BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/PM/NK/2018-19/574]

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

OPG Securities Private Limited (PAN: AAACO1081C)

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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FACTS OF THE CASE IN BRIEF

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 OPG Securities Private Limited (hereinafter referred to as Noticee), was one of the top 10 trading member trading during the investigation period and had bought approximately 4.29% (1424941shares) on the BSE Limited (BSE) on behalf of its clients including GKN Securities. Further all of the above 4.29% (1424941 shares) on BSE was bought on behalf of its client GKN Securities. It was further observed that the Noticee had repeatedly indulged into self-trades on behalf of its abovementioned client on BSE.

3. It was alleged that the Noticee, had repeatedly entered into self-trades on behalf of its client (GKN Securities) in the scrip of SRS during the investigation period. It may be noted that self-trades are trades, in which both the buyer and the seller are the same entity. Self-trades create false or misleading appearance of trading in the securities market and such transactions are carried out without intention of change of ownership of the security and may or may not result into price manipulation. The details of self-trades of the entities mentioned above are as per the table below:

On BSE:

Client Name	Broker Name	Self Trade 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.
GKN Securities	OPG Securities Private Limited	32032	487	0.096	-1	2.248	2.248

4. The Noticee had executed 487 self-trades on behalf of its client (GKN Securities) in the scrip of SRS on BSE involving a total quantity of 32032 shares during the investigation period. In view of the above, it was alleged that the Noticee had violated the provisions of Clause A (2) of the code of conduct specified under schedule II read with Regulation 7 (now Regulation 9(f)) of the SEBI (Stock Brokers & 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 15HB of the SEBI Act, 1992, the alleged violations of provisions of Clause A (2) of the code of conduct specified under schedule II read with Regulation 7 (now Regulation 9(f)) of the SEBI (Stock Brokers & Sub brokers) Regulations, 1992 by the Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

6. A Show Cause Notice A&E/EAD/PM-NK/18634/2017 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 15HB of the SEBI Act, 1992 for the alleged violations of provisions of Clause A (2) of the code of conduct specified under schedule II read with Regulation 7 (now Regulation 9(f)) of the SEBI (Stock Brokers & 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. Vide letter dated August 22, 2017 the Noticee, filed reply to the SCN. The summary of submissions are as follows:

    - *The Noticee submits that the allegation is that they have violated the provisions of 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. This allegation against our Company is a sequel to the allegation of self-trades in the aforesaid scrip on 16.09.2011. The allegation in the Notice is incorrect and is hereby refuted. The Noticee submits that it has exercised due skill and care while executing trades in the scrip of SRS Limited on behalf of our Client M/s. GKN Securities on BSE.*

    - *Further, there have been regular periodical inspections of books of account and other records by NSE, BSE and SEBI and in none of the inspections any violation of the nature referred to in the Notice has been observed, noticed or found by any of the inspection team. It is also pertinent to note that they have not received any communication or Notice either from NSE or BSE alleging non-observance of the Rules, Bye-laws and Regulations of the Stock Exchange or of SEBI, in the matter of aforesaid trading in the scrip of SRS Limited on the day of listing of the scrip i.e. 16.09.2011.*

    - *The self-trades alleged in the Notice are not manipulated 'one to one' transactions i.e. synchronized trades but could have occurred because of matching of small quantities of Buy and Sell orders placed on different id terminals. M/s. GKN Securities does intra-day jobbing and arbitrage in various scrips. Their trades were executed on a number of ids / trading terminals and matching of inter-id trades of small quantities is neither intentional nor malafide and does not result in any financial gain either to them or to their client M/s.*

GKN Securities. The jobbing trades were squared up on the same day of trading.

- *As a matter of fact, any matching of inter-id trades which happens by chance, results in financial loss to the Broker and / or to the client on account of payment of Exchange transaction charges, STT, SEBI Fee and other operational expenses as the trade matching is at the same rate of buy and sell, eventually resulting in financial loss.*

- *M/s. GKN Securities has done only jobbing / arbitrage with same quantities of buy and sell. There are some Stock Brokers who have either only bought the shares or sold the shares during the period of investigation and we believe that the fluctuations, if any, in market prices can be on account of trading by those Stock Brokers.*

- *The alleged self-trades constitutes miniscule percentage or part of the total market volume and as mentioned in the Notice, such trades constituted only 0.096% of the market volume on BSE and 0.072% of the market volume on NSE. This small volume of trade is a testament that such trades cannot be considered to have influenced and / or distorted market equilibrium. The alleged self-trades cannot be said to be manipulative, fraudulent or deceptive transactions. This has been so held in the Order passed by Shri Nagendraa Parakh, Chief General Manager & Adjudicating Officer of SEBI in the matter of trading activities in the scrip of Unitech Limited (Adjudication Order No. EAD/AO-NP/JR/47/2017 dated 19.06.2017). It has been observed in the said order that 'Self-trades occurred because of trading in same shares by multiple traders / jobbers in brokers' own account. The volume of self-trade is less than 1% of the total volume in shares of Unitech Limited. The impact of self-trades on LTP is also not significant on daily basis. Therefore, in compliance of SEBI Policy, I am inclined to drop the adjudication proceedings initiated against the Noticees ………'*

