BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. AK/AO- 89/2014]

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
M/s ISF Securities Limited (PAN: AAACI1667E)

In the matter of
Exedy India Limited

FACTS OF THE CASE

1. The Hon'ble Securities Appellate Tribunal (hereinafter referred to as "SAT") vide Order dated October 28, 2013 quashed and set aside the order EAD-2/AO/174-175/2013 dated March 12, 2013 passed by the Adjudicating Officer, qua M/s ISF Securities Limited (hereinafter referred to as "**Noticee"**) in the matter of Exedy India Limited and *inter alia* permitted Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") to issue a comprehensive Supplementary Show Cause Noticee (hereinafter referred to as "**Supplementary SCN**") to the Noticee within a period of eight weeks.

2. It is observed that Show Cause Notice EAD-2/RG/25382/2012 dated November 12, 2012 (hereinafter referred to as the "**SCN dated November 12, 2012**") alleged that during April 1, 2009 to October 31, 2009 (hereinafter referred to as "**investigation period**"), Noticee entered into self-trades for 7,534 shares by trading in own account, wherein it appeared on both buy and sell sides of the trades, creating artificial/fictitious volume in the scrip of EIL, thus violating Regulations 3(a), 3(d), 4(1), 4(2)(a) and 4(2)(g) of SEBI (Prohibition of Fraudulent and Unfair Trade Practice) Regulations, 2003 (hereinafter referred to as "**PFUTP Regulations**") and Clause A(1),

(3), (4) and (5) of the Code of Conduct for Stock Brokers as laid down in Schedule II under Regulation 7 of SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992 (hereinafter referred to as "**Broker Regulations**"). Vide order No. EAD-2/AO/174-175/2013 dated March 12, 2013, the Hon'ble Adjudicating Officer after considering all the facts and circumstances of the case had imposed a penalty of Rs. 10,00,000 (Rupees ten lacs only) under Section 15HA of SEBI Act on the Noticee for violating Regulation 3(a), 3(d), 4(1), 4(2)(a) and 4(2)(g) of PFUTP Regulations and Rs. 1,00,000 (Rupees one lacs only) under Section 15HB of SEBI Act for violating Clause A(1), (3), (4) and (5) of the Code of Conduct for Stock Brokers as laid down in Schedule II under Regulation 7 of Broker Regulations.

3. Aggrieved by the Order of the Adjudicating Officer, Noticee preferred an appeal before the Hon'ble SAT. The Hon'ble SAT quashed Order dated March 12, 2013 and permitted SEBI to issue a comprehensive Supplementary SCN. Noticee was accordingly issued a comprehensive Supplementary SCN dated December 17, 2013, wherein the charges alleged in the SCN dated November 12, 2012 relating to its trades in the shares of Exedy India Limited, erstwhile Ceekay Daikin Limited (hereinafter referred to as "**EIL/ the Company**") were completely dealt with.

APPOINTMENT OF ADJUDICATING OFFICER

4. The undersigned was appointed as Adjudicating Officer vide order dated November 08, 2013 under rule 4 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as "Rules") read with sub-section (2) of Section 15 I of SEBI Act to inquire into and adjudge under Section 15HA and 15HB of the SEBI Act, the alleged violations of PFUTP Regulations and Broker Regulations.

SHOW CAUSE NOTICE, HEARING AND REPLY

5. Supplementary SCN Ref: EAD-6/AK/VS/32722/2013 dated December 17, 2013 was issued to the Noticee under rule 4 of the Rules to show cause as to why an inquiry should not be held and penalty be not imposed under Section 15HA and 15HB of SEBI Act for the alleged violation specified in the said Supplementary SCN. The Supplementary SCN was delivered and acknowledged by the Noticee. Vide letter dated January 10, 2014, Noticee filed reply to the Supplementary SCN. In the interest of natural justice an opportunity of hearing was provided to the Noticee on January 27, 2014 vide hearing notice dated January 15, 2014. The Noticee vide letter dated January 20, 2014 requested to schedule the hearing at SEBI's New Delhi office. Vide email dated January 23, 2014, the Noticee was informed that their request cannot be acceded to, however, the hearing could be rescheduled at SEBI's Head Office at Mumbai as per their convenience. Subsequently, vide letter dated January 24, 2014, Noticee requested to reschedule the hearing to third week of February 2014 or any other later convenient date. Accordingly, the hearing was rescheduled to February 18, 2014 and the same was informed to the Noticee vide hearing notice dated January 28, 2014. Subsequent to the same, vide letter dated February 10, 2014, Noticee again requested to reschedule the hearing to second week of March 2014, in view of unavoidable scenario. Accordingly, Noticee was given an opportunity for personal hearing on March 12, 2014 which was informed to Noticee vide hearing notice dated February 14, 2014.

6. Mr. Sunil Khemka and Mr. Vinod Jain, Chartered Accountant (hereinafter collectively referred to as Authorised Representatives "**ARs**") appeared on behalf of the Noticee. During the hearing, Noticee submitted written submissions dated March 08, 2014 and reiterated the same and the earlier submissions made vide letter dated January 14, 2014. ARs were informed that charges alleged against the Noticee in the SCN

dated November 12, 2012 was for dealing in the scrip of EIL in a fraudulent manner, creating artificial volume, false and misleading appearance of trading. ARs were also informed that the supplementary SCN is a comprehensive SCN elaborating the charges pertaining to the self trades executed by the Noticee mentioned in the SCN dated November 12, 2012. Also, an opportunity for inspection of the office note dated November 6, 2013, wherein Whole Time Member, SEBI (hereinafter referred to as '**WTM**') had appointed me as an Adjudication Officer, was given to the Noticee, to which the ARs sought for a copy of the office note instead of inspecting the same. A copy of the said note was provided to the ARs. The ARs were also advised to submit past non-compliance of SEBI Act and Regulations made thereunder by the Noticee, if any, as also action taken, if any, by SEBI in the past against the Noticee.

7. Subsequent to the same, vide emails dated March 20, 2014 and March 24, 2014, Noticee requested to treat their reply dated January 14, 2014 as withdrawn and consider reply dated March 08, 2014 as their final reply. The Noticee vide reply dated March 08, 2014 has *inter alia* made the following submissions:

7.1 *That the appointment of the Adjudicating Officer suffers from illegality as the Supplementary SCN has been issued in pursuance to the Order of the WTM of SEBI dated November 08, 2013, which neither refers to the Order of the Hon'ble SAT dated October 28, 2013, vide which SEBI was permitted to issue a comprehensive supplementary SCN to the Noticee, nor, the original Order dated October 09, 2012, hence, the Order dated November 08, 2013 is illegal and is required to be set aside;*

7.2 *That the permission granted to SEBI by the Hon'ble SAT vide its Order dated October 28, 2013 was limited to only providing additional documents to the appellant by issuing Supplementary Show Cause Notice with reference to paragraphs 13 to 20 of the order of Adjudicating Officer dated March 12, 2013, so that a fresh order could be passed on merit after hearing the Noticee. Hence, the Supplementary Show Cause Notice dated December 17, 2013 suffers from*

major legal infirmity as vide paragraph 5, detailed additional facts, charges and allegations have been brought on record, thereby expanding the charges to add further allegations and facts. Also, the charges included in paragraph 2 & 3 of the Supplementary SCN relate to paragraphs 29 and 31 of the said Adjudication Order dated March 12, 2013. This part of the adjudication order was not permitted by SAT to be dealt with again;

7.3 That the order of Whole Time Member dated November 08, 2013 read with the Supplementary Show Cause Notice, results into commencement of a fresh enquiry, which is clearly not permitted and is prohibited by the Constitution of India, Article 20, which is reproduced below :

Article 20

(1)……..

