

**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 -

(a) Marwadi Shares and Finance Limited and

(b) Chandarana Intermediaries Brokers Private Limited

Date of hearing: April 07, 2015

Appearance:

For **Marwadi Shares and Finance Limited** and **Chandarana Intermediaries Brokers Private Limited**:

Mr. Anish kharidia, Company Secretary

For the **Securities and Exchange Board of India** : Mr. Avinash Dhumal, Assistant General Manager, Mr. T. Vinay Rajneesh, Assistant General Manager and Mr. Nilesh Ghuge, Assistant 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 Marwadi Shares and Finance Limited (hereinafter referred to as "**Marwadi**") had traded in the shares of BGIL on the first day of trade (listing day) for its client, Chandarana Intermediaries Brokers Private Limited (hereinafter referred to as "**Chandarana**") and that Chandarana had allegedly executed fictitious trades i.e., self-trades through Marwadi for a total quantity of 1,89,459 shares on the Bombay Stock Exchange Limited ("**BSE**") and the National Stock Exchange of India Limited ("**NSE**"), allegedly creating artificial volumes in the scrip. It was further noticed that Chandarana had executed 24 self-trades on BSE and 169 self-trades on NSE through its stock broker Marwadi and the said orders for such trades were placed from the same

terminal for a total of 22,652 shares on BSE and NSE, allegedly creating artificial volumes and misleading appearance of trading in the scrip of BGIL on the listing day.

2. In view of the alleged violations observed in the investigation in respect of Chandarana and Marwadi, 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. The entities 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, Marwadi, 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 Marwadi and Chandarana, passed separate Orders dated April 30, 2014, wherein he had made the following observations:

Observations and findings of the AO in respect of Marwadi:

"20. From the aforesaid submissions I find that the Noticee has carried out trades for CIBPL, its registered sub-broker. CIBPL is primarily into arbitrage trading by engaging almost 76 terminals between BSE and NSE since long. During the year ended on March 31, 2012, CIBPL had traded in 911 scrips with corresponding 1,35,39,445 trades for 88,19,94,351 shares on BSE and for 891 scrips with corresponding 1,02,53,950 trades for 92,70,74,442 shares. Further, on the day of listing of IPO of BGIL, CIBPL had traded in 415 scrips Page 13 of 14 (208 BSE + 207 NSE) with 1,55,715 trades (89,246 BSE + 66,469 NSE) with corresponding volume of 1,50,37,535 shares (72,73,773 BSE + 77,63,762 NSE). On perusal of the trading pattern carried out by CIBPL, I note that it was in the nature of arbitrage trading. I further find that the volume traded in the scrip of BGIL on the day of listing on both the exchanges was very high and out of the total volumes traded, the Noticee acting on behalf of CIBPL, had carried out trades for a total quantity of 85,13,772 shares. Out of the total quantity of 85,13,772 shares, it has been alleged in the SCN that trades carried out for 22,652 shares were self trades in nature which were found to have been executed from the same terminals. I note that the said matching of trades accounted for 0.27% of volume to the total volume traded by CIBPL in the scrip of BGIL on July 28, 2011 and 0.03% of the total volumes traded by it in the scrip on both the exchanges which cannot be said to have created artificial volumes in the scrip of BGIL.

21. Further, I find that from amongst the total volume of 8,83,04,275 shares traded in the scrip of BGIL on both the exchanges on the day of listing, 1,89,459 shares have been alleged to have been traded by CIBPL in nature of self trades, which is including matching of trades from different terminals, constituted for 0.21% of total volumes in the scrip of BGIL on the listing day on BSE and NSE. The said matching of trades is due to trades getting executed from different terminal by different dealers. Also, I note from the submissions of the Noticee that the quantities which were getting matched were less in number and only on account of the system settlement. However, the extent of concentration on the day of listing is exceptional and unacceptable even in any extreme volatile situations. The Noticee should look into this aspect and remedial steps should be taken for avoiding such instances. Further, there is no allegation against the Noticee that it had indulged in price manipulation.

22. In view of the aforesaid observations and findings, I am of the view that the evidence available on record is insufficient to hold that the trades executed by the Noticee on behalf of its client CIBPL were fictitious in nature and contributed to the creation of artificial volumes in the scrip in as much as the contribution of the Noticee to the market volume was only 0.21% of the total volumes traded on the day of listing. Therefore, 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 of the Broker Regulations read with Clause A as mentioned in Schedule II of the said Regulations do not stand established.

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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."

Observations and findings of the AO in respect of Chandarana:

"18. From the aforesaid submissions, I find that the Noticee is engaged in the business of sub-broking for a long time. The Noticee has carried out trades through broker Marwadi. The Noticee is primarily into arbitrage trading by engaging almost 76 terminals between BSE and NSE since long. During the year ended on March 31, 2012, the Noticee had traded in 911 scrips with corresponding 1,35,39,445 trades for 88,19,94,351 shares on BSE and for 891 scrips with corresponding 1,02,53,950 trades for 92,70,74,442 shares. Further, on the day of listing of IPO of BGIL, I note that the Noticee had traded in 415 scrips (208 BSE + 207 NSE) with 1,55,715 trades (89,246 BSE + 66,469 NSE) with corresponding volume of 1,50,37,535 shares (72,73,773 BSE + 77,63,762 NSE). I note that the volume traded in the scrip of BGIL on the day of listing on both the exchanges was very high and out of the total volumes traded, the Noticee trading through Marwadi, had carried out trades for a total quantity of 85,13,772 shares. Out of the total quantity of 85,13,772 shares, it was alleged in the SCN that trades carried out for 22,652 shares were self trades in nature, executed from the same terminals. I find that the said matching of trades constituted for 0.27% of the total volume traded by it in the scrip of BGIL on July 28, 2011 and 0.03% of the total volumes traded by it in the scrip on both the exchanges which cannot be said to have created artificial volumes in the scrip of BGIL.

19. Further, I find that from amongst the total volume of 8,83,04,275 shares traded in the scrip of BGIL on both the exchanges on the day of listing, 1,89,459 shares have been alleged to have been traded by the Noticee in nature of self trades, which is including matching of trades from different terminals, constituted for 0.21% of total volumes in the scrip of BGIL on the listing day on BSE and NSE. The said matching of trades is due to trades getting executed from different terminal by different dealers. Also I note from the submissions made by the Noticee that the quantities which were getting matched were less in number and only on account of the system settlement. However, the extent of concentration on the day of listing is exceptional and unacceptable even in any extreme volatile situations. The Noticee should look into this aspect and remedial steps should be taken for avoiding such instances. Further, there is no allegation against the Noticee that it had indulged in price manipulation.

20. In view of the aforesaid observations and findings, I am of the view that the evidence available on record is insufficient to hold that the trades indulged into by the Noticee through its broker Marwadi were fictitious in nature and contributed to the creation of artificial volumes in the scrip in as much as the contribution of the Noticee to the market volume was only 0.21% of the total volumes traded on the day of listing. Therefore, 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.

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21. 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 Chandarana and Marwadi (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. The noticees vide separate emails dated July 15, 2014 *inter alia* stated that sufficient time was not afforded to furnish written submissions and that continuing with the hearing as scheduled would be an empty formality. They also submitted -

7. "Besides above, principle of natural justice is also violated on the ground of ambiguous, uncertain and vague Show Cause Notice being issued to us. It is humbly submitted that, *prima facie*, while attempting ourselves to find what the case is made out against us, we come across a statement in para 1 of your Show Cause Notice that "Adjudicating officer (AO) vide order dated April 30, 2014, held that you have indulged in self trades in the captioned scrip." In our most humble submission, not a whisper can be found from the entire contents of the Order dated April 30, 2014, that the Learned Adjudicating

Officer has sought to held that we have indulged into self trades in the captioned scrip on our own. With great surprise, it is earnestly submitted that that was not the charge or allegation, at all, leveled against us in the entire spate of Show Cause Notice dated May 06, 2013. Therefore there is mis-joinder of cause and action at its initiation and the charges levelled against us in the impugned Show Cause Notice are in highly ambiguous terms and are too vague and contrary to the material relied upon. Therefore also the principle of natural justice is violated. Therefore in our genuine belief, the impugned Show Cause Notice is not fit for and capable for further trial in the matter. Under the circumstances, the impugned Show Cause Notice deserves to be dropped forthwith and the same is not binding to us.