- *Your kind attention is also invited to the decision dated 20.04.2016 of Securities Appellate Tribunal in the matter of M/s. Krishna Enterprises Versus SEBI, wherein the Hon'ble Tribunal has opined that conflicting orders passed by the Adjudicating Officers does not promote the development of the Securities Market and is not in the interest of the Securities Market. As a matter of general jurisprudence the ratio decidendi of the orders passed by one Adjudicating Officer of SEBI should be followed by other Adjudicating Officers.*

- *In this context, both NSE and BSE have been issuing circulars from time to time stating that such type of trades between inter-ids of the same broker shall be expunged, deleted or removed from the system.*

- *Further, SEBI has formulated a Policy sometime in May/June, 2016, not to penalize Stock Brokers for self-trades of the nature where the matching of small quantities is between inter-id terminals of the same broker. The Noticee further submits that it had no control while placing the orders as to the names of the counter parties in the market at the time of placing, execution and matching of the trades. The Noticee also submits that there was no intention to manipulate the market or to commit fraud in the aforesaid trading alleged as self-trades. The trades executed in the scrip of SRS Limited were executed without any intention to manipulate the market or to act fraudulently against anybody including the market, investors or a group of investors. The self-trades were accidental and/or unintentional because of deficient system of trade matching of the Stock Exchanges.*
- *Correctly, these type of self-trades should have been expunged and/or deleted or removed from the list of executed trades. Mere occurrence of self-trades is not illegal in the absence of proof of malafide intention to defraud. There is nothing in the show cause notice to suggest that there was any intentional manipulation. There was neither any manipulation in respect of self-trades nor was there any intention to enter into self-trades. It is reiterated that there was no intention/ manipulation/ fraud and in view of small quantities of self-trades (and not synchronized trades), an inquiry should not be held. From the facts stated above, it is concluded that the Noticee has acted with due skill, care and diligence in the conduct of business.*
- *Further, that neither the Noticee nor any of its Directors or Key Managerial Personnel is related to M/s. SRS Limited and / or to their Directors, Management, Key Managerial Personnel etc. There is no direct or indirect connection of any nature whatsoever between the Noticee and M/s. SRS Limited.*

8. Considering the facts and circumstances of the case, reply of 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 written submissions of the Noticee and the documents available on record. The issues that arise for consideration in the present case are :

a. Whether Noticee, by indulging in self-trades on behalf of its client, had violated provisions of Clause A (2) of the code of conduct specified under schedule II read with Regulation 7 (now Regulation 9(f)) of the SEBI (Stock Brokers & Sub brokers) Regulations, 1992? And

b. Does the violation, if any, attract monetary penalty under section 15HB of SEBI Act, 1992?

Violation of clause A (2) Code of Conduct for Stock Brokers specified in the Broker's Regulations, 1992.

10. Upon perusal of the reply of the Noticee and documents available on record, I find that it is not in dispute that the Noticee has executed 487 self-trades on behalf of its client namely, GKN Securities in the scrip of SRS on BSE involving a total quantity of 32032 shares during the investigation period. It is also a matter of record now that the 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 client of 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. I find that Noticee carried out gross trades (buy + sell) for 2849882 shares on BSE in the scrip of SRS during the investigation period, of which self-trades of the client was for a quantity of 32032 shares through 487 trades on BSE. I further find that even in the investigation conducted by SEBI, it was observed that the percentage of gross trade volume of the Noticee was 4.29% on BSE to that of the market trade volume on the exchange.

13. 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 executed on behalf of its client is considered in that background then it would not be appropriate to hold that there was any manipulative intent on the part of the client of the Noticee to engage in intentional self-trades as the self-traded quantity of the client of the Noticee to that of the market trade volume on BSE it was 0.096%. Such percentage / volume of self-trades (0.096%) of the Noticee in the scrip of SRS is miniscule as compared to the total trading in the said scrip during the investigation period.

14. I note that for the transaction in question, order dated May 22, 2018 has been passed in a separate proceeding before me in respect of GKN Securities as under:

   "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 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), 4(2)(a) and 4(2)(g) of SEBI (PFUTP) Regulations, 2003 by the Noticee do not stand established."

15. Since it is not established that GKN Securities (client of the Noticee) had entered into self-trades repeatedly with an intention to create artificial volume in the scrip of SRS, there is no case to draw any adverse inference on the Noticee as regards its role on exercise of due skill, care and diligence under the provisions of Clause A(2) of the Code of Conduct for Stock Brokers, Schedule II read with Regulation 9 of SEBI(Stock

Brokers and Sub-Brokers) Regulations, 1992. As the alleged violation are not established against the Noticee, Issue b. of Para 9, requires no consideration.

ORDER

16. For the aforesaid reasons, Show Cause Notice A&E/EAD/PM-NK/17634/ 2017 dated August 7, 2017 alleging violations of provisions of Clause A (2) of the code of conduct specified under schedule II read with Regulation 7 (now Regulation 9(f)) of the SEBI (Stock Brokers & Sub brokers) Regulations, 1992 by the Noticee i.e. OPG Securities Private Limited, is disposed of without imposition of any penalty.

17. 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 28, 2018 **Prasanta Mahapatra**

Place: Mumbai **Adjudicating Officer**