(2) No person shall be prosecuted and punished for the same offence more than once.

(3) No person accused of any offence shall be compelled to be a witness against himself;

7.4 Further, that in terms of Regulation 9 of PFUTP Regulations, the Investigating Authority is required to submit a report to the Appointing Authority, however, the said report or even relevant extracts of the said investigation report submitted to the Appointing Authority have not been provided;

7.5 That though Regulation 10 of PFUTP Regulations requires the Board, after consideration of the report referred in Regulation 9, to be satisfied that there is a violation of the said Regulations, and after giving a reasonable opportunity of hearing to the person concerned, issue such directions or take such action as mentioned in Regulation 11 and 12, however, the Noticee have not been made aware of any such proceedings in the aforesaid matter, and therefore PFUTP Regulations cannot be legally used against them in the matter;

7.6 Further, that it is completely inappropriate of SEBI to allege that the price of scrip of EIL was manipulated by the Noticee, as during the period in which transactions in the shares of EIL have been undertaken by the Noticee i.e. from

May 19, 2009 to August 05, 2009, there was an all around increase in all the share prices in general, which is clear from the movement of various indices, viz., BSE Sensex, BSE Mid Cap, BSE Small Cap and BSE Auto. BSE Sensex went up from a low of 9,745.77 on April 01, 2009 to a high of 16,360 on October 30, 2009, an overall jump of 68% in Sensex;

7.7 That further it is completely wrong to allege that due to the Noticee's manipulation, a high price of Rs. 119.60 on August 20, 2009 was recorded for the shares of EIL, as their last trading happened during the period August 03-07, 2009 with average sale price of 63.03 per share;

7.8 That it is completely wrong to allege or to conclude that there was no major corporate announcement impacting the prices of the EIL scrip, as several corporate announcements have been summarized by the Adjudicating Officer vide adjudication order dated March 12, 2013;

7.9 That as regards the allegation of SEBI that the Noticee was one of the top brokers and clients in the trading in the scrip of EIL on buy and sell side during the investigation period, it has inter alia been brought out that the total buy trades of the Noticee during the investigation period viz. 2,13,665 shares i.e. on an average about 4,360 shares per day and total sell trades viz. 3,06,246 shares i.e. on an average about 6,250 shares per day, when compared with the total size of the share capital of 40 lac shares during the period, the real impact which Noticee's buying and selling can have on the market becomes clear;

7.10 That it is wrong to allege that the Noticee offloaded large quantities of their holding of EIL shares when the price of the scrip was rising in the market. In fact the average sell price of the Noticee has been moving between Rs. 24.70 to Rs. 37.59 till July 17, 2009, when 73,521 shares were sold, and, only about 19,060 shares were sold by the Noticee at an average price of Rs. 60.10 from July 29, 2009 till August 05, 2009. That even the Adjudicating Officer vide his order dated March 12, 2013 has clearly brought out that the average price at which the shares were offloaded by the Noticee was only Rs. 34.86. Thus, there was no manipulation of prices of shares of EIL by the Noticee. Thus, the allegation

that the Noticee was responsible for 436% increase in the share price of EIL is completely wrong. Also, that the total number of 14 trades and quantity of 9,441 shares dealt by the Noticee at NSE is so small that no conclusion can be drawn against it because of such insignificant quantum. It is, thus, wrong to allege that ISF contributed to new price discovery including first trades for a total Rs 9.10 through 14 trades, which is only 8.94% to total market NHP. Further, based on the facts provided it is clearly established that 77% of the trades of the Noticee never contributed to any increase in the prices;

7.11 That ISF has no link of any kind or relationship of any kind, financial or otherwise, with EIL or any of its Directors, members or its management;

7.12 That it is completely wrong to allege that the Noticee executed trades which were suspicious in nature and amounted to self trades inter alia in view of the following:

a) That it is the failure of software system of Bombay Stock Exchange (BSE) that it is matching buy orders of the same client with the sell orders of the same client, though all the trades are now executed in a unique client code (UCC);

b) That because of high level of activity, the time available with the dealer is generally too short to make all kinds of analysis at the time of putting each order;

c) That it is completely wrong to allege that the Noticee executed self trades for 7,534 shares, to manipulate the market or to artificially create the volume, as it amounts to only 2.84% of the entire sell trades undertaken by the Noticee, whereas the promoters holding was 12.34 Lac shares and even the public holding was 27.97 Lac shares. Further, that self trades for 7,534 shares out of a total market volume of 14,27,128 shares, over a period of 6 months, constituting a miniscule 0.5%, can hardly manipulate the market by creating artificial/fictitious volume in the scrip of EIL;

d) Further, that none of these self trades contributed to any manipulation of prices. In fact, the learned Adjudicating Officer vide his order dated March

12, 2013 has acknowledged the fact that these self trades were insignificant and negligible vis-à-vis the total trading in the scrip and that such few trades in isolation may not lead to the conclusion that they were fraudulent and manipulative trades;

7.13 That no data was provided to the effect that the orders were given by Vishwas Securities and the Noticee at the same time in a synchronized manner;

7.14 That it is completely wrong to allege that after ISF offloaded their entire shareholding, the trading in EIL scrip was suspended. In fact, EIL scrip was being actively traded for more than two and half years thereafter and gave substantial advantage to the investors to get high prices of their investment, as the company performed very well in the normal course of business. EIL scrip was finally delisted from BSE in April 16, 2012 and the investors were given a buyback offer at Rs 350/- per share, which remained open for 12 months from the date of offer;

7.15 That the average price at which the shares were sold by the Noticee was Rs.34.86. The selling price range was from Rs 24.70 to Rs 63.03 during the period Noticee traded in EIL. It is incorrect to allege the high price of Rs. 119.60 to the Noticee, as the Noticee stopped trading in the scrip of EIL on August 05, 2009, whereas the price of 119.60 was achieved only in October, 2009. Similarly that the Noticee has not dealt with EIL shares from April, 2009 till 18th May, 2009 and all conclusions drawn by SEBI based on trading during this period are completely misconceived. Further, that the average trading volume and total trading is also based on full 6 months period;

7.16 That it is completely incorrect that Noticee had significant concentration in LTP variation or was instrumental in new high prices. In more than 77% of the trades, as per the SEBI data itself, the LTP difference in the Noticee's trade was either zero or was negative. It is also completely incorrect and without any facts given by SEBI that the Noticee received shares through other entities and off-loaded the same in the cash market during price rise;

7.17 The allegation of matching trades of 1,22,350 shares is also without any corresponding facts or data provided by SEBI;

7.18 That self trade got executed by mistake of the system. The automatic trading system of the stock exchanges should be equipped to curb such genuine mistakes and errors and if the trading system itself put a technical embargo on such a possibility, no such mistake will recur in future;

7.19 That the dealer and the client have not been able to remember all the pending orders when putting in the next order on the same scrip, as they are dealing in many shares at a time and the time is short in placing all orders, and sometimes they forget to check the existing order already pending in respect of the same scrip, which resulted in self trades;

7.20 That they propose to significantly upgrade their control process so that the possibility of committing such self trades by mistakes can be minimized to the best possible. That they have separately taken steps to train their people so that such mistakes are reduced significantly;

7.21 That neither with the initial show cause notice nor with the supplementary comprehensive SCN, any such details or analysis in respect of para 9 and 10 of the original SCN, has been provided to appreciate the concern of SEBI and to respond to the same;

