BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. EAD/NP/AS/AO/27/2017]

UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OFINDIA ACT, 1992 READ WITH RULE 5 OF SEBI (PROCEDURE FORHOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATINGOFFICER) RULES, 1995

In respect of:

M/s Milkyways Mercantiles Private Limited (PAN AADCM5430G)

59/1 Birhana Road, Kanpur,

Uttar Pradesh, – 208001

And

M/s SPFL Securities Limited (PAN AABCS2452C)

3/4267, Ansari Road, Daryaganj

New Delhi – 110 002

FACTS OF THE CASE IN BRIEF

1. SEBI conducted an investigation in the matter of MIC Electronics Ltd (MIC, hereinafter), which is listed at BSE and NSE. MIC announced the issue of shares/ warrants convertible into equity shares, on preferential basis on February 21, 2012. The closing price of the scrip which was Rs.8.59 as on February 17, 2012 increased to Rs.12.09 as on February 22, 2012 and the scrip also witnessed increased daily volume for few days after this announcement. Thereafter, on May 25, 2012, the preferential issue proposal was withdrawn and the closing price of the scrip in the month of May was Rs.5.37. During the period of announcement and withdrawal, promoters' shareholding reduced from 15.21% (December 2011) to 8.85% (June 2012.).

2. As per finding of Investigation Report (IR), Milkyways Mercantile Private Limited (PAN AADCM5430G) (hereinafter Milkyway/ Noticee 1) entered into self-trades repeatedly through SPFL Securities Private Limited (PAN AABCS2452C) (hereinafter Notice 2)

being registered Stock Broker vide SEBI Regn. No. INB230812537 & INB010812536, which created artificial volume in the scrip of MIC, leading to false and misleading appearance of trading in the securities market. The SCN alleged that the noticee 1 created artificial volume in the scrip in violations of Regulations 3(a), (b), (c) & (d), 4(1), 4(2)(a) & (g) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003 (PFUTP Regulation hereinafter) and Noticee No 2 alleged to have acted as stock broker and counter-party broker in respect of self-trades of Noticee1 in the scrip of MIC Electronics Ltd, thereby it failed to adhere to Clause A (2) of the Code of Conduct for Stock Brokers r/w Regulation 7 of the SEBI(Stock Brokers & Sub-brokers) Regulations, 1992. Based on the findings of the investigation, SEBI initiated Adjudication Proceedings against the Noticee 1 under Section 15 HA of SEBI Act, 1992 for the alleged violation of the provisions of SEBI (PFUTP) Regulations as enumerated above and against noticee 2 under Section 15 HB of SEBI Act, 1992.

APPOINTMENT OF ADJUDICATING OFFICER

3. Vide an order of Whole Time Member, SEBI, dated May 03, 2015, Ms Anita Kenkare, GM, SEBI was appointed as the Adjudicating Officer to inquire into and adjudge under Section 15 HA & 15HB of the SEBI Act, 1992 and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995, for the alleged violations. Vide the internal noting of the Whole Time Member, SEBI, dated December 14, 2015, the undersigned has been appointed as the Adjudicating Officer to inquire into and adjudge under the provisions as enumerated above.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. A show-cause notice (SCN) no. EAD/NP/JS/OW/3219/3/2016 dated February 05, 2016 and show-cause notice (SCN) no. EAD/NP/JS/OW/0002/2016 dated February 11, 2016 was issued to the noticee 1 & noticee 2 under rule 4 of the AO Rules to show-cause as to why an inquiry should not be initiated against noticee and penalty be imposed upon it under section 15HA & 15 HB of SEBI Act, 1992 respectively for the alleged violation specified in the said SCN. The notices were given 15 days of time to make their submission against the allegations made in the SCNs.

5. It was alleged in the SCN to noticee 1 that it had entered into self trades repeatedly, which created artificial volume in the scrip leading to a false and misleading appearance of trading in the scrip of MIC in the securities market. The details of the self-trades entered into by the noticee 1 as per IR are given below:

Self Trades at NSE

Entity Name	Broker On Both Buy & Sell Side	Traded Volume	Total Self Trade Volume	Total Self trade count	Self trade count from same terminal ID	No of days on which self trades done	% of self-traded qty with client's traded vol. %)	Net LTP contribution by self trades (Rs.)
Milkyway Mercantiles Private Limited	SPFL Securities Limited	2299429	28540	67	8	42	1.24	-0.1

Self Trades at BSE

Entity Name	Broker On Both Buy & Sell Side	Traded Volume	Total Self Trade Volume	Total Self trade count	Self trade count from same terminal ID	No of days on which self trades done	% of self-traded qty with client's traded vol (%)	Net LTP contribution by self trades (Rs.)
Milkway Mercantiles Private Limited	SPFL Securities Ltd.	1647928	37769	71	6	42	2.29	-0.72

6. Noticee 1 vide letter dated February 19, 2016 sought extension of 4 weeks to file reply to the SCN. Thereafter Noticee no. 1 filed its reply dated March 16, 2016, (received on March 28, 2016), denied all charges levelled against it and requested for personal hearing. Accordingly, vide letter EAD/NP/JS/MIC/10209/2/2016, dated April 4, 2016, the noticee 1 was given an opportunity of personal hearing on May 18, 2016. The noticee

vide its letter of authority dated May 17, 2016 confirmed that it would be represented by Mr Amit Agarwal. On the scheduled date of hearing on May 18, 2016, Mr Amit Agarwal appeared before me for personal hearing and made oral submissions. The AR reiterated the submissions made vide its reply dated March 16, 2016 to SCN.

