BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/PM/NK/2018-19/595]

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

Adroit Financial Services Private Limited (PAN: AAACA7549K)

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

---

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 Adroit Financial Services Private Limited (hereinafter referred to as Noticee), was one of the top 10 trading member trading during the investigation period and had bought approximately 11.26% (3742522 shares) on the BSE Limited (BSE) on behalf of its clients including AKG Securities and Consultancy Limited. Of the above, approximately 10.62% (3531875 shares) on BSE of the total buy trade volume was on behalf of its client AKG Securities and Consultancy Limited. It was

further observed that the Noticee had repeatedly indulged into self-trades on behalf of its abovementioned client on the exchange, BSE.

3. It was alleged that the Noticee, had repeatedly entered into self-trades on behalf of its clients in the scrip during the investigation period. It may be noted that self-trades are trades, in which both the buyer and the seller are the same entity. Self-trades create false or misleading appearance of trading in the securities market and such transactions are carried out without intention of change of ownership of the security and may or may not result into price manipulation. The details of self-trades of the entities mentioned above are as per the table below:

On 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.
A K G Securities And Consultancy Limited	Adroit Financial Services Private Limited	191889	241	0.577	-1.2	5.433	5.433

4. The Noticee had executed 241 self-trades in the scrip of SRS on BSE involving a total quantity of 191889 shares on behalf of its client, during the investigation period. In view of the above, it was alleged that the Noticee had violated the provisions of Clause A (2) of the code of conduct specified under schedule II read with Regulation 7 (now Regulation 9(f)) of the SEBI (Stock Brokers & Sub brokers) Regulations, 1992.

APPOINTMENT OF ADJUDICATING OFFICER

5. The undersigned was appointed as the Adjudicating Officer under section 15I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **"SEBI Act"**) read with rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalty by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the **'Adjudication Rules'**) to inquire into and adjudge under section 15HB of the SEBI Act, 1992, the

alleged violations of provisions of Clause A (2) of the code of conduct specified under schedule II read with Regulation 7 (now Regulation 9(f)) of the SEBI (Stock Brokers & Sub brokers) Regulations, 1992 by the Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

6. A Show Cause Notice A&E/EAD/PM-NK/18632/2017 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 15HB of the SEBI Act, 1992 for the alleged violations of provisions of Clause A (2) of the code of conduct specified under schedule II read with Regulation 7 (now Regulation 9(f)) of the SEBI (Stock Brokers & 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. Vide letter dated November 27, 2017 Mindspright Legal, Advocates, filed reply to the SCN on behalf of its client Adroit Financial Services Private Limited. The submissions are as follows:

    - *Please refer to your good self's Show Cause Notice bearing reference no. A&E/EAD/PM-NK/18632/2017 dated August 07, 2017 vide which your good self has inter alia advised Our Client to show cause as to why an inquiry should not be held against them under Rule 4 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 read with Section 15 I of the SEBI Act and penalty not be imposed under 15HA (inadvertently mentioned as Section 15 HB in the Notice) of the SEBI Act for the alleged contravention of Clause A(2) of the Code of Conduct for Stock Brokers as specified under Schedule II read with Regulation 7 of Securities Exchange Board India (Stock brokers and Sub brokers) Regulations, 1992 (hereinafter referred to as "Stock Broker Regulations") for the alleged irregularities in the scrip of SRS Limited (hereinafter referred to as "SRS").*
    - *At the outset, Our Client submits that, they do not accept or admit anything stated in your good self's Notice except where the same is expressly admitted by them in this reply. Nothing stated herein shall be deemed to be admitted by them merely on account of non-traverse and unless the same is specifically admitted by them hereunder.*
    - *The major allegations levied in the captioned Notice is that Our Client, being the Securities Exchange Board of India (hereinafter referred to as "SEBI") registered intermediary, executed 241 self-trades for 1,91,889 shares on behalf*

of AKG Securities and Consultancy Ltd. (hereinafter referred to as "AKG") and so has failed to exercise due skill, care and diligence by failing to prevent such self-trades.

- *Our Client submits that although there may be some quite infrequent, random and insignificant instances of self-trades executed by them on behalf of AKG while acting as broker, but those were purely accidental/incidental in the ordinary course of business and not planned to be executed to manipulate trading in the scrip. The random nature of timing, quantity, dealers and partial matching with other market participants substantiates this contention. The orders are placed at the individual terminal ID level and the orders of small quantities 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 same were bonafide transactions and de hors of any violation of the laws governing the securities market. 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/NSE 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. The person putting the orders works on closed mechanism where he cannot know the orders which are put by the other traders, whether in the same branch or other. Our Client, therefore, must not be held liable by your good self as these trades can occur even when a broker exercises due skill care and diligence.*
- *Before proceeding further with the specific submissions on the merits of the Notice, Our Clients would like to provide their brief background and certain facts relating to AKG:*
  - *Our Client is an entity duly constituted under the Companies Act, 1956 and has been registered with Securities and Exchange Board of India as stock broker with National Stock Exchange of India Ltd. having registration no. INB 230853830 and with BSE Ltd. having registration no. INB011228336*.
  - *Our Client has been engaged in the business of stock broking activities for last 20 years and has an impeccable track record of securities laws compliance till date.*
  - *AKG had opened its account with Our Client in the year 2002 and have since their registration been engaged in the business of buying, selling and dealing in stocks & commodities.*
  - *They are engaged into the business of jobbing/arbitrage in the securities market. Their arbitragers and jobbers regularly visit Our Client's office and undertake through our dealers jobbing transactions looking into the opportunities available to them.*
  - *At this stage it is pertinent to mention that their jobbers regularly carry out transactions of more than Rs. 100 Crores in cash market on any*

given day in multiple scrips depending on the market conditions and availability of arbitrage conditions.