7.22 That it is completely incorrect to allege that the Noticee dealt with in the scrip of EIL in a fraudulent manner. All the trades undertaken by the Noticee are in the normal course of business and there has never been any intention on the part of the Noticee to defraud anybody. There is no fact on record that any investor or trader has been cheated by the Noticee's trading. SEBI has not brought out any fact to support that the Noticee with a negative mens rea undertook trading in EIL shares. That the share price movement during the period of their trading is fully in line with the performance of EIL as well as movement in various share indices including Sensex;

7.23 That there is no material on record that any investor suffered any loss due to the default of the Noticee. There is also no evidence brought on record that the

Noticee deliberately acted in a fraudulent manner with a view to deceive others. In fact the facts as elaborated as above clearly establish that the Noticee undertook all its business transactions and trading in normal course of business and without any manipulated or fraudulent practices;

7.24 That in view of the above, the violation of Regulations 3(a), 3(d), 4(1), 4(2)(a) and 4(2(g) of PFUTP Regulations is not applicable in the case of the Noticee, as there is no fact or supporting for any such dealing by the Noticee;

7.25 That the Noticee never indulged in any act which created false and misleading appearance of trading in the securities market. The volume of trading as well as actual trades undertaken by the Noticee in the EIL scrip were in the normal course of business and no false or misleading appearance of trading have been brought out on record. There is also no complaint of any kind from any investor having adversely been affected or cheated in any manner whatsoever from the alleged fraudulent or unfair trade practices;

7.26 That no transaction in the securities which have been entered into by the Noticee without any intention of perform the same or without intention of changing of ownership of the securities has been brought out. All payments and securities obligations have been duly met by the Noticee and accordingly the allegation of entering into transactions without intention of performing the same does not hold good. 7,534 shares got executed by mistake of the system and the same was never done intentionally on the part of the Noticee. Further, that these self trades have not caused any harm to the market and have also not impacted the share prices or volume of shares in any significant manner and was a genuine mistake;

7.27 That it is denied that the Noticee has failed to show high standards of integrity, promptitude and fairness. The Noticee never indulged in any manipulation or fraudulent transactions and therefore, has not violated the Code of Conduct of the Stock Brokers as laid down in Schedule II under Regulation 7 of Broker Regulations;

7.28 That the Noticee's major contention of the supplementary show cause notice No. EAD-6/AK/VS/32722/2013 dated December 17, 2013 is that it actually amounts to expanding of various charges leveled against the Noticee in terms of original show cause notice No. EAD-2/RG/25382/2012 dated November 12, 2012. It is not clearly permitted in terms of Indian Legal Jurisprudence, principles of natural justice and Constitution of India and several legal decided cases in similar matters. Once the show cause notice has been issued in respect of a particular matter, the charges can neither be expanded nor new facts can be added or brought to light so as to increase the scope of charges;

7.29 That the Hon'ble SAT vide their order dated October 28, 2013 set aside the adjudicating order dated March 12, 2013, only for a limited purpose and permitted SEBI to issue a comprehensive supplementary show cause notice to address the concern of the Noticee that the Adjudicating Officer did not provide the basis of material set out in paragraph 13 to 20 of his order. The Hon'ble SAT has also further observed that besides the aforesaid basis, order logs & trade logs relating to trade in shares of EIL had not been furnished to the Noticee and therefore, permitted SEBI for providing necessary details and documents. It accordingly permitted SEBI to issue Supplementary Show Cause Notice enclosing therewith all documents which respondent wants to rely upon so that the fresh Order could be passed on merits after hearing the appellant. That the order of the Adjudicating Officer dated March 12, 2013 was accordingly quashed and SEBI was permitted to issue a Supplementary Show Cause Notice;

7.30 Further, that the matter relating to self trades of 7,534 shares was dealt with in a detailed manner in the original show cause notice as well as in the Adjudication Order dated March 12, 2013, wherein the explanation of the Noticee was accepted by the learned Adjudicating Officer, whereby the Adjudication Officer had agreed with the contention of the Noticee that the self trades executed by the Noticee are insignificant and negligible vis-à-vis the total trading in the scrip, and concluded that such few trades in isolation may not lead to the conclusion that they are fraudulent and manipulative trades;

7.31 That in view of the above submissions, para 5 of the Supplementary Show Cause Notice, contained in pages 2 to 9, is required to be dropped, as these paragraphs contain large number of additional facts and allegations which were never brought in the original show cause notice dated March 12, 2012, and bringing new facts or expanding charges or allegations against the Noticee at this stage could be completely unjust and against the principles of natural justice. In any case, all allegations contained in paragraph 5 are denied and it is denied that the Noticee created artificial volume in EIL scrip by executing various self trades;

7.32 That no such allegations have been laid down against the Noticee in the past and therefore, these allegations are not repetitive in nature.

CONSIDERATION OF ISSUES AND FINDINGS

8. I have carefully perused the written submissions wherever submitted by the Noticee, the facts put forth during the hearing and the documents available on record. The allegation against Noticee is of dealing in the scrip of EIL in a fraudulent manner by executing self trades for 7,534 shares during the period from April 01, 2009 to October 31, 2009 i.e. the investigation period, thereby creating artificial/ fictitious and false and misleading appearance of trades. Hence, Noticee was alleged to have violated Regulation 3(a), 3(d), 4(1), 4(2)(a) and 4(2)(g) of SEBI PFUTP Regulations and Clause A(1), (3), (4) and (5) of the Code of Conduct for Stock Brokers as laid down in Schedule II under Regulation 7 of SEBI Broker Regulations.

9. Before moving forward, it will be appropriate to refer to the relevant provisions of the SEBI PFUTP Regulations, which reads as under:

3. Prohibition of certain dealings in securities

No person shall directly or indirectly-

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

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

4. Prohibition of manipulative, fraudulent and unfair trade practices

(1) Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.

(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:-

(a) indulging in an act which creates false or misleading appearance of trading in the securities market;

(g) entering into a transaction in securities without intention of performing it or without intention of change of ownership of such security;

Stock-Brokers to abide by Code of Conduct.

7. The stock-broker holding a certificate shall at all times abide by the Code of Conduct as specified at Schedule II.

SCHEDULE II

Code of Conduct for Stock Brokers

A. GENERAL

(1) INTEGRITY: A stock-broker, shall maintain high standards of integrity, promptitude and fairness in the conduct of all his business.

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

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

(5) *COMPLIANCE WITH STATUTORY REQUIREMENTS*: *A stock-broker shall abide by all the provisions of the Act and the rules, regulations issued by the Government, the Board and the stock exchange from time to time as may be applicable to him.*

ISSUES AND FINDINGS

10. In view of the issues raised by the Noticee as aforesaid, the following questions need to be addressed before proceeding with issues pertaining to the alleged fraudulent trades executed by the Noticee in the scrip of EIL.

10.1 Whether Appointment Order dated November 08, 2013 suffers from illegality as contended by the Noticee and is required to be set aside?

10.2 Whether the Hon'ble SAT vide its order dated October 28, 2013 had limited the scope of the Supplementary SCN only to providing additional documents to the Noticee with reference to paragraphs 13 to 20 of the Order of Adjudicating Officer dated March 12, 2013 as contended by the Noticee?

10.3 Whether the Supplementary SCN dated December 17, 2013 has expanded the charges and added further allegations and facts and therefore suffers from major legal infirmity as contended by the Noticee ?

10.4 Whether the Order of the Whole Time Member dated November 08, 2013 read with Supplementary SCN results into commencement of a fresh enquiry?

