BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. EAD-2/DSR/KM/108-115/2014]

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

In respect of

1. **BP Fintrade Private Limited [PAN: AAACY2372G]**
2. **Setu Securities Private Limted [PAN: AAGCS3919K]**
3. **Hitesh Shashikant Jhaveri [PAN: ADEPJ1181A]**
4. **J.V. Stock Broking Private Limited [PAN: AABCJ1783D]**
5. **BP Equities Private Limited [PAN: AAACB4602L]**
6. **SPFL Securities Limited [PAN: AABCS2452C]**
7. **Mansi Share & Stock Brokers Private Limited [PAN: AADCM6645D]**
8. **SPS Share Brokers Private Limited [PAN: AABCS9622C]**

In the matter of

Gayatri Projects Limited

Background:

1. Securities and Exchange Board of India (hereinafter referred to as SEBI) conducted an investigation into the trading of suspected entities in the scrip of Gayatri Projects Limited (hereinafter referred to as GPL) and into the possible violation of the SEBI Act, 1992 (hereinafter referred to as the Act) and various Rules and Regulations made there under.

2. The investigation, inter alia, revealed BP Fintrade Pvt. Ltd. (Noticee 1), Setu Securities Pvt. Ltd. (Noticee 2), Hitesh Shashikant Jhaveri (Noticee 3) and J.V. Stock Broking Pvt. Ltd. (Noticee 4) had entered into self trades on BSE on several occasions and that on all the occasions where self trades were executed, the respective brokers viz., BP Equities Pvt. Ltd. (Noticee 5), Mansi Share & Stock Brokers Pvt. Ltd. (Noticee 7), SPS Share Brokers Pvt. Ltd. (Noticee 8) and SPFL Securities Ltd. (Noticee 6) on both buy side and sell side was the same. Therefore, it is alleged that they had entered into self trades which created artificial volume in the scrip, leading to false and misleading appearance of trading in the scrip in the securities market.

3. SEBI has, therefore, initiated adjudication proceedings under the Act to inquire into and adjudge the alleged violations of the provisions of Regulation 3(a), (b), (c) & (d) and 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 (1), (2), (3) and (4) of the Code of Conduct as specified under schedule II read with Regulation 9(f) of the SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992 (hereinafter referred to as Broker Regulations) against the Noticees.

Appointment of Adjudicating Officer:

4. I have been appointed as the Adjudicating Officer, vide order dated November 26, 2013 under Section 15-I of the SEBI Act read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the 'Adjudication Rules') to inquire into and adjudge under Section 15HA

of the Act for Noticees at sr. No. 1 to 4 and Section 15HB of the Act for Noticees at sr. No. 5 to 8 for the alleged violation of the aforesaid provisions of law.

Notice, Reply & Personal Hearing:

5. A notice dated February 04, 2014 (hereinafter referred to as the 'SCN') was issued to the Noticees in terms of Rule 4 of the Adjudication Rules requiring them to show cause as to why an inquiry should not be held against them for the alleged violations. It was alleged in the SCN that Noticees No. 1 to 4 have entered into self trades and created artificial volume in the scrip of GPL, leading to a false and misleading appearance of trading in the scrip in the securities market and Noticees No. 5 to 8 have acted as a broker and counterparty broker for self trades for their respective clients.

6. In the interest of natural justice and in order to conduct an inquiry as per Rule 4 (3) of the Adjudication Rules, vide letter dated March 05, 2014 an opportunity of personal hearing was granted to the Noticees.

7. The Noticee No. 1 filed its reply to the SCN vide letter dated February 21, 2014 and appeared before me on March 20, 2014 and reiterated its submissions made in its reply to the SCN. Noticee No. 2 filed its reply to the SCN vide letter dated February 18, 2014 and appeared before me on March 26, 2014 and reiterated the submissions made in its reply to the SCN. Noticee No. 3 filed its reply to the SCN vide letter dated March 18, 2014 and appeared before me on March 20, 2014 and reiterated its submissions made in its reply to the SCN.