PARA WISE REPLY TO ALLEGATIONS LEVELLED IN THE NOTICE ARE AS UNDER:

- *With regard to Para 1 of the Notice it is submitted that the appointment of your goodself is a matter of record and so Our Client does not have anything to comment on the same.*
- *With regard to Para 2 of the Notice it is submitted that investigation into the IPO of SRS is also a matter of record and so Our Client does not have anything to comment on the same.*
- *In Para 3 and 4 of the Notice, certain trade details in the scrip of SRS is stated, with regard to which it is submitted that the same is a matter of record and so Our Client does not have anything to comment on the same.*
- *In Para 5 and 6 of the Notice the trading details about the top 10 buy and sell broker and the top 10 buy client and sell client at NSE and BSE is stated, with regard to which it is submitted that the same is a matter of record and so Our Client does not have anything to comment on the same.*
- *In Para 7 of the Notice it has been observed that Self Trades are those trades in which both buyer and seller are same entity. Self-Trades create artificial/fictitious volume in the market and give a false and misleading appearance of trading in the scrip at the exchange. With regard to this Our Client humbly submits that the observation of your good self that Self Trades create artificial/fictitious volume in the market and give false and misleading appearance of trading in the scrip at exchange is wrong and arbitrary. The same may have been the position before May 16, 2017 when SEBI formulated the Policy. But because of this Policy, which can also be termed as a revolutionary act by SEBI, the position has now been settled once and for all that Self Trades per se does not create market volume and manipulate the price of scrip, but those self-trades which creates market volume and manipulate the price of the scrip will be treated as fraudulent. The Policy of SEBI marks a beginning of a new Jurisprudence of fraudulent self-trades in India and so Our Client prays to your good self to decide the instant case accordingly and not by perceiving the observation made in Para 7 of the Notice about the self-trades.*
- *Further in Para 7 of the Notice, the summary of total self-trades on BSE and NSE is stated, with regard to which it is submitted that it is nowhere stated in the SCN that all the Noticees are connected to each other and in order to manipulate the price of the scrip, has collectively engaged in intentional self-trades. Hence Our Client humbly submits that the self-trades has to be analysed independently and not with the trades of other noticees as it is not connected with others.*
- *In Para 8 of the Notice it has been alleged that a total of 241 self-trades for 1,91,889 shares were executed by Our Client on behalf of AKG leading to*

creation of artificial volume in the scrip of SRS in the market and giving false and misleading appearance in the scrip of SRS at the exchange. The submissions of Our Client with regard these allegations are twofold. Firstly, the trades executed by AKG were not intentional self-trades and are not violative of SEBI Act and PFUTP Regulations. As the conduct of AKG is not violative of SEBI Act and PFUTP Regulations, therefore Our Client cannot be held liable for violation of Stock Broker Regulations for failing to exercise due diligence, as the mischief done by AKG is a prerequisite for the alleged mischief done by Our Client. Secondly, nothing has been indicated in the Notice by which it can be inferred that Our Client has not exercised due diligence.

- *With regard to the first contention that, as the trades executed by AKG are not intentional self-trades, so Our Client cannot be held liable for Stock Brokers Regulations, it is submitted by Our Client that balance trades are not self-trades as they are mistakenly matched on other individual terminal id's which is very normal trading/jobbing/arbitrage practice. Admittedly only those self-trades, which are meant to give a false/misleading appearance of trading in the Scrip at the Stock Exchange, are illegal and not otherwise.*
- *The Adjudicating Officer, SEBI in the matter of MIC Electronics Ltd. while proceeding against Ajay Desai and Indira Securities Private Limited (Adjudication Order No. EAD/NP/JS/AO/21/2017 dated February 22, 2017), Vora Financial Services Private Limited and JMP Securities Private Limited (ADJUDICATION ORDER NO. EAD/NP/JS/AO/23/2017 dated February 27, 2017), Samurai Securities Private Limited (ADJUDICATION ORDER NO. EAD/NP/JS/AO/26/2017 March 16, 2017) and against M/s Milkyways Mercantiles Private Limited and M/s SPFL Securities Limited (ADJUDICATION ORDER NO. EAD/NP/AS/AO/27/2017 dated March 16, 2017) discussed the practicalities in execution of trades and distinguished between intentional and unintentional self-trades. It was observed that*
- *"...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. 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.... 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..... 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.... 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'."... (emphasis supplied)

- *While making these observations the Adjudicating Officer, SEBI, taking into consideration the factors mentioned in Section 15 J of the SEBI Act, and in exercise of the powers conferred under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, disposed off the Show Cause Notices issued to both the Noticees.*
- *As per the ruling in the above matters, the self-trades executed by AKG comes into the definition of unintentional self-trade as there are no Same ID self-trades at all.*
- *In this regard, it is submitted that as aforesaid, AKG is a jobber/arbitrager who regularly undertakes jobbing transactions of crores of rupees on any given day in multiple scrips depending on the market conditions and availability of jobbing/arbitrage conditions. AKG's representatives give instructions based on different strategies to multiple dealers who trade through multiple terminals and therefore there is a high probability that the orders originating from these strategies interact with each other without any malicious intention. As aforesaid, the same happened with AKG in the present case. Therefore, the allegations of fraud and manipulation resulting from self-trades cannot be levied unless they are supplemented by strong evidences/documents/information establishing intention to defraud or manipulate the market by means of self-trades, which in the present case are not supplemented.*
- *SEBI came out with its new policy (Approved Policy Number EFD/DRA-3/ON332/2017) dated May 16, 2017 (hereinafter referred to as "Policy") by which it was observed that intention is a sine qua non for establishing manipulation in case of self-trades and accidental/unintentional self-trades are not covered under the said regulations. Further it was observed that in all matters of Self trade 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. Hence, it was decided in the policy that the quasi-judicial body may assess the ongoing cases involving allegations of self-trade by analyzing whether any manipulation is arising out of self-trade or any intention to enter into 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. Further, while assessing the manipulative intents, the volume transacted may also be considered in addition to the other factors.