8. *8. In view of the prima facie observation as above, we are not admitting the contents of Show Cause Notice dated July 11, 2014 in its entirety and emphatically and categorically contend that the same as is nothing but bias, convenient, partial and selective viewing, contrary to the level of satisfaction achieved by the Learned Adjudicating Officer, contrary to the records relied upon, contrary to the charges leveled against us in Show Cause Notice dated May 06, 2013, in complete defiance and derogation of function of anonymous online trading system and isolation of viewing the attendant circumstances to the role of the broker for the trades of its clients and the same is in violation of principle of natural justice."*
9. *In view of what has been stated herein above and more particularly in light of the fact that the impugned Show Cause Notice attracts and mired by fatal flow of violation of principle of natural justice:*
 - 9.1 *by not affording us the reasonable and sufficient time to defend properly, adequately and effectively against the unilateral opinion formed by the Whole Time Member, SEBI,*
 - 9.2 *by serving the Show Cause Notice contrary to the Learned Adjudicating Officer Order dated April 30, 2014, and Show Cause Notice dated May 06, 2013,*
 - 9.3 *by not providing the material relied upon while establishing that "Learned Adjudicating Officer has erred to appreciate that self trades...The same is therefore not in the interest of the securities market", it shall not be assumed or presumed that our non appearance in the personal hearing or failure to furnish our response to the impugned Show Cause Notice within stipulated date. Under the circumstances and in view of above representation, it shall not be presumed that we have nothing more to say in the matter and thereby SEBI is entitle to usurp the power to proceed in the matter and pass an order as may deem fit based on the material available on record. We mostly humbly say and submit that we are ready and willing to furnish our reply and to avail the opportunity of personal bearing and confident to convince the Whole Time Member, SEBI that the opinion formed by him is erroneous and the conclusion arrived at by the Learned Adjudicating Officer is correct, provided fair opportunity and reasonable time is given to us to defend and the Show Cause Notice is issued in absolute unambiguous terms and charges and allegation leveled therein shall be capable of making us to understand what we need to defend and what we required to meet with.*
10. *In view of what has been stated herein above, it would be in fitness of thing to drop the impugned Show Cause Notice at the earliest. However, if you carry view contrary to what has been stated herein above and are willing to continue with the present proceedings in the present form then fair and reasonable opportunity be afforded to us to enable us to defend ourselves and the contradiction emerged in the Show Cause Notice is required to be removed at the earliest. "*

In view of the request made by the noticees, they were afforded another opportunity of personal hearing on July 30, 2014 which was rescheduled to July 25, 2014. However, vide e-mail dated July 18, 2014, Chandarana stated that -

"On reading of the email, except the re-scheduling the date of hearing, nothing is stated and therefore we are at complete loss to understand whether the representation made wide our reply letter dated 15th July 2014, is considered or not or is it under consideration of your goodself or not. In the above referred email, no response has been given in that regard and it appears that the date of hearing is fixed in mechanical and stereotype manner without being heed to our submissions. In absence of your clarification in that regards we lack the issues to be addressed to in the present proceedings. Therefore till the clarification is made for the issues raised, it would be believed that it would be futile effort to proceed with the hearing scheduled on 25th

July, 2014 and same be re-scheduled to any date after the month of September 2014. However, we are ready and willing to make written submission and avail the opportunity of personal hearing in due deference, provided the clarification is being given to us. In view of the above it would in fitness of think that instead of conducting the proceedings, which are objectionable at its roots, may be re-scheduled to any date after the month of September, 2014."

Marwadi vide email dated July 18, 2014 stated -

"We are in receipt of your email directing us to appear before whole time member on 30th July, 2014 and re-scheduled to 25th July, 2014.

Wide our reply dated 15th July, 2014 we have raised certain issues which goes to the root of initiation and consequent conduct of the proceedings against us pursuant to the show cause notice in reference. We maintain and contend the same. However, with view to extend our co-operation, we are not averse to avail the opportunity of personal hearing before the whole time member restricted to the issue rose by us and not on the merits of the matter."

Chandarana submitted further letters dated August 14, 2014 and September 05, 2014. The submissions *inter alia* were that there was no error in the Order passed by the AO in the matter. They also submitted-

".....

4. *During prima facie analysis on sample basis, it is found that original order no. 15000079002697 and corresponding self trade order no. 23000095001267, the position of pending order book as has been derived is enclosed herewith as an **Enclosure A** and **Enclosure B** respectively. On plain looking at the data contained therein, a prima facie question has come to our mind that considering the applicability of matching order rules, how both the trades got matched despite such huge pending order book running into thousands of trade pending per second on incremental basis and hundreds of trade matching per second on BOLT. In view of the above and more particularly in light of the trades showing in pending order book manifesting the attendant circumstances for each such trade, how and on what basis it can be assumed and presumed that there is an element of human interference in matching of two trades on our part. Not only that, how and on what basis it can be concluded that self trades are per se illegal when there is no role or interference on part of any human much less the role on our part to match such alleged trades.*

5. *While analyzing further on sample basis, it has come to our knowledge that the Order no. 14000087000003 found in order book has no corresponding trailed either in trade order file or in pending order file. To seek the guidance in this regard, a mail was sent to BSE through MSFL for its guidance to look into the status of the said*

order. The copy of the mail is enclosed herewith as an **Enclosure C** to this submission for your necessary appreciation to subscribe the veracity of the data claimed to have been relied upon by SEBI. As on date, we are awaiting the reply from BSE. In view of the above, it would be in fitness of thing to not to proceed further in the matter in hush hush manner and thereby to pass the order on the basis of material available on record i.e. the material annexed with the impugned Show Cause Notice, as has been contemplated in your letter, till the truth comes on record with respect to matching of alleged self trades.

6. In view of the above, and more particularly in light of the applicability of order matching rules for the alleged self trades arising out of Arbitrage trading in the ordinary circumstances, the question of violation of provisions of Section 12A(a), (b) and (c) of SEBI Act, 1992 read with regulations 3 (a), (b), (c) & (d) and 4(1) & 4(2) (a) of the SEBI PFUTP Regulations does not arise at all. Under the circumstances the question of issuance of Show Cause Notice does not arise at all, rest apart the legitimacy to impose appropriate penalty in terms of Section 15HA of SEBI Act, 1992. Therefore also no fault can be found on part of the learned Adjudicating Officer.

7. In view of the above, we reiterate our stand taken till date and communicated from time to time and earnestly hope that no proceedings shall attain further in the matter till the objection raised from time to time are dealt with by proper authority and to our satisfaction and the requisition of principle of natural justice are complied with.

8. In view of what has been stated from time to time by us, we deny the claim of the SEBI that the learned Adjudicating Officer has erred in passing the Order dated April 30, 2014 and emphatically and categorically say and submit that the same is just and equitable and there is no need on part of SEBI to find error under the guise of not in the interest of securities market. We deny the averments made, observations and finding derived and charges and allegation leveled and allegation with respect to violation of provision of law stated in the Show Cause Notice in its entirety and contend that the same deserves to be dropped forthwith. ”

Thereafter, Chandarana made further submissions vide letter dated September 05, 2014. SEBI vide letter dated January 05, 2015 intimated the noticees regarding the personal hearing scheduled on January 14, 2015 and also provided them the soft copy of the Trade and Order log and data on self-trades in a Compact Disc (CD). In response, the noticees vide email/letter dated January 12, 2015 *inter alia* requested for a hearing in February 2015. The request was accepted and the hearing was scheduled on February 10, 2015. However, the noticee vide email/letters dated requested for an opportunity of inspection of documents and to fix the personal hearing to a mutually convenient date and for final written submissions thereafter. The inspection was held on February 10, 2015. The noticees also filed letters dated February 25, 2015 making their submissions and further replies dated March 20, 2015 of Chandarana and March

27, 2015 of Marwadi. The personal hearings fixed on March 02, 2015 and March 17, 2015 were adjourned on the request made by the noticees and a final opportunity of personal hearing was fixed on April 07, 2015.

