**BEFORE THE ADJUDICATING OFFICER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**

**ADJUDICATION ORDER NO. AO/JS/VRP/23-28/2017**

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**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:

| Sr. No. | Name and Address of the Entities | PAN Number |
|---|---|---|
| 1 | M/s. Rikhav Investments<br>01, Anna Franchises , Shopping Centre 4,apartment Kilvani Naka, Silvasa, Silvasa, Dadra And Nagar Haveli, India, 396230 | AALFR6841B |
| 2 | JMP Securities Pvt Ltd<br>801/805 Elite Square Bldg,<br>Perin Nariman Street, Bazar Gate,<br>Mumbai - 400001 | AAACJ8850C |
| 3 | Marwadi Shares and Finance Ltd<br>Marwadi Financial Plaza Nana Mava Main Road Off 150 Feet Ring Road, Rajkot, Gujarat, India, 360005 | AABCM5192K |
| 4 | Genuine Stock Brokers Pvt. Ltd.<br>B-601 Gopal Palace, Near Shiromani Tower,<br>Nehru Nagar, Satellite Ahmedabad,<br>Gujarat: 380015 | AAACG7970J |
| 5 | Naman Securities & Finance Pvt. Limited<br>415 Parekh Market39 J.S.S.Road, opera House<br>Mumbai - 400 004 | AAACN1917G |
| 6 | BP Fintrade Pvt Ltd<br>Room No-45 Mulji Laxmidas Bldg 3rd Floor 3 Mint Road Fort, Mumbai, Maharashtra, India, 400001 | AAACY2372G |

**In the matter of in the scrip of Midfield Industries Limited**

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**BACKGROUND**

1. Securities and Exchange Board of India (hereinafter referred to as **'SEBI'**) conducted investigation in the scrip of the company during the period of August 4, 2010 to April 29, 2013 (hereinafter referred to as the **'investigation period'**).

2. Upon Investigation, it was alleged by SEBI that the entities viz. M/s. Rikhav Investments, JMP Securities Pvt. Limited, Marwadi Shares and Finance Limited, Genuine Stock Brokers Pvt. Limited, Naman Securities & Finance Pvt. Limited and BP Fintrade Pvt. Limited (hereinafter all 6 collectively referred to as **'Noticees'**) had violated the provisions of the Regulations 3(a), (b), (c), (d), 4 (1) and 4(2) (a) and (g) of SEBI (Prohibition of fraudulent and Unfair Trade Practices relating to the Securities Market) Regulation, 2003 (hereinafter referred to as **'PFUTP Regulations'**) by executing self-trades on more than 1 day & the total volume of said self-trades was more than 10000 shares. The details of self-trades executed by the Noticees is shown in table below:

| S. No. | Entity Name | Total Self Trade Volume | Total Self Trade Count | No of days on which self-trades done | % Of Self Traded Qty. To Market Vol. | Net LTP contribution by self-trades |
|---|---|---|---|---|---|---|
| 1 | M/s. Rikhav Investments | 23820 | 1040 | 45 | 0.01% | -2.75 |
| 2 | JMP Securities Pvt Ltd | 23523 | 26 | 13 | 0.01% | 0.1 |
| 3 | Marwadi Shares and Finance Ltd | 15728 | 81 | 23 | 0.01% | 0.25 |
| 4 | Genuine Stock Brokers Pvt. Ltd. | 15438 | 101 | 16 | 0.01% | 0.55 |
| 5 | BP Fintrade Pvt Ltd | 84143 | 1052 | 89 | 0.04% | -6.9 |
| 6 | Naman Securities & Finance Pvt. Ltd. | 11328 | 44 | 20 | 0.01% | 0 |

**APPOINTMENT OF ADJUDICATING OFFICER**

3. An Adjudicating Officer was appointed vide order dated September 22, 2016 under Section 19 read with section 15-I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **'SEBI Act, 1992'**) and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rule, 1995 (hereinafter referred to as **'Adjudication Rules'**), to inquire into and adjudge under Section 15HA of SEBI Act, 1992. Consequent to transfer, the proceedings are now proceeded with in terms of Order dated May 18, 2017 to inquire into and adjudge under Sections 15HA the alleged violations against the Noticees.