- *Thus, it can be seen that SEBI itself has made its stand that intention is a prerequisite for violation of Regulation 3 and 4 of PFUTP Regulations and unintentional self-trades are not violative of Regulations 3 and 4 of PFUTP Regulations.*
- *Therefore the burden of proof of Our Client in order to prove that they are not liable for the violation of Stock Brokers Regulations, is just to prove that the trades executed by AKG in the scrip of SRS, which resulted into self-trades, were not intended to be manipulative and this claim has to be corroborated with other factors such as impact of trades on market volume, nature of the transactions, in-depth analysis of self-trades, and other such factors.*
- *The Adjudicating Officer, SEBI in the matter of Aster Silicates Ltd. while proceeding against Crosseas Capital Services Pvt. Ltd. (Adjudication Order No. EAD/AO-NP/SJ/AO/50/2017 dated June 22, 2017), after analysing the policy of SEBI dated May 16, 2017 with respect to ongoing cases dealing with non-manipulative self-trades observed that*

  "...I find that though the Noticee has entered into self-trades on multiple occasion, yet the volume of self-trades vis-a-vis total volume in the shares of Aster Silicates Limited is miniscule. No mala fide intention behind self-trades executed by the Noticee has been bought out in investigation report. ... There is no evidence in the investigation report to suggest any fraudulent intention behind execution of self-trades by the Noticee. The volume of self-trades is less than 1% of the total volume in shares of Aster Silicates Limited. The impact of self-trades on LTP is also not significant on daily basis. Therefore, in compliance of SEBI policy, I am inclined to drop the adjudication proceedings initiated against the Noticee vide SCN dated May 06, 2015.
- *In another matter of Unitech Limited (Adjudication Order No. EAD/ AO-NP/ JR/47/2017 dated June 19, 2017), the Adjudicating Officer, SEBI passed the order after doing the analysis of the Policy and stated that*

  "...Though the Noticees have entered into self-trades on multiple occasion, yet the volume of self-trades vis-a-vis total volume in the shares of Unitech Limited is miniscule. No mala fide intention behind self-trades executed by the Noticees have been brought out in investigation. Self-trades occurred when multiple jobbers are engaged by a broker for day trading.... There is no evidence in the investigation report to suggest any fraudulent intention

behind execution of self-trades by the Noticees. Self-trades occurred because of trading in same shares by multiple trades/ jobbers in brokers' own account. The volume of self-trade is less than 1% of the total volume in shares of Unitech Limited. The impact of self-trades on LTP is also not significant on daily basis. Therefore, in compliance of SEBI policy, I am inclined to drop the adjudication proceedings initiated against the Noticees vide SCN dated April 21, 2017."

While making these observations the Adjudicating Officer, SEBI, in exercise of the powers conferred under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, disposed off the Show Cause Notice.

- *If we apply the reasoning of these case in the instant case then the Notice issued against Our Client must be disposed of by your good self as in the present case also the volume of self-trades is less than 1% and is only 0.577% on BSE as per the SCN itself. The impact of self-trades on LTP is also not significant on daily basis. Further, there is no evidence in the investigation report to suggest any fraudulent intention behind execution of self-trades by AKG. Due to these reasons Our Client cannot be held liable for violation of Stock Brokers Regulation.*
- *It is submitted that the trades executed by AKG in the present case were result of thousands of orders and out of the said 30,887 trades at BSE, only 241 trades resulted into the alleged self-trades in the account of AKG.*
- *Before dealing with detailed submissions in relation to the self-trades executed by AKG through Our Client, it is pertinent to note that*:
  - *AKG was trading and executing numerous jobbing transactions on daily basis during the investigation period in scrips ranging from 100 to 120, available for trading on NSE & BSE and SRS was not the only scrip in which transactions were done by AKG. As these transactions were being executed through multiple traders, it was practically impossible for any dealer to detect orders of other dealers before entering any order.*
  - *SRS is a company which at that point of time had reputed promoters, the company's financial position was also good and therefore there was no reason for any prudent jobber/arbitrageur like AKG to have doubt about any foul play in such a scrip. It may also be pointed out that even though the price of the scrip had moved manyfold during a short span of time there were no alerts from either the primary level regulators or the secondary regulators for possibility of any kind of mischief being carried out in the scrip.*
  - *The days on which self-trades were executed by AKG were the days which witnessed high volatility in the scrip. It is submitted that the nature of the trades executed by AKG were jobbing transactions and the same were executed looking at the jobbing opportunities due to higher volatility in the scrip of SRS. The same is evident from the price movement of the scrip during the Investigation Period.*

- *It is to be noted that for taking an advantage of this volatility AKG had authorised a total of 8 representatives to place orders on AKG's behalf. These 8 representatives in turn were placing orders with multiple dealers on different terminals at Our Client's office based on their understanding. The alleged 241 self-trades executed by AKG were executed through multiple dealers. In order to substantiate the claim, Our Client are annexing herewith dealer wise trading details to show that these trades in the scrip of SRS were executed through multiple dealers sitting on different terminals.*
- *The aforesaid document and evidence clearly show that numerous orders were being placed simultaneously by AKG's representatives in the system through various dealers on the basis of their understanding and assessment of the market conditions.*
- *The trading pattern followed by AKG was not different from its day to day trading pattern followed by it in any other scrip where it has traded*.