7. The noticee 2 vide its letter dated 22/02/2016 sought extension of time to file its reply to charges levelled in SCN. Vide its reply dated March 18, 2016, (received on March 28, 2016), noticee 2 denied charges levelled against it in the SCN and requested for personal hearing. Accordingly, vide letter EAD/NP/JS/MIC/10209/1/2016, dated April 4, 2016, the noticee 2 was given an opportunity of personal hearing on May 18, 2016. The noticee vide its letter dated May 16, 2016 confirmed that it would be represented by Mr Amit Agarwal. On the scheduled date of hearing on May 18, 2016, Mr Amit Agarwal, Advocate appeared before me for personal hearing and made oral submissions as relied upon in their reply dated March 18, 2016 to SCN.

SUBMISSION OF THE NOTICEE

8. Vide its reply dated March 16, 2016, the noticee no. 1, inter-alia, submitted as under:

Without prejudice to anything else hereinafter stated, we state and submit as follows:

We cannot be faulted for buying and selling shares in the market at market price and for delivery. We submit that we have not, in any manner, been a party to, or contributed to any irregularity in dealings in the shares of MIC. At the further outset and without prejudice to anything else herein stated, it is submitted that the allegations made in and findings arrived at in the said notice as against us are based on incomplete and incorrect assumptions of facts. We deny each and every allegation and/or contention made in the said notice and nothing therein stated should be deemed to have been admitted and/or inferred to have been admitted by us, save and except to the extent specifically admitted herein. We have to submit that at first that we did not had any malafide intentions whatsoever. We were/are into trading/jobbing/arbitrage of shares business for long. We have VSATS of NSE & BSE installed in our office provided by the broker M/s. SPFL Securities Limited. That we are having more than 80 traders/jobbers/arbitragers doing share business on our behalf. It is quite clear that traders/jobbers/arbitragers of ours have purely done trading/jobbing/arbitrage in the scrip of MIC and that we did not had any malafide intention whatsoever while trading/jobbing/arbitrage in the scrip of MIC. Further we submit that we have been *trading/jobbing/arbitrage on daily basis in shares of more than 600-700 companies listed in National Stock Exchange of India Limited and Bombay Stock Exchange Limited with Total Turnover ranging approximately from Rs.15.00-30.00 Crores resulting in delivery volume of approximately from Rs. 5.00-8.00 Crores on daily basis in Capital Market Segment. We are enclosing herewith our trading pattern for sample ten days in BSE & NSE which clearly shows our business activities of trading, arbitrage, jobbing business during the Investigation Period and also shows that more than 80% of the scrips traded on each day have been squared up within the same or intra exchange with very nominal delivery. We have traded in several other scrips and not in MIC only during the Investigation Period and annexed herewith as Annexure -3 showing ours trading details during the Investigation Period, by which it is amply clear that we have dealt in more than 1400 scrip's other than MIC during the Investigation Period. The percentage of trades carried for MIC is very minuscule compared to the total trades of ours Thus traders/jobbers/arbitragers of ours have done trading/jobbing/arbitrage in various scrips and that we did not had any malafide intention to create artificial volumes in the scrip of MIC as alleged in the SCN while trading/jobbing/arbitrage in the any scrips.*

As regards allegation of self-trade, it is admitted that there are some quite infrequent, random and insignificant instances of self-trade. However, it may be noted that these instances of self- trades were purely accidental/incidental in the ordinary course of business as aforesaid showing details of trading in 1400 scrips and thus not planned to be executed to manipulate trading in the scrip of MIC by creating artificial volumes as alleged in SCN. The random nature of timing, quantity, dealers and partial matching with other market participants substantiate the same. Further there has been no allegation of circular trading, price manipulation etc against us.

9. Vide its reply dated March 18, 2016, the noticee 2 submitted as under:

As per the reply submitted by Milkyway Mercantile Private Limited (Milky) we have to submit that at first that they did not have any malafide intentions whatsoever. They were/are into trading/jobbing/arbitrage of shares business for long. They have VSATS of NSE & BSE installed in their office provided by us. That they are having more than 80 traders/jobbers/arbitragers doing share business on their behalf. They have enclosed details of trading done in MIC during the Investigation Period in their reply submitted to us. It is quite clear that traders/jobbers/arbitragers of Milky have purely done trading/jobbing/arbitrage in the scrip of MIC and that they did not had any malafide intention whatsoever while trading/jobbing/arbitrage in the scrip of MIC. Further Milkyway have submitted and accordingly we submit that they have been trading/jobbing/arbitrage on daily basis in shares of more than 600-700 companies listed in National Stock Exchange of India Limited and Bombay Stock Exchange Limited with Total Turnover ranging approximately from Rs.15.00-30.00 Crores resulting in delivery volume of *approximately from Rs. 5.00-8.00 Crores on daily basis in Capital Market Segment. They have submitted their trading pattern for sample 10 days in BSE & NSE which clearly shows their business activities of trading/arbitrage/jobbing business during the investigation period in their reply and also depicts that more than 80% of the scrips traded on each day have been squared up within the same or intra exchange with very nominal delivery. Milky have traded in several other scrips and not in MIC only during the Investigation Period and they have submitted details showing their trading details during the Investigation Period in their reply by which it is amply clear that they have dealt in more than 1400 scrip's other than MIC during the Investigation Period. The percentage of trades carried for MIC is very minuscule compared to the total trades of Milky. Thus traders/jobbers/arbitragers of Milkyway have done trading/jobbing/arbitrage in various scrips and that they did not had any malafide intention to create artificial volumes in the scrip of MIC as alleged in the SCN while trading/jobbing/arbitrage in the any scrips.*

