BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/PM/NK/2018-19/503]

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

Crosseas Capital Services Private Limited (PAN: AACCC5470H)

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 the Noticee namely, Crosseas Capital Services Private Limited (hereinafter referred to as Crosseas) had entered into self-trades on proprietary account on both the exchanges, National Stock Exchange of India Limited (NSE) and BSE Limited (BSE).
3. It was alleged that the Noticee, namely, Crosseas Capital Services Private Limited had repeatedly entered into self-trades on both the exchanges (NSE and BSE) on several occasions and in large quantities thereby creating artificial volumes in the

scrip. Further, there was no change of ownership of the shares. 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.
Crosseas Capital Services Private Limited	Crosseas Capital Services Private Limited.	264330	3054	0.466	-0.95	7.938	7.948

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.
Crosseas Capital Services Private Limited	Crosseas Capital Services Private Limited	328809	3900	0.989	-20.50	9.908	9.908

4. In view of the above, it was alleged that the Noticee, namely, Crosseas Capital Services Private Limited had violated the provisions of Regulations 3(a), 3(b), 3(c), 3(d), 4(1) and 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) and have also violated the provisions of Clause A(3), A(4) and A(5) of the Code of Conduct for Stock Brokers as specified under Schedule II read with Regulation 7 (now Regulation 9(f)) of SEBI (Stock Brokers and Sub Brokers) Regulations, 1992.

APPOINTMENT OF ADJUDICATING OFFICER

5. The undersigned was appointed as 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 for the alleged violations of provisions of Regulations 3(a), 3(b), 3(c), 3(d), 4(1) and 4(2)(a) and 4(2)(g) of SEBI (PFUTP) Regulations, 2003 and under section 15HB of the SEBI Act,

for the alleged violations of provisions of Clause A (3), A (4) and A (5) of the Code of Conduct for Stock Brokers, Schedule II read with Regulation 9 of SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992 by the Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

6. A Show Cause Notice A&E/EAD/PM-NK/18638/2017 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) and 4(2)(a) and 4(2)(g) of the SEBI (PFUTP) Regulations, 2003 and under section 15HB of the SEBI Act, for the alleged violations of provisions of Clause A (3), A (4) and A (5) of the Code of Conduct for Stock Brokers, Schedule II read with Regulation 9 (f) of SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992 as specified in the SCN. Copies of the documents relied upon in the SCN were provided to the Noticee along with the SCN.

7. The Noticee Vide letter dated August 21, 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 letters dated November 17, 2017 December 8, 2017, March 15, 2018 and May 04, 2018. The summary of submissions in the above mentioned replies are as follows:

    - *The Noticee has placed reliance upon the SEBI policy dated May 16, 2017 to deal with ongoing cases involving allegation of self-trades. The Noticee submitted that paragraph 2 of the policy states that, "intention is a sine quo non for establishing manipulation in case of self-trades and accidental self-trades are not covered under the said regulations. Accordingly, mere occurrence of self-trades should not be considered as per se illegal in the absence of any other additional evidence to prove manipulation or intent to defraud …an assessment has to be made regarding whether the said trade was intentional or unintentional on the basis of supporting evidence and the manipulation caused by indulging in self-trades should be clearly brought out."*
    - *Accordingly, Paragraph 3(a) of the policy states that "The quasi-judicial authority may assess on the basis of SCN/investigation report whether any manipulation is arising out of self-trade or any intention to enter self-trade is evident from the material on record. If the manipulation or intent can be established the same may be proceeded with as approved. However, if no*

intention or manipulation is evident from the case and the only charge is mere occurrence of self-trades, then the entity may be exonerated by the quasi-judicial authority."

- *The Noticee submitted that Show Cause Notice in other similar matter in respect of Crosseas Capital Services Pvt. Ltd. in the matter of trading activities in the scrip of Aster Silicates Limited has been disposed of on the basis of the above Enforcement Action Policy. The order records that, "There is no evidence… to suggest any fraudulent intention behind execution of self-trades by the noticee. Therefore, in compliance of SEBI policy, I am inclined to drop the adjudication proceedings initiated against the Noticee vide SCN dated May 06, 2015." Therefore, you are requested to drop the adjudication proceedings initiated against the Noticee vide the above Show Cause Notice at the earliest.*

- *The Noticee submitted that the Show Cause Notice in the instant matter is merely indicating occurrence of self-trades and no intention has been imputed and no dimension of manipulation has been brought out.*

- *The Noticee has reiterated that the submissions in the matter of Servalakshmi Papers Limited apply to the current matters as well and are summarised as under:*

  All the trades have been executed on the approved Algo Trading Software in an automated manner and there is no manual punching of trades.

  Internally matched trades (self-trades) are spread over a large number of individual trader ids (multiple servers / lease lines).

  Matched trades are random in nature and spread throughout the day.

  Matched quantities are extremely small, random and unequal.