10.5 Whether in terms of Regulation 9 of PFUTP Regulations, the report submitted by the Investigating Authority to the Appointing Authority is required to be submitted to the Noticee?

10.6 Whether under Regulation 10 of PFUTP Regulations, the Board was required to give a reasonable opportunity of hearing to the Noticee and issue such directions as mentioned in Regulation 11 and 12, which having not been done in the instant matter, hence, PFUTP Regulations cannot legally be used against the Noticee in the instant matter?

11. I now proceed to look into each of the aforesaid issues raised by the Noticee in its reply dated March 08, 2014:

11.1 *As regards 10.1 above, the Noticee has contended that the Order of the Whole Time Member of SEBI dated November 08, 2013 neither refers to the Order of the Hon'ble SAT dated October 28, 2013, nor, the original Order dated October 09, 2012, hence, the Order dated November 08, 2013 is illegal and is required to be set aside.*

11.1.1 In order to appreciate that the aforesaid concern raised by the Noticee does not hold good, the following factual aspects need to be taken note of:

a) The Noticee was *inter alia* provided along with the SCN a copy of the proceedings of the Whole Time Member appointing Adjudication Officer dated November 19, 2013;

b) The said proceedings dated November 19, 2013 were *inter alia* meant to communicate to the Noticee of my appointment as the Adjudicating Officer by the Whole Time Member, SEBI vide an Order dated November 08, 2013, in exercise of powers conferred upon the Whole Time Member under Section 19 of the SEBI Act, 1992

read with Section 15-I of SEBI Act, 1992 and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules 1995, to inquire and adjudge under Section 15HA and 15HB of SEBI Act, 1992 for the alleged violations by ISF Securities Ltd. (the Noticee) in the matter of Exedy India Ltd. (EIL/ the company);

c) The said Order dated November 08, 2013 of the Whole Time Member, SEBI appointing the Adjudication Officer was on an Office Note dated November 06, 2013, which *inter alia* refers to the appeal filed by the Noticee against the Adjudication Order dated March 12, 2013 and the Hon'ble SAT Order dated October 28, 2013 setting aside the said impugned Order qua the Noticee only. The said Note *inter alia* also brings out the fact that Adjudication Officer who had passed the Adjudicating Order dated March 12, 2013 has been on deputation to Financial Services Commission (FSC) Mauritius;

d) In view of the aforesaid contention of the Noticee, during the hearing an opportunity for inspection of the Office Note dated November 06, 2013 was given to the Noticee;

e) The AR sought for a copy of the said Office Note, instead of inspecting the same. Accordingly, a copy of the said note was accordingly given to the AR at the hearing.

From the aforesaid, it becomes clear that the Appointment Order dated November 08, 2013 does not suffer from any illegality as contended by the Noticee.

11.2 *As regards 10.2 above, the Noticee has contended that the Hon'ble SAT vide its Order dated October 28, 2013 had limited the scope of the Supplementary SCN*

to only providing additional documents to the Noticee with reference to paragraphs 13 to 20 of the Order of Adjudicating Officer dated March 12, 2013.

11.2.1 This contention of the Noticee cannot be examined in isolation without considering the Order of Hon'ble SAT. In order to appreciate that the Noticee's interpretation of the Hon'ble SAT Order dated October 28, 2013, as aforesaid, is not correct, the recorded proceedings of the Order need to be examined:

a) The Hon'ble SAT vide order dated October 28, 2013 quashed and set aside the Order dated March 12, 2013 of the Hon'ble Adjudicating Officer qua the Noticee and permitted SEBI to issue a comprehensive Supplementary SCN to the Noticee. I note that the said Order dated October 28, 2013 of the Hon'ble SAT records the proceeding as under:

".... After the matter was argued for some time, learned counsel for appellant brought to our notice that impugned order dated March 12, 2013 has been passed by adjudicating officer on the basis of materials set out at paragraph 13 to 20 of the order which were neither referred to in the show cause notice nor supplied to appellant during adjudicating proceedings. Similarly trade and order logs relating to trades in shares of Exedy India Limited have not been furnished to appellant though repeatedly demanded by appellant. Learned counsel for respondent fairly states that evidence referred to in paragraph 13 to 20 of impugned order dated March 12, 2013 were not supplied to appellant. Learned counsel for respondent, on instructions, states that respondent may be permitted to issue supplementary show cause notice enclosing

herewith all documents which respondent want to rely upon so that order could be passed on merits after hearing appellant.

Accordingly, impugned order is quashed and set aside qua the appellant only. Respondent is permitted to issue a comprehensive supplementary show cause notice to appellant within a period of eight weeks from today... "

b) It is, thus, noted from the above that the Hon'ble SAT quashed the Order dated March 12, 2013 and permitted SEBI to issue a comprehensive supplementary SCN enclosing all documents which it want to rely upon so that Order could be passed on merits after hearing the Noticee. Since the impugned Order dated March 12, 2013 has been quashed and set aside, the question of providing additional documents with reference to certain paras appearing in the said impugned Order, as contended by the Noticee, does not arise in the first place. Besides, the only inference that can be drawn from the Order dated October 28, 2013 of the Hon'ble SAT, as aforesaid, is that the Noticee is entitled to receive copies of all documents that the Adjudication Officer intends to rely upon.

It is, thus, clear that the Hon'ble SAT permitted SEBI to issue a comprehensive supplementary SCN enclosing all documents which it wants to rely upon, and neither directed, nor, restricted the Adjudicating Officer to supply documents based on certain references made in impugned Order dated March 12, 2013.

11.3 *As regards 10.3 above, the Noticee has contended that the Supplementary SCN dated December 17, 2013 has expanded the charges and added further allegations and facts and therefore suffers from major legal infirmity.*

11.3.1 In order to appreciate that the aforesaid argument made by the Noticee does not hold good, the following factual aspects need to be taken note of:

a) The Hon'ble SAT vide Order dated October 28, 2013 quashed and set aside Order dated March 12, 2013 and permitted SEBI to issue a comprehensive supplementary SCN enclosing all documents which it wants to rely upon;

b) In compliance with the said Order of Hon'ble SAT, I was appointed as an Adjudicating Officer vide Order dated November 08, 2013 to inquire and adjudge under Section 15HA and 15HB of SEBI Act, 1992, the alleged violations by the Noticee in the matter of Exedy India Ltd. (EIL/ the company);

c) The SCN dated November 12, 2012 had alleged that the Noticee had during the investigation period entered into self trade for 7,534 shares by trading in own account, thereby creating artificial/ fictitious volume in the scrip of EIL. It also alleged that the Noticee had dealt in the scrip of EIL in a fraudulent manner, created artificial volume, false and misleading appearance of trading, and thus, violated Regulation 3(a), 3(d), 4(1), 4(2)(a) and 4(2)(g) of PFUTP Regulations. Further, it alleged that the Noticee as a stock broker had failed to show high standards of integrity, promptitude and fairness and had indulged in manipulative and fraudulent transactions and thereby violated clauses A (1), (3), (4) and (5) of the Code of Conduct for Stock Brokers as laid down in Schedule II under Regulation 7 of Broker Regulations;

d) The Supplementary SCN dated December 17, 2013 too alleged that by executing self trades, Noticee had created artificial volume in the scrip and consequently violated provisions of Regulation 3(a), 3(d), 4(1), 4(2)(a) and 4(2)(g) of PFUTP Regulations and Clause A(1), (3),

(4) and (5) of the Code of Conduct for Stock Brokers as laid down in Schedule II under Regulation 7 of Broker Regulations;

e) The Supplementary SCN further enumerated through certain instances, the modus operandi of the Noticee that resulted in self trades getting executed, and thereby creating artificial volumes in the EIL scrip;

f) The soft copies of trade and order logs for the period from March, 2009 to November, 2009, the alleged self trades and price volume data of BSE were provided to the Noticee in a Compact Disc (CD) along with the Supplementary SCN.