9. The summary of the submissions made by Chandarana vide reply dated March 20, 2015 are mentioned below:

- (a) BSE has issued various circulars since January 1, 2015, along with additional FAQs on Self Trade Prevention Check functionality. This goes to the root of the controversy relating to the self trades.
- (b) The BSE circular dated January 15, 2015 stated that self trade prevention check functionality was introduced with the purpose of preventing matching between a buy and sell order entered in the same order book by a member for the same client code originating from same or difference trading terminals of the member. This object and purpose stated in the circular rules out any potentiality of occurrence of self trades in future as is found and alleged in the impugned show cause notice. The noticees admit that the occurrence of self trades till date were on account of anonymous online trading system. The noticees contended that in such anonymous online trading system neither the broker nor the client have any control or any role whatsoever to play, much less to take remedial measures. The online trading system was not carrying the functionality of preventing the matching between a buy and sell order entered in the same order book by a member for the same client code and it is widely believed that the system put in place till date has been approved by SEBI.
- (c) The steps taken by BSE not only admit the lacunae in matching of trades in the anonymous online trading system put in place and prevail till the date of modification but also suggest the corrective remedial measures adopted by it so as to prevent occurrence of self trades in future in the interest of securities market. The interest of securities market is now protected by remedial measures taken by BSE.
- (d) The observation "Also I note from the submissions made by the Noticee that the quantities which were getting matched were less in number and only on account of system settlement" made by the adjudicating officer at para 19 of the impugned order, has not been controverted or challenged in the show cause notice dated July 11, 2014.

- (e) The Adjudicating Officer has also observed that "*However, the extent of concentration on the day of listing is exceptional and unacceptable even in any extreme volatile situations. The noticee should look into this aspect and remedial steps should be taken for avoiding such instances*". As the role and functionality of the anonymous online trading system is to deal with matching of trades, the above observations made by the Adjudicating officer is not attracted on the noticees. Considering that remedial steps have now been taken by BSE, the substantial cause to invoke the provisions of section 15 I-(3) of the SEBI Act under the guise of above observation of the Adjudicating Officer and thereby usurping the power made available therein for contemplated penal action are no longer exercisable in the facts and circumstances of the present matter and therefore the proceedings have become infructuous.
- (f) Further, the significant and pertinent observation made by the Adjudicating Officer that there is no allegation against the noticee that it had indulged in price manipulation clearly and evidently establishes that there was no ulterior motive on the part of the noticees behind such alleged trades nor any undue gains resulted to them nor any fraud was committed against any one on account of such alleged trades so as to attract the provisions of the SEBI Act and the SEBI (PFUTP) Regulations.
- (g) While referring to the observations made in the impugned order and also noted in the show cause notice that "*Out of the total quantity of 85,13,772 shares, it was alleged in the SCN that trades carried out for 22,652 shares were self trades in nature, executed from the same terminals. I find that the said matching of trades constituted for 0.27% of the total volume traded by it in the scrip of BGIL on July 28, 2011 and 0.03% of the total volumes traded by it in the scrip on both the exchanges which cannot be said to have created artificial volumes in the scrip of BGIL*" establishes the fact that the same was on account of anonymous online trading system. Therefore, the interest of securities market has not been jeopardized by the alleged trades.
- (h) The observation that the evidence available on record is insufficient to hold that the trades indulged into by Chandrana through its broker Marwadi were fictitious in natures and contributed to the creation of artificial volumes in the scrip, has not been disputed by SEBI while issuing the impugned show cause notice.
- (i) The noticees referred to the definition of " Trading system of the NSE" read with clause 1(a) under chapter VII "Dealings by Trading members" under title "Jurisdiction" read with clause (a) and (b) under Chapter IX "Transactions and Settlements" under title "Trading system" contained

in the bye laws of NSE. The noticees submitted that the trading system of NSE performs a function of effecting trades between the trading members received through order driven system put in place by NSE and processing by electronic or computer network put in place by NSE. Therefore, neither the role of the broker nor its client is evident in effecting buy and sell order culminating into a trade.

- (j) The system put in place by the stock exchange does not recognise any person other than its own trading members as parties to any trade as is evident from the said provisions. Therefore, the client code or the same client code is not recognized by NSE while effecting the trades in its automated trading system. Therefore, the validation as to same client code on buy and sell side is evidently missing while effecting the deals under such circumstances the accountability and liability for effecting a trade under same client code of the same member shall neither be attracted nor be fastened on them.
- (k) The noticees also referred to clause 1.3.17 "Trading Systems", clause 2.1.5 "Dealings on the exchange", clause 2.5.2 "Trading Parameters", clause 3.2.6 "Trade Operations", clauses 3.4.1, 3.4.2 and 3.4.5 "Order Management". The applicable provisions of the Rules, bye laws and Regulations establish the correctness and authenticity of the conclusion derived by the Adjudication Officer that the alleged self-trades were due to system settlement accounts and not otherwise as alleged in the show cause notice.
- (l) The present proceedings are not tenable and sustainable on account of violation of principles of natural justice as is evident from the contents of the email dated August 7, 2014, the minutes of inspection dated February 10, 2015 and the letter dated February 25, 2015. Due procedure established in the PFUTP Regulations has been violated while invoking power under section 15 I (3) of the SEBI Act. The formation of opinion by an order in writing before invoking PFUTP Regulations on certain existing grounds is a prerequisite. No such order in writing regarding the satisfaction of the authority that there was prima facie violations of the Regulations and the securities were being dealt with in a manner detrimental to the investors' interest was brought to their notice. Nothing was produced to show that the report as required by law to level allegations of fraud against the noticees was considered by the Board and reasonable opportunity of being heard in consonance with the principles of natural justice was afforded to the noticees before invoking power under section 15-I(3) of the SEBI Act.

- (m) The charges and allegations levelled against the noticee at para 10 of the Show Cause notice dated May 06, 2013 are that *"In view of the above, it is alleged that noticees at serial nos. 1 to 7 have executed structure/ self trades in order to obtain exit from BGIL group (company related entities) without the intention of change of ownership of shares by thereby created artificial volume and false / misleading appearance of the scrip in the market is in violation of section 12A(a), (b) and (c) of the Act and Regulation 3(a), (b),(c),(d),4(1) and (2)(a) of the PFUTP Regulations"* while the charges and allegation levelled vide show cause notice dated July 11, 2014, is that *"AO has erred to appreciate that self trades are fictitious and reprehensible and such trades, while beneficial ownership is not transferred , are admittedly manipulative in nature. Further, self trades are illegal in nature since one cannot buy and sell shares from himself and such transactions are obviously fictitious and meant only to create false volumes on the trading screen of the exchange. The same is therefore not in the interest of the securities market."* Therefore it can be deciphered that the charges and allegations in the show cause notice dated July 11, 2014 are completely different including in its dimensions and the element of unilateral improvisation of charges and allegations levelled in the earlier show cause notice dated May 6, 2013. The same causes prejudice to the ability of the noticees to defend the substantial cause of error in the impugned order which has been viewed not in the interest of securities market arising out of alleged self-trades and therefore the impugned show cause notice is not only bad in law but conversely establishes that no error has been committed by the Adjudicating Officer while passing the impugned order on the basis of material relied upon by him.
- (n) The opinion of SEBI as stated in para 2 of the show cause notice that *"AO while observing that Noticee has executed 96,193 shares of self-trades at BSE i.e. 4.55% of the noticee's volume and 93,266 shares of self-trades at NSE i.e. 4.35% of the noticee's volume and the extent of concentration on the day of listing was exceptional and unacceptable"*, the significant and material fact as to how self-trades have resulted in violation of SEBI Act and PFUTP Regulations has not been explained and instead jump to the conclusion that *"AO has erred to appreciate that self-trades are fictitious and reprehensible and such trades, where beneficial ownership is not transferred, are admittedly manipulative in nature. Further, self-trades are illegal in nature since one cannot buy and sell shares from himself and such transactions are obviously fictitious and meant only to create false volumes on the trading screen of the exchange. The same is therefore, not in the interest of securities market"*.
- (o) If in the opinion of SEBI, self-trades are the acts that violate SEBI Act and PFUTP Regulations then how the provisions can be imputed to the noticees' self-trades needs to be explained

explicitly. This explanation is evidently missing in the show cause notice and therefore the same is not worth for further trial.

