons on 39 terminals, there was a possibility of inadvertent matching of trades. In other words, pending buy orders placed from one terminal could match with pending /fresh sell orders from another terminal, without there being any intention to create artificial volumes or enter into fictitious trades.

(k) The fact that, neither itself nor its client AKG did intend to enter into any fictitious / manipulated trades is also evident from the fact that the alleged inter id self trades constituted merely 0.29% of the total trading volume on BSE and 0.0006% of the trading volume on NSE.

(l) The above and other explanations furnished by it before the AO were considered by him in a detailed order dated April 30, 2014. The Adjudicating Officer came to a reasoned conclusion that neither it (Adroit) nor its Client (AKG) had any intention of creating artificial volumes or entering to manipulative trades. Further, the Adjudicating Officer came to a conclusion that given the nature of the trading activity, matching of trades from different terminals was

inevitable and that there was no "meeting of minds" for the purpose of creating artificial volumes. The Adjudicating Officer also came to a conclusion that in respect of matching of trades from the same terminal a lenient view could be taken in view of the fact that the total volume of shares matched was 11 trades of one share each constituting a total of 11 shares.

(m) The present SCN issued by SEBI calls upon Adroit to show cause why penalty ought not to be "imposed" against it for the alleged self trades executed by one of its client and that it has aided and abated AKG to create false or misleading appearance of trading in securities market. It is further alleged in the SCN that the Adjudicating Officer failed to appreciate that the self trades were manipulative and illegal in nature and were meant to create artificial volumes.

(n) Without prejudice and in any event, it is submitted that the provisions of section 15-I (3) reads as under :

.."The Board may call for and examine the record of any proceedings under this section and if it considers that the order passed by the adjudicating officer is erroneous to the extent it is not in the interests of the securities market, it may, after making or causing to be made such inquiry as it deems necessary, pass an order enhancing the quantum of penalty, if the circumstances of the case so justify:

***Provided** that no such order shall be passed unless the person concerned has been given an opportunity of being heard in the matter; **Provided further** that nothing contained in this sub-section shall be applicable after an expiry of a period of three months from the date of the order passed by the adjudicating officer or disposal of the appeal under section 15T, whichever is earlier."*

(o) For the purpose of invoking jurisdiction under the aforesaid section, two principles tests needs to be satisfied. *Firstly*, the order of the Adjudicating Officer should be "***erroneous***". *Secondly*, the order of the Adjudicating Officer ought not to be in the interest of the securities market. It is submitted that the test required to be satisfied is cumulative in nature and therefore, both the requirements ought to be satisfied before jurisdiction under section 15-I (3) can be exercised.

(p) It is submitted that a similar provision is found under section 263 of the Income Tax Act, 1961. section 263 of the Income Tax Act reads as under:

Section 263: Revision of Orders Prejudicial to Revenue.

1. *The Commissioner may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by the [Assessing] Officer is erroneous in so far as it is prejudicial to the interests of the revenue, he may, after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment.*

[Explanation.—For the removal of doubts, it is hereby declared that, for the purposes of this sub-section,—

(a) an order passed [on or before or after the 1st day of June, 1988] by the Assessing Officer shall include—

i. an order of assessment made by the Assistant Commissioner[or Deputy Commissioner] or the Income-tax Officer on the basis of the directions issued by the [Joint] Commissioner under section144A;

ii. an order made by the [Joint] Commissioner in exercise of the powers or in the performance of the functions of an Assessing Officer conferred on, or assigned to, him under the orders or directions issued by the Board or by the Chief Commissioner or Director General or Commissioner authorized by the Board in this behalf under section 120;

(b) "record" [shall include and shall be deemed always to have included] all records relating to any proceeding under this Act available at the time of examination by the Commissioner;

(c) where any order referred to in this sub-section and passed by the Assessing Officer had been the subject matter of any appeal [filed on or before or after the 1st day of June, 1988], the powers of the Commissioner under this sub-section shall extend [and shall be deemed always to have extended] to such matters as had not been considered and decided in such appeal.]

2. *No order shall be made under sub-section (1) after the expiry of two years from the end of the financial year in which the order sought to be revised was passed.]*

3 *Notwithstanding anything contained in sub-section (2), an order in revision under this section may be passed at any time in the case of an order which has been passed in consequence of, or to give effect to, any finding or direction contained in an order of the Appellate Tribunal, [National Tax Tribunal,] the High Court or the Supreme Court.*

Explanation.—In computing the period of limitation for the purposes of sub-section (2), the time taken in giving an opportunity to the assessee to be reheard under the proviso to section 129 and any period during which any proceeding under this section is stayed by an order or injunction of any court shall be excluded.

(q) The Hon'ble Supreme Court as well as various High Courts have, in respect of the provisions of Section 263 of the Income Tax Act, consistently held that the twin tests as laid down in Section 263 are required to be satisfied before jurisdiction under Section 263 can be exercised. It is further well settled that the scope and power under the provisions of Section 263 cannot be exercised, if the order passed by the learned Officer takes into account all available material before coming to a definite conclusion and passing the order. It is well settled that the power under Section 263 do not empower the Commissioner of Income Tax to re-open concluded orders merely because he does not agree with the conclusion arrived at by the learned officer.

