BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/SM/AD/2021-22/15214]

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

In respect of

Crosseas Capital Services Private Limited
(PAN: AACCC5470H)

In the matter of Ess Dee Aluminium Limited

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') had conducted investigation into the trading activities of certain entities in the scrip of Ess Dee Aluminium Limited (hereinafter referred as '**Company/ EAL/By Name'**), a listed company whose scrip is listed on both BSE Ltd. (hereinafter referred to as "**BSE"**) and National Stock Exchange of India Ltd. (hereinafter referred to as "**NSE"**) (collectively referred to as "**Exchanges"**), for the period from September 01, 2012 to June 30, 2013 (hereinafter referred to as "**Investigation Period/IP**"). The focus of investigation was to ascertain whether there was any violation of the provisions of the securities laws. Pursuant to the aforementioned investigation, SEBI observed violation of Regulations 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(a) and (g)

of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as '**PFUTP Regulations'**) and Clause A(2) of the Code of Conduct for Stock Brokers as specified under Schedule II read with Regulation 7 of the SEBI (Stock Brokers and Sub Brokers) Regulations,1992 (hereinafter referred to as **'Stock Brokers Regulations'**) by certain entities including Crosseas Capital Services Private Limited (hereinafter referred to as "**Noticee /By Name**").

2. Therefore, SEBI initiated adjudication proceedings against Noticee and appointed Mr. D. Ravi Kumar (hereinafter referred to as "**erstwhile AO**") to inquire and adjudge under Section 15HA and 15HB of SEBI Act, 1992 (hereinafter referred to as '**SEBI Act'**), the aforesaid alleged violations of provisions of PFUTP Regulations by Noticee.

3. A Show Cause Notice bearing Ref. No. A&E/EAD-3/DRK-DS/7819/2014 dated March 12, 2014 (hereinafter referred to as **'SCN'**) was served on Noticee by "Hand Delivery Acknowledgement Due"(hereinafter referred to as **'HDAD'**) in terms of Rule 4 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as '**Adjudication Rules**') to show cause as to why an inquiry should not be initiated against Noticee and why penalty, if any, should not be imposed on it under Sections 15HA and 15HB of the SEBI Act for the alleged violation of the provisions of Regulations 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(a) and 4(2)(g) of PFUTP Regulations and Clause A(2) of the Code of Conduct for Stock Brokers as specified under Schedule II read with Regulation 7 of the Stock Brokers Regulations.

4. The erstwhile AO, vide Adjudication Order dated March 27, 2015 (hereinafter referred to as '**Adjudication order'**), concluded that Noticee had violated Regulations 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(a) and 4(2)(g) of PFUTP Regulations

and Clause A(2) of the Code of Conduct for Stock Brokers as specified under Schedule II read with Regulation 7 of the Stock Brokers Regulations and imposed a penalty of Rs. 20,00,000 (Rupees Twenty Lakh only) for violation of Regulations 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(a) and 4(2)(g) of PFUTP Regulations and Rs. 5,00,000/- (Rupees Five Lakhs only) for failure to comply with Stock Brokers Regulations.

5. Thereafter, an appeal, Appeal No. 104 of 2015, was filed before Hon'ble Securities Appellate Tribunal (**SAT**) by Noticee challenging the aforementioned Adjudication order passed against it. The Hon'ble SAT, vide common order dated February 10, 2017 (hereinafter referred to as "**SAT Order**"), quashed, *inter alia*, Adjudication order against Noticee and remanded the matter back to SEBI for passing fresh order on merits and in accordance with law. The relevant extracts of the aforementioned order of Hon'ble SAT are reproduced hereunder:

   "………..2. Counsel for SEBI on instruction states that SEBI has decided to have a fresh look in these matters and, therefore, the impugned orders may be set aside and restored to the file of WTM of SEBI for passing fresh order on merits and in accordance with law.

   3. Accordingly, orders impugned in these appeals are quashed and set aside and remanded to SEBI for passing fresh order on merits and in accordance with law.