Thus, it is clear from the above that the Supplementary SCN has neither expanded the charges, nor, added further allegations or facts as contended by the Noticee. In order to enable the Noticee to better understand the charges framed against it, the Comprehensive Supplementary SCN dated December 17, 2013 described through certain instances, the manner in which trades placed by the Noticee had resulted in self trades getting executed.

11.4 *As regards 10.4 above,* the Noticee has contended that the Order of the Whole Time Member dated November 08, 2013 read with Supplementary SCN results into commencement of a fresh enquiry?

11.4.1 For the reasons explained above, it becomes clear that under no circumstances the Order of the Whole Time Member dated November 08, 2013 read with Supplementary SCN results into commencement of a fresh enquiry as contended by the Noticee. Besides, I note that the Noticee has also contended that the charges included in paragraph 2 & 3 of the Supplementary SCN relate to paragraphs 29 and 31 of the Adjudication Order dated March 12, 2013 and that this part of the adjudication order was not permitted by SAT to be dealt with again. As

seen from the recorded proceedings of the Hon'ble SAT Order as above, it is noted that the Hon'ble SAT had quashed and set aside the Order dated March 12, 2013, hence the contention of the Noticee that the Hon'ble SAT did not permit a certain part of the Order dated March 12, 2013 to be dealt with again, is totally false and baseless.

11.5 *As regards 10.5 above,* the Noticee has contended that in terms of Regulation 9 of PFUTP Regulations, the Investigation Authority (IA) is required to submit a report to the Appointing Authority and they have not been provided with the said report or even relevant extracts of the said investigation report.

11.5.1 In order to appreciate that the aforesaid argument made by the Noticee does not hold good, the following factual aspects need to be taken note of:

a) Regulation 9 of the PFUTP Regulations lays down the procedure to be followed by the IA on completion of the investigation. It *inter alia* lays down that the Investigating Authority shall, on completion of investigation, after taking into account all relevant facts, submit a report to the Appointing Authority. However, it no where spells out that the investigation report should be provided to the persons against whom actions are proposed/ initiated;

b) The Hon'ble SAT vide Order dated October 28, 2013 permitted issue of Comprehensive Supplementary SCN enclosing all documents which the Adjudicating Officer wants to rely upon so that order could be passed on merits after hearing the appellant;

c) Accordingly, all the relevant extracts of the investigation report were incorporated in the Supplementary SCN and the supporting documents on the basis of which charges have been alleged against

the Noticee and which the Adjudicating Officer wanted to rely upon were provided to the Noticee;

d) In this context, it becomes necessary to quote the judgment of the Hon'ble SAT, in the case of *Mayrose Capfin Private Limited V/s. Securities and Exchange Board of India* (Appeal No. 20 of 2012) dated 30.03.2012, wherein the Hon'ble SAT has observed in the matter that *"The principles of natural justice require that the inquiry officer should make available such document and material to the delinquent on which reliance is being placed in the inquiry. It is not necessary for the inquiry officer to make available all the material that might have been collected during the course of investigation, but, has not been relied upon for proving charge against the delinquent. No prejudice can, therefore, be said to have been caused to the appellant on this count*";

e) Further it is observed that in Chandrama Tiwari vs. Union of India (AIR 1988 SC 117), the Hon'ble Supreme Court has also observed that "*It is not necessary that each and every document must be supplied to the delinquent government servant facing charges; instead only material and relevant documents are necessary to be supplied to him. If a document even though mentioned in the Memo of charges is not relevant to the charges or if it is not referred to or relied upon by the enquiry officer or the punishing authority in holding the charges proved against the government servant, no exception can be taken to the validity of the proceedings or the order passed on the ground of non-supply of the copy of the order. If a document is not used against the party charged, the ground of violation of principles of natural justice cannot be successfully raised. Violation of the principles of natural justice arises only when a document, a copy of which may not have been supplied to the party charged, is used in recording findings of guilt against him*."

In view of the above, I find that the principles of natural justice have been met with and the contention of the Noticee that they have not been provided with the Investigation Report or even the relevant extracts of the said investigation report does not appear justified.

11.6 *As regards 10.6 above,* the Noticee has contended that Regulation 10 of PFUTP Regulation requires the Board to give a reasonable opportunity of hearing to the person concerned and issue such directions as mentioned in Regulation 11 and 12, however, the Noticee has not been made aware of any such proceeding in the instant matter, hence PFUTP Regulations cannot be legally used against them in the matter.

11.6.1 In order to appreciate that the aforesaid argument made by the Noticee does not hold good, the following factual aspects need to be taken note of:

a) Regulation 10 of the PFUTP Regulation expounds that actions under Regulation 11 and 12 of the PFUTP Regulations will follow, if Board is satisfied that there is a violation of the Regulations after giving a reasonable opportunity of hearing;
b) Regulation 11 and 12 of the PFUTP Regulation envisages initiation of proceedings under Section 11 and/or 11B of SEBI Act;
c) The instant proceedings, on the other hand, have been initiated by the Whole Time Member against the Noticee under Section 19 of SEBI Act read with Section 15-I of SEBI Act and Rule 3 of SEBI (Proceeding for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995, to inquire and adjudge under Section 15HA and 15HB of the SEBI Act.

Thus, it is observed from the above that actions under Regulation 11 and 12 of the PFUTP Regulation cannot be followed for the proceedings initiated under Rule 4 of Rules, hence, the contention of the Noticee that they have not been made aware of any proceedings as required under Regulation 11 and 12 of PFUTP Regulations in the instant matter is without merit.

11.7 From all of the above, it becomes clear that the aforesaid issues raised by the Noticee at paras 10.1 to 10.6 above are ambiguous and lack perspicuity.

12. I now move on to examine the other contentions of the Noticee with regards to the charges alleged against the Noticee. The following are accordingly the issues under consideration:

12.1 Whether the Noticee entered into self-trades for 7,534 shares in the scrip of EIL by trading into its own account in a fraudulent manner, thereby creating artificial volumes, false and misleading appearance of trading, thus, violating Regulation 3(a), 3(d), 4(1), 4(2)(a) and 4(2)(g) of SEBI PFUTP Regulations and Clause A(1), (3), (4) and (5) of the Code of Conduct for Stock Brokers as laid down in Schedule II under Regulation 7 of SEBI Broker Regulations ?

12.2 Does the violation, if any, on the part of the Noticee attract monetary penalty under Section 15HA and 15HB of SEBI Act?

12.3 If so, what would be the monetary penalty that can be imposed on the Noticee taking into consideration the factors mentioned in Section 15J of the SEBI Act?

13. Before moving ahead to examine the aforesaid issues regarding the charges alleged against the Noticee, I find that the Noticee in its reply has *inter alia* rebutted all allegations of price manipulation and submitted various justifications for the price rise in the EIL scrip during the investigation period. I note that case before me is for dealing in the scrip of EIL in a fraudulent manner by creating artificial volume, false and misleading appearance of trading by entering into self-trades. I find that charge

of price manipulation was neither alleged against the Noticee in the SCN dated November 12, 2012, nor, in the Supplementary SCN, though certain material that was collected during the course of investigation was *inter alia* a part of the SCN dated November 12, 2012. As such, no details or analysis as regards price manipulation by the Noticee has been provided. Besides, I also do not find any allegation against the Noticee in the Comprehensive SCN to the effect that Vishwas Securities Ltd. and the Noticee traded in a synchronized manner in the scrip of EIL during the relevant period. Hence, I proceed with the matter taking into consideration the reply of the Noticee with respect to the alleged charges viz. the self trades executed by the Noticee in the scrip of EIL during the relevant period.