- (p) The noticees have submitted that without prejudice to the aforesaid submissions, they place on record the analysis of pending order book of BSE. An effort was made according to them to show and establish that the alleged trades termed as self-trades were on account of anonymous online trading system wherein no role or interference has been caused through human efforts. Therefore, the same are neither fictitious nor reprehensible. The annexure produced by the noticees establishes a vital fact that the trades were matched in defiance of price, time priority rules followed by stock exchange trading system and further establishes the vital fact that if such breach was not made, there would not have been any self-trades but would have managed with other counter party orders pending in the system as per price time priority rules.
- (q) A pertinent question arises as to how negligible shares which has no impact on the volume that took place in BGIL on July 28, 2011 can be alleged as fictitious and meant only to create false volumes on the trading screen of exchange against huge volume pending in the order books. Another pertinent question would be how much artificial volume is created on account of such alleged trades and how and in what manner it has caused harm to the interest of securities market. These questions are not answered in the show cause notice. In the absence of the same, the charges levelled in the show cause notice are nothing but mere ipse *dixit* and not worth for trial.
- (r) The conduct of the noticees demonstrate that the circumstance was ordinary with respect of placing of orders at prevailing rates at that point of time. The annexure states the "impact cost" which is the cost to the market on account of the alleged self-trades. A pertinent question that arises as to what prompted the noticees to match the trades as alleged or what difference could have been the cost to the noticees if the trades matched with others. Another question would be the gain or the cost saved by indulging in self-trades. The question regarding how and in what manner it has influenced or prejudiced the interest of securities market has not been brought out in the show cause notice. The noticees have not been alleged of indulging in price manipulation.
- (s) When the system has performed its function, in its ordinary course, how can it then be viewed and alleged that self-trades are illegal. To substantiate their contention that alleged self-trades was on account of the anonymous online trading systems, the noticees claimed to have annexed details of pending order book for almost 310 trades. Therefore, the contention was that the

alleged trades were not only on account of anonymous online trading system but was also on account of erroneous matching function of the anonymous online trading system.

- (t) In view of their submissions, the noticees submitted that the orders passed by the Adjudicating Officer are not erroneous. There is no material in the entire show cause notice or the material relied upon for the issuance of the show cause notice showing and establishing the genuine and cogent reasons substantiating the act and conduct of finding an error in the impugned Adjudication orders. It should be appreciated that the impugned order has been passed by a quasi-judicial officer after undergoing quasi-judicial process of inquiry prescribed under the SEBI Act. To find an error in the quasi-judicial act and conduct requires substantial and cogent material to establish the error committed by the authority. Nothing is available on record in this regard and therefore it becomes evident that the power available under section 15 I(3) of the SEBI Act has been usurped merely on the basis of personal perceptions with respect to self-trades and not otherwise and therefore there is no need to interfere with the impugned order.
- (u) There is nothing in the entire show cause notice dated July 11, 2014, showing and establishing the violation of SEBI Act and PFUTP Regulations on account of the alleged trades. On the contrary, it is established fact that the alleged self-trades did not result in price manipulation and therefore neither the fraud is committed nor the trades have been carried out in a fraudulent manner.
- (v) It is further established fact that the noticees have indulged in arbitrage trading which has been duly approved and permitted by SEBI including the stock exchanges. The arbitrage trading envisages no change in beneficial ownership. Admittedly the alleged trades have been on account of anonymous online trading system. In view of the same, the alleged violation is not attracted and there is no need to invoke the provisions of section 12 A(a)(b) and (c) of the SEBI Act read with Regulations 3(a)(b)(c) and (d), 4(1) and 4(2)(a) of the SEBI PFUTP Regulations thereby imposing the contemplated penalty in terms of section 15 H A of the SEBI Act.
- (w) The noticee submitted that even otherwise no case is made out under 12 A(a), (b) and (c) of the SEBI Act, 1992 read with Regulations, 3(a), (b),(c),(d), 4(1) and (2)(a) of the SEBI PFUTP Regulations. The essential prerequisite under the aforesaid statutory regime is intent or defraud, deceive or otherwise cause an intentional manipulative or misleading practice. The requirement of a positive intent to defraud, manipulative or mislead would in any case not be satisfied in the present facts since it has been demonstrated that it acted bona fide on the order matching rules

on anonymous online trading system. Therefore, an allegation of deceitful contrivance and / or deliberate manipulation is hardly made out against us. The fact that they gained absolutely no benefit or advantage as a result of the allegedly "fraudulent practice" also operates as a strong presumption against the tenability of the aforesaid charges against the noticee

- (x) The noticees have submitted that in the light of the following factors, the proceedings be dropped against them.
- ambiguities contained in the SCN issued to the noticees making them incapable to defend as also no material supporting the charges and allegation levelled in the SCN.
 - ambiguities with respect to the charges and allegations and dealt with while arriving at the conclusion by the Adjudicating officer while passing the impugned order and the charges and allegation contained in the SCN.
 - substantial cause of issuance of SCN to take remedial action no longer exists now.
 - violation of principles of natural justice.
 - not carrying out the proceeding as envisaged in the PFUTP Regulations.
 - trades by adopting arbitrage trading practice as has been specifically permissible in the applicable laws.
 - establishing the functional and operational aspects of anonymous online trading system in the alleged trades.
 - establishing the order matching rules of the exchanges behind the alleged trades with errors in matching of alleged trades by anonymous online trading system.
 - establishing that if the online trading system had followed the price time priority criteria correctly, then there ought not to have resulted into self-trades.
 - establishing the vital fact that there was neither intention nor human interference and the trades were in the ordinary course of business erroneously matched by anonymous online trading system.
 - the remedial measure put in place by BSE ruling out the possibility and potentiality of occurrence of such alleged manipulative trading practices and thereby completely and absolutely meeting with the concern expressed by the Adjudicating officer in the impugned matter.
 - it has been established beyond doubt by the Adjudicating Officer that such negligible trades have not created artificial volume and the same has been accepted by SEBI and

therefore the substantial question of the alleged trades were not in the interest of securities market no longer stand for scrutiny.

- admitted fact that no price manipulation occurred on account of alleged trades.
- admitted fact of there being no nexus with BGIL or its connected entities,
- admitted fact of neither any undue gain or benefit occurred to the noticees nor a manipulative and fraudulent element of *mens rea* behind the alleged trades found and alleged against the noticees.

10. Marwadi vide reply dated March 27, 2015 *inter alia* made the following submissions:

- (a) Marwadi stated that the alleged transactions cannot be termed and considered as self-trades.
- (b) Orders placed in the anonymous online trading system is an act on the part of the client and matching of trade is an act on part of the exchange through anonymous online trading system put in place. Every deal or trade is generated on account of direct act of two entities wherein the broker acts as facilitator. Therefore, the conduct of both the entities needs to be viewed for their respective roles before dragging the broker in the matter.
- (c) The Adjudicating Officer accepted the contention of order matching rules while coming to conclusion made in his Order.
- (d) The substantial contention on the part of the client/broker has been that the trades were matched by anonymous online trading system pursuant to its criteria of price time priority on which they do not have any control.
- (e) To further substantiate the contention, the evidence in the form of pending order book prevailed at the time of imputing the buy side trade/sell side trade and trade matching time were placed on record highlighting in clear terms the default/breach in following the price time priority criteria by the anonymous online trading system.
- (f) It has been cogently demonstrated on the basis of Pending Order Book that had there been no default/breach in following the price time priority criteria by anonymous online trading system then the alleged self-trades would not have resulted into buy side and sell side client code as the same parties. On account of the default/breach in following the order matching rules by anonymous online trading system, the client/broker should not be faulted with.

