<u>BEFORE THE ADJUDICATING OFFICER</u>

<u>SECURITIES AND EXCHANGE BOARD OF INDIA</u>

[ADJUDICATION ORDER NO. Order/PM/NK/2018-19/525]

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

R M Share Trading Private Limited (PAN: AABCR6331B)

In the matter of

IPO of SRS Limited and the trading pattern in the scrip of SRS Limited on the day of listing of the scrip of SRS Limited

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<u>FACTS OF THE CASE IN BRIEF</u>

1. Securities and Exchange Board of India (hereinafter referred to as "SEBI") conducted an investigation in the matter relating to the IPO of SRS Limited and the trading pattern in the scrip of SRS Limited (herein after referred to as 'SRS' or 'the Company') on the day of listing of the scrip (SRS Limited) i.e. September 16, 2011 (hereinafter referred to as 'investigation period'/'period of investigation).

2. It was observed that the Noticee namely, R. M. Shares Trading Private Limited (hereinafter referred to as Noticee / R. M. Shares) had repeatedly entered into self-trades on proprietary account on both the exchanges, National Stock Exchange of India Limited (NSE) and BSE Limited (BSE).

3. It was alleged that the Noticee, namely, R. M. Shares Trading Private Limited had repeatedly entered into self-trades on the exchanges (NSE and BSE) on several occasions and in large quantities thereby creating artificial volumes in the scrip.

Further, there was no change of ownership of the shares. The details of self-trades of the entities mentioned above are as per the table below:

On NSE:

Client Name	Broker Name	Self Traded Qty.	No. of Self-Trades	% of Self Traded Qty. to Market Vol.	LTP diff. (INR)	% of Self Traded Qty. to Clients Buy Vol.	% of Self Traded Qty. to Clients Sell Vol.
R M Shares Trading Private Limited	R M Share Trading Private Limited	39750	915	0.07	1.45	2.712	2.712

On BSE:

Client Name	Broker Name	Self Traded Qty.	No. of Self-Trades	% of Self Traded Qty. to Market Vol.	LTP diff. (INR)	% of Self Traded Qty. to Clients Buy Vol.	% of Self Traded Qty. to Clients Sell Vol.
R M Shares Trading Private Limited	R.M. Shares Trading Private Limited	48538	1095	0.146	-3.40	3.324	3.324

4. In view of the above, it was alleged that the Noticee, namely, R. M. Shares Trading Private Limited had violated the provisions of Regulations 3(a), 3(b), 3(c), 3(d), 4(1) and 4(2)(a) and 4(2)(g) of SEBI (Prohibition of Fraudulent and unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as the SEBI (PFUTP) Regulations, 2003) and have also violated the provisions of Clause A(3), A(4) and A(5) of the Code of Conduct for Stock Brokers as specified under Schedule II read with Regulation 7 (now Regulation 9(f)) of SEBI (Stock Brokers and Sub Brokers) Regulations, 1992.

APPOINTMENT OF ADJUDICATING OFFICER

5. The undersigned was appointed as the Adjudicating Officer under section 15I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **"SEBI Act"**) read with rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalty by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the **'Adjudication Rules'**) to inquire into and adjudge under section 15HA of the SEBI Act, 1992, the alleged violations of provisions of Regulations 3(a), 3(b), 3(c), 3(d), 4(1) and 4(2)(a)

and 4(2)(g) of SEBI (PFUTP) Regulations, 2003 and under section 15HB of the SEBI Act, 1992, the alleged violations of provisions of Clause A (3), A (4) and A (5) of the Code of Conduct for Stock Brokers, Schedule II read with Regulation 9 of SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992 by the Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

