BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. RA/DPS/ 241 – 248 /2017]

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:

1) B.P. Fintrade Private Limited (PAN AAACY2372G)
2) Genuine Stock Broking Private Limited (PAN AAACG7970J)
3) Vijeta Broking India Private Ltd (PAN AACCV6700F)
4) Rikhav Investment (PAN AALFR6841B)
5) JMP Securities Private Limited (PAN AAACJ8850C)
6) Naman Securities and Finance Private Limited (PAN AAACN1917G)
7) B.P. Equities Private Limited.
8) Rikhav Securities Ltd.

In the matter of M/s VMS Industries Limited.

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as **"SEBI"**) conducted investigation into the Initial Public Offering (IPO) of VMS Industries Limited (hereinafter referred to as **'scrip / VMS'**) for the period June 14, 2011 to June 23, 2011 (hereinafter referred to as "**Investigation period"**) to find out any manipulation with regard to the IPO process and trading activity after listing. The shares of the company got listed on Bombay Stock Exchange (BSE) on June 14, 2011. During the course of investigation, *prima facie* the violations of regulation 3 (a) to (d), 4 (1) & 4 (2) (a) & (g) of the SEBI

(Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as '**PFUTP Regulations'**) and clause A (2), A (3), A (4) and A (5) of the Code of Conduct under Schedule II read with regulation 7 (after amendment regulation 9) of the SEBI (Stock Brokers and Sub Brokers) Regulations, 1992 (hereinafter referred to as '**Stock Brokers Regulations')** were observed to have been committed by the B.P. Fintrade Private Limited, **(the Noticee No. 1 / B.P. Fintrade),** Genuine Stock Broking Private Limited **-** a Stock Broker of Bombay Stock Exchange (BSE) - SEBI Registration No. INB011047736 and a Stock Broker of National Stock Exchange of India Ltd (NSE) – SEBI Regn. No. INB231047730, **(the Noticee No. 2 / Genuine),** Vijeta Broking India Private Limited - a Stock Broker of BSE - SEBI Registration No. INB011318632 and a Stock Broker of NSE – SEBI Regn. No. INB231318636 **(the Noticee No. 3 / Vijeta),** Rikhav Investments, **(the Noticee No. 4 / Rikhav),** JMP Securities Private Limited - a Stock Broker of BSE - SEBI Registration No. INB011148237, **(the Noticee No. 5 / JMP Securities),** Naman Securities and Finance Private Limited - SEBI Registration No. INB010808234 and a Stock Broker of NSE – SEBI Regn. No. INB230808238, (**the Noticee No. 6 / Naman**). B.P. Equities Private Limited - SEBI Registration No. INB010979732 and a Stock Broker of NSE - INB231142036, **(the Noticee No. 7 / B.P. Equities)** and Rikhav Securities Ltd - a Stock Broker of BSE - SEBI Registration No. INB011280436 and a Stock Broker of NSE – SEBI Regn. No. INB231280430, (**the Noticee No. 8 / Rikhav Securities**). All the Noticees collectively referred as **'Noticees'** or in their aforesaid '**short names**' or as '**Noticee No. 1-8**' respectively.

APPOINTMENT OF ADJUDICATING OFFICER

2. SEBI, vide order dated November 13, 2015 appointed the undersigned as Adjudicating Officer under Section 15HA (for Noticees No. 1 to 6) and Section 15HB (for Noticees No. 2, 3, 5, 6, 7 and 8) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **'SEBI Act'**), to inquire into the aforesaid alleged violations against the Noticees. The proceedings of appointment of undersigned as Adjudicating

Officer was communicated to the undersigned vide communiqué dated November 18, 2015.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

3. Common Show Cause Notice No. EAO/RA/DPS/32922/2015 dated November 27, 2015 (hereinafter referred to as "**SCN**") was issued to the Noticees under rule 4(1) of the Adjudication Rules to show cause as to why an inquiry should not be held and penalty be not imposed under section 15HA and 15HB of the SEBI Act.