(r) In this regard, attention is invited to the following judgments of the Hon'ble Supreme Court as well as other High Courts:

1. The Hon'ble Supreme Court in the case of **Commissioner of Income Tax vs. Green World Corporation reported in (2009) 7 SCC 69** held as under:-

23. Before, however, adverting to the jurisdictional issue raised by the Assessee herein, we may consider the jurisdiction of the Commissioner of Income-tax to issue notice in terms of Section 263 of the Act. It provides for a revisional power. It has its own limitations. An order can be interfered suo motu by the said authority not only when an order passed by the Assessing Officer is erroneous but also when it is prejudicial to the interests of the Revenue. Both the conditions precedent for exercising the jurisdiction under Section 263 of the Act are conjunctive and not disjunctive.

…

"29. The scope of provisions of Section 263 of the Act is no longer res integra. The power to exercise of suo motu of revision in terms of Section 263(1) is in the nature of supervisory jurisdiction and same can be exercised only if the circumstances specified therein, viz., (1) the order is erroneous; (2) by virtue of the order being erroneous prejudice has been caused to the interest of the revenue, exist.

In Malabar Industrial Co. Ltd. v. CIT MANU/SC/0077/2000:[2000]1SCR744 , this Court held:

7. There can be no doubt that the provision cannot be invoked to correct each and every type of mistake or error committed by the Assessing Officer, it is only when an order is erroneous that the section will be attracted. An incorrect assumption of facts or an incorrect application of law will satisfy the requirement of the order being erroneous. In the same category fall orders passed without applying the principles of natural justice or without application of mind.

10. The phrase 'prejudicial to the interests of the revenue' has to be read in conjunction with an erroneous order passed by the assessing officer. Every loss of revenue as a consequence of an order of assessing officer cannot be treated as prejudicial to the interests of the revenue, for example, when an Income Tax Officer adopted one of the courses permissible in law and it has resulted in loss of revenue; or where two views are possible and the Income Tax Officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the revenue unless the view taken by the Income Tax Officer is unsustainable in law. It has been held by this Court that where a sum not earned by a person is assessed as income in his hands on his so offering, the order passed by the assessing officer accepting the same as such will be erroneous and prejudicial to the interests of the revenue."…

2. The Hon'ble Gujarat High Court in the case of **Commissioner of Income Tax Vs. Arvind Jewellers**[2003] 259 ITR 502 (Guj), has further held that,:

Para 5.

.."A bare reading of Section 263 of the Income Tax Act, 1961, makes it clear that the prerequisite for the exercise of jurisdiction by the Commissioner suomotu under it, is that the order of the Income Tax Officer is erroneous in so far as it is prejudicial to the interests of the Revenue. The Commissioner has to be satisfied of twin conditions, namely, (i) the order of the Assessing Officer sought to be revised is erroneous; and

(ii) it is prejudicial to the interests of the Revenue. If one of them is absent--if the order of the Income Tax Officer is erroneous but is not prejudicial to the Revenue or if it is not erroneous but is prejudicial to the Revenue-- recourse cannot be

had to Section 263(1) of the Act. The provision cannot be invoked to correct each and every type of mistake or error committed by the Assessing Officer; it is only when an order is erroneous that the section will be attracted. An incorrect assumption of facts or an incorrect application of law will satisfy the requirement of the order being erroneous. In the same category fall orders passed without applying the principles of natural justice or without application of mind. The phrase 'prejudicial to the interests of the Revenue' is not an expression of art and is not defined in the Act…

... The phrase 'prejudicial to the interests of the Revenue' has to be read in conjunction with an erroneous order passed by the Assessing Officer. Every loss of revenue as a consequence of an order of the Assessing Officer, cannot be treated as prejudicial to the interests of the Revenue, for example, when an Income Tax Officer adopted one of the courses permissible in law and it has resulted in loss of revenue, or where two views are possible and the Income Tax Officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the Revenue unless the view taken by the Income Tax Officer is unsustainable in law."

Para 6.

6. From the above observations made by the Supreme Court, it is clear that the provisions of Section 263 cannot be invoked to correct each and every type of mistake or error committed by the Assessing Officer, it is only when an order is erroneous that the section will be attracted and incorrect assumption of facts or an incorrect application of law will satisfy the requirement of the order being erroneous. The Supreme Court has also made it clear that the phrase "prejudicial to the interests of the Revenue" has to be read in conjunction with an erroneous order passed by the Assessing Officer and that every loss of revenue as a consequence of an order of the Assessing Officer cannot be treated as prejudicial to the interests of the Revenue. It was further emphatically stated that when an Income Tax Officer adopted one of the courses permissible in law and it has resulted in loss of revenue, or where two views are possible and the Income Tax Officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the Revenue unless the view taken by the Income Tax Officer is unsustainable in law.

Para 7.

Coming to the facts of the present case, it is the finding of fact given by the Tribunal that the assessee has produced relevant material and offered explanations in pursuance of the notices issued under Section 142(1) as well as Section 143(2) of the Act and after considering the materials and explanation, the Income Tax Officer has come to a definite conclusion. The Commissioner of Income Tax did not agree with the conclusion reached by the Income Tax Officer. Section 263 of the Act does not empower him to take action on these facts to arrive at the conclusion that the order passed by the Income Tax Officer is erroneous and prejudicial to the interests of the Revenue. Since the material was there on record and the said material was considered by the Income Tax Officer and a particular view was taken, the mere fact that a different view can be taken, should not be the basis for an action under Section 263 of the Act and it cannot be held to be justified…"

3. The Hon'ble Bombay High Court in the case of **Commissioner of Income Tax Vs. Gabriel India Ltd.** [1993]203ITR108(Bom), has further held that:

9 *"..The consideration of the Commissioner as to whether an order is erroneous in so far as it is prejudicial to the interests of the Revenue, must be based on materials on the record of the proceedings called for by him. If there are no materials on record on the basis of which it can be said that the Commissioner acting in a reasonable manner could have come to such a*

conclusion, the very initiation of proceedings by him will be illegal and without jurisdiction. The Commissioner cannot initiate proceedings with a view to starting fishing and roving enquiries in matters or orders which are already concluded. Such action will be against the well accepted policy of law that there must be a point of finality in all legal proceedings, that stale issues should not be reactivated beyond a particular stage and that lapse of time must induce repose in and set at rest judicial and quasi-judicial controversies as it must in other spheres of human activity. (See Parashuram Pottery Works Co. Ltd. v. ITO MANU/SC/0250/1976 : [1977]106ITR1(SC)).”

***10**. As observed in Sirpur Paper Mills Ltd. v. ITO MANU/AP/0160/1976 : [1978]114ITR404(AP) by Raghuveer J. (as his Lordship then was), the Department cannot be permitted to begin fresh litigation because of new views they entertain on facts or new versions which they present as to what should be the inference or proper inference either of the facts disclosed or the weight of the circumstances. If this is permitted, litigation would have no end, "except when legal ingenuity is exhausted". To do so, is ". . . to divide one argument into two and to multiply the litigation".*

11. The power of suo motu revision under subsection (1) is in the nature of supervisory jurisdiction and the same can be exercised only if the circumstances specified therein exist. Two circumstances must exist to enable the Commissioner to exercise power of revision under this sub-section, viz., (i) the order is erroneous; (ii) by virtue of the order being erroneous prejudice has been caused to the interests of the Revenue. It has, therefore, to be considered firstly as to when an order can be said to be erroneous.

We find that the expressions "erroneous", "erroneous assessment" and "erroneous judgment" have been defined in Black's Law Dictionary. According to the definition, "erroneous" means" involving error; deviating from the law". "Erroneous assessment" refers to an assessment that deviates from the law and is, therefore, invalid, and is a defect that is jurisdictional in its nature, and does not refer to the judgment of the Assessing Officer in fixing the amount of valuation of the property. Similarly, "erroneous judgment" means "one rendered according to course and practice of court, but contrary to law, upon mistaken view of law; or upon erroneous application of legal principles".

12. From the aforesaid definitions it is clear that an order cannot be termed as erroneous unless it is not in accordance with law. If any Income Tax Officer acting in accordance with law makes a certain assessment, the same cannot be branded as erroneous by the Commissioner simply because, according to him, the order should have been written more elaborately This section does not visualise a case of substitution of the judgment of the Commissioner for that of the Income Tax Officer, who passed the order unless the decision is held to be erroneous. Cases may be visualised where the Income Tax Officer while making an assessment examines the accounts, makes enquiries, applies his mind to the facts and circumstances of the case and determines the income either by accepting the accounts or by making some estimate himself. The Commissioner, on perusal of the records, may be of the opinion that the estimate made by the officer concerned was on the lower side and left to the Commissioner he would have estimated the income at a figure higher than the one determined by the Income Tax Officer. That would not vest the Commissioner with power to re-examine the accounts and determine the income himself at a higher figure. It is because the Income Tax Officer has exercised the quasi-judicial power vested in him in accordance with law and arrived at conclusion and such a conclusion cannot be termed to be erroneous simply because the Commissioner does not feel satisfied with the conclusion. It may be said in such a case that in the opinion of the Commissioner the order in question is prejudicial to the interests of the Revenue. But that by itself will not be enough to vest the Commissioner with the power of suo motu revision because the first requirement, viz., that the order is erroneous, is absent. Similarly, if an order is erroneous but not prejudicial to the interests of the Revenue, then also the power of suo

motu revision cannot be exercised. Any and every erroneous order cannot be the subject-matter of revision because the second requirement also must be fulfilled. There must be some prima facie material on record to show that tax which was lawfully eligible has not been imposed or that by the application of the relevant statute on an incorrect or incomplete interpretation a lesser tax than what was just has been imposed.

14*. We, therefore, hold that in order to exercise power under subsection (1) of section 263 of the Act there must be material before the Commissioner to consider that the order passed by the IncomeTax Officer was erroneous in so far as it is prejudicial to the interests of the Revenue. We have already held what is erroneous. It must be an order which is not in accordance with the law or which has been passed by the Income Tax Officer without making any enquiry in undue haste. We have also held as to what is prejudicial to the interests of the Revenue. An order can be said to be prejudicial to the interests of the Revenue if it is not in accordance with the law in consequence whereof the lawful revenue due to the State has not been realised or cannot be realised. There must be material available on the record called for by the Commissioner to satisfy him prima facie that the aforesaid two requisites are present. If not, he has no authority to initiate proceedings for revision. Exercise of power of suo motu revision under such circumstances will amount to arbitrary exercise of power. It is well-settled that when exercise of statutory power is dependent upon the existence of certain objective facts, the authority before exercising such power must have materials on record to satisfy it in that regard. If the action of the authority is challenged before the court it would be open to the courts to examine whether the relevant objective factors were available from the records called for and examined by such authority. Our aforesaid conclusion gets full support from a decision of Sabyasachi Mukharji J. (as his Lordship then was) in Russell Properties Pvt. Ltd. v. A. Chowdhury, Addl. CIT MANU/WB/0144/1976 : [1977]109ITR229(Cal) . In our opinion, any other view in the matter will amount to giving unbridled and arbitrary power to the revising authority to initiate proceedings for revision in every case and start re-examination and fresh enquiries in matters which have already been concluded under the law. As already stated it is a quasi judicial power hedged in with limitation and has to be exercised subject to the same and within its scope and ambit. So far as calling for the records and examining the same is concerned, undoubtedly, it is an administrative act, but on examination "to consider" or in other words, to form an opinion that the particular order is erroneous in so far as it is prejudicial to the interests of the Revenue, is a quasi-judicial act because on this consideration or opinion the whole machinery of re-examination and reconsideration of an order of assessment, which has already been concluded and controversy which has been set at rest, is set again in motion. It is an important decision and the same cannot be based on the whims or caprice of the revising authority. There must be materials available from the records called for by the Commissioner.*