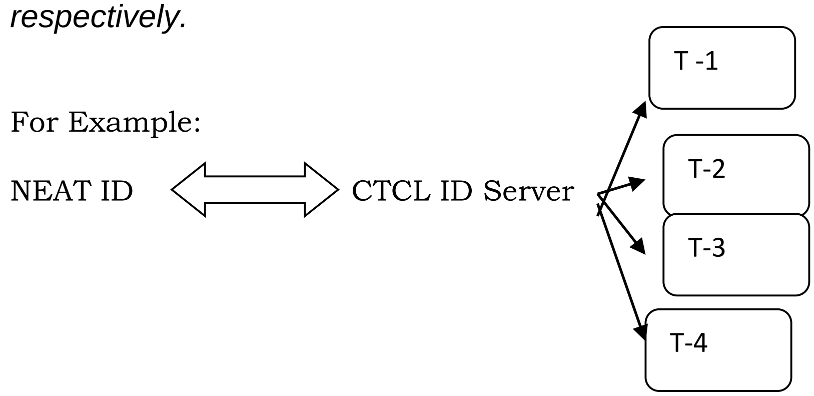
6. A Show Cause Notice A&E/EAD/PM-NK/18641/2017 dated August 7, 2017 (hereinafter referred to as "**SCN**") was issued to the Noticee under Rule 4 of the Adjudication Rules to show cause as to why an inquiry should not be initiated and penalty be not imposed under section 15HA of the SEBI Act, 1992 for the alleged violations of provisions of Regulations 3(a), 3(b), 3(c), 3(d), 4(1) and 4(2)(a) and 4(2)(g) of the SEBI (PFUTP) Regulations, 2003 and under section 15HB of the SEBI Act, for the alleged violations of provisions of Clause A (3), A (4) and A (5) of the Code of Conduct for Stock Brokers, Schedule II read with Regulation 9 (f) of SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992 as specified in the SCN. Copies of the documents relied upon in the SCN were provided to the Noticee along with the SCN.

7. The Noticee submitted its response to the SCN vide letters dated August 17, 2017, October 25, 2017, and May 04, 2018. The summary of submissions in the above mentioned replies are as follows:

    - *The Noticee has submitted that its membership with the NSE has been cancelled by SEBI with effect from March 28, 2013 upon acceptance of surrender of certificate of registration and is an inactive member of BSE since 2013.*
    - *The trading in the scrip SRS Limited (SRS) has been carried out through the automated Algorithm Trading Software in the capital market segment and future option segment of the Exchange for CTCL facility using CTCL software develop by the vendor Greek Soft Technologies Limited in respect of certain trading strategies, which was approved by the National Stock Exchange vide letter dated January 12, 2009 and June 16, 2011. BSE does not have the mechanism of giving approval but only intimation of commencement of algorithmic Trading Software.*
    - *Further, that the self-trades are not done manually but through the algorithmic Trading Software approved by the Exchanges.*

- *The electronic trading platform of the Exchanges provides supersonic speed of broadcast and trade execution. Use of algorithmic trading applications has allowed brokers to execute transactions at a much faster speed than manual trading.*
- *There are multiple algos running simultaneously by different dealers, wherein one algo may place buy orders while the other may place sell orders. This might even be the case for two dealers managing the algo through separate computers and user ID's.*
- *The order has been placed by the dealer in ALGO in the exchange and the order is matched in exchange level. These may result in self-trades, with one or more market participants which are quite infrequent and random. Many a times, a small part of the large buy order of one dealer may also match partially with another broker balance may match with other market participants.*
- *It may be noted that these instances of self-trades are purely incidental to the execution of the trading strategy and are not planned to be executed. The random nature of timing, quantity, dealers and partial matching with other market participants substantiate that these are unintentional and are a matter of pure co-incidence. "*
- *It is informed that the individual terminal ids or dealer ids are linked to the CTCL Terminal ID which is the Server and the said Server through CTCL ID is linked to NEAT/BOLT ID of the NSE/BSE and the orders are put at the Terminal id level and many terminal id are linked to one CTCL ID/IML ID of NSE and BSE respectively.*

For Example:



- *It is submitted that the Orders are placed at the Terminal ID level and the orders of small quantities (being order size of minimum 100 shares and maximum 1000 shares) are place and the average life cycle from the time of placing the order to getting converted into a trade is less than 2 seconds by using the algorithmic trading software. The human involvement is very less for putting the parameters of orders for the day and the trading take place through the algorithmic trading software connected to the server/CTCL Id and the orders are passed on to the NSE/BSE Exchanges and the same are matched at the Exchange level. The self-trades happen on account of latency in the leased lines or the satellite link to the Exchanges. These self-trades cannot be treated* *as fictitious as the same are done on the Exchange approved terminals and in the normal course of business.*

- *Further, the matching with a specified market participant has no specific pattern by way of volume action or price action but is evenly distributed through the entire day of trading in the scrip of SRS Limited (SRS) using the algo trading software. Further, quantities that match at any given point of time are so small that it would be practically impossible to create any inducement to any third party.*
- *Further, Total shares of SRS Limited, traded on September 16, 2011 on BSE was 1460218 and on NSE it was 1465530 shares. The self-traded quantity on BSE was 48538 in 1095 self-trades. Therefore per trade ratio is 44 shares. Similarly on NSE, the self-traded quantity was 39750 shares in 915 self-trades. Therefore per trade ratio is 43.44 shares. Such self-trades as per the letter (SCN) dated August 7, 2017 are not possible manually which is spread in different terminals in fraction of seconds with different quantity matching with different market participants at the said point of time.*
- *Further, the orders placed which got converted into trades was less than 2 seconds time period and all the trades/transactions are Jobbing/Arbitrage in nature and due to High Speed of trading in small lots spread across the day evenly. Further, due to the latency in the leased lines some of the orders partly matched with M/s. Crosseas as their volume is huge balance orders matched with other market participants, which is evident on perusal of the contents. Further orders placed through the Terminal Ids that are matched are not 100% matching orders with other orders in the market but, part orders are matching and balance orders are matched and converted into trades with other persons/entities in the stock market.*
- *The self-trades happening due to manual punching may give a color of fictitious trades but the self-trades happening on account of algo trading software platform is on account of latency factor or loss of packets where in the system matches the orders from two terminals of the trading member with the Exchange System.*
- *The Noticee submitted that they have not violated the provision under Section 15HA and 15HB of the SEBI Act, the violations of Regulation 3(a), (b), (c), (d), 4(1) and 4(2)(a) and 4 (2) (g) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulation, 2003.*
- *The Noticee submitted that they deny that they have violated Clause 3 (a) of SEBI (PFUTP) Regulations, 2003 which states that "No person shall directly or indirectly – Buy, sell or otherwise deal in securities in a fraudulent manner".*
- *The Noticee submits that the said alleged charges under Regulation 3(a) of SEBI (PFUTP) is denied in totally. It is submitted that the dealings in the scrip SRS Limited (SRS) is jobbing using the Algo Trading Software approved by the Exchanges and the specific alleged charge is in respect of self-trades which is*

on account of Algo Trading System mechanism which is an approved mechanism and within the norms laid down by the Exchanges. Hence, the bonafide transactions carried out in the normal course of business cannot be treated as fraudulent. Further, there is no price manipulation of the scrip SRS Limited at any point of time as the transactions are in the market at the market prevailing rates. Hence the charges of alleged fraudulent dealings are denied and ought to be dropped.

