BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. NP/JS/AO/31/2017]

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

Nirmal Bang Securities Ltd. (PAN AAACN7369L)

38-B Khatau Building, 2nd Floor,

Alkesh Dinesh Modi Marg,

Fort, Mumbai 400001

FACTS OF THE CASE IN BRIEF

1. SEBI conducted investigation in the matter of trading activities of certain entities in the shares of M/s Pipavav Defence & Offshore Engineering Company Ltd. (hereinafter referred to as Pipavav), M/s Parsvnath Developers Ltd. (hereinafter referred to as Parsvnath), Glodyne Technoserve Limited (hereinafter referred to as Glodyne) and M/s Tulip Telecom Ltd. (hereinafter referred to as Tulip). The shares of all the aforesaid companies are listed at both BSE and NSE.

2. On July 26, 2012 the stock price of the aforesaid companies witnessed sharp and quick fall on both NSE and BSE. Although there was no corporate announcement or price sensitive information disclosed to the stock exchanges by these companies which would have impacted the share prices negatively, the stock price in case of all the aforesaid four

companies fell sharply within few minutes on July 26, 2012. The percentage of such price variation in those scrips at NSE and BSE was noted as under:

Scrip	**BSE (in %)**	**NSE (in %)**
Pipavav Defence and Offshore Eng. Ltd.	-19.96	-19.99
Parsvanath Developers Limited	-19.91	-19.93
Tulip Telecom Limited	-25.97	-26.02
Glodyne Technoserve Ltd.	-19.98	-19.99

3. Investigation revealed that on July 26, 2012 Nirmal Bang Securities Limited (hereinafter referred to as the noticee) sold shares of Pipavav, Tulip and Parsvnath for its client Manish Agarwal and shares of Tulip for its client Ajit Kumar Jain. The noticee was also observed to amongst the top 10 selling stock brokers in the scrip of Pipavav on July 26, 2012. The shares sold by the noticee accounted for 31.62% of total trade on BSE and 16.55% of the total trade on NSE. The last trading price (LTP) analysis of trades done in Pipavav on July 26, 2012 revealed that the top 10 entities contributed Rs. -56.25/- accounting for 72.3% of market negative LTP on BSE. Similarly, on NSE, the top 10 entities contributed Rs. -42.4/- accounting for 65.1% of market negative LTP. The noticee was also observed to amongst the top 10 stock brokers based on Gross sell on BSE and NSE in the scrip of Parsvanath on July 26, 2012. It is observed from the investigation report that both Manish Agarwal and Ajit Kumar Jain sold shares of Tulip that accounted for 45.7% of market volume on BSE and 15.69% of market volume on NSE. The noticee was also observed to amongst the top 10 stock brokers based on Gross sell on BSE and NSE in the scrip of Tulip on July 26, 2012.

4. The details of the trades of Manish Agarwal is as under:

Name of the Scrip	**BSE**				**NSE**			
	Trading during July 01 – 25, 2012	**Trading on July 26, 2012**	**Trading on July 26, 2012 price**	**Tradi ng during**	**Trading during July 01 –**	**Trading on July 26, 2012**	**Trading on July 26, 2012**	**Tradin g during**

					fall period		**July 27 – Aug 03, 2012**		**25, 2012**				**price fall period**		**July 27 – Aug 03, 2012**	
	B	**S**	**B**	**S**	**B**	**S**	**B**	**S**	**B**	**S**	**B**	**S**	**B**	**S**	**B**	**S**
Pipavav	1835000	702812	0	516000	**0**	**199309**	0	0	760000	1750000	0	1200735	**0**	**151843**	0	0
Parsvnath	0	0	0	100000	0	11208	0	0	0	0	0	200000	0	100000	0	0
Tulip	0	0	0	50000	0	50000	0	50000	100000	0	0	50000	0	24672	0	0

5. The details of the trades of Ajit Kumar Jain traded in the scrip of Tulip are as under :

Name of the Scrip	**BSE**								**NSE**							
	Trading during July 01 – 25, 2012		**Trading on July 26, 2012**		**Trading on July 26, 2012 price fall period**		**Trading during July 27 – Aug 03, 2012**		**Trading during July 01 – 25, 2012**		**Trading on July 26, 2012**		**Trading on July 26, 2012 price fall period**		**Trading during July 27 – Aug 03, 2012**	
	B	**S**	**B**	**S**	**B**	**S**	**B**	**S**	**B**	**S**	**B**	**S**	**B**	**S**	**B**	**S**
Tulip	0	0	0	90000	0	90000	0	90000	290000	0	0	200000	0	200000	0	0

6. Shri Manish Agarwal submitted that these transactions in share of Pipavav, Tulip and Parsvanath executed by the noticee were not authorized by him. Shri Ajit Kumar Jain also alleged that shares of Tulip were sold by the noticee without authorization.