Detailed analysis of Self Trades executed in the account of AKG

- *The only ground for alleging AKG of acting in a fraudulent and manipulative manner to artificially inflate the volume is the execution of meagre self-trades involving a quantity of 1,91,889 shares which constituted 0.577% of the total market volume during the Investigation Period on BSE. It is further submitted to your good self that the impact of trading is on the market as a whole and it does not mean that if one is doing trading at BSE it will have impact only at the market volume of BSE. The impact will be there on NSE as well and by taking into account the number of shares traded in both BSE and NSE on the day of the alleged self-trade in the scrip of SCTL then the Percentage of Self-Traded Quantity to Market Volume will be meagre 0.213% which, by no stretch of imagination, could have influenced the price of the scrip. This leads to the deduction that there was no mens rea at all of AKG to engage in the self-trades. It is humbly submitted that the volume transacted in self-trades is a factor to analyse the manipulative intention of a person as per the Policy. As the same in the instant case is only 0.213%, it cannot be said that there was any manipulative intent of AKG to engage in intentional self-trades, and so Our Client cannot be held liable for not exercising due diligence. In the matter of Prakash Constrowell mentioned above, the Adjudicating Officer took into consideration the combined market volume on BSE and NSE and exonerated Our Client.*

- *Our Client fails to understand the possible impact which these self-trades could have had on the entire market when the quantity for the same was quite less and negligible to draw any negative inference. It is to be noted that if AKG would have been actually interested in artificially inflating the volumes of the scrip of SRS, then in such a case, its contribution to artificial/false trades would have been quite high so that the same could have an impact on the total traded quantity of SRS shares and thus could have increased the profit being earned by AKG. The fact that no such activity was carried out, clearly shows that AKG* *had no wrong intentions and all the trades were carried out in the normal course of the business.*

- *There are two types of self-trades which are evident (a) Self trade from same terminal (b) self-trade from different terminals. There is a very important distinction between the two, which goes to the root of identifying whether a particular self-trade is intentional or it has happened merely due to co-incidence. A self-trade from the same terminal or same ID self-trade is one in which buy and sell order are both put in from the same computer terminal from the same id, meaning thereby the person who is executing the buy and the sell trade is the same. However, when a self-trade occurs from different terminals or different id's, although the client account in which the trade is put in is the same but the terminals from which the buy and sell orders are put for the same client are different. The difference clearly suggests a huge possibility of lack of mens rea for executing a self-trade. If the trades are mistaken trade, it can be easily understood if two different individuals are putting in two different orders for the same client, however mistake for cases wherein the buy and sell trades are put in by same individual for same client would be rare. In the instant case, there are no Same Id self-trades and hence it is apparent that there was no intention of AKG to manipulate the market while trading in the scrip of SRS.*
- *Further, a detailed analysis of all the self-trades of AKG shows that the same were executed devoid of any manipulative intent. In order to substantiate Our Client's claim given below are certain facts:*
  - *AKG during the Investigation Period had carried out 30,887 trades for 35,31,875 shares on buying side on BSE generating a total turnover of 14.37 crores. There are 241 self-trades in the present case among which all the trades are Inter ID self-trades as there are no Same ID self-trade.*
  - *From the total 241 alleged Self Trades during investigation period, there is only one self-trade for 2000 shares, which was a complete matching trade i.e. there was a perfect matching amongst the trade meaning thereby the ordered quantity and the traded quantity matched completely. However the rest of the 240 trades were partially matched trades which means that they were result of split of a single order where a single order given for higher quantity matched with the counter order of low quantity. For e.g. Order No. 16000080010938 of 2000 shares split into 11 trades and matched with Order No. 22000091009463 of just 5 shares, and the balance shares got matched with different entities in the exchange.*
  - *Not only this, but there are instances where two orders of higher quantity got matched with each other for lower quantity. For e.g. Order No. 20000093005980 for 2000 shares split into 31 trades and order no. 22000091004400 for 900 shares split into 9 trades and both matched for meagre 9 shares, and the balance shares got matched with different entities in the exchange.*
  - *It may also be pointed out that 241 alleged self-trades referred hereinbefore were not only the cases arising out of split of one single*

order but also in some instances 2 self or more self-trades have arisen out of 1 single order. For e.g. Order No. 12000095033748 of 3600 shares split into 36 trades out of which 22 shares and 700 shares got matched with counter orders of No. 12000094031990 and 20000093040610, and the balance shares got matched with different entities in the exchange.

- *Further your good self must appreciate that it is a common market practice under Arbitrage/Jobbing activity for the dealers to place orders of 1 (one) share or small quantity at a fixed price differential of say, 10 paise, 25 paise, 50 paise etc. This is done to get the real time status of the ruling market price as sometimes the bid and offer rate prices on the Market watch window do not get refreshed on a real time basis due to connectivity and software problems. By giving the order for the quantity of one share or two shares, arbitrager or jobber are able to know in which direction the price of the particular script has moved or will be likely to move. Based on this information, arbitrager or jobber is able to take the opportunity of price difference between two exchanges and thereby do the arbitrage / jobbing business. This one share sometimes gets matched with a counter order given by the dealer and results into self-trades. Our Client humbly submits that the instant case covers such types of instances. For e.g. the Order No. 14000093000062 was given by AKG's dealers for just one share to get the real time status of the ruling market price and this one share got matched with the counter order of 12000095000163 which was of 5000 shares, and the balance shares got matched with different entities in the exchange. Besides this, there are 5 more instances (viz. Order No. 18000087017475, 18000087077279, 14000095050584, 14000095050590 and 22000091052683) like the one cited above. These types of instances increase the count of self-trades in the account of a person even when it is for just one or two shares.*
- *It may be noted here that the intention of putting order of a dealer is the only measure to decipher his intention. The abovementioned facts clearly show that the intention of AKG was not to match the trades but to execute trades in normal course of business however incidentally/accidently during the course of execution of trades inadvertently orders got partly matched with counter orders.*
- *AKG's total number of trades executed in the scrip of SRS was 30,887 out of which only 241 resulted in self-trades. In these 241 self-trades, there is no Same ID self-trades and all the trades are Inter ID self-trades. This clearly shows that the intention was not to match the trades but to genuinely execute the trades in the market. It may also be pointed out that even the alleged self-trades were at prevailing market price and there is no allegation of either increasing or decreasing the price of the scrip.*
- *In the instant case, the manner in which the orders have been put in and resulted into trades, it clearly show that there was no intention on the*