8. The Noticee No. 4 vide letter dated February 15, 2014 requested for further time to file its reply and vide letter dated March 12, 2014, filed its reply to the SCN. The Noticee failed to attend the hearing on March 20, 2014. The Noticee has not sought for an opportunity of hearing and therefore, I proceed to deal with the matter against the Noticee no. 4 on the basis of the material available on record including the reply to the SCN filed by the Noticee.

9. The Noticee No. 5 filed its reply to the SCN vide letter dated February 24, 2014 and appeared before me on March 20, 2014 and reiterated its submissions made in its reply to the SCN.

10. The Noticee No. 6 vide letter dated February 11, 2014 requested for additional documents and further time to file its reply to the SCN. The Noticee attended the hearing on March 20, 2014, and sought for inspection of documents. Vide letter dated March 28, 2014, the requested documents were forwarded to the Noticee. Accordingly, vide letter dated April 07, 2014, the Noticee filed its reply to the SCN and appeared before me on April 09, 2014 and reiterated the submissions filed in his reply to the SCN and filed further submissions vide letter dated April 10, 2014.

11. The Noticee No. 7 filed its reply to the SCN vide letter dated February 19, 2014. The Noticee, vide letter dated March 18, 2014, sought for postponing the hearing scheduled for March 20, 2014. Accordingly, hearing was granted on March 26, 2014, wherein, the Noticee appeared before me and reiterated its submissions made in its reply to the SCN.

12. The Noticee No. 8 vide letter dated February 15, 2014 requested for further time to file its reply and vide letter dated March 14, 2014, filed its reply to the SCN. The Noticee failed to attend the hearing dated March 20, 2014 and appeared before me on April 11, 2014. The Noticee reiterated the submissions filed in his reply to the SCN and filed further submissions vide letter dated April 10, 2014.

Consideration of Issues, Evidence and Findings:

13. I have carefully perused the charges against the Noticees as per the SCN, written & oral submissions made by the Noticees and the materials as available on record. The issues that arise for consideration in the present case are:

(i) Whether the Noticees have violated the provisions of Regulation 3(a), (b), (c) & (d) and 4(1), 4(2)(a) and (g) of the PFUTP Regulations and Clause A (1), (2), (3) and (4) of the Code of Conduct as specified under schedule II read with Regulation 9(f) of the Broker Regulations ?

(ii) Does the violation, if any, on the part of the Noticees attract any penalty under Sections 15HAand 15HB of the Act?

(iii) If yes, what should be the quantum of penalty?

14. Before proceeding further, it will be appropriate to refer to the relevant provisions, which read as under:-

<u>Relevant provisions of PFUTP Regulations:</u>

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;*

SCHEDULE II

CODE OF CONDUCT FOR STOCK BROKERS

[Regulation 9(f)]

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.

15. I find that GPL was incorporated in 1989 and became a public limited company on December 02, 1994 and is executing major civil works including construction of concrete or masonry dams, earthen dams, national highways, bridges, canals, airports, ports. During the investigation period, the price of the scrip of GPL opened at ₹ 75.20 on May 04, 2009 and closed at ₹ 240.10 on July 31, 2009. The results of the quarter ended June 2009 of GPL showed a net profit of ₹ 11.96 crore as compared to net profit of ₹ 11.11 crore for the quarter ended March 2009. The price volume analysis is as under:

Table: 1

Details	Open	High	Low	Close	Total Traded Volume	Average Traded Volume
Three Month Prior – February 02, 2009 to April 29, 2009	(90) February 02, 2009	(93.8) February 03, 2009	(41.6) March 09 & 12, 2009	(71.75) April 29, 2009	35,23,357	62917 (56 days)
Investigation Period – May 04, 2009 to July 31, 2009	(75.2) May 04, 2009	(240.1) July 31, 2009	(73.85) May 04, 2009	(240.1) July 31, 2009	41,27,307	63497 (65 days)
Three month After – August 03, 2009 to October 31, 2009	(252.1) August 03, 2009	(394) October 20, 2009	(232.4) August 12, 2009	(342.05) October 30, 2009	41,81,383	68547 (61 days)

16. On examining the trade and order log during the investigation period, self trades of a repetitive nature were observed among some entities. Details of the self trades executed by the suspected entities on BSE are as under:

Table: 2

Client Name	Trade Date	Self Trade Qty	Self Trade count	Day's Market volume	% of Self trades to day's market volume	Total buy volume of the Client	% of Self trades to total buy volume of the Client	Total Buy trade count of the Client	Total sell volume of the Client	% of Self trades to total sell volume of the Client	Total sell trade count of the Client
BP Fintrade Pvt Ltd	14/05/09	1	1	90476	0.00	11	9.09	6	12	8.33	11
	29/05/09	800	1	66529	1.20	8000	10.00	3	5600	14.29	3
	02/06/09	4945	42	323037	1.53	10284	48.08	168	30697	16.11	187
	03/06/09	13	13	210338	0.01	6553	0.20	74	6551	0.20	152
	18/06/09	23	4	230729	0.01	3932	0.58	54	4428	0.52	62
	15/07/09	2	2	19653	0.01	165	1.21	13	165	1.21	16
	20/07/09	3	2	148421	0.00	3038	0.10	26	3037	0.10	50
	27/07/09	3	2	83248	0.00	154	1.95	21	154	1.95	21
	31/07/09	5	3	74948	0.01	3041	0.16	31	2828	0.18	24
J V Stock Broking Pvt Ltd	07/05/09	1	1	98827	0.00	4757	0.02	25	4755	0.02	24
	02/06/09	1	1	323037	0.00	6794	0.01	49	7295	0.01	53
	04/06/09	11	2	152804	0.01	6179	0.18	41	5544	0.20	62
	05/06/09	1	1	267488	0.00	11668	0.01	61	12299	0.01	80
	08/06/09	202	1	107861	0.19	4637	4.36	33	3733	5.41	41
	16/06/09	213	1	19249	1.11	985	21.62	14	985	21.62	12
	01/07/09	20	1	32052	0.06	1898	1.05	13	1898	1.05	18
	07/07/09	190	3	27077	0.70	1578	12.04	15	1578	12.04	23
	13/07/09	50	1	23047	0.22	3883	1.29	44	3883	1.29	19
Setu Securities Pvt Ltd	25/05/09	2	2	883	0.23	883	0.23	15	2	100.00	2
	02/06/09	5544	11	323037	1.72	11919	46.51	195	28572	19.40	141
Hitesh Shashikant Jhaveri	18/06/09	2087	9	230729	0.90	90956	2.29	122	25463	8.20	94
	19/06/09	93	7	97666	0.10	32769	0.28	72	38345	0.24	41
	22/06/09	2	2	34983	0.01	8	25.00	8	15170	0.01	41
	23/06/09	9	9	41702	0.02	19905	0.05	81	17486	0.05	133
	24/06/09	16	13	80798	0.02	21732	0.07	74	18291	0.09	82
	25/06/09	1	1	36726	0.00	4	25.00	4	2833	0.04	26
	26/06/09	5	4	42106	0.01	4497	0.11	24	8332	0.06	40
	23/07/09	1	1	67446	0.00	8460	0.01	37	8460	0.01	33
	24/07/09	1	1	24498	0.00	24498	0.00	88	1	100.00	1
	27/07/09	5	4	83248	0.01	97	5.15	23	24516	0.02	136

17. Summary of the self trades executed by the suspected entities on BSE are as under:

Table: 3

Client Name	Total Self Trade Volume	Total Self Trade Count	No of days on which self trades executed	Net LTP contribution by self trades
BP Fintrade Pvt Ltd	5795	70	9	1.65
Setu Securities Pvt Ltd	5546	13	2	6.9
Hitesh Shashikant Jhaveri	2220	51	10	3.6
J V Stock Broking Pvt Ltd	689	12	9	0.35
Total	**14250**	**146**	**30**	**11.8**

18. It is observed from the above tables that BP Fintrade Pvt. Ltd., Setu Securities Pvt. Ltd., Hitesh Shashikant Jhaveri and J.V. Stock Broking Pvt. Ltd. have entered into self trades on BSE on several occasions**.** Summary of the self trades executed through the same brokers are as under:

Table: 4

Sr. No.	Client Name	Member Name	CP Member name	No of shares traded	No. of trades
1	BP Fintrade Pvt. Ltd.	BP Equities Pvt. Ltd.	BP Equities Pvt. Ltd.	5795	70
2	Setu Securities Pvt. Ltd.	Mansi Share & Stock Advisors Pvt. Ltd.	Mansi Share & Stock Advisors Pvt. Ltd.	5546	13
3	J V Srock Broking Pvt. Ltd.	SPFL Securities Limited	SPFL Securities Limited	689	12
4	Hitesh Shashikant Jhaveri	SPS Share Brokers Pvt. Ltd.	SPS Share Brokers Pvt. Ltd.	126	39

19. The Noticees, inter alia, have submitted that instances of self trades are isolated and the same can in no manner be a ground to allege violating the said provisions of law.