**SHOW CAUSE NOTICE, REPLY AND HEARING**

4. A common Show Cause Notices (hereinafter referred to as **'SCN'**) in terms of the provisions of Rule 4 of Adjudication Rules read with Section 15I of SEBI Act, 1992 was issued on September 20, 2017 to the Noticees calling upon the Noticees to show cause as to why an inquiry should not be held against them

under Rule 4 of the Adjudication Rules and penalty be not imposed for the alleged violation. The SCN were duly delivered to the Noticees except Noticee namely Rikhav Investments.

5. The Noticees have submitted their replies to the SCN.

5.1. The Noticee namely BP Fintrade Private Limited vide letter dated October 18, 2017 ad vide letters dated November 20, 2017, *inter alia*, made the following submissions:

*"….Regulation 2(C) defines fraud to include knowing misrepresentation of truth or concealment of material facts, suggestion to a fact which is not true, active concealment of fact, promise without an intention to perform, representation made in a reckless manner, deceptive behavior of a person, false statement made etc.*
*Our act of trading in Midfield or for that matter in any security is only as per our predefined trading strategy. A few incidental self-trades could take place during the execution of our trading strategy, but these negligible number of unintentional self-trades (BSE-0.04%) no way fall under the definition of fraud and hence we cannot be said to have dealt in securities in a fraudulent manner.*
*…..*
*We have executed all our trades on the platform of the Exchange and have always fulfilled our obligation arising there from. All the funds and securities obligations have been promptly met. All trades are executed with an intention of generating small profits and with no other purpose. Self-trades were purely unintentional and such unintentional trades cannot be a ground to question our intentions of performing the trades. Intentions behind the trade cannot be questioned based on such negligible quantity of self- trades but are surely proved beyond doubt from the fact that a extremely large …*
*We have executed all transactions with full integrity and have taken all the required due care while executing the transactions and have ensured all compliances with the statutory requirements. There has been no manipulation or malpractice which the notice could substantiate.*
*We would like to bring your kind notice, the order of the Hon'ble Securities Appellate Tribunal dated January 24, 2014 in the case of Smt. Krupa Sanjay Soni vs SEBI where the SAT had taken a view that "a few instances of self trades in themselves would not, ipso facto, amount to an objectionable trades." A copy of the order is enclosed for your reference as Annexure 1.*
*In addition to this, in a similar matter of Gayatri Project Limited, the adjudicating officer, vide its order dated April 30, 2014 concluded that the charges leveled against the noticees in the SCN do not stand established and the matter was disposed off on the grounds that when the percentage of self-trades is negligible, the self-trades are not capable of creating artificial volume. A copy of the order is enclosed for your reference as Annexure 2.*
*Further, in a similar matter of MIC Electronics Ltd., the adjudicating officer, vide its order dated February 27, 2017 concluded the charges leveled against the notices in the SCN do not stand established and the matter was disposed off. A copy of the order is enclosed for your reference as Annexure-3.*

5.2. The Noticee namely Genuine Stock Brokers Pvt., Limited vide letter dated October 13, 2017, *inter alia*, made the following submissions:

***<u>Denials of Alleged Violation of law</u>***

*We vehemently deny alleged violation of provisions of Regulation 3 (a),(b),(c),(d), Regulations 4(1), 4(2)(a)&(g) of SEBI(PFUTP) Regulation and submit as under:*
*i. We did not buy, sell or otherwise deal in shares of MIL in any fraudulent manner. We had placed orders in shares of MIL in normal and ordinary course of our share trading activity which was in due compliance of all rules and regulation prescribed by regulator from time to time (Ref Regulation 3 (a) of PFUTP Regulations);*
*ii. While dealing in MIL, we have not employed any \ manipulative or deceptive device or acted in contravention of the provisions of SEBI Act or Rules/Regulations made thereunder (Ref Regulation 3 (b) of PFUTP Regulations);*

*iii. While dealing in shares of MIL; we did not employ any device, scheme or artifice to defraud anyone (Ref Regulation 3 (c) of PFUTP Regulations);*
*iv. . We have not engaged in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with dealing in or issue of shares of MIL. None of our trades were in contravention of the provisions of SEBI Act. Or Rules/Regulations made thereunder (Ref Regulation 3 (d) of PFUTP Regulations);*
*v. As aforesaid, we repeat and reiterate that we have not bought, sold or otherwise dealt in shares of MIL in fraudulent manner at all (Ref Regulation 4 (1) of PFUTP Regulations);*
*vi. We have not indulged in an act which created false or misleading appearance of trading in scrip of MIL. All our transactions were carried out on trading terminals of stock exchanges in normal & ordinary course of our trading activities and same were within parameters laid down by stock exchange (Ref Regulation 4(2)(a) of PFUTP Regulations);*
*vii. We have not entered into any transaction in MTL without intention of performing it or without intention of change of beneficial ownership of said securities (Ref Regulation 4(2)(g) of PFUTP Regulations)*