   4. All the appeals are disposed of in the aforesaid terms with no order as to costs."

6. In accordance with the aforesaid order of Hon'ble SAT, SEBI, vide order dated January 25, 2021, appointed undersigned as the Adjudicating Officer under Section 19 of SEBI Act read with Section 15I(1) and Rule 3 of Adjudication Rules to inquire into and adjudge under the provisions of Regulations 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(a) and 4(2)(g) of PFUTP Regulations and Clause A(2) of the Code

of Conduct for Stock Brokers as specified under Schedule II read with Regulation 7 of the Stock Brokers Regulations. Thereafter, SCN was once again sent to Noticee through Speed Post Acknowledgement (hereinafter referred to as **"SPAD"**) as well as through digitally signed email dated July 20, 2021 and the same was duly served on it. Noticee was given fourteen (14) days' time to make its submissions in respect of the allegations made in the SCN.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

7. The SCN, *inter-alia*, alleged the following:

(i) It was alleged that Noticee had executed self-trades on its own account (proprietary trades) during the investigation period leading to false and misleading appearance of trading of the scrip. The details of the self-trades executed by the Noticee are as follows:

Name of the entity	Exchange	Stock Broker on both Buy and Sell Side	Total Self Trade Volume	No. of self-trades	No. of self trades from the same terminal	No. of days on which self trades done	% of Self Traded Quantity to market Volume	Net LTP contribution by self-trades
Crosseas Capital Services Pvt. ltd.	BSE	Crossseas Captial Services Pvt. Ltd.	78,927	6,051	29	121	0.53	-31.6
Crosseas Capital Services Pvt. ltd.	NSE	Crossseas Captial Services Pvt. Ltd.	38,229	2,985	271	106	0.10	12.85

(ii) It is further observed that Noticee as a stock broker had the highest contribution of 8.26% in gross buy and 8.26% in gross sell at BSE whereas at NSE Noticee had contributed 3.45% in gross buy and 3.45% in gross sell. Further, it is also observed that the proprietary trades of Noticee had contributed to the pro-trading concentration to the total market volume in the following manner:

Sr. No.	Exchange	No. of shares buy/ sell	Pro-trading concentration to the total market volume (in %)
1.	BSE	12,27,009 (buy)	8.26
2.	BSE	12,27,431 (sell)	8.26
3.	NSE	12,33,381 (buy)	3.38
4.	NSE	12,33,564 (sell)	3.38

(iii) It was alleged that Noticee's actions have led to the violation of Regulations 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(a) and 4(2)(g) of PFUTP Regulations.

8. *Vide* email dated August 02, 2021, Noticee submitted its reply to the SCN.

9. Thereafter, in the interest of natural justice, vide hearing notice dated February 04, 2022 sent vide digitally signed email dated February 08, 2022 as well as through SPAD, Noticee was granted an opportunity of personal hearing in the matter before the undersigned on February 22, 2022. The hearing notice was duly served on Noticee.

10. On the scheduled date of hearing, Noticee attended the hearing through its authorized representatives Saachi Purohit, Rajesh Baheti (Director of Noticee), Manish Garg (hereinafter referred to as "**ARs**"). During the hearing, the AR of Noticee reiterated the earlier submissions made by Noticee vide its reply dated August 02, 2021.

11. The summary of the reply dated August 02,2021 submitted by Noticee is reproduced hereunder:

    a. Volume of Self trade done by Noticee in the scrip of EAL is miniscule and the SCN does not allege or cite any additional evidence to prove that self-trades were intentional. Noticee could not have manipulated the market with such negligible volume and could not have disturbed the market equilibrium because the self-trades were miniscule in quantity as compared to the total trading volume in the markets.

    b. Total Self Trade volume of 78,927 (BSE) and 38229 (NSE), which is 0.53% and 0.10% respectively of the market volume, would be like a drop in the ocean of liquidity in EAL, and no one would intentionally attempt it. There can't be any purpose of attempting to inject, extra liquidity of 0.53% and 0.10% in already the liquid scrip of EAL. Noticee's Self trade volume was miniscule, had no effect on the liquidity of EAL, which was already liquid, and that it was purely unintentional.

    c. There was no structure to the self-trades in terms of order quantity, price, or actual matched quantity. Moreover, there is no charge of synchronized trades. All of Noticee's self-trades were purely co-incidental to high speed trading and purely unintentional.

    d. Noticee did not gain any benefit from intraday price movement of EAL.

    e. That the self-trades were purely unintentional and co incidental can be borne out by the facts as below:

i. All the trades have been executed on the approved Algo Trading Software in an automated manner and there is no manual punching of trades.