14. I note that Noticee executed self-trades in the shares of EIL, wherein same client appeared on both buy and sell side of the trades, details of which are given below:

TRADE DATE	Self Trade Volume	Day's Market volume	% of Self trades to day's market volume	Total buy volume of the Client	% of Self trades to total buy volume of the Client	Total sell volume of the Client	% of Self trades to total sell volume of the Client
20-05-2009	1	23,005	0.00%	5,551	0.02%	5,003	0.02%
25-05-2009	168	39,410	0.43%	5,352	3.14%	34,226	0.49%
26-05-2009	903	63,521	1.42%	29,498	3.06%	19,187	4.71%
27-05-2009	5,762	72,562	7.94%	27,036	21.32%	35,186	16.38%
01-06-2009	9	67,300	0.01%	14,258	0.06%	12,450	0.07%
02-06-2009	664	49,289	1.35%	20,312	3.27%	17,064	3.89%
22-06-2009	25	8,309	0.30%	4,786	0.52%	1,786	1.40%
10-07-2009	1	20,467	0.00%	2,111	0.05%	5,851	0.02%

From the above table, following instances have been enumerated to reveal the modus operandi of the Noticee that resulted in self trades getting executed, thereby creating artificial volume in the EIL scrip.

14.1 Noticee's self trades on May 27, 2009 for 5,762 shares:

a) It is observed that on May 27, 2009, Noticee executed the following self trades:

TRADE DATE	TRADE TIME	CLIENT NAME	TRADE QTY	Trade RATE	TRADE VALUE	BOT	SOT	BOQ	SOQ	BOR	SOR	TIME DIFF	QTY DIFF
27/05/2009	15.29.23	ISF SECURITIES	2762	29.85	82,445.7	15:29:10	15:29:22	10000	3000	29.85	29.85	00:00:12	0.00
27/05/2009	15.29.25	ISF SECURITIES	3000	29.85	89,550	15:29:10	15:29:25	10000	3000	29.85	29.85	00:00:15	0.00
27/05/2009	15.55.15	ISF SECURITIES	1	29.85	29.85	15:45:51	15:55:14	15000	151	29.85	29.85	00:09:24	0.00

Note: BOT denotes Buy Order Time, SOT denotes Sell Order Time

BOQ denotes Buy Order Quantity, SOQ denotes Sell Order Quantity

BOR denotes Buy Order Rate, SOR denotes Sell Order Rate

b) During the period from April 01, 2009 to October 31, 2009 i.e. the investigation period, it is noted from the price volume data of BSE that the trade volume of EIL was highest on May 27, 2009 at 72,562 shares in comparison with the entire investigation period. On the said date, it is noted from the trade log that Noticee was the gross buy client for 27,036 shares and gross sell client for 35,186 shares, thus, Noticee has net sold 8,150 shares on May 27, 2009. The self trades of the Noticee on May 27, 2009 for 5,762 shares, thus, comprise 21.32% of the gross buy quantity, 16.38% of the gross sell quantity and more than 70% of the net sell quantity of the Noticee on that day.

c) Further, the following is evident from the order log and the trade log of EIL as provided by BSE with respect to the self trades executed by the Noticee for 2,762 shares at 15.29.23 and for 3,000 shares at 15.29.25 on May 27, 2009 in the scrip of EIL:

- During the period from 11:33 upto 15:28, there were no sell orders entered in the system on May 27, 2009;
- At 15:28:56, Noticee entered a sell order for 14,000 shares at price Rs. 29.85 vide order id 23000009047546. Again at 15:29:15.783863, the Noticee entered another sell order for 3,000 shares at Rs. 29.85 vide order id 23000009047608. At 15:29:22.566661, the Noticee vide order id 23000009047628 entered another sell order for another 3,000 shares at Rs. 29.85. Subsequently at 15:29:25.183182, the Noticee placed another sell order for 3,000 shares at Rs. 29.85 vide order id 23000009047636;

- From 15:28 up to 15:41:55 there were no other sell orders entered in the system, except that of the Noticee for 23,000 shares in the manner brought out as aforesaid;
- It is further noted from the order log that Noticee was simultaneously also entering buy orders in the system. Vide order id 23000009047038, Noticee had placed a buy order for 10,000 shares at Rs. 29.85 at 15:26:09. The said buy order was updated at 15:27:04 to 36,000 shares at the same price. The said buy order was again updated at 15:28:39 to 37,000 shares and at 15:29:10 to 40,000 shares at the same price i.e. Rs. 29.85. Further at 15:40:20, vide order id 23000009049677, Noticee placed a buy order for 15,000 shares and revealed a quantity of 10,000 shares. Noticee updated the said order at 15:40:20, 15:41:22, 15:43:29, 15:45:51 and 15:55:26 to reveal 11,000 shares, 12,000 shares, 13,000 shares and 14,000 shares gradually. It may be mentioned that due to this continuous updating of the order id 23000009049677 as aforesaid till almost the end of the trade session, the order lost its time priority for matching and trade for only 1 share out of the order for 15,000 shares got executed. Thus, it is observed that the buy order id 23000009049677 for 15,000 shares was entered by the Noticee only with the intention of showing higher pending buy order quantity to the market;
- The sell order for 14,000 shares placed vide order id 23000009047546 matched with the pending buy orders of other clients. Similarly, sell order for 3,000 shares placed vide Order id 23000009047608 matched with the pending buy order of another client. Sell order for 3,000 shares placed by the Noticee vide order id 23000009047628, matched for 233 shares and 5 shares with the pending buy order of other two clients, before it matched at 15.29.23 with the Noticee's own buy order for 2762 shares placed vide order id 23000009047038 resulting in self trade. Similarly, sell order for 3,000 shares placed vide order id 23000009047636 matched at 15:29:10 with Noticee's own buy order for 3,000 shares placed vide order id 23000009047038 resulting in self trade.

- As there were no other sell orders in the system at the relevant point of time, it was, but, obvious that the buy orders of the Noticee placed almost around the same time as that of its sell orders, would match with its own pending sell orders.

Thus, I find that Noticee placed the aforesaid buy and sell orders with the intention to execute self trades so as to create artificial volume in the scrip.