part of AKG to manipulate the scrip of SRS. It may also be clarified that in cases of securities law violation the intention of parties is immaterial, however in cases of alleged fraud the intention needs to be deciphered from the actions/circumstances.

  - *That the alleged self-trades of AKG constituted only 0.213% of BSE & NSE total market volume in the scrip of SRS during the Investigation Period.*

- *It is vehemently submitted that trading in the scrip of SRS was harmless even though certain self-trades were executed by AKG, since these trades were not capable of causing any harm leaving aside manipulating the market. It is submitted that merely because there is no change in beneficial ownership of shares in case of self-trade, the same independently does not cause any harm to anyone including the market at large. Meaning thereby if one buys and sell among one's own self it cannot impact anyone else, in fact it is not even a contract since there are no two parties, which is quite essential conditions of any contract.*

- *The impact which a self-trade can cause can be negative only if it involves (a) large volumes, which gives a false representation of liquidity in the scrip or on the market as a whole (b) the trade is done to change the prevailing price of the scrip. In the instant case both of the negatives have not happened and therefore no negative inference can be drawn against AKG owing to the alleged few self-trades carried out by AKG and so, no negative inference can be drawn against Our Client. It may be appreciated that AKG's total self-trade volume was a meagre of 1,91,889 shares, which admittedly was 0.213% of the total market volume at NSE & BSE. It is submitted that the impact of the volume of self-trade in order to become negative or violative of any law would entail the test that whether the volume remaining after the volume of the self-trade is removed would be non-sufficient to induce any person to trade in the scrip in question. In the instant case, the same is sufficient, hence, AKG's self-trades are not violative of any law.*

- *It is submitted that aforesaid alleged self-trades should be appreciated in the context of heavy trading (in the nature of jobbing) done by AKG on the relevant occasions and that the said alleged self-trades constitute extremely negligible part of total trading.*

- *Most importantly it has to be appreciated that AKG could not have manipulated the market with such negligible volume and could not have disturbed the market equilibrium because the alleged manipulative trades were miniscule in quantity as compared to the total trading. Considering the volume of the transactions in the scrip and price fluctuation in the exchanges during the period, it is clear that the said alleged self-trades neither led to price fluctuation nor created a false appearance of trading or were tending to mislead the gullible investors. By no stretch of imagination in the instant case it can be concluded that the said self-trades ensured consistent matching of the orders purely for the purpose of projection of the volumes of the shares of SRS in a way that was not the market* *determined volumes, possibly to induce other persons to invest in the said scrip. The manner in which the said alleged self-trades were executed is the most important factor to be considered in these circumstances. The said alleged self-trades were bonafide normal trades which got executed in ordinary course and were not designed self-trades and in no manner manipulative.*

- *Even in the opinion of Hon'ble Securities Appellate Tribunal, if one or few of the orders result in self trade, it would not suffice for establishing the charge of manipulation unless the trades are exceptionally huge. The Hon'ble SAT in the case of N.M. Lohia vs. SEBI (Appeal no. 108 of 2009, Decided on January 13, 2010), while holding the appellant liable for manipulation stated that in case of one or few trades, the outcome would be different. The Hon'ble tribunal observed that :*

  "2. We have heard the learned counsel for the parties who have taken us through the record and the impugned order. A show cause notice dated October 20, 2008 had been issued to the appellant making the aforesaid allegations against him. Details of the trades executed by the appellant were also furnished along with the show cause notice which were annexures attached thereto. A mere look at the trades executed by the appellant would show that they are on the face of it fictitious in as much as he executed trades as a broker in which he himself is the buyer and also the seller. It is not that he executed a solitary trade or only a few of them. He executed a large number of trades for over a year in this fashion. ..."

- *Further, it is important to bring your kind attention to the view taken by the Hon'ble Securities Appellate Tribunal in relation to the self-trades, wherein the Hon'ble Tribunal, vide its order dated January 24, 2014 in the case of Smt. Krupa Sanjay Soni vs. SEBI (Appeal No. 32 of 2013), has observed that "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."*

- *The Adjudicating Officer, SEBI in the matter of Gayatri Projects Limited (Adjudication Order No. EAD-2/DSR/KM/108-115/2014 dated April 30, 2014) observed that*

  "Therefore, I find that, in the instant case, the evidence and material available on record is insufficient to hold that the trades executed by the Noticees no. 1 to 4 had created artificial volume in the scrip (leading to a false and misleading appearance of trading) in as much as there were very few and negligible instances of self-trades as evident from above."

  After making these observations the Adjudicating Officer, SEBI dropped the charges against the Noticees levelled in the Notice.