20. The Noticee No. 1 has, inter alia, submitted that they trade through multiple terminals/dealers and carry out jobbing, arbitrage and positional trading in securities on one or more exchanges using multiple trading strategies and have a very large and voluminous trading and investment portfolio. That the trades are executed from various terminals where multiple dealers execute trades for them as per their predefined trading strategy and taking into account the criticality and importance of time, at times the dealers place sell orders without deleting the pending buy order as a result of which the order gets partially executed against the buy order placed earlier. Since they trade through multiple terminals, the dealers are not aware of the orders placed by other dealers in some cases the buy order of one dealer inadvertently matches with that of other terminals, which they believe, should not be treated as self trades. Further, that their volume in the security during the period covered under the investigation is a meager 1.36% of the market volume and the alleged self trades were a negligible 0.14%, which can no way create any false or misleading appearance of trading in any security. Noticee No. 5, who is the broker for Noticee No. 1, has reiterated the submissions made by Noticee No. 1. Further, they have submitted that they have carried out all their transactions on behalf of the client as per their instructions and they believe that the alleged self trades are co-incidental and unintentional.

21. The Noticee No. 2 has, inter alia, submitted that they undertake various types of trading like jobbing, arbitrage and volatility trading where generally profit are earned by generating volumes and keeping margins lower. That trades are placed by different directors/employees through different dealers of the Broker without the knowledge of each other as a trade natural instinct to pick up those scrips to trade which are showing huge spur in volumes. That during the investigation period, they have traded in approximately 1020 different stocks out of which approximately 70% of the scrips are either benchmark or quality madcap stocks and this clearly indicates that they are trading in a variety of stocks and their trading practices are not malafide or against market practice.

22. The Noticee No. 3 has, inter alia, submitted that he usually undertakes jobbing activities where generally the profit is earned by generating volumes and keeping margins lower and picks up those trades which are showing huge spur in volumes, approaching circuit limits, corporate news on exchange sites. That during the period from April 01, 2009 to March 31, 2010, he has traded in approximately 2000 scrips totaling over 11 crore shares. Further, that the trades in GPL are normal business trades and done with bonafide intentions and he had never envisaged that a normal trading in the scrip would result in being treated as self trades and done with a view to create artificial volume.

23. The Noticee No. 4 has, inter alia, submitted that they were into trading/jobbing/arbitrage of shares business for long with a daily turnover of ₹ 4 to 7 crores and thus there is a possibility that some trades that too very rarely in very small quantity may have got traded between their operators which is a mere coincidence as on the same day other trades which forms majority of trading done in the scrip by them, have been traded with other counter parties. That they have traded in more than 450 scrips other than GPL during the investigation period. That the total number of shares traded during the investigation period in the scrip of GPL is 1,88,873, whereas, the number of self trades is only 689 which is only 0.36% of its total trades in the scrip. Further, that the trades executed by them are miniscule as compared to the total turnover on those dates and that the alleged self trades were unintended as they had placed the order for sell/buy and again placed the order for buy/sell of the shares thinking that the previous orders were executed but actually the orders were pending and buy/sell order got matched with the sell/buy pending order resulting in matched trades. That therefore, the SCN has failed to establish any intent on their part to create a false or misleading appearance of trading or entered in to trades without the intention of performing the same or without the intention of changing ownership. I find that Noticee No. 6, who is the broker for Noticee No. 4, has also reiterated what its client has submitted in its reply to the SCN.