14.2 Noticee's Self trades on June 02, 2009 for 464 shares

a) It is noted that on June 02, 2009, Noticee executed the following self trades:

TRADE DATE	TRADE TIME	CLIENT NAME	TRADE QTY	TRADE RATE	TRADE VALUE	BOT	SOT	BOQ	SOQ	BOR	SOR	TIME DIFF	QTY DIFF
2/6/2009	10.35.28	ISF SECURITIES	464	35.15	16309.6	10:35:28	10:25:56	500	2000	35.15	35.25	00:09:32	0.00
2/6/2009	15.44.50	ISF SECURITIES	200	36.15	7230	15:43:57	15:44:50	15000	300	36.15	36.15	00:00:52	0.00

Note: BOT denotes Buy Order Time, SOT denotes Sell Order Time
BOQ denotes Buy Order Quantity, SOQ denotes Sell Order Quantity
BOR denotes Buy Order Rate, SOR denotes Sell Order Rate

b) The following is evident from the order log and the trade log of EIL as provided by BSE with respect to the self trades executed by the Noticee for 464 shares at 10.35.28 on June 02, 2009 in the scrip of EIL:

- Vide sell order id 18000007010911, Noticee placed sell order at 10:24:45 on June 02, 2009 for 2,000 shares at Rs. 35.25. At 10:25:56, Noticee lowered the price of the said order to Rs. 35.15;
- At 10.28.26, trade for 5 shares got executed at Rs. 35.15 with the buy order of 5 shares placed by another client at 10:28:26 at Rs. 35.15 vide order id 23000009013596 and the balance order of the Noticee for 1995 shares (2,000–5) was pending in the system;
- Subsequently, vide Buy Order id 22000056003478, it is noted that at 10:35:28, Noticee placed a buy order for 500 shares at Rs. 35.15. At 10.35.28, 36 shares out of the buy order for 500 shares matched with buy order of another client

who had placed buy order for 51 shares at Rs. 35.10 at 10:28:32 and the trade got executed at Rs. 35.10;

- At 10.35.28, the balance 464 shares of the buy order for 500 shares of the Noticee matched with the pending sell order id 18000007010911 of the Noticee and self-trade was executed at Rs. 35.15;
- Immediately thereafter at 10:37:18, Noticee deleted the balance 1,531 (2000-5-464) shares of sell order id 18000007010911;
- It is noted that the Noticee lowered the price of its sell order from Rs. 35.25 to Rs. 35.15, when its own trades around the time were happening at a much higher rate of Rs. 35.35;
- It is also observed that on June 02, 2009, except for a few trades which happened at Rs. 35.15/ Rs. 35.10, which included the trades of the Noticee, all the other trades on that day were at a price higher than Rs. 35.15.

Therefore, I find that Noticee placed the aforesaid buy and sell orders in such a manner so as to facilitate creation of artificial volume in the scrip.

15. As regards the self trades, Noticee in its reply has *inter alia* submitted that the self trades got executed by mistake of the system. The Noticee has further submitted that the automatic trading system of the stock exchanges should be equipped to curb such genuine mistakes and errors. The Noticee has also claimed that the dealer and the client are not able to remember all the pending orders when putting in the next order on the same scrip, as they are dealing in many shares at a time and the time is short in placing all orders, and sometimes they forget to check the existing orders already pending in respect of the same scrip, which results in self trades. Noticee has further *inter alia* also submitted that the alleged self-trades of 7,534 shares amounts to only 2.84% of the entire sell trades undertaken by the Noticee, whereas the promoter holding was 12.34 lac shares and the public holding was 27.97 lac shares. It is further submitted that the self-trades of 7,534 shares out of a total market volume of 14,27,128 shares over a period of 6 months, constitutes a

miniscule 0.5%, which can hardly manipulate the market by creating artificial volume in the scrip of EIL.

16. In the matter, I find that it has been categorically brought out in the Supplementary SCN that on May 27, 2009 from 11:33 up to 15:41:55, there were no other sell orders entered in the system in the scrip of EIL, except that of the Noticee from 15:28:56 to 15:29:25 for 23,000 shares. It has also been brought out that the Noticee was entering buy orders in the system simultaneously with its aforesaid sell orders. At 15:26:09, it placed a buy order for 10,000 shares and updated the quantity from 15:27:04 upto 15:29:10 to 40,000 shares. The sell and the buy orders were placed at the same price. As there were no other sell orders in the system at the relevant point of time, it was, but, obvious that the buy orders placed almost around the same time and at the same price as that of its sell orders, would match with the Noticee's own pending sell orders. Thus, I conclude that the Noticee had placed the aforesaid buy and sell orders with the intention to execute self trade so as to create artificial volume in the scrip.

17. Similarly, on June 02, 2009 it is noted that the Noticee lowered the price of its sell order from Rs. 35.25 to Rs. 35.15, when its own trades around the time were happening at a much higher rate of Rs. 35.35. It is also observed that on that day, except for a few trades which happened at Rs. 35.15/ Rs. 35.10, which included the trades of the Noticee, all the other trades on June 02, 2009 were at a price higher than Rs. 35.15. It is further noted that the Noticee deleted the balance sell order quantity once self trade got executed, from which it becomes obvious that the price of the sell order was lowered not with any intent to sell the shares at a lower rate, but, with an intent to execute self trades. Therefore, it is concluded that the Noticee placed the buy and sell orders in such a manner so as to facilitate creation of artificial volume in the scrip.

18. Though the Noticee has claimed the self trades to be plain mistakes which did not get captured by the Exchange mechanism, however, I find the aforesaid instances

evidently demonstrate that the buy and sell orders were not mistakenly placed, but, with an clear intent to execute the self trades. Besides, in my opinion, Noticee being a stock broker should have placed some mechanism in place to ensure that buy and sell trades on own account or of his client, do not result in self trades. Further, merely because the number of such self-trades is not large by itself cannot justify execution of self trades. In this case it becomes necessary to quote the order of Hon'ble Securities and Appellate Tribunal (SAT) in *Chirag Tanna vs. The Adjudicating Officer* dated June 16, 2011 wherein it was held as follows:

"..we have on record the trade and order logs from which it has been pointed out by the learned counsel for the respondent Board that the appellant had executed self trades i.e. trades in which he was both the buyer and seller. Such trades are, admittedly, fictitious and create artificial volumes in the traded scrip."

Further, Hon'ble SAT in a similar matter *H.J. Securities Pvt. Ltd. vs. SEBI* (Appeal No. 76/2012) dated May 11, 2012 has held that:

"The modus-operandi of the appellant in operating through the 19 jobbers from different locations has resulted in fictitious trades / self trades where the buyer and the seller are the same party. Such trades create artificial volume in the traded scrip and send wrong signal to the lay investor with regard to trading in the scrip. The Board has come to a definite finding that the appellant had executed self trades on the day of listing for 2,00,725 shares which was 7.08% of its total quantity i.e. one in every fourteen trades of the appellant's total buy quantity on that day was a self trade on its proprietary account in terms of volume. Similar is the situation on the sale side. It is further noted by the Board that trading pattern in the subsequent day also reflects that one out of eleven trades of the appellants' total buy quantity was a self trade on its proprietary account in terms of volume. This finding of the Board is not disputed by the appellant. If the appellant was operating through jobbers from different terminals, he should have placed some mechanism in place to ensure that his trades do not result in self trades. Simply because the number of such self trades

is not large by itself cannot justify execution of self trades. The appellant is free to adopt any business model but he has to ensure that whatever business model he adopts, it is in conformity with the regulatory framework. Since the business model adopted by the appellant has resulted in self trades which are considered to be fraudulent, we cannot find any fault with the impugned order which has held the appellant guilty of violating the provisions of FUTP regulations as well as code of conduct for the stock brokers. We are, therefore, not inclined to interfere in the matter."

From the above Hon'ble SAT order, it can be inferred that self trades defeat the purpose of anonymity of the trading system of the stock exchange.

19. Regulation 3 prevents any person from buying, selling or dealing in securities in fraudulent manner, engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognised stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under. Regulation 4(1) of PFUTP lays that no person shall indulge in a fraudulent or an unfair trade practice in securities. Regulation 4(2) (a) of PFUTP, prohibits a person from indulging in an act which creates false or misleading appearance of trading in the securities market. Regulation 4(2)(g) inter alia, prohibits entering into a transaction in securities without intention of performing it or without intention of change of ownership of such security. Clauses A (1), (3), (4) and A (5) of Code of Conduct in the Brokers Regulations *inter alia* states that a broker shall maintain integrity, promptitude and fairness in the conduct of all his business and is required to ensure that he does not indulge in fraudulent or deceptive transactions with a view to distort market equilibrium, or, shall not create false market singly or in concert with others that leads to inference with fair and smooth functioning of the market. Furthermore, a broker shall abide by all the provisions and statutory requirements of the Act and rules.