- (g) Therefore, it would be prudent and rational that neither the client nor the broker deserves to be punished for the alleged trades for the default/breach of anonymous online trading system irrespective of the meaning assigned to 'self-trades'.
- (h) The alleged default/breach has now been admitted by the exchanges as is evident from its recent circulars and corrective and remedial measures have already been put in place and therefore the inquiry deserves to be dropped.
- (i) Mere volume or price fluctuation that has been taking place in any scrip on daily and concurrent basis have little bearing to view and to attract the violation of SEBI Act and PFUTP Regulations. The volume and price fluctuation in every scrip has been taking place on demand and supply in each scrip besides various other factors wherein neither the broker nor the client have any ability or capability to influence the same much less to drive the same in predetermined or desired manner and that too on the day of listing the scrip on July 28, 2011.
- (j) Marwadi also stated that it has annexed trade details like closing price, number of shares traded with corresponding number of trades of few scrips for the period - 25.07.2011 to 29.07.2011 demonstrating the difference in closing price corresponding to difference in volumes and difference in number of trades have no correlation with volume and price fluctuation taking place in the scrip.
- (k) It is pertinent to note that 'interest of securities market' is a much wider term and the same cannot be measured or gauged merely on the basis of stray incidences of creation of artificial volume or misleading appearances in the scrip and that too just for a day's trading.
- (l) On July 28, 2011, there was huge volume in the scrip of BGIL and significant price fluctuation took place. The same when considered in the light of the fact that no price manipulation was alleged, then how can such negligible and virtually insignificant trades that too for that day could have affected the securities market. Therefore, Marwadi faced difficulty to deal with and controvert the view that the order of the Adjudication Officer is erroneous and consequent improvised charges and allegations in the SCN.
- (m) It has been well settled principle not to view the trades of listing day adversely except and in event some deliberate and intentional act or orchestrated game is forthcoming from the Investigation Report. In the instant case, admittedly no such averments or observations have been found against Chandarana in the entire contents of the Investigation Report made available to it.

- (n) The Investigation Report mentions that huge volume of trading took place on the listing day in the scrip of BGIL. However, it is not alleged that such volumes were artificially created. In the absence of such fact or any game plan on the part of Chandarana, it does not lend credence to view and emphasize on such alleged stray negligible instances of trades and presume that such self-trades created artificial volume and misleading appearance while trading and arrive at the conclusion that these trades were not in the interest of the securities market.
- (o) The Investigating Authority has not alleged *mens rea* or illicit motive or deriving unfair or illegal gains at the cost of others. Assuming that such trades were not in the interest of the securities market, the role of the exchange also need to be viewed and analysed as the same carried equal obligation to maintain interest of securities market on account of providing trading platform known as anonymous online trading system. Merely on the act of the client on the trading system provided by the exchange, it would not be worthwhile to drag the broker alone for the alleged violation.
- (p) BSE or NSE have never drawn the attention of brokers/clients for the alleged trades as manipulative and thereby it is reasonable to believe that the exchanges have not found such alleged trades prejudicial to the interest of the securities market.
- (q) There is nothing on record rebutting the conclusion derived by the adjudicating officer.
- (r) The SCN is bad in law in as much as it purportedly tries to suggest that it is with respect to AO's Order dated April 30, 2014 which has been issued consequent to the SCN dated May 06, 2013. The charges and allegations levelled at para 9 of SCN dated May 06, 2013 have been concluded at para 10 therein. The charges and allegation levelled vide the SCN dated July 11 & 17, 2014 is *"AO has erred to appreciate that self trades are fictitious and reprehensible and such trades, where beneficial ownership is not transferred, are admittedly manipulative in nature. Further, self trades are illegal in nature since one cannot buy and sell shares from himself and such transactions are obviously fictitious and meant only to create false volumes on the trading screen of the exchange. The same is therefore not in the interest of the securities market"*. Therefore, it can be deciphered that the charges and allegations levelled in the SCN dated July 11 & 17, 2014 are completely different including its dimensions and the element of unilateral improvisation in charges and allegations levelled over the earlier SCN dated May 6, 2013 on that basis impugned order is passed, is evident. Marwadi submitted that it was at complete loss to understand what is before it, what has been made out against it and what is required to meet to defend itself effectively and adequately. This act and conduct caused prejudice to its ability to

defend substantial cause of error in impugned order which has been viewed not in the interest of the securities market arising on account of alleged self-trades and therefore the impugned SCN is not only bad in law but conversely establishes that no error has been committed by the AO while passing the impugned order on the basis of material relied upon by him.

- (s) Section 15-I(3) of the SEBI Act can be invoked only in the event of establishment of guilt/fraud/fraudulent manner while trading and consequent levy of penalty by the AO, the amount of which may be enhanced, if the circumstances of the case so justify with respect to 'not in the interest of securities market' on account of such alleged guilt/fraud/fraudulent trade. In the present case, the noticee has been exonerated on two counts i.e. the quantum of trades have not resulted into creation of artificial volumes and thereby established that such alleged trades cannot be considered as 'not in the interest of securities market' and secondly with respect to insufficient evidence to hold the alleged trades as fraudulent. The same have also not been challenged. Therefore, there is nothing on record to controvert the conclusion of the AO and consequently the levy of monetary penalty did not arise. Therefore, on this preliminary issue alone the SCN needs to be withdrawn/dropped against the noticee.
- (t) In the impugned SCN, only a certain portion of the order has been reproduced without examining the detailed finding of the Adjudication Order passed on the basis of documentary evidence and submissions made by it.
- (u) The entire inquiry is found to be proceeded on the basis of some preconceived notions with respect to self-trades without verifying the facts on record and it has been presumed by SEBI that all self-trades are fictitious and reprehensible, admittedly manipulative in nature, illegal and made only to create false volume on the trading screen of the exchange and not in the interest of the securities market.
- (v) The improvised charges are new and fresh and therefore not dealt with by the AO.
- (w) Self-trades are equated with synchronised and circular trading and associated with malicious intent, though per se not illegal but depends on the attendant circumstances.
- (x) If the mere occurrence of self-trades was indeed illegal/fictitious it would have been clearly mentioned in any of the SEBI Act, rules, guidelines and or regulations of the stock exchanges.
- (y) To stop the occurrence of self-trades, it is not the business model of client/broker that is relevant but also the exchange to build a system to prevent this occurrence. This has now been done by the exchange.

- (z) There is no allegation of price manipulation or relationship with entities/persons who had traded in BGIL or making of unlawful gains for itself or anybody.
- (aa) SEBI has issued the impugned SCN only on account of the observations "*the extent of concentration on the day of listing is exceptional and unacceptable even in any extreme volatile situations*" in paragraph 21 of the Order. Mere volumes cannot be the basis to conclude regarding manipulation.
- (bb) Self-trades cannot be treated as a deliberate act as Chandarana has not actively sought to match orders with itself. There are several factors which led to self-trades, which are beyond the control of Chandarana.
- (cc) A few self-trades were a result of genuine order placement and admittedly there was no mechanism with NSE or BSE to weed out such order and such technology has to be developed by exchanges, which has now been done.
- (dd) At the prevalent point of time, there were no circuit filters on the first day of trading subsequent to the listing of the scrip. Admittedly, there was huge volatility in the market. This is considered as the best time for Arbitraders to trade in the market in anticipation of maximum profit. At the same time, the volume of trades conducted by the Arbitraders during such time is also quite significant. The records and historic trend would show that on the first day of trading, the deliverable volume of shares could be only part of the allottees and to facilitate the allottees to offload their allotted shares, the day traders and Arbitraders play a significant role. Therefore, it is highly farfetched to view the genuine facilitating trading pattern as fraudulent and fictitious.
- (ee) Marwadi merely acted as a stock broker for the purpose of trades conducted by its client Chandarana. Neither the investigation report nor the SCN dated May 06, 2013 issued by the AO and the impugned SCN alleged that Marwadi had connived with its client Chandarana for the purpose of executing the alleged fictitious trades. The matching of trades is inevitable pursuant to order matching rules only. The Hon'ble SAT in *Kasat Securities Pvt. Ltd. vs. SEBI (Appeal no. 27/2006)* and in many other cases 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.*"
- (ff) The provisions of section 15-I(3) of the SEBI Act are analogous to section 262 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 else the procedure prescribed therein needs to be followed.