- *The present charges under Regulations 3(b), 3(c) and 3(d) are not applicable they have not dealt in the scrip SRS Limited either through off market or in the market before listing nor has acted manipulatively or deceptively or applied any device, scheme or artifice to defraud in contravention of the provisions of the act or the rule or regulations made there under. Further the transactions in the scrip are Jobbing in nature using the Algo Trading Software and have not received any off market shares in the own demat beneficiary account.*
- *The Regulation 4 (1) and (2) (a) and (g) is abundantly clear that it is in respect of market manipulation in respect of trading, such as buying and selling of securities and manipulating the market with the intention of artificially raising or depressing the prices of securities. The Noticee submitted that all the dealings in the scrip have been done on September 16, 2011 which are Jobbing using Algo Trading Software and all the settlement obligations have been completed. Further, the charge of "indulging in an act which creates false or misleading appearance of trading in the securities market" cannot be applied the dealing in the scrip was on market prices using the Algo Trading Sofware approved and allowed by the Exchanges. Therefore, the present clause is not applicable and should be dropped.*
- *Further, in the light of facts and circumstances as mentioned above, no charges stand established in price manipulation in the script of SRS Limited and it is, therefore, requested to drop all the charges in the matter and that they have never done any fictitious self-trades and have not violated any provisions of the regulations and that it has never been intention to indulge into any sort of such activities.*

8. Considering the facts and circumstances of the case, reply of the Noticee and the SEBI Policy on self-trades dated May 16, 2017 the undersigned is of the opinion that the present matter can be decided on the basis of facts/materials available on record without personally hearing the Noticee.

CONSIDERATION OF ISSUES AND FINDINGS

9. I have perused the documents available on record. The issues that arise for consideration in the present case are :

a. Whether Noticee, by indulging in self-trades, had violated Regulations 3(a), 3(b), 3(c), 3(d), 4(1) and 4(2)(a) and 4(2)(g) of SEBI (PFUTP) Regulations, 2003 and Clause A (3), A (4) and A (5) of the Code of Conduct for Stock Brokers, Schedule II read with Regulation 9 (f) of SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992? and
b. Does the violation, if any, attract monetary penalty under section 15HA and 15HB of SEBI Act, 1992?

Violation of PFUTP Regulations, 2003

10. Upon perusal of the documents available on record, I find that the Noticee has executed 915 self-trades involving a total quantity of 39750 shares (0.07% of the market Volume) on NSE and 1095 self-trades involving a total quantity of 48538 shares (0.146% of the market Volume) on BSE in the scrip of SRS during the investigation period. It is also a matter of record now, that SEBI has come out with a policy on issue of self-trades dated May 16, 2017 which states that intention is a sine qua non for establishing manipulation in case of self-trades and accidental/unintentional self-trades are not covered under Regulations 4(2)(a), 4(2)(b) and 4(2)(g) of SEBI (PFUTP) Regulations, 2003 which are the specific legal provisions applicable to self-trades.

11. In view of the aforesaid policy of SEBI, the relevant issue to decide herein is whether any manipulation is arising out of the self-trades executed by the Noticee or any intention to enter into self-trades is evident from the material on record. The proof of fraudulent/manipulative transactions in the circumstances always depends on inferences drawn from a mass of factual details, the nature of transactions, conduct of the parties etc. It is difficult to prove intent by direct evidence in these types of manipulation and, therefore, circumstantial evidence has to be taken into consideration. Further, the circumstantial evidence should be sufficient to raise a presumption in its favour with regard to the existence of a fact sought to be proved. Since it is exceedingly difficult to prove facts which are especially within the knowledge of parties concerned, the legal proof in such circumstances partakes the character of a prudent man's estimate as to the probabilities of the case.

12. The Hon'ble Securities Appellate Tribunal ("**SAT**") in the matter of *Ketan Parekh Vs. SEBI* (Appeal No. 2 of 2004 decided on 14.07.2006) observed that, "............*Any transaction executed with the intention to defeat the market mechanism whether negotiated or not would be illegal. Whether a transaction has been executed with the intention to manipulate the market or defeat its mechanism will depend upon the intention of the parties which could be inferred from the attending circumstances because direct evidence in such cases may not be available. The nature of the transaction executed, the frequency with which such transactions are undertaken, the value of the transactions, whether they involve circular trading and whether there is real change of beneficial ownership, the conditions then prevailing in the market are some of the factors which go to show the intention of the parties. This list of factors, in the very nature of things, cannot be exhaustive. Any one factor may or may not be decisive and it is from the cumulative effect of these that an inference will have to be drawn*."