As regards allegation of self-trade, it is admitted that there are some quite infrequent, random and insignificant instances of self-trade. However, it may be noted that these instances of self-trades were purely accidental/incidental in the ordinary course of business as aforesaid showing details of trading in 1400 scrips and thus not planned to be executed to manipulate trading in the scrip of MIC by creating artificial volumes as alleged in SCN. The random nature of timing, quantity, dealers and partial matching with other market participants substantiate the same. Further there has been no allegation of circular trading, price manipulation etc. against us and our client Milky.

The noticee has also submitted table showing the analysis of the internally matched trades vis-à-vis the volume of Milky and the market volume.

That on perusal of the Chart/Table submitted to you it would be observed that the self-trades from same terminal in NSE/BSE in comparison to the self-trades determined in the SCN is much lesser and more importantly do not establish having caused artificial volumes in the scrip of MIC as alleged in the SCN. The details of self-trades as per the Noticee based on Terminal id basis and not based on CTCL/IML id basis is as under:

Date of Trading	*Self-Trade as per SEBI*	*Self-Trade as per Noticee based on Terminal*
03-01-2012	*141*	*0*
05-01-2012	*259*	*0*
07-01-2012	*410*	*0*
09-01-2012	*507*	*0*
11-01-2012	*2228*	*0*
12-01-2012	*75*	*74*
13-01-2012	*807*	*0*

18-01-2012	601	0
20-01-2012	3492	0
25-01-2012	224	0
01-02-2012	897	0
07-02-2012	910	0
08-02-2012	438	0
10-02-2012	111	87
13-02-2012	331	0
16-02-2012	748	0
17-02-2012	912	0
21-02-2012	1995	0
22-02-2012	554	0
24-02-2012	1626	0
28-02-2012	1500	0
29-02-2012	597	0
05-03-2012	12	0
13-03-2012	274	0
15-03-2012	4734	0
19-03-2012	757	0
20-03-2012	585	0
23-03-2012	200	0
27-03-2012	905	0
29-03-2012	250	0
30-03-2012	900	0
03-04-2012	3900	0
04-04-2012	2010	0
09-04-2012	1645	0
12-04-2012	154	0
13-04-2012	536	0
16-04-2012	1109	0
17-04-2012	308	0

19-04-2012	*1*	*0*
20-04-2012	*451*	*451*
24-04-2012	*200*	*8*
30-04-2012	*2885*	*0*
02-05-2012	*1224*	*0*
04-05-2012	*363*	*0*
14-05-2012	*1500*	*0*
15-05-2012	*1999*	*0*
16-05-2012	*250*	*0*
17-05-2012	*1000*	*0*
18-05-2012	*576*	*0*
21-05-2012	*3862*	*0*
22-05-2012	*396*	*0*
23-05-2012	*3610*	*0*
24-05-2012	*354*	*0*
28-05-2012	*78*	*0*
29-05-2012	*1454*	*454*
31-05-2012	*647*	*0*
01-06-2012	*4*	*0*
05-06-2012	*4137*	*0*
08-06-2012	*1076*	*0*
14-06-2012	*498*	*0*
15-06-2012	*4*	*0*
18-06-2012	*150*	*0*
20-06-2012	*100*	*0*
21-06-2012	*42*	*0*
22-06-2012	*66*	*0*
28-06-2012	*1677*	*0*
29-06-2012	*55*	*55*

Thus, self-trade if considered as per terminal ID basis instead of the CTCL/IML ID as per SEBI, the self trades are much lesser than that has been determined. In fact, SEBI in its notice has determined the self trade on 42 days based on CTCL terminal ID basis and not on the individual terminal ID's i.e. sub ID's under CTCL/MIL id's. It is submitted that the individual terminal ID 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 BSE and that the orders are put at the individual terminal ID level and many individual terminal IDs are linked to one CTCL ID/IML ID of NSE/BSE.

It is further submitted that the Orders are placed at the individual Terminal ID level and the orders of small quantities (being order size of minimum 100 shares and maximum 1000 shares) are placed and the average life cycle from the time of placing the order to getting converted into a trade is less than 2 seconds. The human involvement is very less for putting the parameters of orders for the day and the trading takes place through the server/CTCL ID and the orders are passed on to the 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. We also submit that the self-trades as per SEBI is based on CTCL/IML ID which is the server of ours connected to the Exchange. The individual Terminal Id connected to the CTCL ID i.e. server are the Ids from where the orders are placed by the Appellant which have converted into self-trades matching with the same terminal on account of latency and the said self-trades are much less than that have been determined by SEBI. Therefore, on perusal of the table above in respect of Self Trades of ours and that of Self Trades determined by SEBI are much higher while actual self-trades are much lower as there is no material matching of order with another order on the same individual terminal. Balance trades are not self-trades pointed out by SEBI as they have done mistakenly matched on other individual terminal id's which is very normal trading/jobbing/arbitrage practice. It is a known fact that in present system, trades are matched at the stock exchange level and we may, even after putting some system, which may vary from Broker to broker, not be able to prevent completely infrequent self-trade when trading in large number of scrip's through different terminals operated by different traders. In fact, it is one of the responsibilities of the Stock Exchange, being provider of trading facility, to develop a mechanism for prevention of self-trade at the pre trading level so as to rule out the possibility of any self-trade in the interest of securities market. It is important to mention here that during the period of investigation, no Technological System was promoted and/or installed or advised by stock exchanges which could had prevented occurrence of such trades and the alleged event. And that the system to prevent occurrence of self-Trades has been introduced at the Exchange level i.e. BSE and NSE only in March 2015 and June 2015 respectively much after the period of investigation BSE Ltd vide its notice no. 20150101-31, dated January 01, 2015 introduced the mechanism of self-trade prevention check (STPC).