(gg) The present proceedings are also not tenable and sustainable for further trial in the present status on account of violation of principles of natural justice as is evident from the contents of email dated August 07, 2014, Minutes of Inspection dated February 10, 2015 and its letter dated February 25, 2015.

(hh) There was nothing in the SCN dated May 06, 2013 and also there is nothing on record showing, suggesting and establishing the view of SEBI that "*AO has erred to appreciate that self-trades are fictitious and reprehensible and such trades ... The same is therefore not in the interest of the securities market*". The judicial views propounded by Courts/Tribunal on the basis of facts of each case are not sufficient to prove the charges and allegation sought to be levelled against it and thereby view them as violation of SEBI Act and PFUTP Regulations. The facts and circumstances of the case including material placed on record are required to be tested with the provision of law alleged to be violated. Its client Chandarana has categorically established on the basis of records that the alleged trades are not self-trades. Therefore, it needs to be determined whether the alleged trades were self-trades or not and thereafter it further needs to be established that whether Marwadi as a broker played any role in aiding and abetting Chandarana for the alleged trades.

(ii) Marwadi also referred to the submissions of Chandarana made vide letter dated March 20, 2015 and stated that it relied on the same.

(jj) Marwadi also submitted that during the Financial Year 2011-2012, there has not been any regulatory action against it except the present one for only its client Chandarana though Marwadi had traded for thousands of clients during the year in thousands of scrips both on BSE and NSE including F & O Segments.

(kk) Marwadi also submitted that on July 28, 2011, it had traded for 4,608 clients including Chandarana for almost 1,410 scrips including BGIL for almost 2,39,563 trades for 2,32,76,507 shares. The allegation has been levelled against it for a meager 24 trades on BSE for 3328 shares and 169 trades on NSE for 19,324 shares in BGIL and not for the other trades. On July 28, 2011, Marwadi had traded for 710 clients in BGIL for almost 85,624 trades for 1,09,71,368 shares. Therefore, Chandarana was not the only client for which it had traded. Chandarana has on July 28, 2011, traded in 415 scrips including BGIL for almost 1,55,715 trades for 1,50,37,535 shares. Therefore, BGIL was not the only scrip in which Chandarana had traded. The trading activity of Chandarana in the rest of the scrips has not been found as has been found in BGIL.

- (ll) On July 28, 2011, Chandarana had traded in BGIL for almost 67,628 trades for 85,13,772 shares, whereas the allegation is in respect of 24 trades on BSE for 3328 shares and 169 trades on NSE for 19,324 shares.
- (mm) If the total activity undertaken by Marwadi as well as its client Chandarana during FY-2011-2012 and the trading in BGIL is seen in its entirety, there would not be any room to suggest that its role as an intermediary can be viewed to be 'not in the interest of the securities market'.
- (nn) Therefore, the trades of the noticee should be seen in its entirety and not only the alleged trades in BGIL.
- (oo) While referring to the alleged violation of the provisions of the SEBI Act, PFUTP Regulations and Code of Conduct under the Stock Brokers Regulations, the noticee submitted that the essential pre-requisite under the statutory regime is intent to defraud, deceive or otherwise cause an intentional manipulative or misleading practice by Chandarana and aiding and abetting thereto. The requirement of a positive intent to defraud, manipulate or mislead would in any case not be satisfied in the present facts as it has been demonstrated that it acted in a bonafide manner as per the order matching rules of anonymous online trading system. Therefore, an allegation of deceitful contrivance and/or deliberate manipulation is hardly made out against Chandarana much less against it (Marwadi). Except brokerage, Marwadi had not gained any benefit or advantage as a result of the alleged trades.

11. Pursuant to requests for adjournment of the dates fixed for the personal hearings and after availing an opportunity of inspection of documents in the matter, the noticees were afforded a final opportunity of personal hearing on April 07, 2015. On the said date, the noticees were represented by their authorised representative, Mr. Anish Kharidia, Company Secretary. The representative filed common written submissions dated April 07, 2015 of the noticees along with a compilation of documents and made oral submissions on the lines of those submissions. Such submissions were majorly a reiteration of the submissions made in the aforesaid replies. The noticees had emphasised their submission that the orders alleged to be self-trades are found to be in defiance of the criteria of price time priority prescribed under order matching rules and therefore on account of lapses in the system, the alleged trades with common code on both the side cannot be termed as self-trades or such lapses of the system be attributable to the client/broker. The noticees explained the same by taking Trade Id 14227 as an example. According to them, on receipt of a buy order (no. 18000083003197) for 500 shares at limit price

of Rs.63.90/- at 09:20:45:138290, the anonymous online trading system starts searching for an opposite matching order on the basis of priority of price and time and got matched with sell order no. 18000083003319 for 52 shares placed at Open Market rate on 09:20:45:683644. The trade matched at 09:20:45:695191 at Rs.63.90/-. There was a time gap of 545354 nano seconds between the buy and sell order and 556901 nano seconds between buy order and execution of trade and 11547 nano second between sell order and execution of trade. This process was completely confidential and not within the reach of any human. However, prior to the sell order no. 18000083003319 for 52 shares placed at Open Market rate on 09:20:45:683644, there were 3 best buy orders pending in the system -

- i. order no. 160000700000311 for 11 shares at Rs.71.65 on 09:20:26:996910
- ii. order no. 20000900003210 for 200 shares at Rs.70.40/- on 09:20:37:928247
- iii. order no. 20000090003501 for 200 shares at Rs.66/- on 09:20:37:863104

Therefore, the order for sell of 52 shares ought to have first matched with above 3 orders and not with the buy order no. 18000083003197 for 500 shares at limit price of Rs.63.90/- at 09:20:45:138290. Therefore, there is an error in the matching process put in place by the exchange. There was nothing in the SCN as to how Chandarana could match its sell order with pending buy order when 3 buy orders were pending in the order book. Assuming that the 3 pending orders were exhausted prior to the moment of matching the alleged trade ID, then how can Chandarana be alleged to have indulged in self-trades as neither the information as to 3 pending orders in the system nor the matching done by the anonymous online trading system can be in the knowledge of Chandarana. Considering the fact that when the buy order was placed, there were 306 buy orders pending in the pending order book with corresponding 53,449 buy shares and 783 sell orders were pending in the pending order book with corresponding 6,44,512 sell shares. Therefore, a pertinent question arose as to how the client could be aware of this pending order book position and how it can apply itself to interfere in the order matching process. Therefore, merely on account of subsequent act of the online trading system pursuant to receipt of an order in the system, it cannot be alleged that the client placed order in a fraudulent manner and for which the parties can be made responsible.

The noticees have also stated that the above illustration was selected and that they have enclosed a summary statement of almost 310 such trades. The said statement along with details of its pending order book which includes the 25 alleged self-trades on NSE and 24 alleged self-trades on BSE have been

annexed with their submission dated March 20, 2015. The said submissions are reproduced herein below for reference:

"8 *Without prejudice to the aforesaid and in furtherance of our earlier replies, we herewith place on record the further analysis of the pending order book of BSE taken till date in a summary statement as an Enclosure J along with further examples with a foot note of observations thereto as an Enclosure J/1, Enclosure J/2 and Enclosure J/3 as well as pending order book of almost 310 such wrongly trades, at present, running into almost 23,480 pages in soft copy (in CD) to this submission.*

8.1 *On close look at the said summery statement, an effort has been made to show and establish the attendant circumstances related to alleged self trade IDs and thereby establishing that the alleged trades viewed and termed as self trades were on account anonymous online trading system wherein no role or interference has been caused through our human efforts and therefore the same are neither fictitious nor for the same can we be made reprehensible.*

8.2 *The annexure produced hereinabove clearly and evidently establishes a substantial and vital fact that the trades were matched in defiance of price time priority rules followed by exchange trading system, and further establishing a substantial and vital fact that had there been no breach of price time priority criteria followed by the system, there would not have been any alleged self trades resulted into self trades but would have matched with other market counter party pending in the system as per price time priority rules.*