5.3. The Noticee namely JMP Securities Pvt. Limited vide letter dated December 05, 2017, *inter alia*, made the following submissions:

*"……*
*(iii) The percentage volume of our alleged self-trades vis a vis market volume was exceedingly insignificant to have any kind of impact on either the price or volume of the scrip. Admittedly there is no allegation that we had increased or decreased the price. The allegation of creating misleading appearance of trading cannot sustain in view of the miniscule quantum of self-trades which were much less than ½ % of total volumes (save and except on 2 days). Such miniscule quantum of alleged self-trades cannot create artificial volume, leading to false and misleading appearance. Thus, effectively the incidental self-trades had no impact either on the price or the volume of the scrip.*
*(iv) It may be appreciated that in the entire trading pattern only a small percentage of trades have resulted in the alleged self-trades, on 13 stray days (out of investigation period spanning over 998 trading days) which were done by us in the ordinary course of trading dehors sinister intent or design.*
*……*
*(vii) It is not the case wherein our dealers had deliberately placed orders in the nature of self-trades. None of the impugned trades were placed for creating any artificial price rise or fall. The alleged self-trades have occurred as our dealers were active jobbers on the exchange. The alleged accidental self-trades occurred due to technical inadvertent matching with no intention to effect (and actually had no affect) either the price or volume of the scrip and without the knowledge of the dealers. Admittedly ther has been no disturbance/ impact either on price or volume as a result of our accidental self-trades.*
*……*
*14 In this context it is submitted that Hon 'ble Supreme Court in the case of **Varanasaya Sanskrit Vishwa Vidyalaya a & Anr. V Dr. Rajkishore Tripathi and Anr**, has inter alia been held that "using strong language not sufficient. Proof required. It is not enough to state in general terms that there was collusion "without more particulars. General allegations are insufficient even to amount to an averment of fraud or which only court ought to take notice, however strong the language in which they are couched may be, and the same applies to undue influence and coercion."*
*…..*
*Hear we may point out that the Hon'ble Tribunal in the matter of Smt Krupa Sanjay Soni vs SEBI (SAT Appeal No. 32 of 2014), vide its order dated 24.1.2014 has inter alia observed that "This Tribunal has taken a consistent view that few instances of self-trades in themselves would not, ipso facto, amount to an objectionable trades." Even in the matter under reference, the alleged self-trades are few and have happened under peculiar circumstances as set out hereinbefore.*
*…..".*

5.4. The Noticee namely Marwadi Shares and Finance Limited vide letter dated October 17, 2017, *inter alia*, made the following submissions:

*"……*

*10 In our humble submission, neither we have violated any provisions of SEBI Act, 1992, relating to trading in the scrip during the investigation period in manner as has been alleged. Therefore there appears to be complete confusion and dilemma prevailed in the minds of Investigating Authority in respect of who the entities are involved in the trades and who played the fraudulent and manipulative role.*

*11 In view of the above, we would certainly like to place on record true and correct facts and circumstances under which such alleged transactions have taken place.*

*11.1 We would also like to bring to your notice of your goodself that we have not been a party to execute such alleged Self-Trades as has been alleged but emphatically and categorically say and submit that the same was on account of trade matching system of anonymous online trading system of the exchanges.*

*11.2 Under the circumstances, we would like to have copy of all such documents, stated / referred in the impugned Notice and appears to have been relied upon by your goodself to enable us to defend ourselves properly and effectively. We would also like to have copy of all such documents, records, information, and data collected during the course of investigation.*

*11.3 Even, no reference of affording an opportunity to inspect the records and documents is found in the entire impugned Notice. However, before responding to and placing on record our objections to the impugned Notice in question, we would like to have copies of certain documents as well as statements, if any, recorded of any persons including the documents and information which have been enlisted hereunder so as to enable us to know as to on what basis and on the basis of which documents and evidences such allegations are put against us and such harsh penal actions are contemplated against us.*