7. As per the findings on investigation, it is observed that on July 26, 2012 the noticee sold 5,16,000 shares of Parsvnath before price fall patch and 1,99,309 during price fall patch on BSE for its client Manish Agarwal. The noticee had submitted to the investigation team of SEBI that the orders for the alleged trades had been placed as per instruction of

Manish Agarwal and contract notes and SMS in respect of such trade were sent to Manish Agarwal. According to the investigation report of SEBI, the telephone number 0330334016250 belongs to Nirmal Bang Securities Pvt. Ltd., and outgoing call from the same was observed at 16:34:43 whereas trades were executed during 09:32:15 to 09:34:41. The impugned trades had been executed before the calls were made to the Manish Agarwal. Hence, the noticee was alleged to have placed orders fraudulently without the consent and authorization of its client Manish Agarwal. Also, the investigation team of SEBI could not confirm from the voice logs submitted by noticee the identity of the person who had placed orders for the impugned trades.

8. Similarly, in case of Ajit Kumar Jain, the noticee was alleged to have placed orders without the consent of its client in the scrip of Tulip. The noticee claimed to have sent contract notes and SMS to its client and even it got confirmation from him. The investigation report mentioned that trades for Ajit Kumar Jain were executed during 09:35:44 to 09:47:21 and calls to him were made during at 16:37:30. The impugned trades had been executed before the calls were made to Ajit Kumar Jain. Hence, the noticee was alleged to have placed orders fraudulently without the consent of its client Ajit Kumar Jain. Also, the investigation team of SEBI could not confirm from the voice logs submitted by noticee the identity of the person who had placed orders for the impugned trades.

APPOINTMENT OF ADJUDICATING OFFICER

9. Shri Jayanta Jash, Chief General Manager, SEBI, vide an order of Whole Time Member, SEBI, dated July 08, 2014, was appointed as the Adjudicating Officer to inquire into and adjudge under Section15HA &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 of provisions under Regulation 4(1) and 4(2)(m) of SEBI(Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003(PFUTP Regulations, hereinafter) and Clauses A(1), A(2) and B(1) of the Code of Conduct for Stock Brokers as specified under Schedule II read with Regulation 9 of SEBI(Stock Brokers and Sub Brokers) Regulations, 1992 by the noticee. Subsequently, vide order dated 28th October, 2015, Shri S. V. Krishnamohan, Chief General Manager, was appointed Adjudicating Officer to enquire into and adjudge under

Section 15HA & 15HB of the SEBI Act, 1992. Vide the internal noting of the Whole Time Member, SEBI, dated December 14, 2015, the undersigned was appointed as Adjudicating officer to adjudge the matter.

SHOW CAUSE NOTICE (SCN), REPLY AND PERSONAL HEARING

10. The noticee was issued a show-cause notice dated February 26, 2016 and a copy of the investigation report was also provided to the noticee. It was alleged in the show-cause notice that Noticee carried out unauthorized trade on behalf of its clients Manish Agarwal and Ajit Jain in various scrip of Parasvanath, Pipvav and Tulip on July 26, 2012, and therefore, failed to maintain high standards of integrity, promptitude and fairness in its conduct in violation of the code of conduct for stock brokers as mentioned at Clause A (1), A (2), & B (1) as specified under Schedule II read with Regulation 9 of SEBI (Stock Broker and Sub Broker) Regulations, 1992. Further, noticee by executing unauthorized transaction in securities on behalf of its client has also violated provision of Regulation 4(1) and 4(2) (m) PFUTP Regulations. The noticee was, therefore, called upon to show cause as to why an inquiry should not be held against them in terms of Rule 4 of SEBI Adjudication Rules and penalty be imposed under section 15HA of SEBI Act, 1992 for executing unauthorized trade on behalf of its client in violation of Regulation 4(1) and 4(2)(m) of SEBI(Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 and & under section 15HB of SEBI Act for its failure to abide by the code of conduct for stock brokers as mentioned at Clause A(1), A(2), & B(1) as specified under Schedule II read with Regulation 9 of SEBI(Stock Broker and Sub Broker) Regulations, 1992.

REPLIES TO SCN

11. The noticee, vide its reply to SCN dated March 15, 2017, received on March 20, 2017 submitted, inter-alia, as under:

The following submissions (detailed below) demonstrate that no further Inquiry is required in the matter and that the proceedings be disposed of against NBSPL *without any directions:*

a. *The present proceedings are barred by the principle of res judicata in as much as the allegations of the Clients against NBSPL in relation to the very facts have already been determined and dismissed by a Whole Time Member of SEBI ("**WTM**"). The learned WTM has conclusively ruled against the allegation that NBSPL undertook unauthorized trades for the Clients. We understand that this ruling of the learned WTM has not been challenged and has therefore achieved finality.*