24. The Noticee No. 7 has, inter alia, submitted that they are in no way connected either directly or indirectly with the Management or any of the Insiders of GPL. That their client was an active client for which they have obtained all KYC documents and have permitted trading on the basis of his risk category. That the alleged self trades done for its client were genuine trades done in normal market conditions and were delivery based transactions, wherein, pay-in of funds and payout of securities occurred as per exchange regulations. Further, that controlling or manipulating prices in scrips like GPL is not possible for a single trader under any circumstances looking at the volume and trades of the scrip in the market.

25. The Noticee No. 8 has, inter alia, submitted that his client was a HNI client, who made investments and carried out regular jobbing exercise with them in several shares and securities and whose average daily turnover during the financial year 2009-10 was ₹ 10.50 crores. That since essentially being a jobber, who trades into various scrips on a daily basis, it is not possible for any person to keep a track of the movements of all the scrips. That placing of single share order for checking and ascertaining the market movement is a common practice among jobbers and in certain cases the jobbers in a hurry to execute transactions in a particular scrip, enters into trades even before the single share orders are executed or removed from the pending order list and this in certain cases a part of the orders gets matched with the pending order resulting into inadvertent matching of transactions i.e. partial self trades. That the intention of such orders is not manipulation or fraudulent trade practice, but only an outcome of genuine jobbing activity. Further, that the client had traded in the scrip on a total of 72 days in financial year 2009-10, out of which as per SEBI own record, he has executed self trades on just 10 days for a miniscule quantity of just 126 shares against a total trading volume of 9,91,932 shares, out of which a total of 4,64,913 shares were traded during the investigation period and this in no manner created any false and misleading appearance as the same was only 0.003% of the total traded volume. The Noticee submitted various instances where there are vast differences in terms of order quantity and trade quantity and in certain cases only 1 share has matched and that the same clearly shows that these transactions were genuine in nature and without any malafide intention.

26. I note that the Noticees No. 5 to 8 are registered intermediaries carrying out the business of broking for their clients i.e. Noticees No. 1 to 4 who are mainly involved in jobbing activities. On examining the trade and order logs, I note that the number of shares getting matched in a single trade is very less in number (at times even one share). Further, I note from Table 2 above that the trades executed by each Noticee are miniscule as compared to the total turnover on those dates.

27. I find that the Noticee No. 1 dealt in self trades on 9 days and the self trade quantity/percentage of self trades were very less in comparison to the day's market volume. The percentage of self trades to the day's market volume were generally less than 1% and only on 2 days did it amount to 1.20% and 1.53% of the market volume. I find that Noticee No. 2 dealt in self trades only on 2 days when the percentage of its self trades to the day's market volume was 0.23% and 1.72% which are negligible. Noticee No. 3 dealt in self trades on 10 days and the self trade quantity in comparison to the day's market volume was less than 1% on all the ten days. Noticee No. 4 dealt in self trades on 9 days and the self trade quantity/percentage was very less in comparison to the day's market volume. The percentage of all the self trades to the day's market volume was less than 1% except on one day when it was 1.11% of the day's market volume. Therefore, I find that the percentage of self trades of the Noticees 1 to 4 are negligible when compared to the day's total market volume and not capable of creating artificial volume in the scrip of GPL. Accordingly, it is not necessary to go into the merits of the other submissions made by the Noticees.

28. The Hon'ble Securities Appellate Tribunal (vide its order dated January 24, 2014) in the case of Smt. Krupa Sanjay Soni vs SEBI, had observed 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, in the instant case , the evidence and material available on record is insufficient to hold that the trades executed by the Noticees no. 1 to 4 had created artificial volume in the scrip (leading to a false and misleading appearance of trading) in as much as there were very few and negligible instances of self trades as evident from above. Further, I find that there is no allegation against the Noticees that they had indulged in price manipulation. Accordingly, I also find that their respective brokers i.e. Noticees No. 5 to 8 cannot be held guilty of violating the provisions of law.

ORDER

29. 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 Noticees in the SCN do not stand established and the matter is, accordingly, disposed of.

30. In terms of the Rule 6 of the Adjudication Rules, copies of this order are sent to the Noticees and also to Securities and Exchange Board of India.

Date: April 30, 2014 **D. SURA REDDY**

Place: Mumbai **ADJUDICATING OFFICER**