8.3 *The details under the column "Self Trade Qty" is with respect to the details of matching quantity from amongst the quantity stated under the column "Buy Order Qty" and "Sell Order Qty". This clearly and evidently demonstrates that how can there be our role to match orders partially in anonymous online trading system.*

8.4 *The details under the column "Total No. of Buy Order Pending", "Total Qty. of Pending Buy Order", "Total No. of Sell Order Pending", "Total Qty. of Pending Sell Order" demonstrates the position of pending order book at the time of self trade ID.*

8.4.1 *This leaves a substantial question that considering the volume stated therein, a pertinent question arises as to how we as a client can interfere to match the trade as has been alleged in the anonymous online trading system.*

8.4.2 *Not only that a further pertinent question arises as to how such negligible shares qty, which leaves no impact on the volume that took place in the BGIL on 28/07/2011 can be alleged as fictitious and meant only to create false volumes on the trading screen of the exchange against such huge volume pending in the order book.*

8.4.3 *Above all, a significant and pertinent question as to how much artificial volume is created on account of such alleged trades and how and in what manner it has caused harm to the interest of securities market for which great hue and cry is being made.*

8.4.4 *Nothing can be gathered from the entire contents of the Show Cause Notice.*

8.4.5 *In absence of the same, the charges and allegation levelled in the Show Cause Notice are nothing but mere ipse dixit and not worth for trial for the contemplated penal action.*

8.5 *The details under the column “Self Trade Rate”, “Buy Order Rate”, “Sell Order Rate”, “LTP”, “Impact Cost” demonstrates the absolute conduct in ordinary circumstances on our part for placing the order at rates prevailing at prevalent point of time. The information stated under the column “Impact Cost” demonstrates the cost to the market on account of alleged self trades and thereby manifesting absolute protecting the interest of securities market on account of alleged self trades.*

8.5.1 *Considering the fact as is evidenced from the columns, a substantial and pertinent question arises has to what could have prompted us to match the trades as has been alleged or conversely what different could have been the cost to us if the said trade is matched with others.*

8.5.2 *The further substantial and pertinent question arises as to for what gain or to save what cost which could have prompted us to indulged into such matching of trades as has been alleged.*

8.5.3 *Above all, on account of such alleged trades how and in what manner it has influenced or prejudiced the interest of securities market.*

8.5.4 *Not a whisper has been found to have made in the entire contents of the Show Cause Notice.*

8.5.5 *Therefore, in our genuine understanding, considering the data under the column and appreciated in rightful manner by the Investigating Authority and thereby, in the wisdom of investigating authority, the allegation of price manipulation has not been levelled against us. This act and conduct of Investigating Authority, at the threshold of investigation, established that interest of securities market was not jeopardize on account of alleged self trades and therefore the alleged self trades were not deemed to be not in the interest of securities market is already been established by the Investigating Authority and the Investigation Report has been approved by the SEBI.*

8.6 *The details under the column “No. of Pending Orders on Board at same Price” demonstrates the pending order book position at the time of self trade ID and how the trade got matched from amongst the buy and sell orders and buy and sell quantity nearest to the criteria of Price Time Priority pursuant to order matching rules.*

8.7 *The details under the column “Violated Order (No. of Pending Order Before CIBPL Order)” demonstrates the breach of the criteria of Price Time Priority related to self trade ID evidencing the absolute function of Price Matching Rules. Therefore when the system has performed its function in its ordinary course then how can it be viewed and thereby alleged that self trades are illegal in nature since one cannot buy and sell shares from himself. It is really absurd and ridiculous to make us reprehensible for the function and operation of the anonymous online trading system.*

8.8 *The data contained in the annexure, obviously and evidently establishes the grievance on our part against the regulatory apprehensive perceptions behind the charges and allegations levelled in the spate of two Show Cause Notices as genuine and contention to uphold our denial for the alleged trades to be termed and considered as self trades. In view of the above, the impugned proceedings also deserves to be dropped on the basis of merits of the case which completely trashes the charges and allegations levelled on the basis of contents of para 2 of the impugned Show Cause Notice dated July 11, 2014.*

8.9 *To substantiate our contention that the alleged trades alleged to be self trades is the function of anonymous online trading system, which has wrongly matched the trade culminated into self trades, we annex herewith the details of pending order book for almost 310 trades, though not exhaustive, as part of this reply in soft copy (pdf format) to this submission. The further analysis is in progress.*

8.10 *Therefore, in our most earnest submission, say and submit that the alleged trades were not only on account of anonymous online trading system but the same were also on account erroneous matching function of anonymous online trading system; "*

The noticees submitted that the volumes contributed by them through self-trades was not significant and that the entire volume traded by the client is not found to have created artificial volumes or false or misleading appearance of trading. The information that alleged trades for 6,806 shares (the SCN states 22,652 shares from same terminal) constituting 0.07% of total order placed and matched within the same terminal and 1,82,653 shares constituting 1.90% of total order placed alleged to be matched within the group of 76 terminals came to their notice only through the show cause notice. They also contended that Arbitrage was legal and permitted in the securities market. The noticees also made submissions that they have unblemished record in the market.

The noticees have also reiterated that NSE and BSE has taken corrective and remedial measures and therefore there is no room to view the order placing activity by the client/broker as fraudulent or being manipulative.

12. As requested, the representative was also granted liberty to file additional submissions. The noticees filed common additional written submissions vide email dated May 04, 2015. The submissions made therein are a reiteration of their earlier submissions and I do not deem it necessary to repeat the

same here. However, I note that the noticees have emphasised their submission that the alleged self-trades was on account of the error in the anonymous online matching system.

13. Thereafter, vide email dated **June 16, 2015**, the noticees referred to the definitions of "netting" and "novation" under the Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2012:

'Netting' means the determination of net payment or delivery obligations among the clearing members of a recognised clearing corporation by setting off or adjustment of the inter se obligations or claims arising out of buying and selling of securities, discontinuation of business, dissolution, winding-up or insolvency or such other circumstances as may be specified in the bye-laws of the clearing corporation.

'Novation' means the act of a clearing corporation interposing itself between both parties of every trade, being the legal counterparty to both.

The noticees have submitted that in their case, for every alleged trade that took place on the exchange trading platform, the counter party was always the exchange/clearing corporation. The noticees contended that in view of the definitions, it could be deciphered that the AO did not commit any error as claimed in the SCN by SEBI. The case that has been made out against them was contrary to applicable laws and procedure for trade matching and settlement of trade being followed in ordinary course. The noticee therefore requested for dropping the SCNs.

14. 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. The charge against Chandarana is that it had indulged in self-trades in the shares of BGIL on July 28, 2011 (i.e. the listing day and first day of trading in shares of BGIL), while trading through its stock broker, Marwadi, for a total quantity of 1,89,459 shares on the BSE and NSE which allegedly created artificial volumes in the scrip of BGIL. It was also alleged that Chandarana had executed 24 self-trades on BSE and 169 self-trades on NSE through Marwadi and the said orders were placed from the same terminal of the said stock broker for a total quantity of 22,652 on BSE and NSE, thereby creating artificial volumes and misleading appearance of trading in the scrip of BGIL.

Marwadi is alleged to have executed the above mentioned self-trades and is alleged to have aided and abetted its client, Chandarana in creation of artificial volumes in the scrip of BGIL on the day of listing.

15. The AO has observed that the evidence available on record is insufficient to hold that the trades executed by Chandarana through its stock broker Marwadi were fictitious in nature and contributed to the creation of artificial volumes in the scrip as the contribution to the market volume was only 0.21% of the total volumes traded on the day of listing. The AO concluded that the charges levelled against the noticees do not stand established and disposed of the matter.

16. SEBI, thereafter issued a SCN dated July 11, 2014 to the noticees *inter alia* stating that though Chandarana and Marwadi (as a stock broker for Chandarana) had executed self-trades for 96,193 shares (4.55% of Chandarana's volumes) at BSE and self-trades for 93,266 shares (4.35% of Chandarana's volumes) at NSE, the AO had erred in not appreciating that self-trades are fictitious and reprehensible and such trades where beneficial ownership is not transferred are admittedly manipulative. It was also observed that self-trades are illegal in nature as one cannot buy and sell shares from himself and such transactions were obviously fictitious and meant only to create false volumes on the trading screen of the exchange and that the same are therefore not in the interest of the securities market. The noticees were advised to show cause as to why appropriate penalty cannot be imposed against them under section 15HA of the SEBI Act for alleged violation of section 12A of the SEBI Act, regulation 3, 4(1) and 4(2)(a) of the PFUTP Regulations.