4. It was alleged in the SCN that the Noticees No. 1 to 6 had executed self trades (i.e. same buy client as well as the sale client for a given trade resulting in no change of beneficial ownership) during the investigation period in the scrip of VMS. It was alleged that Noticee No. 1 (B.P. Fintrade) has executed self trades on 30 occasions and on all the occasion it is revealed that the broker on buy side and sell side was same i.e. Noticee No. 7 (B.P. Equities). Noticee No.4 (Rikhav) has executed self trades on 44 occasions and on all the occasion it is revealed that the broker on buy side and sell side was same i.e. Noticee No. 8 (Rikhav Securities). Further Noticee No. 2 (Genuine), Noticee No. 3 (Vijeta), Noticee No. 5 (JMP Securities) & Noticee No. 6 (Naman), are the stock brokers of BSE and NSE and it was alleged that they had executed self trades in their proprietary account on 103, 16, 41 and 26 occasions respectively. The details of order/ trade log pertaining to self trades executed by the Noticees No. 1 to 6 were shown in the Compact Disc (**CD)** which was enclosed along with the SCN as Annexure - II.

5. In view of above, it is alleged that the Noticee No. 1 to 6 by indulging in self trades repeatedly, created artificial volume in the scrip, leading to false and misleading appearance of trading of the scrip in the securities market and hence fraudulent; and thereby, the Noticee No. 1 to 6 had allegedly violated regulations 3(a), (b), (c) (d), 4(1), 4(2)(a) and (g) of PFUTP Regulations. It is alleged that the Noticee No. 2, 3, 5 and 6

indulged in repeated self trades in proprietary account and therefore indulged in manipulation, malpractices and failed to abide by PFUTP Regulations with respect to self trades; and thereby the Noticee No. 2, 3, 5 and 6 had allegedly violated Clause A(3), A(4) and A(5) of the Code of Conduct under Schedule II read with regulation 7 (after amendment regulation 9) of the Stock Brokers Regulations.

6. It is alleged that the Noticees No. 7 and 8 acted as broker and counterparty broker for self trades of Noticees No. 1 and 4 respectively and hence failed to exercise due skill and care; and thereby, the Noticee No. 7 and 8 had allegedly violated Clause A(2) of the Code of Conduct under Schedule II read with regulation 7 (after amendment regulation 9) of the Stock Brokers Regulations.. The aforesaid regulations are reproduced as under;

PFUTP Regulations

Prohibition of certain dealings in securities

3. *No person shall directly or indirectly—*

a) buy, sell or otherwise deal in securities in a fraudulent manner;

b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;

c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;

d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.

4. Prohibition of manipulative, fraudulent and unfair trade practices

1) *Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.*
2) *Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:-*
    a) *indulging in an act which creates false or misleading appearance of trading in the securities market;*
    b) *………*
    c) *………*
    d) *………*
    e) *………*
    f) *……….*
    g) *entering into a transaction in securities without intention of performing it or without intention of change of ownership of such security"*

SCHEDULE II CODE OF CONDUCT FOR BROKERS

A. General.

(2) Exercise Of Due Skill And Care: A stock-broker, shall act with due skill, care and diligence in the conduct of all his business.

(3) Manipulation: A stock-broker shall not indulge in manipulative, fraudulent or deceptive transactions or schemes or spread rumours with a view to distorting market equilibrium or making personal gains.

(4) Malpractices: A stock-broker shall not create false market either singly or in concert with others or indulge in any act detrimental to the investors interest or which leads to interference with the fair and smooth functioning of the market. A stock-broker shall not involve himself in excessive speculative business in the market beyond reasonable levels not commensurate with his financial soundness.

(5) Compliance With Statutory Requirements: A stock-broker, shall abide by all the provisions of the Act and the rules, regulations issued by the Government, the Board and the Stock Exchange from time to time as may be applicable to him.

7. It was stated in the SCN that the aforesaid alleged violations, if established, would make the Noticee No. 1 to 6 liable for monetary penalty under section 15HA and would make the Noticee No. 2, 3, 5, 6, 7 and 8 liable for monetary penalty under section 15HB of the SEBI Act, which reads as follows:

SEBI Act:

Penalty for fraudulent and unfair trade practices.