ii. Internally matched trades (self-trades) are spread over a large number of individual trader ids (multiple servers / lease lines). Actual self-trades within the same user id is much less than as alleged in the SCN

iii. Self-Matched trades are random in nature and Spread throughout the day. Self-Matched quantities are extremely small as compared to order size, random and unequal. If at all, only a miniscule proportion of any given order has converted into self-trades on account of system generated trading mechanism by using Approved Algo Trading Software because of the order pattern of other market participants. Besides, system generated orders have only been rarely and accidentally matched internally, and in odd quantities. Orders, whether resulting in rare internal matching or not, have been placed at or around the market price. Intentional trades, on the other hand attempt to match entire order quantities on both sides and in large order sizes,

iv. The internal matching has also happened on account of the latency factor in the system of Algo Trading in which System places orders at ultra high frequency and there is at time latency on account of lease line distance, drop of packets in the leased lines, due to which some of the trades may have rarely and accidentally matched internally as the buy/sell orders are placed at Ultra High Frequency and automatically.

v. Orders were never placed with the intent to do a self-trades.

f. There is no charge relating to price manipulation, exit or entry provider, etc of any other kind against Noticee other than mere occurrence of self-trades.

g. Noticee also placed reliance on plethora of judgements where proceedings were disposed without imposing penalty in cases of unintentional self-trades. Noticee placed reliance on Adjudication Orders in the matter of Unitech Limited, in the matter of Aster Silicates Limited, in the matter of Multi Commodity Exchange of India Ltd, Apollo Tyres Limited, Halonix Ltd etc. Noticee also placed reliance on enforcement policy of SEBI, EFD/DRA-3/ON/332/2017 dated May 16, 2017.

CONSIDERATION OF ISSUES, EVIDENCE AND FINDINGS

12. I have carefully perused the charges levelled against Noticee in the SCN, reply of Noticee and the material available on record. The issues that arise for consideration in the present case are:

I. Whether Noticee has violated the provisions of Regulations 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(a) and 4(2)(g) of PFUTP Regulations and Clause A(2) of the Code of Conduct for Stock Brokers as specified under Schedule II read with Regulation 7 of the Stock Brokers Regulations?

II. If yes, then do the violations, if any, on the part of Noticee attract any monetary penalty under Section 15HA and 15HB of the SEBI Act?

III. If yes, then what would be the quantum of monetary penalty that can be imposed upon Noticee, taking into consideration the factors mentioned in Section 15J of the SEBI Act?

13. Before proceeding to examine the case on its merits, it would be proper to refer to the relevant provisions of PFUTP Regulations, SEBI Act and Stock Broker Regulations which have been purportedly violated by Noticee as alleged in the SCN. The said provisions of the law are reproduced herein below:

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;

…

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

Relevant provisions of Stock Broker Regulations:

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.*

SCHEDULE II
CODE OF CONDUCT FOR STOCK BROKERS

[Regulation 7] **A. General.** *(1)*
……………..
(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 rumors with a view to distorting market equilibrium or making personal gains.
(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.

Issue No. I: Whether Noticee has violated the provisions of Regulations 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(a) and 4(2)(g) of PFUTP Regulations and Clause A(2) of the Code of Conduct for Stock Brokers as specified under Schedule II read with Regulation 7 of the Stock Brokers Regulations?

14. It has been alleged in the SCN that Noticee had executed self-trades on its own account (proprietary trades) during the investigation period leading to false and misleading appearance of trading of the scrip of EAL and thereby had violated Regulations 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(a) and 4(2)(g) of PFUTP Regulations and Clause A(2) of the Code of Conduct for Stock Brokers as specified under Schedule II read with Regulation 7 of the Stock Brokers Regulations. With respect to the allegations in the SCN, Noticee has contended that self-trades executed by

it were miniscule in nature and could not have disturbed market equilibrium. Further, Noticee has also contended that self-trades were purely unintentional and co-incidental

15. I note from available records that Noticee had executed self-trades (i.e. trades in which both the buyer and the seller are the same entity) by way of proprietary trades during the IP. The same has also been admitted by Noticee in its submissions. The details of self-trades executed by Noticee as noted from materials available on record are as given hereunder:

Name of the entity	**Exchange**	**Stock Broker on both Buy and Sell Side**	**Total Self Trade Volume**	**No. of self-trades**	**No. of self trades from the same terminal**	**No. of days on which self trades done**	**% of Self Traded Quantity to market Volume**	**Net LTP contribution by self-trades**
Crosseas Capital Services Pvt. ltd.	BSE	Crossseas Captial Services Pvt. Ltd.	78,927	6,051	29	121	0.53	-31.6
Crosseas Capital Services Pvt. ltd.	NSE	Crossseas Captial Services Pvt. Ltd.	38,229	2,985	271	106	0.10	12.85

16. I note from the table above that on BSE, during IP, Noticee had executed self-trades in 78,927 shares of EAL through 6,051 trades over 121 trading days. I also note that aforementioned self-trades executed by Noticee constituted to only

0.53% of the total traded market volume in scrip of EAL at BSE during the IP. Similarly, I also find that on NSE, Noticee had executed self-trades in 38,229 shares of EAL through 2,985 trades over 106 days. I also note that the percentage of self trade volume executed by Noticee to the total traded market volume of scrip of EAL on NSE was 0.10%. Thus, I agree with contention of Noticee that volume of self-trades executed by Noticee was miniscule compared to total traded market volume in scrip of EAL in the exchanges. I find that aforementioned self-trades are too insignificant to disturb the market mechanism or to mislead the investors of securities market in the scrip of EAL. In light of the foregoing, I find that the percentage contribution in the volume, as mentioned above, does not suggest the possibility of any manipulative intent on the part of Noticee to the extent of contributing to market volume through artificial volume creation in the scrip of EAL during the investigation period.

17. As per Regulation 4(2)(g) of PFUTP Regulations, entering into a transaction in securities without intention of performing it or without intention of change of ownership of such security, is deemed to be fraudulent. In this regard, I note that nothing has been brought on record in the investigation to show that the aforesaid self-trades by Noticee were executed in a fraudulent manner.

18. I also note that other factors relating to manipulative intent, namely, frequency, timing, number of self-trades and any other pattern have not been alleged against Noticee in the SCN. In this regard I note that Hon'ble SAT in the Judgment, in the matter of Smt. Krupa Sanjay Soni vs. SEBI (Appeal No. 32 of 2013) held that,

    "This Tribunal has taken a consistent view that a few instances of self-trades in themselves would not, ipso facto, amount to an objectionable trades."

Therefore, I find that only few instances of self-trades, as presented in the instant matter cannot be considered to be fraudulent in nature, unless supporting facts and circumstances leading to a manipulative intent behind these trades are also presented. I note that investigation is silent on these facts and circumstances, which would be necessary to establish that these self-trades executed by Noticee were manipulative trades, intended to defraud the market. I am of view that a charge of market manipulation as a result of self-trades should be made on the basis of strong and cogent evidence, which is lacking in instant case. In this regard, it is pertinent to highlight that Hon'ble SAT in case of KSL & Industries Ltd v. SEBI (Appeal no. 9 of 2003) has held that "*A wild allegation of market manipulation, in particular the charge of fraudulent action unsupported with* convincing evidence are not sustained. Fraud cannot survive on mere conjecture and surmises."

19. On account of aforesaid observations, I find it difficult to conclude that the aforesaid self-trades by Noticee in the scrip of EAL were in violation of provisions of Regulations 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(a) and 4(2)(g) of PFUTP Regulations. Since allegation against Noticee that it has violated provisions of Regulations 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(a) and 4(2)(g) of PFUTP Regulations is not established, there is no case to draw any adverse inference on Noticee as regards allegation of violation of Clause A(2) of the Code of Conduct for Stock Brokers as specified under Schedule II read with Regulation 7 of Stock Broker Regulations against it. Since, the alleged violations are not established against Noticee, Issues No. II and III require no consideration.

ORDER

20. Accordingly, taking into account the aforesaid findings, the Adjudication proceedings against Noticee i.e. Crosseas Capital Services Private Limited

initiated vide Show Cause Notice dated March 12, 2014, stand disposed of without imposition of any penalty under Sections 15HA and 15HB of SEBI Act.

21. In terms of rule 6 of the Adjudication Rules, copies of this order are sent to Noticee and also to the Securities and Exchange Board of India.

Date: February 28, 2022	**SOMA MAJUMDER**
Place: Mumbai	**ADJUDICATING OFFICER**