4. The Hon'ble Rajasthan High Court in the case of **Commissioner of Income Tax Vs. Girdhari Lal** [2002]258ITR331(Raj), has further held that:

"7. When the Assessing Officer after going through the material on record and after considering the explanation of the assessee, made some additions and rejected the books of account, it cannot be said that he has not applied his mind. In our view, it is not always necessary that every assessee in the line of business should have the same rate of profit.

8. When the Assessing Officer has considered all relevant material on record, it is basically a question of fact and it cannot be interfered with unless the finding of the Tribunal is found perverse.

Considering the material on record, it cannot be said that the finding of the Tribunal is perverse.".

5. The Hon'ble Allahabad High Court in the case of **Commissioner Of Income- Tax Vs Goyal Private Family Specific [**1987 35 TAXMAN 522 All], has further held that:

5. In his orders, the Income-tax Officer had clearly stated that he had discussed the case with the representative of the assessee and it was only after the discussion that the Income-tax Officer held that the assessee was a private specific trust and the income thereof was exempt in the hands of the trust but that it was assessable in the hands of the beneficiaries. Having considered all these facts, the Tribunal observed in paragraph 4 : "The reasons given by the Commissioner of Income-tax for coming to the conclusion that the assessments had been made in a hurried way without any checking or scrutiny are superficial. " Such finding of the Tribunal is not without material and hence no question of law arises.

6. There is no finding by the Commissioner that the Income-tax Officer reached an erroneous conclusion and that, on the facts and circumstances of the case, the conclusion would have been different. The orders of the Income-tax Officer may be brief and cryptic, but that by itself is not sufficient reason to brand the assessment orders as erroneous and prejudicial

6. The Hon'ble Delhi High Court in the case of **Addl. Commissioner Of Income-Tax, Vs J. K. D'Costa on [**1982 133 ITR 7 Delhi], has further held that-

"7. The second question, in our opinion, is also capable of the same simple answer. Though the language of s. 263 is quite wide, it only empowers the Commissioner to pass an order which the circumstances of the case will justify. As the Tribunal has rightly pointed out, the mere fact that there is some minor omission or mistake in the assessment order cannot justify the action of the Commissioner in setting aside the whole of the assessment order. Such a wholesale cancellation of the assessment with a direction to make a fresh assessment is called for only in cases where there is something totally or basically wrong with the assessment which is not capable of being remedied by amendments to the assessment order itself. In the present case, having come to the conclusion that there was a defect in the assessment order in so far as the question of levy of interest was not considered by the ITO, all that the Commissioner had to do was to direct the ITO to consider the question on merits and in accordance with law after giving the assessed an opportunity of being heard. It was not further necessary for him, nor did the circumstances of the case justify, that the whole assessment should be set aside. We need hardly point out that setting aside of assessment wholesale will have far reaching consequences under the Act and that the jurisdiction under s. 263 should not be extended so as to result in such far reaching consequences except where the circumstances call for such a remedial action. We, therefore, also answer the second question in the affirmative and in favor of the assessed. As the assessed has succeeded, he will be entitled to costs. Counsel's fee, Rs. 350."

(s) The powers under Section 15-I (3) would necessarily have to be exercised based on principles analogues to the provisions of the Section 263 of the Income Tax Act. Once the Adjudicating Officer has arrived at a reasoned conclusion based on the explanation furnished by it, the powers under section 15-I (3) ought not to be invoked.

(t) Without prejudice to above, one of the principal requirements for exercising jurisdiction under the provision of 15 (I) (3) of SEBI Act is that "the Order" should be erroneous to the extent that it (i.e. "the Order") is not in the interest of the securities market. Though the SCN alleges that, trades executed by AKG are allegedly illegal, and therefore the trades are not in the interest

of the securities market. However, the SCN does not give any particulars of how "the Order" is not in the interest of securities market.

(u) Assuming, without admitting the trades were not in the interest of securities market as alleged in the SCN, that itself does not satisfy the test laid down under section 15-I(3) is as much as the test provided therein relates to any purported error in "the Order", which makes "the Order" an order which is not in the interest of the securities market. If this test is not being satisfied the jurisdiction and under section 15 (I) (3) of SEBI Act cannot and ought not be invoked. Mere illegality if any in the trades, or the trades not being in the interest of the securities market as alleged does not confer any jurisdiction on SEBI to invoke the provision of 15-I(3) of SEBI Act.