BSE Ltd. vide its notice no. 20150211-33 dated February 11, 2015 further informed the trading members that the Exchange proposes to make STPC functionality Live in Equity segment with effect from Monday, March 16 2015. The said February 11, 2015 notice further provides that Self-trade prevention check (STPC) functionality is being introduced with the purpose of preventing matching between a buy and a sell order entered in the same order book by a member for the same client code originating from same or different trading terminals of the member.

That if an incoming order is likely to match with a passive order belonging to the same member and client code combination in the same order book, the system shall cancel such incoming order thus preventing a self-trade.

That the above-mentioned check shall also be applicable for the same member and client code combination in the same order book where client type is "OWN" on both sides of the trade. That the above mentioned check shall NOT be applicable for the same member and client code combination in the same order book where client type is "INST" on both sides of the trade.

Similarly, NSE Ltd vide its Circular Ref. No: 23/2015 dated May 19, 2015 proposes to introduce a new facility in the Capital Market segment for prevention of self- trades. The said NSE circular requested the members to note the following points regarding self-trade prevention facility:

- *The purpose of this facility is to prevent matching between a buy and a sell order entered in the same order book by a member for the same client code (UCC) originating from same or different trading terminals of the member. If an active order is likely to match with a passive order belonging to the same member and client code combination in the same order book, then such an order (full or partial as the case may be) shall be cancelled by the exchange.*
- *The facility shall be applicable to Non-institutional and Proprietary (PRO) orders. The implementation date for the same shall be communicated in due course of time. In view of the above, the contention of the notice that we by allowing self-trades to be executed, failed to carry out its business with due skill, care and diligence in violation of Regulation 9 read with clause A (2) of the code of Conduct for stock brokers as specified in Schedule II of the Stock Broker Regulations, is vehemently opposed and denied and SCN of SEBI be put to strict proof thereof, particularly in view of the 'Self Trade prevention mechanism' introduced by the BSE & NSE in 2015 only.*

Further, in the matter of Networth Stock Broking Ltd v Sebi (SAT Appeal no 5 of 2012 decided on June 19, 2012) "SAT has been consistently holding that violation of FUTUP regulations involves commission of fraud which is indeed a serious market offence and a high degree of probability is required to establish such a charge. There has to be enough material on record to show that the broker had knowledge *of the game plan at the time of executing the trade or the trading pattern of the client gives rise to some suspicion about the mischief. Merely because the appellant acted as a broker of one of the parties, it does not follow that he was a party to the game plan of the client in executing matching trades. The foundation of enquiry under enquiry regulations is a valid notice and also that the charge leveled therein has to be clear, precise and unambiguous so that the delinquent knows what exactly he is charged with. The whole time member appears to have jumped to the conclusion that merely because circular trades were executed on 38 days by the appellant, his intention was manipulative. This finding is based on no material on record and it appears that the WTM has not appreciated the concept of circular/synchronized trades. Admittedly, the trades in question were executed by the clients and the appellant was acting only as a broker. It has not entered into any proprietary trades. If there is some evidence or material available on record that the appellant knew that the trades were fictitious then there would be no hesitation in upholding the finding of the Board. However, there is no such link available either on the record or any finding to this effect has been recorded by the whole time member. There is no material on record to show that the appellant, as a broker knew, that the trades were circular/synchronized. There are no findings that either the broker or their clients were connected persons or they were acting in concert "There can be a variety of reasons for the trades matching on the screen of the exchange. Merely because a trade has matched both in regard to price and quantity and that the buy and sell orders were placed at the same time it cannot lead to the conclusion that the broker had knowledge of fictitious trades being executed between the buyer and the seller. It has been observed by this Tribunal in a number of cases that on a screen based trading system; it is not possible for a broker to know who the counter party is at the time when the trades are executed."*

Thus, FUTUP Regulations cannot be invoked in such alleged self trades as mentioned in SCN without findings about the fraud having been committed, especially when the objective of FUTUP Regulations is to prevent fraudulent and unfair trade practices, to establish the same involvement of fraud is sine-qua-non.

Even in the case of Ajmera (supra) SAT has observed that merely because the two clients have executed matched trades, it does not follow that their brokers were necessarily a party to the game plan.

Following the decision in the case of Kasat Securities Pvt. Ltd. vs. SEBI (SAT Appeal no. 27 of 2006 decided Qn 20.6.2006), SAT has held in a number of cases including in the case of Bipin R. Vora vs. SEBI (SAT Appeal no. 62 of 2006 decided on 13.9.2007), M. J. Patel Shares and Stockbrokers Ltd. vs. SEBI (SAT Appeal no. 157 of 2004 decided on 17.7.2006) that merely because the appellant acted as a broker of one of the parties, it does not follow that he was a party to the game plan of the client in executing the matched trades.