*12.The documents which we would like to have copies of are as under:-*

*12.1 On plain reading of para 1 of Notice a reference of Annexure I of the Show Cause Notice being the "Communication of Order appointing Adjudicating Officer", it states at para (i) "whereas... conducted investigation... and into the possible violation of the provisions of the SEBI Act, 1992 and various Rules, Regulations and Guidelines made there under." On further reading at para (ii) "And whereas it prime facie appeared to the Whole Time Member that the following entities...". On further reading at para (iii) "And whereas the Whole Time Member is satisfied that there are sufficient grounds to inquire into and adjudicate upon the alleged violations of the said entities..." is found. You are requested to provide the details submitted before the Whole Time Member, SEBI which has satisfied him to exercise the powers conferred upon him under Section 19 of SEBI Act, 1992 read with Section 151 of SEBI Act, 1992 and Rule 3 of the Adjudicating Officer Rules, 1995 to enable us to defend ourselves properly and effectively.*

*12.2 We have been in receipt of impugned Notice dated September 20, 2017 on September 27, 2017, annexed therewith the documents claimed to have been relied upon like,*

*(a) Annexure: 1B - Copy of the order dated September 22, 2016 communicating the appointment of AO,*

*(b) Annexure: 1A: Copy of the transfer order dated May 18, 2017*

*No other and further documents have been claimed to have been relied upon documents for the present proceedings. You are requested to provide Investigation Report along with all other documents and record collected during the course of Investigation.*

*12.3 On having careful look at the contents of Para 3 of Show Cause Notice, the details of self-trades at BSE in the shares of "MIDFIELD INDUSTRIES Ltd." has been presented in a tabular form. You are requested to provide the complete trade log, Order Log, price log, volume log, price volume volatility log, complete trade history and tick by tick data for the period of investigation.*

*12.4 On having careful look at the contents of para 4 of Show Cause Notice, that "... the Noticee No. 3 (Marwadi Shares and Finance Ltd.) had indulged into Self-Trades on BSE...." You are requested to provide complete details of data and basis adopted including the basis adopted in selection of quantity of more than 10,000 as has been referred in para 3 of the notice.*

*12.5 You are also requested to provide the details of terminal id, CTCL id, dealer id, etc; to substantiate the contents of columns in the table.*

*12.6 You are requested to provide us the complete trade and order log including tick by tick data so as to enable us to remove the inconsistency, if any, as also to respond effectively and properly.*

*12.7 On having careful look at the contents of para 4 of Notice, that "In view of the above, it is alleged that Noticees namely....Marwadi Shares and Finance Limited ...., have violated 3(a)(b)(c)(d), 4(1)(A) AND (G) of SEBI(PFUTP) Regulations, 2003" Your are requested to provide complete details of documents, records and information relied upon to come to conclusion as has been referred in para under reference.*

*12.8 We would also like to have a copy of the complete trade history, trade order log, volume order log, price order log, price – volume volatility log, etc: as we has been alleged as as made part of the entire group.*

*13. Without prejudice to our stand taken hereinabove, we most humbly and respectfully submit that after being made available copies of the aforesaid documents, we may satisfy ourselves that no other further documents are required and on being satisfied, we may ask for inspection and thereafter shall put our objections against the said impugned Notice within a reasonable time which may be given to us. Therefore,* *we earnestly request you to furnish us the copy of such documents and particulars immediately so as to enable us to put our objection, to ask for inspection, if needed and to avail the opportunity of hearing thereafter at the earliest.*

*14. In view of what is stated hereinabove and in light of the fact that the allegation is based on the trade data of BSE and the adverse observation has been made without taking into consideration the consequences arising after putting in place the preventive mechanism by both BSE, it would in fitness of thing to dispose off the matter as has been communicated to Parliament of else first refer the matter to WTM of SWBI to form fresh opinion as has been contended before Hon'ble SAT before proceedings further in the matter.*

6. As sought for by Noticee an opportunity of personal hearing was granted to the BP Fintrade Pvt. Limited on November 16, 2017. The authorized Representative of the Noticee appeared for the hearing and reiterated the submissions made vide letter dated October 18, 2017.
7. Considering the facts and circumstances of the case, it is determined that no prejudice would be caused to the Noticees namely M/s. Rikhav Investments, JMP Securities Pvt Limited, Marwadi Shares and Finance Limited, Genuine Stock Brokers Pvt. Limited and Naman Securities & Finance Pvt. Limited in the given matter if opportunity of hearing under Rule 4(3) of Adjudication Rules is not provided to them in the instant proceedings, and the proceedings can to continued further.
8. As regards the requests of the Noticees namely Genuine Stock Broker Pvt. Limited and Marwadi Shares and Finance Limited to provide certain documents such as investigation report/ inspection of documents, etc., it is to mention that the all relevant documents pertaining to the charges levelled in the SCN were provided to the Noticees.
9. Given all of the above, considering the facts and circumstances of the case, it is being deemed appropriate to decide the matter on the basis of facts/material available on record.