b. *It is trite law that judicial discipline requires that the decision of a higher authority or a coordinate bench ought to be followed by another authority. This principle has been reiterated even by the Hon'ble Securities Appellate Tribunal. Therefore in light of the settled position on this very issue which is the subject matter of the adjudication proceedings and the decision of the learned WTM against the allegations in the Show Cause Notice having attained finality, there cannot be a contrary view taken in the present proceedings.*

c. *The investigation report, which is the sole basis of the issuance of the Show Cause Notice, does not conclude any violation by NBSPL and also by the Clients. There is therefore no basis for alleging that there was any fraudulent trading in the Scrips even on a bare perusal of the investigation report.*

d. *The allegation against NBSPL is with respect to only three scrips namely Pipavav, Pasrvnath and Tulip. While the Investigating Officer makes an allegation of "unauthorized trades" by NBSPL with respect to Pipavav and Parsvnath, there is no such observation as regards Tulip as is evident from Page 43 to 44 of the Investigation Report provided to us.*

e. *The allegation of violation of PFUTP Regulations and the Code of Conduct as mentioned above is recorded because the Clients for whom the trades were executed denied having given any instructions to NBSPL and therefore all the trades of the Clients were termed as "unauthorized" by the Investigating Officer.*

f. *The investigation report concludes abruptly and without even setting out observations and conclusions in relation to trading in Tulip. Indeed such flippant investigation report ought not to have led to the issuance of the Show Cause Notice and subjecting NBSPL to costs and efforts of the present proceedings, which the learned Adjudicating Officer must consider.*

g. *It is respectfully submitted that the investigation report is vitiated by non-application of mind in as much as it does not set out the exact basis on which it alleged that NBSPL executed unauthorized trades. There is no reasoning or evidence contained in the investigation report or the Show Cause Notice to substantiate this allegation other than recording an observation that the call logs provided by NBSPL is reported to be at a later time (in the evening) when the alleged trades were executed in the morning. This, according to the Investigating Officer is conclusive to hold that the trades were not authorized by the Clients. The Investigating Officer made no efforts to find out how and in what manner the trades were authorized by the Clients which would have clarified the controversy. Further, even the submissions of NBSPL to the Investigating Officer too have not been considered and only selective submissions are taken on record.*

h. *In any case the allegations in the Show Cause Notice which is based on an incorrect investigation report is in contradiction to the observation in the order passed by the learned WTM. This Order was also provided to the Investigating Officer, who seems to have disregarded the same and chose to proceed with the Investigation Report based on his own analysis and observations.*

i. *The NSE had also investigated the issue based on complaints by both the Clients on the very issue of unauthorized trades. The NSE has correctly disposed of these complaints without any adverse observation or order against NBSPL in relation to the alleged unauthorized trades.*

j. *There is material to demonstrate that the trades in question were always informed to the Clients.*

k. *The record demonstrates that both the Clients raised issues with the trades in question only after the same were being investigated by authorities and in response to the Exparte Order passed by SEBI which recorded serious allegations against the Clients. There is also an allegation that the Clients are connected entities and have manipulated the scrips. Only to defend this allegation, the Clients made an incorrect statement and took a stand that the trades were not authorized by them. The WTM has categorically ruled that the allegation of unauthorised trades is an afterthought and do not appear to be correct and no evidence is brought on record by the Clients.*

l. *The Disciplinary Action Committee proceedings held at BSE and NSE would also demonstrate this fact and the malafides of the Clients in making such an allegation against*

NBSPL. Interestingly, none of the Clients have initiated any arbitration proceedings, which any client would have done had there been any unauthorized trades by the stock broker.

Proceedings by SEBI against the Clients:

*SEBI had passed an ex parte ad interim order on August 3, 2012 ("**Ex-Parte Order**") inter alia against the Clients in relation to the very trades that are the subject matter of the present proceedings. The Ex-Parte Order restrained both the Clients from accessing the securities market and further prohibited from buying, selling or dealing in securities in any manner whatsoever, till further directions. Although it was stated in the Ex-Parte Orders that the trading by the Clients was effected through NBSPL, there were no directions against NBSPL.*

*It appears that the Clients filed submissions in response to the Ex-Parte Order pursuant to which a confirmatory order dated January 11, 2013 ("**Confirmatory Order**") was passed against them by a Whole Time Member of SEBI.*