17. The noticees have been alleged of having executed 'self-trades'. It is important to understand the nature of the trades executed by the noticees. Chandarana is found to be the seller and also the buyer in respect of the impugned trades and its stock broker, Marwadi is alleged to have facilitated such 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 who traded the 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"."

18. 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;

19. 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 Marwadi 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.

20. Chandarana has stated that it was involved in day trading and arbitrage. 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 Marwadi has, as a stock broker, traded for Chandarana 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.

21. I note that the noticees have contended that self-trades were executed because of the erroneous exchange matching system. The noticees explained the same by taking Trade Id 14227 as an example.

According to them, on receipt of a buy order (no. 18000083003197) for 500 shares at limit price of Rs.63.90/- at 09:20:45:138290, the anonymous online trading system starts searching for an opposite matching order on the basis of priority of price and time and got matched with sell order no. 18000083003319 for 52 shares placed at Open Market rate on 09:20:45:683644. The trade matched at 09:20:45:695191 at Rs.63.90/-. There was a time gap of 545354 nano seconds between the buy and sell order and 556901 nano seconds between buy order and execution of trade and 11547 nano second between sell order and execution of trade. This process was completely confidential and not within the reach of any human. However, prior to the sell order no. 18000083003319 for 52 shares placed at Open Market rate on 09:20:45:683644, there were 3 best buy orders pending in the system -

- iv. order no. 160000700000311 for 11 shares at Rs.71.65 on 09:20:26:996910
- v. order no. 20000900003210 for 200 shares at Rs.70.40/- on 09:20:37:928247
- vi. order no. 20000090003501 for 200 shares at Rs.66/- on 09:20:37:863104

Therefore, the order for sell of 52 shares ought to have first matched with above 3 orders and not with the buy order no. 18000083003197 for 500 shares at limit price of Rs.63.90/- at 09:20:45:138290. Therefore, there is an error in the matching process put in place by the exchange. There was nothing in the SCN to show as to how Chandarana could match its sell order with pending buy order when 3 buy orders were pending in the order book. Assuming that the 3 pending orders were exhausted prior to the moment of matching the alleged trade ID, then how can Chandarana be alleged to have indulged in self-trades as neither the information as to 3 pending orders in the system nor the matching done by the anonymous online trading system can be in the knowledge of Chandarana. Considering the fact that when the buy order was placed, there were 306 buy orders pending in the pending order book with corresponding 53,449 buy shares and 783 sell orders were pending in the pending order book with corresponding 6,44,512 sell shares. Therefore, a pertinent question arose as to how the client could be aware about this pending order book position and how it can apply itself to interfere in the order matching process. Therefore, according to the noticees, merely on account of subsequent act of the online trading system pursuant to receipt of an order in the system, it cannot be alleged that the client placed order in a fraudulent manner and for which the parties can be made responsible.

I have considered the above submissions. I note that the above contentions were referred to the BSE, who reiterated that all orders entering their trading system are assigned a unique order number and

timestamp and the matching of orders in the electronic order matching system of its exchange is based on price and time priority resulting into trades. According to BSE, all trades including the trades in the matter were a result of matching of orders on price and time priority basis. However, the alleged anomaly in the order matching engine of the stock exchange is a separate matter and SEBI may like to look into it. The noticees have themselves stated that it had placed a **buy order** for 500 shares at limit price of Rs.63.90/- at **09:20:45:138290** and a **sell order** for 52 shares placed at open market rate at **09:20:45:683644**. Both the buy order and the sell order have been placed almost simultaneously. Therefore, the actions of the client and the stock broker in failing to ensure that their own buy orders does not match with their sell orders is of prime importance. No one should be allowed to send mixed signals to the markets.

22. 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/personnel of the noticees 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. I, accordingly find the noticees guilty of having contravened the provisions of the PFUTP Regulations alleged against them. Further, the stock broker Marwadi has also not complied with Clause A of code of conduct for stock brokers prescribed under the Stock Brokers Regulations.

23. Marwadi has submitted that even if SEBI was to find Chandarana guilty for self-trades, it should not be held liable for the same merely for acting as the stock broker for its 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, Marwadi 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 are responsible for executing self-trades.

24. I also note that there is no allegation of price manipulation against the noticees. Chandarana has been charged of having executed self-trades thereby creating artificial volumes. Marwadi has been charged of having abetted Chandarana 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. Chandarana and Marwadi (as a stock broker for Chandarana) had executed self-trades for 96,193 shares (4.55% of Chandarana's volumes) at BSE and self-trades for 93,266 shares (4.35% of Chandarana's volumes) at NSE. A total of 1,89,459 shares have been traded through self-trades in NSE and BSE. Chandarana has stated that quantity of buy-sell of 42,56,886 shares executed on BSE and NSE substantiates the fact of arbitrage trading without an intention of transfer of beneficial ownership while placing trades. The noticees have also stated that 67,628 trades in BGIL corresponding to 42,56,886 shares and demonstrates the execution of 3-4 trades per second and that the same revealed the operation of continuous buy-sell action or reversal action at either or one place concurrently.

I have noted the above submissions. The percentage of volumes of self-trades done by the noticees as against the total traded volumes on BSE and NSE is less than 1%. Such trades were 4.45% of the total trades of Chandarana in the scrip of BGIL. The above 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, would not be responsible for self-trades that may result from their 'strategy'. Therefore, I am of the considered opinion that the leniency shown by AO is misplaced. The noticees also referred to the following observation of the Hon'ble SAT in the matter of Smt. Krupa S. Soni vs. SEBI decided on January 24, 2014 that "*This Tribunal has taken consistent view that a few instances of self trades themselves would not ipso facto amount to objectionable trades*". The quantity of shares traded in self-trades is already mentioned above. Such quantity cannot be said to be negligible.

25. It was also noticed that Chandarana had executed 24 self-trades on BSE and 169 self-trades on NSE through Marwadi and the said orders were placed from the same terminal of the said stock broker for a total quantity of 22,652 on BSE and NSE. 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.

26. 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. The same is therefore not in the interest of the securities markets. Therefore, I find that both the ingredients i.e., order being 'erroneous' and being '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 in this regard are therefore dismissed as devoid of any merit.

27. The noticees have contended that the charges and allegations levelled in the SCN dated July 11 & 17, 2014 are completely different when compared with the charges in SCN dated May 6, 2013 issued by the AO. The noticees have also contended that they were at complete loss to understand what was before them. These submissions do not have merit. The AO in his Order has dealt with the alleged self-trades said to be executed by Chandarana, through its stock broker, Marwadi. The said stock broker was alleged to have executed fictitious trades (self-trades) for its client Chandarana. The SCN dated July 11, 2014 was issued as erroneous observations were made in the AO Orders dated April 30, 2014.

28. In view of the foregoing discussions and observations, I, in exercise of the power conferred upon me under section 19 of the Securities and Exchange Board of India Act, 1992 read with section 15-I(3) thereof, hereby dispose off the SCNs dated July 11, 2014 issued to the noticees, **Marwadi Shares and Finance Limited and Chandarana Intermediaries Brokers Private Limited**, with the following order:

- a) For the default/violations committed by the stock broker, **Marwadi Shares and Finance Limited** as found above, a penalty of Rs.5,00,000/- is imposed on it.
- b) For the default/violations committed by **Chandarana Intermediaries Brokers Private Limited** as found above, a penalty of Rs.5,00,000/- is imposed on it.
- c) 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.

29. In the interest of the securities market, the stock broker, **Marwadi Shares and Finance 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. **Chandarana Intermediaries Brokers Private Limited** shall also take steps to ensure that its trades or trading strategy do not result in self-trades or other prohibited trades.

PRASHANT SARAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA

Date: October 13th, 2015
Place: Mumbai