**ISSUES FOR CONSIDERATION**

10. After perusal of the material available on record, I have the following issues for consideration, viz.,
    I. Whether the Noticees had violated of the provisions of the Regulations 3(a), (b), (c), (d), 4 (1) and 4(2) (a) and (g) of PFUTP Regulation by executing self-trades as referred in para 2 above?
    II. Does the violation, if any, on the part of the Noticees attract monetary penalty under Section 15HA of the SEBI Act, 1992?
    III. If so, what quantum of monetary penalty should be imposed on the Noticees considering the factors stated in section 15J of SEBI Act, 1992?

**FINDINGS**

11. On perusal of the material available on record and giving regard to the facts and circumstances of the case and submissions of the Noticees, the findings are as under:-

***ISSUE I: Whether the Noticees had violated of the provisions of the Regulations 3(a), (b), (c), (d), 4 (1) and 4(2) (a) and (g) of PFUTP Regulation by executing self-trades as referred in para 2 above?***

12. It is not in dispute that the Noticees had executed self-trades as stated in para 2 above. The Noticees namely BP Fintrade Pvt. Limited, JMP Securities Pvt. Limited and Genuine Stock Brokers Pvt. Limited had submitted that the self-trade were not intentional and the said self-trades were negligible as compared to the total market volume.
13. In the case in hand it is observed from the documents available on record that the Noticees carried out self-trades for the shares of company as stated in para 2 above during the investigation period, the percentage of the self-trades are 0.01% to the total market volume in respect of Noticees M/s. Rikhav Investments, JMP Securities Pvt Limited, Marwadi Shares and Finance Limited, Genuine Stock Brokers Pvt. Limited and Naman Securities & Finance Pvt. Limited and 0.04% in respect of the Noticee namely BP Fintrade Pvt. Limited.
14. The Noticees in their support had relied on the Hon'ble SAT judgment in the case of Smt Krupa Sanjay Soni vs SEBI (SAT Appeal No. 32 of 2014) where in it is held that, few instances of self-trades in themselves would not, ipso facto, amount to an objectionable trades. Relying on the Hon'ble SAT judgment in the case of Smt Krupa Sanjay Soni vs. SEBI (SAT Appeal No. 32 of 2014) the submissions of the Noticees are accepted.
15. After taking into account aforesaid observations, it is noted that there is miniscule percentage / volume of self-trades as compared to the total market volume during the investigation period.
16. Further the investigation report lacks information to conclusively come to the conclusion as to how the trades so indulged in by the Noticees were in any way manipulative in nature.

17. That being the case, on the above grounds, it can be concluded that violations of provisions of Regulations 3(a), (b), (c), (d), 4(1), 4(2)(a) and (g) of PFUTP Regulations, 2003 by the Noticees do not stand established.

***ISSUE II: Does the violation, if any, on the part of the Noticees attract monetary penalty under Section 15HA of the SEBI Act, 1992?***

18. In view of the findings at para 17 above, the Noticees are not liable for monetary penalty under Section 15HA of the SEBI Act, 1992.

***ISSUE III. If so, what quantum of monetary penalty should be imposed on the Noticees?***

19. Since, the Noticees are not liable for monetary penalty in the instant matter, this issue deserves no consideration.

**ORDER**

20. In view of my findings noted in the preceding paragraphs, the Adjudication Proceedings initiated against M/s. Rikhav Investments, JMP Securities Pvt. Limited, Marwadi Shares and Finance Limited, Genuine Stock Brokers Pvt. Limited, Naman Securities & Finance Pvt. Limited and BP Fintrade Pvt. Limited vide Show Cause Notice dated September 20, 2017 are accordingly disposed off.

21. In terms of the provisions of Rule 6 of the Adjudication Rule, a copy of each of this order is being sent to M/s. Rikhav Investments, JMP Securities Pvt. Limited, Marwadi Shares and Finance Limited, Genuine Stock Brokers Pvt. Limited, Naman Securities & Finance Pvt. Limited and BP Fintrade Pvt. Limited and also to the Securities and Exchange Board of India, Mumbai.

**Date: December 27, 2017** **Jeevan Sonparote**
**Place: Mumbai** **Adjudicating Officer**