BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/PM/NK/2018-19/553]

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

Chandarana Intermediaries Brokers Private Limited (PAN: AACCC4258K)

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 Chandarana Intermediaries Brokers Private Limited (hereinafter referred to as Noticee/Chandarana) was one of the top 10 clients trading during the investigation period and had bought approximately 3.49% (1979900 shares) on the National Stock Exchange of India Limited (NSE) and 5.94% (1973293 shares) on BSE Limited (BSE) of the gross traded volume through the stock broker Marwadi Shares and Finance Limited. It was further observed that the Noticee repeatedly through the

stock broker Marwadi Shares and Finance Limited indulged into self-trades on both the exchanges, NSE and BSE.

3. It was alleged that the Noticee had repeatedly entered into self-trades in the scrip 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 NSE:

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.
Chandarana Intermediaries Brokers Private Limited	Marwadi Shares And Finance Limited	84359	544	0.149	-9.8	4.261	4.261

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.
Chandarana Intermediaries Brokers Private Limited	Marwadi Shares & Finance Limited	161431	846	0.486	-7.2	8.181	8.181

4. The Noticee trading through Marwadi Shares and Finance Limited, executed 544 self-trades in the scrip of SRS on NSE involving a total quantity of 84359 shares and 846 trades on BSE involving a total quantity of 161431 shares during the investigation period. In view of the above, it was alleged that the 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 SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as the SEBI (**PFUTP) Regulations, 2003**).

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), 4(2)(a) and 4(2)(g) of SEBI (PFUTP) Regulations, 2003 by the Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

6. A Show Cause Notice A&E/EAD/PM-NK/18644/2017 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), 4(2)(a) and 4(2)(g) 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 Vide letter dated August 29, 2017 replied to the SCN and also sought inspection of documents relied upon while issuing the SCN, which was acceded to. The Noticee in addition to the abovementioned reply, also filed additional submissions vide letter dated September 26, 2017. The summary of submissions in the above mentioned replies are as follows:

    - *The Noticee submitted that substantial development that has taken place in the matter of Self-Trades at SEBI and SEBI has demonstrated its change in stand related to Self-Trades before the Finance Ministry as executive function as well as before Hon'ble SAT as judicial function. This change in stand of viewing Self-Trades has direct and definite bearing in the facts of the present matter.*
    - *The Noticee has referred to media report published in the Mint Newspaper under title "SEBI reverses stand on Self-Trades" on Monday September 19,*

2016. The said media purportedly reported clearly and evidently manifests the act and conduct on part of SEBI to have put an end to controversial matter of Self-Trades and communicated its stand to the Member of Parliament and Finance Ministry. On making such communication, the stand taken by SEBI therein becomes the public policy and binding to SEBI. Therefore the decision regarding Self-Trades has found to have been taken by SEBI with respect to past matters as well as existing matter and such decision is required to be respected for the investigation period 16th September, 2011. The said media report refers the SEBI communication to Finance Ministry in reply to the question of Member of Parliament Gajendra Singh Shekhawat on SEBI's selective action against certain brokers and found entities executing Self-Trades. In response to the query from MP, SEBI is found to have stated that "Stock Exchanges have already taken measures for preventing self-trade and no further action is envisaged in the matter. It claims to have further stated that "Self-Trades of the previous period (before preventive mechanism was put in place by exchanges) that do not appear to be manipulative will not warrant any penal action. In cases that are pending investigation, they would be disposed of accordingly.

- *In the fact in the case of SRS, the price movement that took place on 16th September, 2011 has been placed on record at para 3 of the SCN. No adverse observation has been found to have been derived on that count of price manipulation. Not only that, it states at para 4 of SCN that "There was no significant movement in the price of the scrip during September 17, 2011 to September 30, 2011." Therefore it is not the case of manipulation and therefore on account of above stand taken by SEBI this matter needs disposal accordingly.*

- *The adverse opinion as to the alleged trades is found to have stated at para 7 of the SCN, which stated that "It was observed that Noticees have entered into Self-Trades. It may be noted that self-trades, in which both buyer and the seller are the same entity…." This clearly and evidently makes it clear that these observation attracts the substantial cause advanced by SEBI of "Self-Trades of the previous period (before preventive mechanism was put in place by exchanges)" and therefore SCN deserves to be disposed of / dropped accordingly in marked respect of the representation of SEBI before Parliament through Finance Ministry.*

- *The Noticee submits that the authenticity and correctness of reference of the above communication referred in newspaper is not accessible. But while having fresh look at the matter, SEBI may have to take into consideration the stand taken and communicated to the Parliament. Therefore we are quite hopeful that present matter is likely to be reconsidered and dropped by SEBI on its having fresh look at the matter.*

- *Besides the stand of SEBI before Finance Ministry and Parliament, the stand SEBI took before Hon'ble SAT in our own matter is also very significant has* *direct bearing on the matter as pending such matter it would not be worthwhile to proceed with another matter on the same charges and allegations.*