The following extracts of the Confirmatory Order are relevant to the allegations in the present matter:
I note that Mr Ajit and Mr Manish both have not disputed the trades in their account in the respective scrips as described in the interim order. ***With regard to the alleged sale of shares in the respective scrips on July 26, 2012 both have claimed that orders for selling those shares on July 26, 2012 were executed by their broker NBSPL on its own.*** *I have perused the copy of the emails written by Mr. Ajit and Mr. Manish to NBSPL on various dates and the reply of NBSPL to those mails, relied upon by them in support of their submissions. I note that Mr. Manish sent an e-mail to NBSPL on July 31, 2012 i.e. 5 days after the trades in question and only after NBSPL informed him that he would have to return the pay-out with respect to the alleged trades.* ***In this e-mail Mr. Manish had claimed that the trades in question were executed by NBSPL without his authorisation or approval and he was told that the sell orders were placed by NBSPL due to margin shortfall. Further, Mr. Ajit sent similar e-mail to NBSPL on August 08, 2012 i.e. after a gap of almost two weeks from July 26, 2012 and a week after the interim order was passed, claiming that the sell orders were not placed by him but they were placed by NBSPL.***

From the replies of NBSPL dated August 13, 2012 and August 17, 2012 to Mr Ajit and Mr Manish, respectively I note that it has categorically confirmed *(a) that all the alleged trades on July 26, 2012 were executed by Mr Ajit and Mr Manish themselves and that it has in its possession the voice logs of the trade confirmation given by Mr Ajit and Mr. Manish as evidence;*

(b) that pay-out in respect of all the alleged transactions were effected to them on July 30, 2012 and they were informed about the same via SMS alerts;

(c) that it had asked Mr Ajit to come to NSE office in Kolkata on July 27th and 28th, 2012 (at the request of BSE/NSE officials) to explain the transactions done on July 26, 2012 but he chose not to come on either of the dates;

(d) that Mr Manish attended a conference call with the officials of BSE and NSE on July 28, 2012 wherein a scrutiny was being conducted in relation to the trades in question wherein Mr Manish had confirmed to the officials of the NSE and BSE that the trades were on his behest;

(e) that it is also in possession of Mr Ajit's and Mr. Manish's undertaking given to it in respect of all their trading activities in all scrips dealt with them as demanded by Exchanges (BSE & NSE) on July, 28, 2012, which they have forwarded to NSE & BSE on July 31, 2012.

I note that though Mr. Ajit and Mr. Manish have, vide their identical e-mails dated August 16, 2012 and August 20, 2012, respectively sent to NBSPL, denied the above confirmation of NBSPL, they have failed to establish their claim by any evidence. Their e-mails cannot substantiate their submissions as they contain their own claims unsupported by any independent evidence. I, therefore, find that submissions of Mr. Ajit and Mr. Manish are after thought and do not appear to be correct…"

[Emphasis supplied]

The Confirmatory Order continued the restrains in the Ex-Parte Order against the Clients. We understand that the Confirmatory Order has not been challenged by Manish or Ajit and the above observations in the Confirmatory Order have therefore achieved finality.

Complaints of the Clients before the NSE:

The NSE and the BSE had been investigating the trades in question since July 26, 2012. There was a conference call held with the officials of the NSE and BSE on July 28, 2012 in relation to the trades. Manish had attended the said call and had confirmed before the officials of the exchanges that the trades in question were indeed authorized by him. This is also recorded in the Minutes of the proceedings before the stock exchanges. It was only on July 31, 2012 (by Manish) and on August 11, 2012 (by Ajit) that the plea of unauthorized trades were taken by both the Clients i.e. after realizing that their trades are being scrutinized. The Confirmatory Order correctly records that the plea by the Clients were 'after thought and do not appear to be correct'.

It is submitted that both the Clients, in furtherance of the above after thought, filed complaints dated August 20, 2012 and August 16, 2012 marking the NSE and BSE alleging that NBSPL had executed the trades in question without approval from them. The NSE by its letters of August 28, 2012 forwarded the same to NBSPL for redressal of the complaints.

NBSPL had, by its letters dated September 14, 2012 (forwarded to the NSE by a separate letter dated September 14, 2012) responded to the allegations by the Clients. NBSPL had demonstrated that the trades by the Clients were at their instance and had produced copies of documents to demonstrate the same. Upon considering the submissions of NBSPL, the NSE and the BSE disposed of the complaints by the Clients.

Investigation by SEBI:

SEBI had conducted an extensive investigation in the matter leading to the issuance of an investigation report, a copy of which has been provided to NBSPL. The following are some relevant observations in the investigation report:

Re: Analysis in the scrip of Pipavav:

a. *Paragraph 20, page 12: Conclusion & Recommendations: Based on observations during Investigation, no adverse inference can be drawn against any of the 19 suspected entities. Further, no adverse inference can be drawn on top Negative LTP contributors as they squared off their positions* *during price fall patch. Adjudication proceedings may be initiated against Nirmal Bang Securities for execution of unauthorised trades in the accounts of Manish Agarwal.*