(v) Further without prejudice and in any event it is submitted that, the powers under section 15-I (3) are available only to "enhance" the penalty. For the purpose of such power to be exercised, the pre-requisite is that there is a penalty which has been levied by the Adjudicating Officer and which can be considered to be the subject matter of enhancement under Section 15-I (3). However, in the present case, the Adjudicating Officer has exonerated it and has not levied any penalty against it. Therefore, the question of exercising the power of enhancement cannot and does not arise.

(w) The noticee referred to the definition of the words "enhancement" and "enhanced" as defined in the **Black's Law Dictionary Ninth Edition** which reads as under:-

"Enhanced:-*adj. Made grater; increased"*

(x) It also relied upon the judgment of Hon'ble Madras High Court in the case of **State of Tamil Nadu vs. Jakthi Veliyeetakam** dated 4th February 1977 in Tax Case No. 92 of 1997 (Revision No.17 of 1977), wherein the Hon'ble Madras High Court held as under:-

Para 3.

"For the purpose of this case, we are assuming that the expression "order of assessment" occurring in Section 36(3)(a) includes an order levying penalty because Section 36(3)(a)(i) refers to the penalty itself. With regard to the request of the State to the Tribunal to restore the penalty, we are of the opinion that none of the four words occurring in Section 36(3)(a)(i), namely, "confirm, reduce, enhance or annul" is capable of including a power to restore a penalty which has been set aside by the appellate authority. Obviously, the words "confirm, reduce or annul" will have no relevancy to the request which the State has made to the Tribunal. The only expression that will be of any consequence is the word "enhance". For the word "enhance" to apply, there must be something to be increased. In this case, since the Appellate Assistant Commissioner has set aside the very order of penalty, there was no penalty to be increased. To enhance the

penalty already imposed is different from restoring the penalty which was imposed by the original authority but set aside by the Appellate Assistant Commissioner since the subject-matter of the appeal before the Tribunal is the order of the appellate authority only and not the order of the original authority. Consequently, an application for restoration of the penalty in the present case will not come within the scope of Section 36(3)(a)(i) of the Act and, therefore, the Tribunal was right in not restoring the order of penalty though the reasons given by the Tribunal for doing so are different. Hence the tax revision case is dismissed.."

(y) In view of the above, it is submitted that as the Adjudicating Officer has not imposed any penalty on it, the powers under Section 15-I (3) to "*enhance*" the penalty cannot be invoked in the facts and circumstances of the present case.

(z) Without prejudice and in addition to the above, the noticee submitted that it had merely acted as a stock broker for the purpose of trades conducted by its clients. Neither the investigation report nor the AO Notices issued by the Adjudicating officer and SCN issued by SEBI alleged that it has in any manner connived with its client for the purpose of executing the alleged fictitious trades. This particularly in view of the fact that as submitted hereinabove, the matching of trades is inevitable. The Hon'ble Securities Appellate Tribunal in the case of **Kasat Securities Pvt. Ltd. Vs. SEBI (Appeal No. 27 of 2006)** has held that:-

"SEBI cannot infer or assume that the brokers is aware of manipulation carried out by a client and cannot jump to the conclusion that merely because the broker has acted as broker on behalf of such a client, it ought to have known the nature of these transactions"

(aa) In view of the ratio of the above mentioned judgment, it is submitted that even if SEBI was to hold AKG guilty of having conducted the alleged manipulative /fictitious trades, the noticee as a stock broker, who had acted on behalf of and under the instructions of its clients, cannot be held liable for the alleged manipulation.

6. Replies/submissions made by AKG:

AKG *inter alia* made the following submissions-

(a) AKG is a regular investor in the securities market and has been trading through Adroit since the year 2002.

(b) A significant portion of its trades involved transactions in the nature of jobbing. Its average daily trading volume for jobbing transactions exceed Rs.100 crores across multiple scrips.

(c) By its very nature, jobbing involves trading at thin margins and capitalizing on anticipated price differences ranging between a few paise to a few rupees. Since traders who do jobbing look for profit based on thin margins, the volume of transactions in case of jobbing is quite substantial.

(d) Jobbing is a recognized form of business in the securities market. For this purpose, on July 28, 2011, it had traded through Adroit through 39 terminals, which were given instructions to undertake transactions in the nature of jobbing. Its total volume of trades on the first day of listing was approximately Rs.21.93 crores, which constituted 4.28% of total market volume on that day. In terms of number of shares, it traded in 35,34,702 shares on BSE and 1,08,888 shares on the NSE.

(e) The allegation in the AO Notice was that trades in respect of 1,09,334 shares on BSE and 309 shares on the NSE were in the nature of inter id self trades in as much as such trades were executed for the same client on the buy and sell side. Out of the above, it is alleged that these trades were executed from different terminals. In other words, the buy order was placed on a particular terminal and the sale order was placed on another terminal. The AO's notice further alleged that in respect of 29924 shares out of 42 self trades got executed for the same terminal. Based on the documents, it had submitted that the self trades from the same terminal were in respect of 11 trades of one share each constituting a total of 11 shares which is 0.000023%of the total market volume.

(f) As regards the inter terminal trade, it had set out in detail the manner in which trades are undertaken from different terminals and on account of the fact that matching of trades on screen base trading is on an anonymous basis, it is impossible for any person to know or find out that orders placed from one terminal have inadvertently matched with counter orders placed from another terminal.

(g) AKG had submitted before the Adjudicating Officer that on account of the fact that 8 different dealers were giving instructions for jobbing transactions to 39 different persons on 39 terminals, there was a possibility of inadvertent matching of trades. In other words, pending buy orders placed from one terminal could match with pending /fresh sell orders from another terminal, without there being any intention to create artificial volumes or enter into fictitious trades. The fact that it did not intend to enter into any fictitious / manipulated trades is also evident from the fact that the alleged inter id self-trades constitute merely 0.29% of the total trading volume on BSE and 0.0006% of the trading volume on NSE.