***15HA**. If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher.*

Penalty for contravention where no separate penalty has been provided.

***15HB**. Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees.*

8. During the period of instant proceeding, the Hon'ble Supreme Court of India vide judgment dated November 26, 2015 in the case of *SEBI vs. Roofit Industries Ltd*. held that Adjudicating Officer has no discretion in deciding quantum of penalty under Chapter VI A (except in u/s 15F(a) and 15HB of the SEBI Act). The issue involved in *Roofit* case was differently interpreted in case of *Sidharth Chaturvedi* (decided on March 14, 2016) and accordingly, the legal issue / matter was pending for Larger Bench of Hon'ble Supreme Court of India. Meantime, as per "The Finance Act 2017" (Notified for Part VIII of Chapters VI came into effect from April 26, 2017) following has been *inter - alia* clarified in respect of adjudication under SEBI Act-

147. In section 15J of the principal Act, the following Explanation shall be inserted, namely:-

"Explanation- For the removal of the doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under section 15A to 15E and clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section."

9. Consequent to the clarity brought into the Finance Act, 2017, an opportunity of hearing was provided to the Noticees on June 6, 2017 vide notice dated May 22, 2017. In response to the SCNs, the Noticee(s) had filed submissions / reply and attended hearing which are mentioned below respectively.

Reply / hearing in respect of the B.P. Fintrade / Noticee No. 1:-

10. Reply dated December 28, 2015 was received from B.P. Fintrade. Further vide letter dated September 12, 2016, B.P. Fintrade had requested for a copy of investigation report. In this regard, vide letter dated September 22, 2016, B.P. Fintrade was informed that you have already submitted your reply dated December 28, 2015, however as per your request copy of the investigation report is enclosed herewith. Vide letter dated October 13, 2016, B.P. Fintrade had informed that the Annexure of the Investigation report are not provided. In this regard, once again vide letter dated October 18, 2016 investigation report and its annexures were provided to the B.P. Fintrade. B.P. Fintrade vide letter dated March 15, 2017 submitted its reply. An opportunity of hearing was provided which was availed by B.P. Fintrade on June 6, 2017. The hearing was attended by the authorized representatives of B.P. Fintrade and reiterated as submitted in its reply dated December 28, 2015 and March 15, 2017, and submitted that we don't have any other material documents for submissions in this regard.

<u>Reply / hearing in respect of the Genuine / Noticee No. 2:-</u>

11. Genuine vide letter dated December 10, 2015 requested for extension of 15 days' time to reply. Further Genuine vide letter dated December 21, 2015 submitted that we are very surprised with the views taken by SEBI for minuscule unintentional self-trades in proprietary account due to jobbing business. An opportunity of hearing was provided which was availed by Genuine on June 6, 2017. The hearing was attended by the authorized representatives of Genuine and submitted that reply dated June 1, 2017 has been filed on June 2, 2017 and reiterated as submitted in its reply dated June 2, 2017. Further, additional submissions dated June 6, 2017 was received from Genuine.

<u>Reply / hearing in respect of the Vijeta / Noticee No. 3:-</u>

12. Vijeta vide letter dated December 12, 2015 filed its reply. An opportunity of hearing was provided which was availed by Vijeta on June 6, 2017. The hearing was attended by the authorized representatives of Vijeta and reiterated as submitted in its reply dated

December 12, 2015. Further, additional submissions dated June 9, 2017 was received from Vijeta.

Reply / hearing in respect of the Rikhav / Noticee No. 4:-

13. Rikhav vide letter dated December 3, 2015 requested for extension of 30 days' time to reply and vide letter dated March 20, 2016 filed its reply. An opportunity of hearing was provided which was availed by Rikhav on June 6, 2017. The hearing was attended by the authorized representatives of Rikhav and reiterated as submitted in its reply dated March 20, 2016. During hearing it also submitted that it had applied application for settlement on March 30, 2016.

Reply / hearing in respect of the JMP Securities / Noticee No. 5:-

14. JMP Securities vide letter dated December 30, 2015 filed its reply. The hearing was attended by the authorized representatives of JMP Securities and reiterated as submitted in its reply dated December 30, 2015. Further, additional submissions dated June 8, 2017 was received from JMP Securities.