Re: Analysis in the scrip of Pipavav:

b. *Paragraph 40, page 23: Conclusion & Recommendation: Adjudication proceedings may be initiated against Edelweiss Securities Limited, Nirmal Bang Securities Limited and Kaynet Capital Limited for execution of unauthorised trades in accounts of Gajaria Jayna Precision Industries Pvt. Ltd. and Manish Agarwal and Kuvam Plast Limited respectively.*

c. *There is no conclusion in the investigation report in the case of Tulip despite the fact that there is no adverse observation against NBSPL.*

d. *It is interesting to note that the Investigating Officer has failed to consider all the submissions contained in the submissions made by NBSPL during the investigation. Please see the email dated 04.07.2013 sent by NBSPL to SEBI during the investigation.*

Submissions:

The present proceedings are barred by principles of res judicata and issue estoppel:

The alleged unauthorized trades were the subject matter of the proceedings that culminated in the Confirmatory Order as seen above. Both the Clients have contended in response to the Ex-Parte Order that the trades in question were unauthorized and executed by NBSPL without their approval. The learned WTM has upon review of NBSPL's submissions ruled in no uncertain terms that the trades in question were indeed authorized by the Clients and the contentions of the Clients were an afterthought and incorrect. We understand that the Confirmatory Order has not been challenged and is therefore presently conclusive.

It is therefore submitted that the issues in the present Show Cause Notice have already been agitated in prior proceedings and have attained finality and therefore cannot be gone into in the present proceedings. The fact of the issues having attained finality between the parties gives rise to "issue estoppel" and "cause of action estoppel" which now prevents SEBI from raising any of the issues raised in the Confirmatory Order against NBSPL. Agitating the same issues for the purported causes of action would clearly be against public policy.

In support of this submission NBSPL is relying upon the judgment of the Hon'ble Supreme Court in the case of Ishwar Dutt V. Land Acquisition Collector reported in AIR 2005 SC at page 3165 where it was held that:

"Issue estoppel may arise where a particular issue forming a necessary ingredient in a cause of action has been litigated and decided and in subsequent proceedings between the same parties involving a different cause of action to which the same issue is relevant, one of the parties seeks to reopen that issue. Here also bar is complete to relitigation but its operation can be thwarted under certain circumstances.

Further in paragraph 28 it was ruled that:

> *"It was further observed[1]:*
>
> *"In a case of this nature, however, the doctrine of 'issue estoppel' as also 'cause of action estoppel' may arise. In Thoday (supra) Lord Diplock held:*
>
> *"..."cause of action estoppel" is that which prevents party to an action from asserting or denying, as against the other party, the existence of a particular cause of action, the non-existence or existence of which has been determined by a court of competent jurisdiction in previous litigation between the same parties. If the cause of action was determined to exist, i.e., judgment was given on it, it is said to be merged in the judgment.... If it was determined not to exist, the unsuccessful plaintiff can no longer assert that it does; he is estopped per rem judicatam"*

In support of the above proposition NBSPL also relies upon the judgment of the Hon'ble Supreme Court in the case of Dadu Dayalu Mahasabha Jaipur (Trust) v. Mahant Ram Niwas reported in AIR 2008 SC at page 2187 where in paragraph 29 it has been held that:

In State of U. P. v. Nawab Hussain, (1977) 2 SCC 806 this Court held: - AIR 1977 SC 1680

"3. The principle of estoppel per rem judicatam is a rule of evidence. As has been stated Marginson v. Blackburn Borough Council, it may be said to be "the broader rule of evidence which prohibits the reassertion of a cause of action". This doctrine is based on two theories: (i) the finality and conclusiveness of judicial decisions for the final termination of disputes in the general interest of the community as a matter of public policy, and (ii) the interest of the individual that he should be protected from multiplication of litigation. It therefore serves not only a public but also a private purpose by obstructing the reopening of matters which have once been adjudicated upon. ***It is thus not permissible to obtain a second judgment for the same civil relief on the same cause of action, for otherwise the spirit of contentiousness may give rise to conflicting judgments of***

[1] In the case of Y. B. Patil AIR 1977 SC 392

equal authority, lead to multiplicity of actions and bring the administration of Justice into disrepute. It is the cause of action which gives rise to an action, and that is why it is necessary for the courts to recognise that a cause of action which results in a judgment must lose its identity and vitality and merge in the judgment when pronounced. It cannot therefore survive the judgment, or give rise to another cause of action on the same facts. This is what is known as the general principle of res judicata." *(Emphasis supplied)*

Further in paragraph 30 it was held that:

30. Yet again in Hope Plantations Ltd. v. Taluk Land Board, Peermade and another, (1999) 5 SCC 590.

"26. It is settled law that the principles of estoppel and res judicata are based on public policy and justice. Doctrine of res judicata is often treated as a branch of the law of estoppel though these two doctrines differ in some essential particulars. Rule of res judicata prevents the parties to a judicial determination from litigating the same question over again even though the determination may even be demonstratedly wrong. When the proceedings have attained finality, parties are bound by the judgment and are estopped from questioning it. They cannot litigate again on the same cause of action nor can they litigate any issue which was necessary for decision in the earlier litigation. These two aspects are "cause of action estoppel" and "issue estoppel." These two terms are of common law origin. Again, once an issue has been finally determined, parties cannot subsequently in the same suit advance arguments or adduce further evidence directed to showing that the issue was wrongly determined. Their only remedy is to approach the higher forum if available. The determination of the issue between the parties gives rise to, as noted above, an issue estoppel. It operates in any subsequent proceedings in the same suit in which the issue had been determined. It also operates in subsequent suits between the same parties in which the same issue arises. Section 11 of the Code of Civil Procedure contains provisions of res judicata but these are not exhaustive of the general doctrine of res judicata. ***Legal principles of estoppel and res judicata are equally applicable in proceedings before administrative authorities as they are based on public policy and justice.***"

*[**Emphasis supplied**]*

It is submitted that the above judgments make it clear that since the issues in relation to the issue of unauthorized trades have conclusively been decided by the Confirmatory Order it is now not open for SEBI to agitate the issues in relation to the Confirmatory Order once again against NBSPL. It is *apparent therefore that the issuance of the Show Cause Notice is against public policy and the same ought to be quashed or disposed.*

<u>Judicial disciple requires the present proceedings to be dropped:</u>

It is most humbly submitted that the ruling of the Confirmatory Order, being by a higher authority within SEBI ought to be followed in the present proceedings. It is submitted that orders passed by an adjudicating officer are subject to review by the SEBI (acting inter alia through one of its WTM) under Section 15I of the SEBI Act. It is therefore possible for a Ld. WTM to review the orders of an adjudicating officer making the office of a Ld. WTM higher than that of a Ld. Adjudicating officer within SEBI.

It is apparent therefore that judicial discipline would require that the ratio of the Confirmatory Order be followed in the present case. The Hon'ble Supreme Court has in the case of Union of India and others v. Kamlakshi Finance Corporation Ltd. AIR 1992 SC 711 ruled that:

"…It cannot be too vehemently emphasised that it is of utmost importance that, in disposing of the quasi-judicial issues before them, revenue officers are bound by the decisions of the appellate authorities; The order of the Appellate Collector is binding on the Assistant Collectors working within his jurisdiction and the order of the Tribunal is binding upon the Assistant Collectors and the Appellate Collectors who function under the jurisdiction of the Tribunal. The principles of judicial discipline require that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities. The mere fact that the order of the appellate authority is not "acceptable" to the department - in itself an objectionable phrase - and is the subject matter of an appeal can furnish no ground for not following it unless its operation has been suspended by a competent court.…"

Therefore it is submitted that the decision of the Confirmatory Order ruling that there were no unauthorized trades by NBSPL, the same ratio be followed in the present case.

The investigation report, which is the sole basis of the issuance of the Show Cause Notice, does not conclude any violation by any party including the Clients. It is submitted that a bare perusal of the investigation report will indicate that the various aspects of the trading by the Clients were reviewed without any adverse inference against them. There are specific reference in the investigation report that there is no allegation of any market manipulation by any party. There is therefore no basis for alleging that there was any fraudulent trading in the Scrips even on a bare perusal of the investigation report.

It is respectfully submitted that the allegation of SEBI as recorded in the Show Cause Notice where it is alleged inter alia that NBSPL undertook fraudulent trades is incorrect. It is submitted that there is nothing in the investigation report or in the Show Cause Notice to support this allegation. The allegation against NBSPL is therefore apparently baseless and unsubstantiated.

Without prejudice, for the sake of arguments, it is interesting to note that, not only NBSPL but even the Clients are not alleged to have undertaken any fraudulent trading in the Investigation Report. It therefore defies reason as to why the allegation of fraudulent trading ought to be levelled against NBSPL.

Without prejudice to the above it is submitted that the investigation report itself is an unreliable document in as much as concludes abruptly and without even setting out observations and conclusions in relation to trading in Tulip. The investigation report does not contain any cogent reasoning or conclusion as to why NBSPL is alleged to have undertaken unauthorised trades.

It is submitted that the flippant and casual manner in which the investigation report and the Show Cause Notice levels the allegations against NBSPL is precarious. It is humbly submitted that subjecting a party to the hardships and costs of proceedings on the basis of such an inconclusive and incorrect document, in the teeth of previous decisions by a higher authority within SEBI is distressing.

It is submitted that the very trades in question were the subject matter of complaints before the NSE as set out above. The NSE has, after considering the submissions of NBSPL, disposed of the complaints of the Clients without any adverse orders against NBSPL. It is apparent therefore that another authority i.e. the NSE has determined that there is no merit in the contentions of these Clients that NBSPL undertook unauthorized trading.

It is submitted that the above developments were indeed available at the time of Investigation and the Investigating Officer ought to have taken note of all the facts and submissions rather than being selective in his approach.