(h) The above and other explanations furnished by us before the Adjudicating Officer were considered by him in a detailed order dated 30th April 2014.

Like Adroit, AKG also made submissions with respect to section 15-I(3) of the SEBI Act comparing the same with the provisions of the Income Tax Act and on the 'enhancement' of penalty. Similar case laws were also cited.

In view of their submissions, both the noticees requested SEBI to discharge them from the respective SCNs issued in these proceedings.

7. I have considered the Adjudication Orders dated April 30, 2014 passed in respect of the noticees, the SCNs issued for review of the adjudication orders, submissions made by the noticees and other material available on record. Adroit is alleged to have traded in the shares of BGIL on the first day of trade (listing day) for its client, AKG and executed self-trades for AKG for a quantity of 1,09,014 shares on the BSE and 320 shares on the NSE. It is further alleged that Adroit had executed 42 self-trades for AKG from the same trading terminal for 29,924 shares on the BSE. AKG was alleged to have created artificial volumes in the scrip and that Adroit was alleged to have aided and abetted AKG in creation of artificial volumes in the scrip of BGIL on the listing day. Both the noticees have not disputed the fact of indulging in 'self-trades', however the quantity of the shares traded in self-trades happening from the same terminal has been disputed. This would be addressed later in this Order.

8. The noticees have been alleged of having executed 'self trades'. A 'self trade' is a trade wherein a person places both the buy and sell orders in a scrip and such orders match resulting in a situation where the person is both the seller and the buyer in a trade. In such a case, the beneficial ownership of those traded shares does not change. In this regard, I also note the observations made by the Hon'ble Securities Appellate Tribunal in the following matters with respect to 'self trades' :

(i)**Order dated 23.4.2012 in Appeal no. 21 of 2012 - Systematix Shares & Stocks (India) Limited vs. SEBI**:

"…. It has been held in several cases by this Tribunal that self trades are fictitious and reprehensible. Trades, where beneficial ownership is not transferred, are admittedly manipulative in nature. ….."

(ii) **Order dated 11.05.2012 in Appeal No. 76 of 2012 (*H.J. Securities Pvt. Ltd. vs. Securities and Exchange Board of India*)**:

".....The appellant is a stock broker and he understands the implication of his actions well. Self trades, which implies the trades in which both buyer and seller are the same party and does not result in change of beneficial ownership are fictitious in nature and they create artificial volume in the scrip sending wrong signal to the lay investor about trading in the scrip. .....

"*6. We have considered the rival submissions and are inclined to agree with the view expressed by learned counsel for the Board. The modus-operandi of the appellant in operating through the 19 jobbers from different locations has resulted in fictitious trades / self trades where the buyer and the seller are the same party. Such trades create artificial volume in the traded scrip and send wrong signal to the lay investor with regard to trading in the scrip. The Board has come to a definite finding that the appellant had executed self trades on the day of listing for 2,00,725 shares which was 7.08% of its total quantity i.e. one in every fourteen trades of the appellant's total buy quantity on that day was a self trade on its proprietary account in terms of volume. Similar is the situation on the sale side. It is further noted by the Board that trading pattern in the subsequent day also reflects that one out of eleven trades of the appellants' total buy quantity was a self trade on its proprietary account in terms of volume. This finding of the Board is not disputed by the appellant. If the appellant was operating through jobbers from different terminals, he should have placed some mechanism in place to ensure that his trades do not result in self trades. Simply because the number of such self trades is not large by itself cannot justify execution of self trades.* ***The appellant is free to adopt any business model but he has to ensure that whatever business model he adopts, it is in conformity with the regulatory framework. Since the business model adopted by the appellant has resulted in self trades which are considered to be fraudulent****, we cannot find any fault with the impugned order which has held the appellant guilty of violating the provisions of FUTP regulations as well as code of conduct for the stock brokers. We are, therefore, not inclined to interfere in the matter.*"

{Emphasis supplied}

(iii)**Order dated 03.12.2012 in Appeal No. 211 of 2012 - Anita Dalal vs. SEBI** :

"*7. The appellant has been found guilty of self trade as well. Self trades admittedly are illegal. This Tribunal has held in several cases that self trades call for punitive action since they are illegal in nature. In M/s. Jayantilal Khandwala& Sons Pvt. Ltd. vs. Securities and Exchange Board of India (Appeal no. 24 of 2011 decided on June 8, 2011) this Tribunal*

has held that "one cannot buy and sell shares from himself. Such transactions are obviously fictitious and meant only to create false volumes on the trading screen of the exchange"."

9. From the above cited orders of the Hon'ble SAT, I note that -

(a) Self-trades are fictitious and reprehensible;

(b) Trades where beneficial ownership is not transferred, are manipulative in nature;

(c) Self-trades create artificial volume in the market;

(d) Whatever be the business model, it should be ensured that such model complies with the regulatory framework;

10. At this stage, I also refer to the provisions of law which are alleged to have been contravened by the noticees, the same are reproduced below:

Relevant provisions of the SEBI Act, 1992:

Section 12A. No person shall directly or indirectly –

(a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognised stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made there under;

(b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognized stock exchange;

(c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognized stock exchange, in contravention of the provisions of this Act or the rules or the regulations made there under;

Relevant provisions of PFUTP 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 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;

Relevant provisions of Broker Regulations (alleged only against Adroit as a stock broker):

Stock brokers to abide by Code of Conduct.