- *Only a miniscule proportion of the orders have converted into self-trades on account of system generated trading mechanism by using Approved Algo Trading Software. Besides, system generated orders have only been rarely and accidentally matched internally, and in odd quantities. Orders, whether resulting in rare internal matching or not, have been placed at or around the market price.*

- *The internal matching has happened on account of the latency factor in the system of Algo Trading in which system places orders at ULTRA HIGH FREQUENCY and there is at time latency on account of lease line distance, drop of packets in the leased lines, due to which some of the trades may have rarely and accidentally matched internally as the buy/sell orders are placed at Ultra High Frequency and automatically.*

- *Orders were never placed with the intent to do a self trade.*

- *Submissions on such facts were accepted by all authorities indicating the fact that self-trades were purely accidental in nature, and there was no evidence to the contrary.*

- *The Noticee has submitted that in the affidavit dated October 9, 2015 filed by Bombay Stock Exchange (BSE Limited) before Hon'ble SAT BSE admitted that Algo trading results in accidental self-trades.*
- *The Noticee has further submitted that the findings and recommendations of SEBI appointed Secondary Markets Action Committee (SMAC), in the meeting held on 30th January 2014 had clearly said that "It was felt that self-trades could be possible in the scenario wherein multiple traders in a broking house may be placing buy and sell order in same scrip for different clients or multiple ALGO orders of the same broker get matched, without any intent of self execution, creation of artificial volume, manipulation etc".*
- *The Noticee has submitted that no document/material/evidence has been brought out/specified in the Show Cause Notice to demonstrate that the self-trades were manipulative and intentional in nature/ and were not mere occurrence/accidental.*
- *It may kindly be noted that SEBI has not granted us any documents/material to impute that-*
- *Self-trades executed were not incidental/accidental in nature.*
- *Self-trades were manipulative or it was done with intent to defraud.*
- *Self-trades executed were intentional.*
- *Self-trades executed has caused any manipulation.*
- *The percentage of Self trade in the present matter is miniscule as the volume of unintentional self-trades executed was only 0.66% of total market volume of SRS Ltd. at both the exchanges, i.e. BSE and NSE. In order to understand the calculation of the total percentage of self-trades, kindly refer to the below mentioned table:*

Sr. No	*Details*	*Volume of Self-trades (A)*	*Total Market Volume (B)*	*% of Self-trades to total Market (A/B)*
1	*BSE*	*328809*	*33245609*	*0.46%*
2	*NSE*	*264330*	*56691927*	*0.99%*
3	*Total (BSE+NSE)*	*593139*	*89937536*	*0.66%*

- *It may kindly be noted that no adverse inference has been drawn with respect to Last Traded Price, New High Price, New Low Price and first trades of the Noticee in the Investigation Report in the present matter of SRS Ltd.*
- *Hon'ble Securities Appellate Tribunal in its order dated August 7, 2014, in the matter of RM Shares Trading Private Limited vs. SEBI has held that "in an adjudicating proceedings, if a party relies on adjudication order passed in another case, then judicial discipline demands that the Adjudicating Officer considers that order and thereafter passes an order either to follow or distinguish the earlier order or disagree with the order by recording reasons as to how that ought not to be followed".*

- *The Honourable Calcutta High Court in its order dated 26th July, 1991 in the matter of Indian Cardboard Industries Ltd. v Collector of Central Excise has held that "It is a settled principle of law that Show Cause Notice/Proceedings is liable to be quashed "When there is no material justifying the issuance of the Show Cause 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.

<u>CONSIDERATION OF ISSUES AND FINDINGS</u>

9. I have perused 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) and 4(2)(a) and 4(2)(g) of SEBI (PFUTP) Regulations, 2003 and Clause A (3), A (4) and A (5) of the Code of Conduct for Stock Brokers, Schedule II read with Regulation 9 (f) of SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992? and
    b. Does the violation, if any, attract monetary penalty under section 15HA and 15HB of SEBI Act, 1992?

Violation of PFUTP Regulations, 2003

10. Upon perusal of the documents available on record, I find that the Noticee has executed 3054 self-trades involving a total quantity of 264330 shares (0.466% of the market Volume) on NSE and 3900 self-trades involving a total quantity of 328809 shares (0.989% of the market Volume) on BSE in the scrip of SRS during the investigation period. It is also a matter of record now, that 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 trading member had bought 3319617 shares (9.99%) on BSE and 3339863 (5.89%) shares on NSE in the scrip of SRS during the investigation period. Of the above, the Noticee as a client had bought 3318717 (9.98%) shares on BSE and 3329863 (5.87%) shares on NSE in the scrip of SRS during the investigation period.

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 percentage of self-traded quantity of the Noticee to that of the market trade volume on NSE is 0.46% and BSE is 0.99% only. Such small percentage / volume of self-trades 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. 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, the 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 the 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) and 4(2)(a) and 4(2)(g) of SEBI (PFUTP) Regulations, 2003 and Clause A (3), A (4) and A (5) of the Code of Conduct for Stock Brokers, Schedule II read with Regulation 9 of SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992 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/18638/2017 dated August 7, 2017 alleging violations of provisions of Regulations 3(a), 3(b), 3(c), 3(d), 4(1) and 4(2)(a) and 4(2)(g) of SEBI (PFUTP) Regulations, 2003 and Clause A (3), A (4) and A (5) of the Code of Conduct for Stock Brokers, Schedule II read with Regulation 9 of SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992 by the Noticee i.e. Crosseas Capital Services 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 21, 2018 **Prasanta Mahapatra**
Place: Mumbai **Adjudicating Officer**