<u>There is no irregularity by NBSPL:</u>

It is submitted that both the Clients were, at every stage, aware of the trades executed by NBSPL on their behest. Manish had even participated in person at Kolkata NSE office and attended conference call on July 28, 2012, with the officials of the NSE and BSE and had confirmed that the trades were executed due to margin pressure. Ajit refused to appear before the exchanges. With regard to the trades, it is submitted that:

a. *NBSPL has already provided to SEBI, the voice logs of the trade confirmation given to the Clients on the date of the trade.*
b. *Had the investigating officer enquired about the manner of placing the orders by the clients, NBSPL would have responded to the same and explained how the Clients were personally giving instructions to NBSPL.*
c. *SMS messages were sent to the Clients about the execution of the trade giving details of trades done and the ledger balance post execution of trades.*
d. *ECN were also sent to the Clients at the end of the day confirming the said trade.*

e. *SMS alerts would have been sent to the Clients by the depository system on their mobile number on transfer of securities from their account.*
f. *SMS alerts about the clearance of cheques would have been received by the Clients from their bank. In addition, NBSPL has also sent to the Clients alerts on their mobile on payment of funds.*

It is pertinent to point out that the Clients both had given undertakings in respect of all their trading activities in all scrips they have dealt with NBSPL, as demanded by the Exchanges on July 28, 2012, which we have forwarded to NSE and BSE on July 31, 2012. In light of the above it is submitted that there is nothing to indicate that NBSPL carried out any unauthorized trading. It is pertinent to point out that the pay-out in relation to the trades in question were effected on July 30, 2012. NBSPL had, by its letter dated July 30, 2012, pointed out the direction of the stock exchanges to withhold the pay-out in relation to the transactions in July 26, 2012. NBSPL had inter alia requested the Clients to refund the pay-out effected to them, as required by the stock exchanges in response to which, the Clients decided to take up the contention of unauthorized trades by NBSPL just to disown the liability and escape the responsibility.

Manish's letter dated July 31, 2012 was issued immediately on the day after NBSPL's letter of July 30, 2012 pointing out the exchanges' directives and after the pay-outs were effected. Thereafter, upon passing of the Interim Order on August 3, 2012, Manish issued the letter dated August 8, 2012 referring to the letter dated July 31, 2012 to raise incorrect and frivolous contentions in context of the Ex-Parte Order. Ajit raised incorrect contentions for the first time by his letter dated August 11, 2012.

It is apparent therefore that the complaints by the Clients were also in anticipation of the Ex-Parte Order against them on account of the regulatory scrutiny of their trading. It is apparent that the Clients' incorrect contentions are motivated by their perceived need to defend themselves in relation to transactions that lead to the passing of the Ex-Parte Order. This aspect has been appreciated and upheld by the Confirmatory Order but unfortunately has led to the incorrect initiation of the present proceedings.

PERSONAL HEARING

12. Vide letter dated December 22, 2016, the noticee was called for personal hearing on January 20, 2017. The noticee, vide its letter dated January 16, 2017, requested for another date of hearing citing unavailability of its counsel. Hence, vide letter dated January 18, 2017 personal hearing was rescheduled to be held on March 9, 2017 which was attended by the

compliance officer of noticee along with its authorized representatives. The ARs had requested one week time to submit their reply to the SCN dated February 26, 2016. The noticee submitted its reply to the SCN on March 03, 2017 and made its submission.

CONSIDERATION OF ISSUES AND FINDINGS

13. The issues under consideration in respect of the case are as under:

    a. Whether there is any violations of Regulations 4(1) and 4(2) (m) of SEBI (PFUTP) Regulations, 2003 and Clause A (1), A (2), & B (1) of the Code of Conduct for Stock Brokers as prescribed under Regulation 9 of SEBI (Stock Broker and Sub Broker) Regulations, 1992 by the noticee.
    b. Does the violation, if any, attract monetary penalty under section 15HA & 15 HB of the SEBI Act, 1992?
    c. If so, what should be the quantum of monetary penalty to be imposed?

14. It would be important to refer to the relevant provisions of the code of conduct for stock brokers as prescribed under SEBI (Stock Broker and Sub Broker) Regulations, 1992 & Regulation 4(1) and 4(2) (m) of PFUTP Regulations which read as under:

    Clause A (1) of the Code of Conduct for Stock Brokers states, "INTEGRITY: A stock-broker, shall maintain high standards of integrity, promptitude and fairness in the conduct of all his business."

    Clause A (2) of the Code of Conduct for Stock Brokers states, Exercise of due skill and care: "A stock-broker shall act with due skill, care and diligence in the conduct of all his business."