7. The stock broker holding a certificate shall at all times abide by the Code of Conduct as specified in Schedule II.

Clause A of the Code of Conduct for Stock Brokers

A. General.

(1) Integrity: A stock-broker, shall maintain high standards of integrity, promptitude and fairness in the conduct of all his business.

(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.

(3) Manipulation: A stock-broker shall not indulge in manipulative, fraudulent or deceptive transactions or schemes or spread rumours with a view to distorting market equilibrium or making personal gains.

(4) Malpractices: A stock-broker shall not create false market either singly or in concert with others or indulge in any act detrimental to the investors interest or which leads to interference with the fair and smooth functioning of the market. A stockbroker shall not involve himself in excessive speculative business in the market beyond reasonable levels not commensurate with his financial soundness.

(5) Compliance with statutory requirements: A stock-broker shall abide by all the provisions of the Act and the rules, regulations issued by the Government, the Board and the Stock Exchange from time to time as may be applicable to him.

11. The facts and circumstances of the case in respect of the noticees is similar to the case of H.J. Securities Pvt. Ltd. (Order of Hon'ble SAT dated May 11, 2012 – Appeal no. 76/2012). In the said

matter, the stock broker had, through jobbers, indulged in self trades. The following observations are relevant :

"The modus-operandi of the appellant in operating through the 19 jobbers from different locations has resulted in fictitious trades / self trades where the buyer and the seller are the same party. Such trades create artificial volume in the traded scrip and send wrong signal to the lay investor with regard to trading in the scrip. The Board has come to a definite finding that the appellant had executed self trades on the day of listing for 2,00,725 shares which was 7.08% of its total quantity.."

"If the appellant was operating through jobbers from different terminals, he should have placed some mechanism in place to ensure that his trades do not result in self trades. Simply because the number of such self trades is not large by itself cannot justify execution of self trades…."

The only seeming difference between the case at hand and the above referred case is that Adroit has, as a stock broker, traded for AKG in respect of the impugned trades, whereas in HJ Securities case, the broker had indulged in proprietary trades.

The Hon'ble SAT, while upholding the finding of SEBI with respect to violation of regulation 3(a), (d) and 4(1), 4(2) (a) and (g) of the PFUTP regulations and code of conduct for stock brokers as prescribed in Schedule II of the stock broker and adjudication penalty against H J Securities, also observed "…..*The appellant is a stock broker and he understands the implication of his actions well. Self trades, which implies the trades in which both buyer and seller are the same party and does not result in change of beneficial ownership are fictitious in nature and they create artificial volume in the scrip sending wrong signal to the lay investor about trading in the scrip.*" "….. *Since the business model adopted by the appellant has resulted in self trades which are considered to be fraudulent, we cannot find any fault with the impugned order which has held the appellant guilty of violating the provisions of FUTP regulations as well as code of conduct for the stock brokers. We are, therefore, not inclined to interfere in the matter.*" Similar observations have been made by the Hon'ble SAT in a plethora of cases.

12. In the present matter, AKG is said to have instructed, through its jobbers, the dealers of Adroit for placing orders in the shares of BGIL on the listing day/first trade day. Accordingly, Adroit had placed orders for AKG. Such orders resulted in self trades for 1,09,014 shares in BSE and for 320 shares on NSE. This position has not been disputed by the noticees. They have contended that 'on account of the matching of trades on screen base trading is on an anonymous basis, it is impossible for any person to know or find out that orders placed from one terminal have inadvertently matched with

counter orders placed from another terminal'. This contention cannot be accepted. As held by the Hon'ble SAT, the noticees can employ any modus/strategy for placing orders, but the same should be within the contours of law. Further, their modus or strategy should be structured or designed in such a way to avoid self trades and other prohibited trades in the securities markets. Ideally, the systems of the noticee should have taken care of such a contingency. As observed by the Hon'ble SAT, a person adopting any business model for trading in the securities market should ensure that such model complies with the regulatory framework. Having failed to ensure the same, the noticees cannot be excused. As regards the trades which executed through orders placed in the same terminal, the allegation is that 42 self trades through same terminal were executed for 29,924 shares. The AO has given a finding that only 11 shares had matched from the same terminal. This finding is made only on the basis of the submissions made by the noticees. No attempt has been made by the AO to reach to the bottom of the matter as to why the figure in the SCN, i.e., 29,924 shares in 42 self trades is incorrect and why the noticees' contention of 11 shares in 11 trades is correct. It is incorrect to limit self trades to those which are being conducted from the same terminal. All the trades in which the same client id appears both on the buy and sell leg are self trades as the economic consequences are the same even if the terminals are different. The AO is completely off the mark in considering same terminal trades only as self trades. I, accordingly find Adroit and AKG guilty of having contravened the provisions of the PFUTP Regulations alleged against them. Further, the stock broker Adroit has also not complied with Clause A of code of conduct for stock brokers prescribed under the Stock Brokers Regulations.