In the case of Ramaben Samani Finance Pvt. Ltd. vs. SEBI (SAT Appeal no. 91 of 2006 decided on 22.10.2007), SAT has specifically observed that there has to be enough material on record to show that the broker knew about the game plan at the time of executing the trade. Therefore, if a broker has to be *attributed knowledge of circular/synchronized the Board must have with it some material on record from which such knowledge can be inferred. Merely because the appellant has acted as a broker it cannot lead us to the conclusion that he had knowledge of the wrong doing. It is true that the trades have been found to be circular/synchronized, but there is nothing on record to how that the appellant had knowledge of the manipulative intent or mischief of the client. While dealing with an identical situation, SAT has made following observations in the case of Kasat Securities Pvt Ltd vs. SEBI(Appeal No. 27 of 2006 decided on 29.06.2006):-*

"Trading was through the exchange mechanism and was online where the code number of the broker alone is known and the learned counsel for the parties are agreed that it is not possible for anyone to ascertain from the screen as to who the clients were. This is really a unique feature of the stock exchange where, unlike other moveable properties, securities are bought and sold between the unknowns through the exchange mechanism without the buyer or the seller even getting to meet. Therefore it is not possible for the broker to know who the parties were. Merely because the appellant acted as a broker cannot lead us to the conclusion that it must have been about the nature of the transaction. There has to be some other material on the record to prove this fact. The Board could have examined someone from KIL to find out whether the appellant knew about the nature of the transactions but it did not do so. As a broker, the appellant would welcome any person who comes to buy or sell shares. The Board in the impugned order while drawing an inference that the appellant must have known about the nature of the transactions has observed that the appellant failed to enquire from its clients as to why they were wanting to sell the securities. We do not think that any broker would ask such a question from its clients when he is getting business nor is such a question relevant unless of course, he suspects some wrong doing for which there has to be some material on the record."

The contents of paragraph 3 are denied and it is submitted that self-trade is not per-se illegal and contrary to the Law and Regulations. There are some kinds of self-trades which do not constitute market abuse and are genuine market transactions. There can be instances where genuine trading intentions within the same firm may result in self-trades. Therefore each case of self trades has to be judged and examined on merits.

However the said SCN does not establish any linkage between the random/infrequent self trades of Milkyway to that of the price of the scrip of MIC during the said period. So on this ground also the allegation about attracting of FUTUP Regulations 3(a),. (b), (c) & (d) and 4(1), 4(2) (a) & (g) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices (PFUTP) Regulations 2003 cannot sustain being without merits.

We have never indulged in manipulative, fraudulent or deceptive transactions or schemes or spread rumors with view to distorting the market equilibrium or making personal gains. It is pertinent to note that we have never traded in MIC Electronics Limited on our proprietary account. This fact itself establishes beyond doubt that we as brokers always maintained high standards of integrity.

Moreover it is not known to us about any system available with the broking concern or in the market to be installed which could rule out any self-trades altogether at the pre trade level and if there is any such system we would be the first to install the same. To the best of our knowledge to install any system preventing self-trades at its initiation i.e. at the pre trade level requiring huge technological and state of the art support and data available with the stock exchanges only and not at the brokers level. As a matter of fact the problem of self-trade at the pre trade level has now been checked to a great level only when the exchanges installed the STPC system in 2015. Thus we have not contravened any code of conduct more specifically Clause A (2) as alleged in the SCN.

CONSIDERATION OF ISSUES AND FINDINGS

10. I have carefully perused the replies to the SCN, oral/written submissions made by Noticee during personal hearing and the documents available on record. The issues that arise for consideration in the present case are:

a) Whether noticee 1 has violated Regulation 3(a), (b), (c) & (d), 4(1), 4(2) (a) & (g) of PFUTP Regulation and noticee 2 has violated Clause A (2) of the Code of Conduct for Stock Brokers as specified under Schedule II read with Regulation 7 of SEBI (Stock Brokers and Sub Brokers) Regulations, 1992.

b) Does the violation, if any, on the part of Noticees attract any penalty under section 15HA & 15HB of the SEBI Act, 1992?

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

FINDINGS

11. Noticee 1 is alleged to have entered into repetitive self-trades in violation of provisions of PFUTP Regulations. The noticee 2 is the stock broker through which, noticee 1 had executed such self-trades and it is alleged upon Noticee 2 that as a stock broker it has failed to exercise due care and skill and failed to adhere to the Code of Conduct as prescribed under Schedule II read with Regulation 7 of SEBI (Stock Broker and Sub Broker) Regulations, 1992.

11. Orders that match with each other with no resultant change in ownership are termed self-trade. Self-trades are buy and sell transaction executed by the same person (entity) at same price or different price at different time or with a very small gap of time, with no genuine trading intent. These trades are per se seen as manipulative in nature, aimed at artificially pumping up the turnover to portray a false picture of liquidity. Self-trade may not result in profit or loss to any other person however, these may result into trading volume and a new price.