- *Further the Adjudicating Officer, SEBI in the matter of Servalakshmi Papers Limited (Adjudication Order No. EAD-2/DSR/RG/08/2013 dated November 27, 2013), where the proceedings were being initiated against AKG, observed that "I note from the submission of the Noticee that it executes arbitrage trades so as to benefit from the price difference on the stock exchanges and due to the* *nature of trading there is high volume Page 11 of 12 involved and the turnover is very high. I find merit in the submissions of the Noticee that in such market situations the matching of trades from different terminals is inevitable and there may not be any meeting of minds."*

While making these observations the Hon'ble Adjudicating Officer disposed off the matter by giving benefit of doubt to the Noticee and concluded that the violation of provisions of Section 12A (a), (b) and (c) of the Act read with Regulation 3(a), (b), (c), (d) and 4(1) & 4(2)(a) and (g) of the PFUTP Regulations do not stand established.

- *Thus, it can be seen that the frequency, the time period and the state of market has to be considered before declaring a person guilty of manipulation by self-trades. The trades in the present case cannot be considered huge and further, these trades did not happen due to design but merely due to the huge volume of orders and trading occurring in the scrip on the said occasions.*
- *Now, considering the aforesaid and taking into account the nature of self-trades and the fact that there is a high possibility of it happening as a result of bonafide mistake devoid of any fraudulent intention, it is submitted that establishing intention/fraudulent motive in commission of self-trades is absolutely imperative to allege anyone with fraudulent and unfair trade practice, which is also mentioned in the approved policy of SEBI. In the present case, there is no such document/information/evidence provided which establishes any such fraudulent intention. Further, as aforesaid, AKG's self-trades contributed a very meagre and negligible percentage to the total volume of the trading in the scrip of SRS during the Investigation Period.*
- *As per the first contention and the arguments advanced aforesaid, Our Client has bought into the notice of your good self that trades executed in the account of AKG were not intentional self-trades, and so, as per the policy of SEBI, are not fraudulent. It is pertinent to note here and must also be appreciated by your good self that, as there was nothing wrong with the trades executed in the account of AKG, Our Client cannot be held liable for not exercising due diligence and so the contravention of the Stock Brokers Regulations. This is because in order to make Our Client liable for Stock Brokers Regulation, it has to be proved that the trades executed by AKG were mischievous. However, as in the present case the trades executed by AKG were genuine, it cannot be said that Our Client has not exercised due diligence. Therefore it is our humble submission that Our Client is not liable for the allegation levelled against it in the Notice.*
- *The Adjudicating Officer, SEBI in the matter of Rushil Decor Limited (Adjudication Order No. EAD-5/BS/AO/06-07/2017-18 dated October 13, 2017) has exonerated Our Client from the charges of violation of provisions of Stock Brokers Regulations on the ground that the violation of PFUTP Regulations has not been established against AKG in the matter of Self Trades. It was observed that:*

"Since, the manipulation, malpractices or violation of aforesaid provisions of PFUTP Regulations are not established in this case, therefore, the alleged violation of Clause A(3) of the Code of Conduct of Stock Brokers as specified under Schedule II read with Regulation 7 of the Stock Brokers Regulations which are consequential to establishment of manipulative/ fraudulent exercise, are also not established against the Noticee No. 2."

- *Similar observation has been made in favour of Our Client in the matter of Prakash Constrowell Ltd. (Adjudication Order No. EAD/PM-AA/AO/3/2017-18 dated October 31, 2017)*

  "Since it is not established that AKG had entered into self-trades repetitively to create artificial volume in the scrip, there is no case to draw any adverse inference on the Noticee as regards its role on exercise of due skill and care under Clause A(2) of the Code of Conduct as stipulated under Schedule II read with Regulation 7 of Broker Regulations, 1992."

- *As per Our Client's second contention, it is humbly submitted before your goodself that there is only a wild allegation that as the alleged self-trades were executed by Our Client in the accounts of AKG, so Our Client is liable for not exercising due diligence and so for the violation of certain provisions of the Stock Brokers Regulations, and no additional evidence or documents has been provided in the Notice to substantiate the same. Except the fact that Our Client executed trades on behalf of AKG in the scrip of SRS, no other inference which can lead to a legitimate conclusion that Our Client was not diligent while doing the execution of the trades has been provided. It is submitted that this approach by your goodself that just because a broker has executed some mischievous trades on behalf of a person so he has failed to exercised due diligence is bad and is also against various judgments.*

- *In the matter of Networth Stock Broking Ltd v. SEBI (SAT Appeal no 5 of 2012 decided on June 19, 2012) it was observed that "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. Trading was through the exchange mechanism and was online where the code number of the broker alone is known and it is not possible for anyone to know from the screen as to who the clients are. Merely because the appellant acted as a broker it cannot be concluded that he must have known about the transactions. .... 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."

- *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."*

- *Following the decision in the case of **Kasat Securities Pvt. Ltd. vs. SEBI** (SAT Appeal no. 27 of 2006 decided On 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. "The question that now arises is whether there was any material before the adjudicating officer to conclude that the appellant was a party to the execution of fictitious trades. It is not in dispute that on the screen based trading the broker who puts in the buy/sell order can only know the particulars of his client and it is well-nigh impossible for him to know who the counter party is or even his broker at the time when the trade is executed. These details/particulars can be found out only on a detailed enquiry after the trade is executed. It is primarily for this reason that we held that the link between the client and the broker in the matter of executing fictitious trades has to be brought out and 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. Merely because a person acts as a broker will not lead us to the conclusion that he knew about the fictitious nature of the trade."*

- *Our Client places reliance on the order of the learned SAT in the case of **Kishore Ajmera vs. SEBI** wherein the Hon'ble Tribunal held that it must necessarily "allege and establish that the broker or the sub broker was aware of the counter party or his broker at the time when the trade was executed." The said judgment of **Kishore Ajmera** was upheld by the Hon'ble Supreme Court, which held that there was no material to hold either lack of vigilance or bonafides on the part of the broker.*