13. Adroit has submitted that even if SEBI was to find AKG guilty for self trades, it should not be held liable for the same merely for acting as the stock broker for AKG and has cited the observations of the Hon'ble SAT (i.e., *SEBI cannot infer that the broker is aware of manipulation carried out by a client merely because the broker has acted as a broker for the client*). As discussed above, this is a case where the stock broker had placed orders for its client which resulted in self trades. As observed by the Hon'ble SAT in the case of HJ Securities, Adroit being the stock broker, should understand the implications of executing 'self trades' done through its terminals. The fictitious nature of self trades have been explained above with reliance on the observations of the Hon'ble SAT made in the matter of HJ Securities. In view of the observations, both the noticees (*Adroit as the stock broker and AKG as its client*)

are responsible for executing self trades. The above contention of Adroit is therefore dismissed, as being without merit, in this case.

14. I also note that there is no allegation of price manipulation against the noticees. AKG has been charged of having executed self trades thereby creating artificial volumes. Adroit has been charged of having abetted AKG in creation of artificial volumes through execution of self trades. I also note from the Order of the AO that on the listing day i.e., on July 28, 2011, a total of 4,75,78,807 shares (on NSE) and 4,07,25,468 shares (on BSE) were traded. I have also noted that the percentage of volumes of self trades done by the noticees (AKG and Adroit as stock broker placing such orders) as against the total traded volumes on BSE and NSE is less than 1%. Such trades were approximately 3% of the total trades of AKG. This matching by way of self trades is not acceptable and the leniency shown by the AO would be detrimental to market discipline. Further, showing any leniency would convey a wrong message that the entities who adopt strategies in trading, as submitted by Adroit and AKG in this case, would not be responsible for the self trades that may result from their 'strategy'. Therefore, I am of the considered opinion that the leniency shown by AO is misplaced.

15. The noticees have contended that the provisions of section 15-I(3) of the SEBI Act are analogous to section 263 of the Income Tax Act and that once the AO has arrived at a reasoned conclusion, the powers under section 15-I(3) should not be invoked. The noticees have also contended that one of the principal requirements for exercising jurisdiction under the provision of 15-I(3) of SEBI Act is that "the Order" should be erroneous to the extent that it (i.e. "the Order") is not in the interest of the securities market and that the SCNs do not give any particulars of how "the Order" is not in the interest of securities market. The noticees have also contended that mere illegality if any in the trades, or the trades not being in the interest of the securities market as alleged does not confer any jurisdiction on SEBI to invoke the provision of 15-I(3) of SEBI Act. I have considered such submissions and perused the observations made by the Hon'ble Courts as reproduced by the noticees. As mentioned above, self trades are those trades which contravene the provisions of the PFUTP Regulations and the Code of Conduct prescribed for stock brokers. The Hon'ble SAT has also held so in various cases. The AO Orders in respect of the noticees, which are under review in these proceedings is erroneous as it has deviated from the settled position on self trades and their violation of the securities laws. Further, if such erroneous orders are not reversed, the same would definitely not be in the interest of the securities markets. Therefore, I find that both the ingredients i.e., order being erroneous' and 'not in the interest

of the securities market' under section 15-I(3) of the SEBI Act are satisfied. The above submissions of the noticees are therefore dismissed as devoid of any merit.

16. The noticees have also contended that as there is no penalty imposed by the AO, there is no scope to 'enhance' the penalty under section 15-I(3) of the SEBI Act. The noticees have also cited the observations of the Hon'ble Madras High Court in *State of Tamil Nadu vs. Jakthi Veliyeetakam*, wherein the Hon'ble High Court has observed *inter alia "..... To enhance the penalty already imposed is different from restoring the penalty which was imposed by the original authority but set aside by the Appellate Assistant Commissioner since the subject-matter of the appeal before the Tribunal is the order of the appellate authority only and not the order of the original authority."* On perusal of the same and the scheme of the provisions of section 15-I(3), I am of the considered opinion that this case law may not be applicable to the issue at hand as this is not a case of 'restoring a penalty' that has been set-aside. Further, I place reliance on the judgement of Hon'ble Madras High Court in the matter of *Bhavani Mills Limited Vs State of Tamil Nadu* [Order dated October 03, 1991] wherein the Hon'ble Court has observed "..... *the word "enhance" is wide enough to enhance the penalty from zero to something ..... the word "enhance" is sufficient enough to enable the Tribunal to impose penalty which was not imposed ...".* In view of the above observations of the Hon'ble High Court, I am unable to accept the contention of the noticees.

17. In view of the foregoing discussions and observations, the SCNs dated July 11, 2014 issued to the noticees, Adroit Financial Services Private Limited and AKG Securities and Consultancy Limited, in these proceedings are disposed of in terms of the following orders:

a) The stock broker, Adroit Financial Services Private Limited shall review its own systems and take appropriate steps to avoid self-trades and other categories of trades which are prohibited under the SEBI Regulations/guidelines. AKG Securities and Consultancy Limited shall also take steps to ensure that its trades do not result in self-trades.

b) For the default/violations committed by the **stock broker, Adroit Financial Services Private Limited** as found above, a penalty of Rs.5,00,000/- is imposed on it.

c) For the default/violations committed by **AKG Securities and Consultancy Limited** as found above, a penalty of Rs.5,00,000/- is imposed on it.

d) The penalties imposed above shall be paid by the respective noticees to SEBI, within a period of 45 days from the date of receipt of this Order, by way of a Demand Draft drawn in favour of "SEBI – Penalties Remittable to Government of India" and payable at Mumbai. The said Demand Draft shall be forwarded to the General Manager - Enforcement Department, Securities and Exchange Board of India, Plot No. C4-A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.

PRASHANT SARAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA

Date: January 13, 2015
Place: Mumbai