12. 'Self-trade' in securities markets in India are essentially concerned with manipulation of information about market liquidity and price of the scrip. Therefore, execution of such trades is considered unfair and fraudulent as no change in ownership takes place. SAT in its orders from time to time have pronounced that 'self-trades ipso jure amount to be manipulative and therefore punishable under securities laws'. As per various Judgment of Hon'ble SAT, -

    (a) Self-trades are fictitious and reprehensible;
    (b) Trades where beneficial ownership is not transferred, are manipulative in nature;
    (c) Self-trades create artificial volume in the market;
    (d) Whatever be the business model, it should be ensured that such model complies with the regulatory framework;

In **Balwinder Singh v. SEBI** (Order dated 11.2.2014), the SAT observed that "self-trades/wash trades are per se not allowed under SEBI Act/Rules, since these do not result in change in actual/beneficial ownership of shares and only result in increase in volumes in particular scrip, which create illusion of increased trading in these scrip and may mislead investors in trading in these scrips and disturb/distort securities market". In **Anita Dalal v. SEBI**, the SAT Vide order dated 2.12.2012 observed: "Self trades admittedly are illegal. Tribunal has held in several cases that self-trades call for punitive action since they are illegal in nature. In **M/s. Jayantilal Khandwala & Sons Pvt. Ltd. vs. Securities and Exchange Board of India**, Tribunal vide order dated June 2011 held that "one cannot buy and sell shares from himself. Such transactions are obviously fictitious and meant only to create false volumes on the trading screen of the exchange". Further, in **HJ Securities Pvt Ltd v. SEBI**, the Tribunal vide its order dated May 11, 2012 noted that "Simply because the number of such self-trades is not large by itself cannot justify execution of self-trades". In case of **Systematic Shares & Stocks (India) Limited v. SEBI**, the SAT Vide order dated 23.04.2012 observed that "it has been held in several cases by this Tribunal that self-trades are fictitious and reprehensible. Trades, where beneficial ownership is not transferred, are admittedly manipulative in nature." SAT while deciding the appeal in case of **Angel Broking Ltd. V SEBI** vide its order dated 01.10.2014 SAT observed that " self-trades and that too buying share at higher price and selling at a lower price clearly shows that the trades executed were not normal trades". The order was appealed in the Supreme Court and Hon'ble Supreme court vide its order dated 08.1.2015 dismissed the appeal in terms of the signed order.

13. But, the above ruling was contrasted with observations of the SAT in **Smt. Krupa Sanjay Soni v. SEBI** vide its order dated Jan 09, 2014 where it had taken a view that "***a few instances of self-trades in themselves would not, ipso facto, amount to an objectionable trades***".

14. It's important to emphasise that there should be regulatory distinction between unintentional self-match trades and intentional, manipulative (and illegal) wash trades. Intentional wash trades are illegal self-trades that can manipulate markets by giving the impression of legitimate trading interest or activity at a certain price, time, and size. However practically self-matches that can also occur unintentionally. Such trades can occur in the course of normal trading when orders of one broking firm from two independent trading strategies/terminal coincidentally interact with each other. Though completely legitimate, and without an intent to manipulate, the two buy-sell orders on Stock Exchange from two independent dealers/terminal can end up matching with each other.

15. Self trades are executed by jobbers or market maker. Based on the technical analysis, if certain price level is breached, it is perceived as a momentum is caught in direction of the price movement. In order to catch the momentum, jobbers put indicative orders of small quantity of shares near the trigger price on both sides and once any trade get executed, they put more orders in that direction and later at an appropriate opportunity they square off their positions to their advantage. Many times more than one jobber actively trades in same stock through same broker but different trading terminal and sometime jobbers' orders match with each other. Such trades though originated through different terminal IDs but end up at same broker so these are also counted as self-trades. Whereas,

Arbitragers see opportunity in stocks traded at more than one exchange/ Segment to encash upon price differential in one exchange/ Segment vis-à-vis another by putting corrective orders.

16. It may be noted that Synchronized trades are different from Self-trades but are considered manipulative under provisions of PFUTP Regulations similar to self-trades. Recently Supreme Court in the matter of **SEBI vs. Kishore R Ajmera** (C.A. no.2818 of 2008) vide its order dated 23/02/2016 has observed that based on the attended circumstances being the hugged and repeated trading in illiquid scrips, the inference can reasonable be drawn that the broker is involved in the devise of synchronized trades which leads to unnatural rise in hiking the price/value of the scrip(s). The Hon'ble Court has laid down parameters, though non-exhaustive, that can be used to arrive at a conclusion with respect to liability in such cases for violation of the provisions of the SEBI Act, 1992 and regulations framed thereunder. The parameters are:

   a. Volume of the trade affected;
   b. The period of persistence in trading in the particular scrip;
   c. The particulars of the buy and sell orders, namely the volume thereof;
   d. The proximity of time between the two and such other relevant factors.
   e. The fact that trading has gone on without settlement of accounts i.e. without any payment and the volume of trading in the illiquid scrips.