- *Therefore, as per the authorities cited above, Our Clients cannot be held liable for violation of the Stock Brokers Regulations as in the Notice except a blind allegation of the violation, no other evidence has been provided to corroborate the same. As in the present case no material, documents or other evidence has been provided in the Notice which can even give a slight inference that Our Client has failed to exercise due diligence, so the serious charge of not exercising due diligence cannot sustain against Our Client. There must be some material on record from which the knowledge of Our Client that the trades of AKG are going to result in self-trades can be inferred. Merely because Our Client has acted as a broker of AKG and executed some alleged self-trades cannot mean that Our Client has failed to exercise due diligence.*

- *Further, there is no 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 it would have been there, Our Client would be the first to install the same. It may be pointed out that, since there are no mechanism available for jobbers/arbitrageurs, SEBI itself has directed the stock exchanges to come out with a mechanism to curb the happening of self-trades. NSE has implemented "Self-Trade Prevention" mechanism w.e.f October 12, 2015 vide circular dated October 01, 2015 and BSE has also implemented a Self-Trade Prevention Check (STPC) Mechanism w.e.f March 16, 2015 vide circular dated February*

11, 2015. Therefore, it has always been the responsibility of Stock Exchanges to ensure and implement appropriate mechanisms to prevent Self Trades given their statistical & technical expertise and thus Our Client should not be penalised for not able to prevent self-trades from occurring, the responsibility of whose prevention has always been on the Stock Exchanges.

- *It is pertinent to note that in spite of having different dealers having different terminals at BSE, there are no shares which got matched during the Investigation Period on the same terminal, the same clearly shows that Our Client's were always aware of the individual positions and always ensured that AKG's trades do not match in any manner, resulting into self-trades. The same shows the high level of expertise and caution exercised by Our Client in executing the transactions of the company. However, owing to the frequency and speed at which the orders were being placed by the jobbers, no co-ordination was possible to examine if any other jobber has put in a counter order or that a part of their unexecuted trade, still remains pending and that it would match with their own trade. It can further be seen from the order quantity that each dealer was placing orders independently as the quantities in these trades had huge difference.*

- *It is to be noted that such high level of expertise was ensured despite the fact that during the Investigation Period, AKG was dealing in multiple scrip, in range of 100 to 120, on NSE and BSE, during the investigation period.*

- *It is pertinent to note here that the Adjudicating Officer has recently, following the principle laid down in abovementioned matter of Aster Silicates Ltd., exonerated Our Client in the matter of **Multi Commodity Exchange of India Limited** (Adjudication Order No. RA/JP/ 184 – 188/2017 dated September 29, 2017), **United Spirits Limited** (Adjudication Order No. RA/JP/ 166 - 171/2017 dated September 29, 2017), **Rushil Decor Limited** (Adjudication Order No. EAD-5/BS/AO/06-07/2017-18 dated October 13, 2017) and **Prakash Constrowell Ltd.** (Adjudication Order No. EAD/PM-AA/AO/3/2017-18 dated October 31, 2017) from the charge of violation of provisions of Stock Brokers Regulations as the percentage of self-trades executed by Our Client on behalf of AKG were comparatively very less than the percentage of self-trades carried out in the matter of Aster Silicates Ltd.**,** which is also the case in the instant matter. Therefore, considering that the percentage of self-trades on total market volume is very miniscule, Our Client must not be held liable for violation of provisions of Code of Conduct under Stock Brokers Regulation in the instant case also.*

- *It is submitted that in the instant case there is no evidence at all to establish that Our Client has failed to exercise due skill care and diligence and so has failed to abide by the Code of Conduct for Stock Brokers as specified under Schedule II read with Regulation 7 of Stock Broker Regulations and in view of the authorities cited above it is humbly submitted that the charges against Our*

Client should be quashed. It is further submitted that while taking a decision under the impugned provision, the Learned Adjudicating Officer has to take into account Section 15J of the SEBI Act, 1992 which specifies the factors to be considered before levying any penalty, which are as under:

"(a) the amount of disproportionate gain or unfair advantage, whether quantifiable, made as a result of the default;
(b) the amount of loss caused to an investor or group of investors as a result of the default;
(c) the repetitive nature of the default."

- *With regard to Clause (a):- **"the amount of disproportionate gain or unfair advantage, whether quantifiable, made as a result of the default":** it is submitted that the findings does not lead to the conclusion that there has been disproportionate gain or unfair advantage of Our Client as all the shares were bought and sold on the instructions of AKG. In the total trading carried out by AKG through Our Client in the scrip of SRS during the Investigation Period, Our Client has earned a total brokerage of Rs. 2820/- only at BSE while the brokerage earned in the alleged self trades is merely Rs. 154/- only.*

- *With regard to Clause (b);- **"the amount of loss caused to an investor or group of investors as a result of the default"** : it is submitted that there are no investor complaints filed at any Stock Exchange or SEBI in respect of the trades executed by AKG through Our Client. Further, the same has also not been alleged in the notice. It is also submitted that your good self was unable to prove any loss caused to other investors as a result of AKG's trading in the scrip of SRS through Our Clients. In absence of such direct information the allegation of causing loss to other investors is baseless. Therefore it is submitted that there is no amount of loss caused to any investor or group of investors from the conduct of Our Client.*

- *With regard to Clause (c):- **"the repetitive nature of the default."** it is stated that Our Client has never been held guilty for not exercising due skill and care and therefore the issue of repetition does not arise at all. It is submitted that the instances pointed out in the notice are isolated instances and hence there is no question of repetitive nature of default.*