20. The Noticee, I find, has *inter alia* further submitted that the explanation relating to self trades executed by it was accepted in the Adjudication Order dated March 12, 2013, whereby the Order *inter alia* concluded that such few trades in isolation may not lead to the conclusion that they are fraudulent and manipulative trades. I note that the Hon'ble SAT vide Order dated October 28, 2013 has quashed and set aside the Adjudication Order dated March 12, 2013. I find it unreasonable on the Noticee's part to selectively rely on the said quashed order wherever it best suits its purpose, whereas, otherwise generally hold the conclusions drawn by the said Order as wrong and incorrect. The Noticee cannot defend and appeal against the same order based on its own whims and fancies.

21. The submission made by the Noticee can't suffice for their inability and non complicity in the aforesaid transactions and can't establish that it was not guilty of the violation of the aforementioned allegations. Therefore, I don't find the explanations of the Noticee satisfactory. Noticee being a stock broker, understands the implications of its actions well, and, should have put proper mechanisms in place, so as to avoid the self-trades. Every broker has the responsibility to maintain high standard of integrity, promptitude and fairness in conducting business and to comply with the statutory requirements. Thus, the Noticee cannot absolve from their liabilities on the ground that the quantity of such self-trades were "miniscule".

22. Noticee has argued that the alleged self-trades have not actually impacted the price in any material manner. I note that the allegation against the Noticee is of creating artificial volumes in the scrip of EIL and not of price manipulation. It is to be noted that it is not the volumes made though bonafide normal market mechanism that are a cause of concern for the regulator. It is the artificial volumes created through fictitious self trades, which defeat the purpose of anonymity of the trading system of the stock exchanges and adversely affect the investors' interest by sending wrong signal to the lay investors, which is a cause of serious concern for the regulator.

23. Thus, in the instant case in light of the facts of the case and materials available on record, I conclude that Noticee has violated the provisions of Regulation 3(a), (d), 4(1) and 4(2)(a) & (g) of PFUTP Regulations and Regulation 7 read with Clauses A(1), A(3) A(4) & A(5) of Code of Conduct for Stock Brokers as specified in Schedule II of the Broker Regulations.

24. The next issue for consideration is what would be the monetary penalty that can be imposed on the Noticee for violation of Regulation 3(a), (d), 4(1) and 4(2)(a) & (g) of PFUTP Regulations and Regulation 7 read with Clauses A(1), A(3) A(4) & A(5) of Code of Conduct for Stock Brokers as specified in Schedule II of the Broker Regulations.

25. The Hon'ble Supreme Court of India in the matter of *SEBI Vs. Shri Ram Mutual Fund* [2006] 68 SCL 216(SC) held that *"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant…".*

26. Thus, the aforesaid violations by Noticee makes him liable for penalty under Section 15HA and 15 HB of the SEBI Act, which read as follows:

"15HA - Penalty for fraudulent and unfair trade practices

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

15HB - Penalty for contravention where no separate penalty has been provided

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

27. While determining the quantum of penalty under sections 15HA and 15HB, it is important to consider the factors stipulated in section 15J of SEBI Act, which reads as under:

"15J - Factors to be taken into account by the adjudicating officer

While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-

(a) the amount of disproportionate gain or unfair advantage, wherever 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."

28. It is difficult, in cases of such nature, to quantify exactly the disproportionate gains or unfair advantage enjoyed by an entity and the consequent losses suffered by the investors. I have noted that the investigation report also does not dwell on the extent of specific gains made by the clients or broker/s. However, I find that the Noticee by executing self trades, which implies the trades in which both buyer and seller are the same party and does not result in change of beneficial ownership, created artificial volumes, thereby sending wrong signal to the lay investors about trading in the scrip. Self trades are, hence, considered to be serious violation, even in the absence of noticeable market effect, because they do not reflect the forces of supply and demand and gives a false impression with respect to the market liquidity. Besides, I find that the self-trades for 5,762 shares on May 27, 2009 comprised approx. 21.32% of Noticee's total buy volume (27,036 shares), 16.38% of the total sell volume (35,186 shares) and more than 70% of the net sell quantity of the Noticee (8,150 shares) on that day. Similarly, the self trades for 664 shares on June 02, 2009 comprised approx. 3.27% of its total buy volume (20,312 shares), 3.89% of

its total sell volume (17,064 shares) and more than 20% of the net buy quantity of the Noticee (3,248 shares) on that day. Also, I note that such self trades have occurred repeatedly on eight (8) occasions. I have, however, taken note of the fact that the Noticee has assured that they propose to significantly upgrade their control process so that the possibility of committing such self trades by mistakes can be minimized to the best possible.

29. I note that person found to be guilty of violating PFUTP Regulations can be imposed a penalty of Rs. 25 crore or three times the amount of profit made, whichever is higher, under Section 15HA of the Act and person found guilty of any regulations where no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees, under Section 15HB.

30. Detailed analysis, brought out as above, of the orders placed by the Noticee that resulted in self-trades, dismisses the Noticee's version made through its various submissions that the alleged self-trades got executed by mistake of the system and the same were never done intentionally. On the contrary, the analysis above clearly demonstrates that the Noticee knowingly engaged in execution of self-trades. I find that this is sufficient to prove that the Noticee has created a false or misleading appearance of trading in violation of Regulation 3(a), (d), 4(1) and 4(2)(a) & (g) of PFUTP Regulations and failed to carry out its business with due, skill, care and due diligence in violation of Regulation 7 read with Clause A (1), A(3), A(4) and A(5) of Code of Conduct for Stock Brokers as specified in Schedule II of the SEBI Stock Brokers Regulations.

31. Further, it is apparent from the case laws referred above that self trades are, ordinarily and of their nature, baneful practices which will, invariably, have the purpose and, often, the effect of interfering with the integrity of securities market, even though such self trades may be miniscule in quantity. This sort of activity is, therefore, rightly considered to be illegal, and justifiably so. In the instant case, I find

that the Noticee has executed an illegal operation repeatedly on eight occasions ranging from 0.02% of its total buy/sell volume on a day to 21% of its total buy volume on a day, thus, detrimental to the smooth functioning of the securities market, and hence, deserves to be viewed seriously.

ORDER

32. After taking into consideration all the facts and circumstances of the case, I impose a penalty of Rs. 10,00,000 (Rupees Ten Lakh Only) under section 15HA and Rs. 1,00,000 (Rupees One Lakh Only) under 15HB of the SEBI Act, {i.e. a total penalty of Rs. 11,00,000 (Rupees Eleven Lakh Only)} on the Noticee which will be commensurate with the violations committed by it.

33. The Noticee shall pay the said amount of penalty by way of demand draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, within 45 days of receipt of this order. The said demand draft should be forwarded to Shri. Suresh Gupta, Chief General Manager, Investigations Department, SEBI Bhavan, Plot No. C – 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.

34. In terms of rule 6 of the Rules, copies of this order are sent to the Noticee and also to the Securities and Exchange Board of India.

Date: **June 05, 2014** **Anita Kenkare**

Place: **Mumbai** **Adjudicating Officer**