13. Hon'ble Supreme Court of India in the matter of *SEBI v Kishore Ajmera* (order dated February 23, 2016), observed the following with respect to synchronized trades and market manipulations:

    "It is a fundamental principle of law that proof of an allegation levelled against a person may be in the form of direct substantive evidence or, as in many cases, such proof may have to be inferred by a logical process of reasoning from the totality of the attending facts and circumstances surrounding the allegations/charges made and levelled. While direct evidence is a more certain basis to come to a conclusion, yet, in the absence thereof the Courts cannot be helpless. It is the judicial duty to take note of the immediate and proximate facts and circumstances surrounding the events on which the charges/allegations are founded and to reach what would appear to the Court to be a reasonable conclusion therefrom. The test would always be that what inferential process that a reasonable / prudent man would adopt to arrive at a conclusion…

14. I find that Noticee as a trading member had bought 1465530 shares (2.59%) on NSE and 1460218 shares (4.39%) on BSE in the scrip of SRS during the investigation period. Of the above, the Noticee as a client had bought 1465530 (2.59%) shares on NSE and 1460218 (4.39%) shares on BSE in the scrip of SRS during the investigation period.

15. I note that volume transacted in self-trades is a factor to analyze the manipulative intention of a person as per the SEBI policy dated May 16, 2017 on the issue of self-trades. If the self-trades of the Noticee is considered in that background then it would not be appropriate to hold that there was any manipulative intent on the part of the Noticee to engage in intentional self-trades as the percentage of the self-traded quantity of the Noticee to that of the market trade volume on NSE is 0.07% and BSE is 0.146% only. Such small percentage / volume of self-trades of the Noticee in the scrip of SRS is miniscule as compared to the total trading in the said scrip during the investigation period.

16. It is important to note here that the motive behind executing fraudulent self-trades can either be to artificially raise the volume in a scrip / or to manipulate the price of a scrip by way of creating misleading appearance of trading so as to induce others to deal in the particular scrip. I note that the Investigation Report has not brought out any allegation of price manipulation attributed to the Noticee's self-trades nor is there any evidence suggesting any fraudulent intention behind execution of such self-trades by the Noticee.

17. I also note that there are no adverse observations regarding other forms of market manipulation i.e. synchronized trading, reversal trading or executing orders away from last traded price or creation of new high prices by way of first trades etc. against the Noticee in the Investigation Report.

18. After taking into account aforesaid observations, perusal of Investigation Report and taking into account, in particular, the miniscule percentage / volume of self-trades as compared to the total market volume during the investigation period, I am of the view that self-trades of the Noticee in the scrip of SRS during the investigation period were non-intentional and non-manipulative. That being the case and after taking into account, the SEBI policy dated May 16, 2017 on self-trades, I am inclined to conclude that violations of provisions of Regulations 3(a), 3(b), 3(c), 3(d), 4(1) and 4(2)(a) and 4(2)(g) of SEBI (PFUTP) Regulations, 2003 and Clause A (3), A (4) and A (5) of the Code of Conduct for Stock Brokers, Schedule II read with Regulation 9 of SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992 by the Noticee do not stand established.

Since the alleged violations are not established against the Noticee, Issue b. of Para-9, requires no consideration.

ORDER

19. For the aforesaid reasons, Show Cause Notice A&E/EAD/PM-NK/18641/2017 dated August 7, 2017 alleging violations of provisions of Regulations 3(a), 3(b), 3(c), 3(d), 4(1) and 4(2)(a) and 4(2)(g) of SEBI (PFUTP) Regulations, 2003 and Clause A (3), A (4) and A (5) of the Code of Conduct for Stock Brokers, Schedule II read with Regulation 9 of SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992 by the Noticee i.e. R. M. Shares Trading Private Limited, is disposed of without imposition of any penalty.

20. 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: May 22, 2018 **Prasanta Mahapatra**
Place: Mumbai **Adjudicating Officer**