Reply / hearing in respect of the Naman / Noticee No. 6:-

15. Naman vide letter dated December 22, 2015 filed its reply. An opportunity of hearing was provided which was availed by Naman on June 6, 2017. The hearing was attended by the authorized representatives of Naman and reiterated as submitted in its reply dated December 22, 2015, and submitted that we don't have any other material documents for submissions in this regard.

Reply / hearing in respect of the B.P. Equities / Noticee No. 7:-

16. Reply dated December 28, 2015 was received from B.P. Equities. Further vide letter dated September 12, 2016, B.P. Equities had requested for a copy of Investigation report and vide letter dated October 3, 2016 and November, 2016 (No date) B.P. Equities had asked for annexures of the Investigation report. In this regard, vide email dated November 9, 2016 that all the documents as per request had been provided to

B.P. Equities vide letter dated September 22, 2016 and October 18, 2016. An opportunity of hearing was provided which was availed by B.P. Equities on June 6, 2017. The hearing was attended by the authorized representatives of B.P. Equities and reiterated as submitted in its reply dated December 28, 2015, and submitted that we don't have any other material documents for submissions in this regard.

Reply / hearing in respect of the Rikhav Securities / Noticee No. 8:-

17. Rikhav Securities vide letter dated December 3, 2015 requested for extension of 30 days' time to reply and vide letter dated March 20, 2016 filed its reply. An opportunity of hearing was provided which was availed by Rikhav Securities on June 6, 2017. The hearing was attended by the authorized representatives of Rikhav Securities and reiterated as submitted in its reply dated March 20, 2016. Further, additional submissions dated June 13, 2017 was received from Rikhav Securities.

18. Rikhav during hearing submitted that it had applied application for settlement on March 30, 2016. In this regard, SEBI vide email dated October 25, 2017 had informed that the application for settlement was received by SEBI on March 30, 2016, the same was returned on April 20, 2016 due to some deficiencies. Thereafter till dated no settlement application had been received from Rikhav in this matter.

19. After taking into account the allegations, reply of the Noticees and other evidences / material available on records, I hereby proceed to decide the case on merit.

CONSIDERATION OF ISSUES AND FINDINGS:-

20. I have carefully perused the written submissions of the Noticees and the documents available on record. The issues that arise for consideration in the present case are :

a. *Whether the Noticees had indulged into self-trades with an intention to create misleading appearance of trading without any change in beneficial ownership of such securities and whether such indulgence by the Noticees are in violation of regulation 3 (a) to (d), 4 (1) & 4 (2) (a) & (g) of the PFUTP Regulations and clause A (2), A(3), A (4) & A (5) of the Code of*

Conduct under Schedule II read with regulation 7 (after amendment regulation 9) of the Stock Brokers Regulations?

b. *If yes, then, does the violations on the part of the Noticees attract monetary penalty under sections 15 HA and/or 15HB of the SEBI Act?*

c. *If yes, then, what would be the monetary penalty that can be imposed upon all the Noticees taking into consideration the factors mentioned in section 15J of the SEBI Act read with rule 5 (2) of the Adjudication Rules?*

21. I have carefully perused the allegations, submissions of all the Noticees and the evidences / material available on records. The facts / details of the trading / trading data as alleged in the SCN and the respective submissions / defences of the Noticee(s) are similar in nature, hence, their submissions towards the allegations, are being examined on merit collectively.

22. The Hon'ble Securities Appellate Tribunal (**Hon'ble SAT**) in the case of ***Krupa Soni & Ors. v/s SEBI*** (Appeal No. 32/2013) decided on January 24, 2014 observed as follows-

"On perusal of pleadings and hearing the oral submissions, we note that the self trades are fictitious in nature as there is no transfer of actual beneficial ownership of share and because the buyer and seller are the same person. Such trades are injurious to a healthy market and result in the creation of artificial volumes in the scrip. This in turn gives a totally wrong signal to the members of the public who may invest in the hope of making some gains but ultimately land up with losses. The argument advanced by the learned counsel for the Appellant Shri J.J. Bhatt, who appears with Ms. Rinku Valanju that such self trades were executed through several brokers, in no way mitigates the charge of violation of the PFUTP Regulations. <u>This Tribunal has taken a consistent view that a few instances of self trades in themselves would not, ipso facto, amount to an objectionable trades".</u>