- *SEBI expressed its desire before the Hon'ble SAT to permit SEBI to take a fresh look into files in the matter of Appeal No: 104, 184, 185, 279, 403, 410, 411, 455, 507 (Chandarana.) of 2015 and 30 and 43 of 2016. In view of the representation made before Hon'ble SAT, it becomes amply clear that the Board is of the opinion to have a fresh look on the opinion once formed relating to the grounds for adjudging under any of the provisions in Chapter VI-A of the Act with respect to Self-Trades. It would be in fitness of thing to not to proceed with the matter identical and similar to one which is pending for its due and proper consideration of carrying out "fresh look" in the matter of Self-Trades. In our genuine belief, the significant development that has taken place in the opinion once formed by SEBI with respect to Self-Trades and admitted change in stand once taken by SEBI with a view to have a fresh look into the matter has direct and definite bearing in the impugned matter. Therefore, in our considered view, no harm, whatsoever is likely to cause either to neither anyone nor the safety and integrity of securities market is likely to be jeopardised in giving WTM of SEBI to have fresh look into matter of SRS. Conversely, if the matter is not referred to WTM of SEBI for forming opinion afresh as requested and the proceedings is decided to be continued by your goodself in its existing form and status, then irreparable harm and loss is obvious and definite to cause to the Noticee.*
- *The Noticee submitted that it firmly believes that it has a good case to make out and would certainly be able to convince and to satisfy that no Self-Trades has been caused as has been alleged in the impugned NOTICE and further confident that it will likely to meet with the same fate as has been found in the order of Hon'ble SAT referred hereinabove.*
- *The Noticee submitted that without prejudice to what is stated hereinabove above as also hereinafter, it most humbly and respectfully submits that the allegations made against and the charges levelled in the SCN are not admitted by them. It is respectfully submitted that this has been the first ever communication received from the Board on August 10, 2017 in the nature of Notice dated August 07, 2017 in the matter of SRS Limited, though it has been claimed that the Board had conducted investigation in the shares of SRS Limited to ascertain whether there was any violation of the provisions of SEBI Act, 1992, relating to the IPO of SRS Ltd. and trading in the scrip of SRS Ltd. on the day of listing of the scrip SRS Ltd. i.e. September 16, 2001 (hereinafter referred to as "Investigation period").*
- *The Noticee submitted that they have not been in receipt of any correspondence pursuant to Section 11C of the SEBI Act, 1992 before issuance of Notice dated August 07, 2017. The Investigation* inter-alia *revealed that the Noticee was amongst the top 10 buy clients and sell clients on NSE and BSE. It is worthwhile to say that neither there were any adverse findings against it nor*

has there been any prohibitory direction issued against it pursuant to the Investigation.

- *Without prejudice to the aforesaid, it appears that the impugned Notice has been issued without seeking clarification / documents / information etc. from them. Therefore, it seems that purpose and object of such enquiry has been lacking.*
- *Therefore, prima-facie, it appears that the contents of Notice dated August 07, 2017 and its corresponding pretext and context are not on the basis of or in line with or preceded by any purposeful and effective investigation, which can be considered to have provided sound and cogent basis to the observations, findings and conclusions stated in the Notice dated August 07, 2017. This incoherent act and conduct has rendered the contents of Notice dated August 07, 2017 contrary to the facts and documents available on record and nothing but subjective and convenient viewing of transactions, which were carried out in the ordinary circumstances and usual practice of trading pattern. In view of this apparent infirmities in the proceedings adopted for initiation of enquiry and consequent conduct thereto, the enquiry pursuant to Notice dated August 07, 2017 is void ab initio, apart from the same lacking the sound and credible basis including absence of evidence to sustain the charges and allegations levelled.*
- *Besides the aforesaid, the contents of the above referred Notice are based on unilateral observations and findings, on the basis of information furnished by the third parties and the same have been accepted as true and correct facts without inviting clarifications and explanations to the facts and attendant circumstances during the course of investigation thereto before initiating enquiry for the charges and allegations levelled therein and thereby the principle of natural justice has been violated.*
- *The basis adopted to level allegation has been the trade data collection from the system of NSE and BSE. Such data pertains to the period prior to the preventive mechanism put in place by NSE and BSE relating to occurrence of Self-Trades. SEBI assured the Parliament in year 2016 that it will have fresh look for the cases prior to preventive mechanism put in place.*
- *The Noticee has submitted that they have not violated any provisions of SEBI Act, 1992, relating to the IPO of SRS Ltd. and trading in the scrip of SRS Ltd. on the day of listing of the scrip SRS Ltd. i.e. September 16, 2001 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.*
- *The Noticee further submitted that it would like to place on record true and correct facts and circumstances under which such alleged transactions have taken place and that that they were not 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. From the impugned Notice, references of third party communication and documents and information, received during the course of investigation is made at various places in the contents of the impugned Notice and the same appears to have been greatly relied upon for the charges and allegation levelled in the impugned Notice.

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, had violated Regulations 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(a) and 4(2)(g) of PFUTP Regulations, 2003? and
   b. Does the violation, if any, attract monetary penalty under section 15HA of SEBI Act, 1992?

Violation of SEBI (PFUTP) Regulations, 2003

10. Upon perusal of the reply of the Noticee and documents available on record, I find that it is not in dispute that there were 544 self-trades by the Noticee in the scrip of SRS on NSE involving a total quantity of 84359 shares and 846 trades by the Noticee on BSE involving a total quantity of 161431 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 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 client trading through Trading Member Marwadi Shares And Finance Limited traded for 3959800 shares (3.49%) on NSE and 3946586 (5.94%) shares of SRS during the investigation period of which the self-traded quantity was for 84359 (0.15% of market volume on NSE) shares spread over 544 trades on NSE and 161431 (0.49% of market volume on BSE) shares spread over 846 trades on BSE.

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 self-traded quantity of the Noticee to that of the market volume on NSE and BSE was 0.15% and 0.49% respectively. Such percentage / volume of self-trades (0.15% and 0.49%) 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. From the aforesaid negligible percentage of self-trades, it is difficult to arrive at the conclusion that these self-trades were executed by the Noticee with an intent to create misleading appearance of trading in the securities market. 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 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. 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/18644/ 2017 dated August 7, 2017 alleging 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 i.e. Chandarana Intermediaries Brokers 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 23, 2018 **Prasanta Mahapatra**
Place: Mumbai **Adjudicating Officer**