17. The Hon'ble Court observed that all of the aforesaid should raise serious doubt in a reasonable manner and failure of stock broker to notice such trades would amount to negligence, lack of caution and due care would also indicate the involvement of the broker in such manipulative trades. The Hon'ble Court also specified the degree of liability to differentiate between violation of the Code of Conduct and FUTP Regulations. A case of persistent manipulative trading by a stock broker would show a deliberate intention on his part to play the market. Similarly, SAT in case of **S.P.J Stock Brokers Pvt. Ltd V/s SEBI** vide appeal no 52 of 2013 and order dated 04.09.2013 observed that "Fact that appellant had stated that while carrying out jobbing transactions some transactions carried out by appellant could have been matching, it cannot be inferred that trades effected by appellant were manipulated. " Further, "Synchronized trade is per se not illegal. Synchronized transaction would be illegal if it is executed with a view to manipulate the market, is dubious in nature and is executed with a view to avoid regulatory detection, does not

involve change of beneficial ownership or is executed to create false volume resulting in upsetting market equilibrium etc." **In the case of Kapil Chaturabhuj Bhuptni** vide Appeal no.95/2013 and order dated 10/10/2013 SAT in its order vide 'Para 7' has stated that "***Therefore in our considered opinion simple trading by the appellant in a particular scrip without any proved nexus between trades with the other so called group of brokers and clients is not per se punishable***. Undoubtedly, the appellant has traded in the scrip for about 64 days which is admittedly minor comprising only 0.89 percent of the total trades in the scrip but in absence of some satisfactory evidence, the appellant cannot be held guilty of violation of Regulations 4(1) and 4(2) (a) and (g) of the PFUTP Regulation. Such an insignificant percentage of the total trading executed during the period of investigation in this case does not seem to indicate any prior meeting of minds as alleged by the respondent."

18. The necessity of 'Intent' and the element of "fraud" appears to be a pre-requisite in all the parts of Regulations 3 and 4 of the PFUTP Regulations. 'Fraud' has been principally defined under Regulation 2(c), though inclusively, to mean such trades which are entered into in order to 'induce others'. Regulation 4(2) are very specific in nature. The test laid down in the regulation demand a manipulative intent to affect market information. Even clause (a) as a strict liability clause, the test is to prove '**misleading appearance of trading'**. In instances, where evidence of 'material market harm' is absent and where self-trades constitute low fraction of the total trading volume in the scrip whereby the materiality of those trade on market is negligible, those self-trades like synchronized trades, should not be considered to be manipulative under PFUTP regulations. Self-trade found in otherwise a liquid script and where no connection is established between the traders then such self-trades may not be in violations of provisions of PFUTP regulations. Therefore, cases where the shares traded are highly liquid and self-trades happen due to other technical reasons, the requirements of Regulation 4 of PFUTP are not met.

19. Therefore, a distinction needs to be made between 'wilful self-trades' which is done with a motive to induce other to trade in that particular stock and 'unintentional self-trades' which are in the nature of jobbing and had occurred due to technicalities of the anonymous trading system. Self-trades, if material whether or not substantial, if affect market information regarding that security, a single self-trade of even one share should be deemed to adversely affect the market. while deciding the case of **Religare Securities Ltd Vs.**

SEBI decided on 12.1.16, SAT observed that "if appellant had glanced through the trades executed by the said client it would have revealed that the said client had time and again indulged in unusual trades by trading in single share and each of such trade contributed price rise by about 2% from last LTP, certainly appellant would have noticed the anomaly". It is therefore important to analyse whether intention to manipulate or commit fraud is present and if intention is established the penalty must match with the 'materiality of market harm'. The SAT in its order in case of **KSL & Industries Ltd v. SEBI** vide appeal no 9/2003 has held that "I do not find any material on record in support of the said charge. A wild allegation of market manipulation, in particular the charge of fraudulent action unsupported with convincing evidence are not sustained. Fraud cannot survive on mere conjecture and surmises." The materiality has be substantiated by evidence on record.

20. At a broader level of stock exchanges, majority of trades are squared off during the day and such squared off trades does not go for settlement by Delivery V/s. Payment and as such no change of ownership of shares take place. These trades which are squared off during the day are neither illegal not considered manipulative as these add to liquidity and help in fair price discovery. However, repetitive self-trade may be misused to create artificial volume and induce other to trade in the stock. Self-trades would be fraudulent in nature if done on persistent basis, in connivance with manipulator/promoter and have intention to influence liquidity or price. The unintentional random trades on either side of direction of price should not be construed as manipulative. Therefore, to decide whether, self-trades are fraudulent or not would depend upon case to case and no thumb rule shall apply. It would be necessary to see the intention behind such trades. Unintentional self-trade may not be manipulative whereas intentional self-trades would constitute wash trades. Further, Securities market are dynamic in nature and new trade patterns evolve from time to time. Hence the views taken in one situation may not hold good in other time as it needed to be judged in the present context. SAT in case of **Smt. Krupa Sanjay Soni v. SEBI** (order dated Jan 09, 2014) also held that "a few instances of self-trades in themselves would not, ipso facto, amount to an objectionable trades". The Supreme court in the case of **SEBI vs. Kishore R Ajmera** (C.A. no.2818 of 2008) vide its order dated 23/02/2016 has observed "*that the primary purpose of the statutory enactments is to provide an environment conducive to increased participation and investment in the securities market which is vital to the growth and development of the economy. The provisions of the SEBI Act and regulations will, therefore, have to be understood and interpreted in the above manner.*" Therefore, the necessity of 'Intent'

the element of "fraud" should be examined as a pre-requisite in all the parts of Regulations 3 and 4 of the PFUTP Regulations. 'Fraud' has been principally defined under Regulation 2(c), though inclusively, to mean such trades which are entered into in order to 'induce others'.