- *Having stated the factors of Section 15 J, Our Client would like to draw the attention of your good self to a few case laws, wherein the respective courts have dealt into the aspect of penalty and factors for levying any penalty on any delinquent. In this regard your kind attention is drawn to Hon'ble Supreme Court's decision in the case of **Hindustan Steel vs. State of Orissa (AIR 1970 SC 253)** where it was held as follows: "An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding and penalty will not be ordinarily imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or* *dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bonafide belief that the offender is not liable to act in the manner prescribed by the statute."*

- Again, the Hon'ble Apex Court in the case of ***Ex-NaikSardar Singh vs. Union of India (1991) 3 SCC 212)*** inter alia held that: *"the penalty imposed must be commensurate with the gravity of the misconduct and that any penalty disproportionate to the gravity of the misconduct would be violative of Article 14 of the Constitution."*

- Further in the matter of ***Ranjit Thakur vs. Union of India (AIR 1987 SC 2386)*** it was held that: *"The Sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review would ensure that even on an aspect which is, otherwise, within the exclusive province of Court Martial, if the decision of the Court even as to sentence is an outrageous defiance of logic then the sentence would not be immune from correction. Irrationality and perversity are recognized ground of judicial review. The penalty imposed must be commensurate with the gravity of the misconduct and that any penalty disproportionate to the gravity of the misconduct would be violative of Art. 14 of the Constitution. The point to note and emphasis is that all powers have legal limits."*

- *In the instant case since no primary violation against Our Client has been made out and as Our Client has also explained the genuineness of the case, the question of imposition of any penalty does not arise. Therefore it is duly submitted that Our Client has not committed any wrong and no charge has been established against Our Client even prima facie, to warrant any action.*

8. Considering the facts and circumstances of the case, reply of Noticee and the SEBI Policy on self-trades dated May 16, 2017 the undersigned is of the opinion that the present matter can be decided on the basis of facts/materials available on record without personally hearing the Noticee.

CONSIDERATION OF ISSUES AND FINDINGS

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

   a. Whether Noticee, by indulging in self-trades on behalf of its client, had violated provisions of Clause A (2) of the code of conduct specified under schedule II read with Regulation 7 (now Regulation 9(f)) of the SEBI (Stock Brokers & Sub brokers) Regulations, 1992? and
   b. Does the violation, if any, attract monetary penalty under section 15HB of SEBI Act, 1992?

Violation of clause A (2) Code of Conduct for Stock Brokers specified in the Broker's Regulations, 1992.

10. Upon perusal of the reply of the Noticee and documents available on record, I find that it is not in dispute that the Noticee had executed 241 self-trades on behalf of its client namely, AKG Securities and Consultancy Limited in the scrip of SRS on BSE involving a total quantity of 191889 shares during the investigation period. It is also a matter of record now that the SEBI has come out with a policy on issue of self-trades dated May 16, 2017 which states that intention is a sine qua non for establishing manipulation in case of self-trades and accidental/unintentional self-trades are not covered under Regulations 4(2)(a), 4(2)(b) and 4(2)(g) of 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 client of 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. I find that Noticee carried out gross trades (buy + sell) for 7484684 shares on BSE in the scrip of SRS during the investigation period, of which self-trades of the client was for a quantity of 191889 shares through 241 trades on BSE. I further find that even in the investigation conducted by SEBI, it was observed that the percentage of gross trade volume of the Noticee was 11.26% on BSE to that of the market trade volume on the exchange.

13. I note that the 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 executed on behalf of its client is considered in that background then it would not be appropriate to hold that there was any manipulative intent on the part of the client of the Noticee to engage in intentional self-trades as the self-traded quantity of the client of the Noticee to that of the market trade volume on BSE it was 0.577%. Such percentage / volume of self-trades (0.577%) of the Noticee in the scrip of SRS is miniscule as compared to the total trading in the said scrip during the investigation period.

14. I note that for the transaction in question, order dated May 28, 2018 has been passed in a separate proceeding before me in respect of AKG Securities and Consultancy Limited as under:

"After taking into account aforesaid observations, perusal of investigation report and taking into account, in particular, the miniscule percentage / volume of self-trades as compared to the total market volume during the investigation period, I am of the view that self-trades of Noticee in the scrip of SRS during the investigation period were non-intentional and non-manipulative. That being the case and after taking into account, the SEBI policy dated May 16, 2017 on self-trades, I am inclined to conclude that violations of provisions of Regulations 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(a) and 4(2)(g) of SEBI (PFUTP) Regulations, 2003 by the Noticee do not stand established."

15. Since it is not established that AKG Securities and Consultancy Limited (client of the Noticee) had entered into self-trades repeatedly with an intention to create artificial volume in the scrip of SRS, there is no case to draw any adverse inference on the Noticee as regards its role on exercise of due skill, care and diligence under the provisions of Clause A (2) of the code of conduct specified under schedule II read with Regulation 7 (now Regulation 9(f)) of the SEBI (Stock Brokers & Sub brokers) Regulations, 1992. As the alleged violation are not established against the Noticee, Issue b. of Para 9, requires no consideration.

ORDER

16. For the aforesaid reasons, Show Cause Notice A&E/EAD/PM-NK/17632/ 2017 dated August 7, 2017 alleging violations of provisions of Clause A (2) of the code of conduct specified under schedule II read with Regulation 7 (now Regulation 9(f)) of the SEBI (Stock Brokers & Sub brokers) Regulations, 1992 by the Noticee i.e. Adroit Financial Services Private Limited, is disposed of without imposition of any penalty.

17. 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 30, 2018 **Prasanta Mahapatra**

Place: Mumbai **Adjudicating Officer**