    Clause B (1) of the Code of Conduct for Stock Brokers states says, "…. A stock-broker, in his dealings with the clients and the general investing public, shall faithfully execute the orders for buying and selling of securities at the best available market price and not refuse to deal with a Small Investor merely on the ground of the volume of business involved. A stock-broker shall promptly inform his client about the execution or non-execution of an order, and make prompt *payment in respect of securities sold and arrange for prompt delivery of securities purchased by clients."*

Regulation 9 of the SEBI (Stock Brokers & Sub-brokers) Regulations, 1992 states, "Any registration granted by the Board under Regulation 6 shall be subject to the following conditions, namely,-

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(b) he shall abide by the rules, regulations and bye-laws of the stock exchange which are applicable to him;

(f) he shall at all times abide by the Code of Conduct as specified in Schedule II."

Regulation 4(1) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulation, 2003, states, "Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.

Regulation 4(2) (m) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulation, 2003 states, "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:—an intermediary not disclosing to his client transactions entered into on his behalf including taking an option position."

FINDINGS

15. The allegation against the noticee is that he has executed unauthorised trades in the stock of Pipavav, Tulip and Parsvnath for its client Manish Agarwal and unauthorised trades in the stock of Tulip for its client Ajit Kumar Jain. It may be noted that no adverse inference was drawn in investigation report with respect to the trades of Manish Agarwal and Ajit Jain which would have impacted the share prices negatively on July 26, 2012. The issue under consideration is that only whether the trades executed by the noticee for its client Manish Agarwal and Ajit Kumar Jain were unauthorised trades.

16. The same issue was examined by the WTM SEBI in his Order no. WTM/RKA/ISD/02/2013 dated January 11, 2013. where WTM had concluded that "*I note that though Mr. Ajit and Mr. Manish have, vide their identical e-mails dated August 16, 2012 and August 20, 2012, respectively sent to NBSPL, denied the above confirmation of NBSPL, they have* *failed to establish their claim by any evidence. Their e-mails cannot substantiate their submissions as they contain their own claims unsupported by any independent evidence. I, therefore, find that submissions of Mr. Ajit and Mr. Manish are after thought and do not appear to be correct…"*

17. It is further noted in the aforesaid Order that Mr. Manish Agarwal attended a conference call with the officials of BSE and NSE on July 28, 2012 wherein a scrutiny was being conducted in relation to the trades in question wherein Mr. Manish Agarwal had confirmed to the officials of NSE and BSE that the trades were on his behest. Mr Ajit Jain was also called to office of NSE in Kolkatta on July 27, 2012, however he chose not to come.

18. As per procedure SMS/message should have been sent by the Exchange/Depositories directly in respect of trade/deliveries executed in their account. The noticee had also issued electronic contract note for trade executed on behalf of clients. However, no dispute was raised by both Mr. Manish Agarwal and Mr. Ajit Jain. Even payout made by noticee in respect of trade executed on July 26, 2012 were accepted by them. It is only when a scrutiny was made into these trades by Exchange/SEBI, Mr. Manish Agarwal and Mr. Ajit Jain had claimed that these trades were unauthorised. It is noted that Mr. Manish sent an e-mail to the noticee on July 31, 2012 i.e. 5 days after the trades in question and only after the noticee had informed him that he would have to return the pay-out with respect to the alleged trades as per order of SEBI. Further, Mr. Ajit sent similar e-mail to the noticee on August 08, 2012 i.e. after a gap of almost two weeks from July 26, 2012 and a week after the interim order was passed, claiming that the sell orders were not placed by him but they were placed by the noticee.

19. It may be noted that the Confirmatory Order states that Mr. Ajit Jain and Mr. Manish Agarwal have failed to establish their claim by any evidence. I have carefully perused the Investigation Report and have found no additional material had been brought on record which leads to difference of the findings as given in the Order of WTM, SEBI on same issue. No new evidence was bought on record during investigation by SEBI to conclude that Mr. Ajit and Mr. Manish have in fact established their claim that the trades executed in the scrip of Pipavav, Parsvnath and Tulip on July 26, 2012 were actually unauthorised and were being executed by the noticee on its own.

20. In view of the fact that no new evidence had been brought on record in investigation report to show that trades executed by the noticee were unauthorised, I don't find any reason to differ with the view of WTM, particularly when payout in respect of these trades were accepted by Manish Agarwal and Ajit Jain. It is further noted that the noticee has submitted that NSE and BSE had also enquired into the complaint of Manish Agarwal and Ajit Jain for executing unauthorised trade by Noticee and the disposed of these complaints without any adverse observation or order against the noticee. No arbitration proceedings were initiated by Manish Agarwal and Ajit Jain for the unauthorized trades by the stock broker.

ORDER

21. Having considered all the facts and circumstances of the case, the material available on record, the submissions made by the Noticee 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 notice.

22. 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 the Noticee viz. Nirmal Bang Securities Ltd and also to Securities and Exchange Board of India.

Date: April 13, 2017	**Nagendraa Parakh**
Place: Mumbai	**Adjudicating Officer**