21. I find that the noticee1 is a regular trader (jobber) and is involved in jobbing transactions on both NSE and BSE. The main charge against the noticee 1 is that it had entered into repeated self-trades and created artificial volume in share of MIC leading to false and misleading appearance of trading volume in the securities market. In this respect noticee has submitted that they were/are into trading/jobbing/arbitrage of shares business for long and they are having more than 80 traders/jobbers/arbitragers doing share business on their behalf. The noticee no. 1 submitted that they have been trading/jobbing/arbitrage on daily basis in shares of more than 600-700 companies listed in National Stock Exchange of India Limited and Bombay Stock Exchange Limited with Total Turnover ranging approximately from Rs.15.00-30.00 Crores resulting in delivery volume of approximately from Rs. 5.00-8.00 Crores on daily basis in Capital Market Segment. The noticee 1 also submitted that their trading pattern for sample ten days in BSE & NSE also shows their business activities of trading, arbitrage, jobbing business during the Investigation Period and also shows that more than 80% of the scrips traded on each day have been squared up within the same or intra exchange with very nominal delivery and they have dealt in more than 1400 scrip's other than MIC during the Investigation Period. They have VSATS of NSE & BSE installed in their office provided by the broker M/s. SPFL Securities Limited. The noticee 1 also submitted that their traders/jobbers/arbitragers have purely done trading/jobbing/arbitrage in the scrip of MIC and that they did not had any malafide intention whatsoever while trading/jobbing/arbitrage in the scrip of MIC. As regards allegation of self-trade, it is admitted that there are some quite infrequent, random and insignificant instances of self-trade. However, it may be noted that these instances of self-trades were purely accidental/incidental in the ordinary course of business as aforesaid showing details of trading in 1400 scrips and thus not planned to be executed to manipulate trading in the scrip of MIC by creating artificial volumes as alleged in SCN.

22. The noticee1 has executed many trades in MIC and his overall contribution in buy volume is 3.34% and its sell volume is 3.14% of the total volume in MIC on NSE. On BSE, the noticee 1 has gross buy volume of 6.35% and gross sale of 6.86% as brought out in the

investigation report. On examination of self-trades of the noticee it is noted that Noticee 1 traded in the stock of MIC to the tune of 39,47,357 shares and total 66,309 shares resulted in self-trades, which constitute 1.68 % of the noticee's own trade. Further mostly the self-trades of the noticee 1 were from different terminals. Out of these 127 days of period under Investigation, Noticee 1 did self-trades on 42 days on both BSE and NSE. As per investigation report the self-trade count of the notice is 71 on BSE and 67 on NSE, however, only 6 self-trades have happened on BSE from the same terminal ID and only 8 self-trades have happened from the same terminal ID on NSE. It is not the case that self-trades have taken place on daily basis (which is normally the case when a person intends to create artificial volumes or intends to create misleading appearance of trading in market). The noticee no. 1's own contribution in total trade in shares of MIC was not significant to influence the liquidity in stock of MIC, as it was traded frequently with enough liquidity. It is the volatility in price of stock which has attracted jobber/trader to trade in stock. It is not the case that the noticee had executed sequential trade on continuous basis in order to influence price in one direction, its trade have been found to be on both side of price movement. Self-trades executed by the noticee are not directional and these were random trades on either side. Its contribution in LTP is also not significant. There is no case that noticee while trading had colluded with promoters. The price fall in share had been attributed to liquidation of pledged shares position by lender. Even Investigation Report has stated that there are no connections between the above top 10 buy and sell clients on BSE and NSE with the promoters and directors of the company except L&T Finance Ltd. and STCI Finance Ltd. who were the pledgees. There is no allegation to suggest that Noticee 1 have colluded with any other entity or promoters in creation of artificial volume and or in making any false corporate announcements. From the foregoing, I find that Self-trades of Noticee are non-intentional and non-manipulative in the light of the total transactions that the noticee had been doing on daily basis on the exchanges platform. BSE vide its notice no 201510073 dated October 07, 2015 introduced system to curb self-trades.

23. Having considered all of the submissions of the noticee 1 and the charges levied in the show-cause notice, the noticee 1 has denied that he indulged in self-trades to create artificial volume in the scrip of MIC. From the foregoing, I find that though self-trades had occurred where counterparty broker is same but these buy and sell order have originated from different terminal of the same broker at different time. These self-trades

appeared to be normal and has arisen due to technicalities of anonymous online trading system. Self-trades executed by noticee 1 are not sequential, directional but random. Also, the quantum of self-trades by the noticee 1 is not of such magnitude vis-à-vis total volume in stock of MIC on daily basis that it can adversely affected equilibrium of the market as a whole in terms of price or liquidity in stock of MIC. Self-trades of Noticee 1 is not significant in the light of the number of scrips traded by noticee and the total transactions that the noticee1 had been doing on the various segments of the exchanges platform.

24. Since it is not established that Noticees no. 1 had entered into self-trades repetitively with an intend to manipulate the market by creating artificial volume in the scrip, there is no case to draw any adverse inference on Noticee 2 either that it had failed to adhere to Clause A (2) of the Code of Conduct for Stock Brokers r/w Regulation 7 of the SEBI(Stock Brokers & Sub-brokers) Regulations, 1992.

ORDER

25. Having considered all the facts and circumstances of the case, the material available on record, the submissions made by the Noticee 1 and Noticee 2 (both oral and written) and also the factors mentioned in Section 15 J of the SEBI Act, I, in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, hereby dispose of the Show cause notices.

26. In terms of the provisions of Rule 6 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules 1995, a copy of this order is being sent to both the Noticees viz. Milkyways Mercantile Private Limited, SPFL Securities Ltd and to Securities and Exchange Board of India.

Date: March 16, 2017 **Nagendraa Parakh**
Place: Mumbai **Adjudicating Officer**