23. As per aforesaid case of *Krupa Soni and Sanjay Soni*, the total executed self-trades by the appellant were to the extent of 1,82,942 shares which constituted 7.60% of Krupa Soni Group's trades and <u>3.26% of the total market volume in the scrip</u>**.** In other words, the self trades which are around 3% of the total market volumes in particular scrip have been considered as substantial having impact upon volumes in the scrip.

24. From the records, it is noted that the Noticees had executed / indulged into self-trades and created artificial volume in the scrip, leading to false and misleading appearance of trading of the scrip in the securities market and the details of such self-trades are shown below.

Entity Name	***Broker on both Buy & Sell Side***	***Total Self Traded Volume***	***Total Self Trade Count***	***Self Trade Count from same terminal***	***No. of days on which self trades done***	***%of Self trade Qty to Market Volume***	***Net Last Traded Price (LTP) contribution by self-trades***
Noticee No. 5 (JMP Securities)	Noticee No. 5 (JMP Securities)	35,672	41	16	5	0.07	-0.1
Noticee No. 1 (B.P. Fintrade)	Noticee No. 7 (B.P. Equities)	18,491	30	30	4	0.03	0.1
Noticee No. 6 (Naman)	Noticee No. 6 (Naman)	2,856	26	26	2	0.01	0.05
Noticee No. 2 (Genuine)	Noticee No. 2 (Genuine)	23,797	103	2	3	0.04	0.45
Noticee No. 3 (Vijeta)	Noticee No. 3 (Vijeta)	2,536	16	2	2	0.00	-0.1
Noticee No.4 (Rikhav)	Noticee No. 8 (Rikhav Securities)	4,506	44	29	3	0.01	-0.1

25. From the above, it is noted that the self-trade percentage / volume of the Noticees as compared to the total market volume in VMS is as- (JMPS Securities 0.07%), (B.P. Fintrade and B.P. Equities 0.03%), (Naman 0.01%), (Genuine 0.04%), (Vijeta 0%) and (Rikhav and Rikhav Securities 0.01%). It is seen from the records that the Noticees had entered into self-trades on 2 – 5 days during the investigation period and their volume in such self-trades is less than 1% when compared to the total market volume in VMS scrip. Though the Noticees had entered into self-trades on multiple occasions, yet the volume of self-trades vis -a-vis total market volume in the shares of VMS Industries Limited is not significant. In the given case, I find that the self-trades are less than 1% when compared to the total market volume in VMS. Hence, considering the above, I am of the view that no penalty is warranted to be imposed.

26. Further, I also note that no adverse observations regarding synchronized trading, reversal trading or executing order away from last traded price or creation of new high price by way of first trade etc. is there in the investigation report. Also, no fraudulent

modus operandi was explained under the investigation report regarding such self-trades.

27. Therefore, considering the fact and circumstance of the case, it is concluded that the violation of regulation 3(a) to (d), 4 (1) & 4 (2) (a) and 4 (2) (a) &(g) of the PFUTP Regulations and violation of clause A (2), A (3), A (4) and A (5) of the code of conduct under Schedule II of the Stock Brokers Regulations, does not stand established against the Noticees.

28. As the violations are not established against the Noticees, therefore, consequent Issue No. 2 and 3 requires no examination.

ORDER

29. Accordingly, taking into account aforesaid observations and in exercise of power conferred upon me under section 15 I of the SEBI Act read with rule 5 of the Adjudication Rules, I am of the view that no penalty is warranted to be imposed upon the Noticees in the matter and the case / SCN dated November 27, 2015 is disposed of accordingly.

30. In terms of rule 6 of the Adjudication Rules, copies of this order are sent to the Noticees and also to the SEBI.

DATE: DECEMBER 15, 2017 **RACHNA ANAND**
PLACE: MUMBAI **ADJUDICATING OFFICER**