BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA

ADJUDICATION ORDER NO. PJ/VP/AO– 9/2015

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

R. M. Shares Trading Private Limited

(PAN-AABCR6331B)

In the matter of Onelife Capital Advisors Limited

FACTS OF THE CASE IN BRIEF

1. The Hon'ble Securities Appellate Tribunal vide its order dated 07.08.2014 in the matter of R M Shares Trading Private Limited vs. SEBI in Appeal No. 204 of 2014 had set aside the Adjudication Order dated 28.04.2014 and directed SEBI "to pass fresh order by entrusting the matter to any Adjudicating Officer other than the Adjudicating Officer who has passed the impugned order challenged in the above Appeal No. 204 of 2014.

APPOINTMENT OF ADJUDICATION OFFICER

2. Pursuant to the above facts Shri. D. Sura Reddy was appointed as Adjudicating Officer vide order dated 04.09.2014 under section 19 read with

15 I of 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 Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as '**Rules'**) to inquire into and adjudge the alleged violations committed by the Noticee.Subsequently, vide Order dated 22.06.2015, the undersigned was appointed as an Adjudicating Officer in the said matter.

3. Securities and Exchange Board of India (hereinafter referred to as **"SEBI"**) conducted investigation on noticing suspicious transfers of the proceeds of Initial Public Offer (IPO) to certain entities and noticing fictitious self-trades and creation artificial volumes, in the scrip of Onelife Capital Advisors Limited(hereinafter referred to as "The Company/ OCAL").

4. SEBI had, therefore, initiated adjudicating proceedings under the SEBI Act, to inquire into and adjudge under section 15HA of the SEBI Act the alleged violations of the provisions of regulations 3(a),(b),(c),(d), 4(1), 4(2) (a),(b) and (g) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 **(**hereinafter referred to as **"PFUTP Regulations")** committed by R M Shares Trading Private Limited(hereinafter referred to as **"Noticee"**).

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

5. Show Cause Notice dated 25.10.2013 (hereinafter referred to as **"SCN"**) was issued to the Noticee in terms of the provision of Rule 4 (1) of the Adjudication Rules to show cause as to why an inquiry should not be held against the Noticee in respect of the violations alleged to have been

committed by it. It was alleged in the said SCN that the Noticee had indulged in self-trades both on BSE and NSE the details are as under:

BSE

Client	Date	Self-trades (No. of Shares)	Gross Buy Qty	Self-trade as a % of GB	Market Volume	Self-trade as a % of market volume
RM	17-Oct-11	82155	1401228	5.86%	24441556	0.34%
	18-Oct-11	7387	157248	4.70%	3694394	0.20%
	19-Oct-11	359	39412	0.91%	2761652	0.01%

NSE

Client	Date	Self-trades (No. of Shares)	Gross Buy Qty	Self-trade as a % of GB	Market Volume	Self-trade as a % of market volume
RM	17-Oct-11	67959	1402891	4.84%	34056499	0.20%
	18-Oct-11	6776	157091	4.31%	4257160	0.16%
	19-Oct-11	642	39362	1.63%	4365707	0.01%

6. In response to the SCN, the Noticee, vide letter dated November 09, 2013, submitted reply to the SCN as under:

"We were mainly engaged in Arbitrage/ Jobbing business between two exchanges as well as between two segments of the same exchange. We have 17 dealers executing trade from their respective CTCL & TWS trading work station independently. The price difference between the two exchanges prompt the dealers to take advantage of differential prices. All the orders are placed by dealers based on their own logic and all orders are matched by the exchange server in to trades. It might be possible that coincidently, orders of one dealers matched with the opposite order of order of another dealer and resulted in trade with the same code. We are enclosing dealer-wise/ exchange-wise/ date-wise, purchase and sale quantity for your information and record. Our reply may kingly be treated as compliance to your summons. We wish to clarify that we have never done any fictitiousself-trades and we have not violated and provisions of regulations".

7. The Noticee vide letter dated 14.02.2014 had submitted their additional submissions summarised as under:

7.1. Through our submission hereinabove we have clarified that all trades were executed by us under normal course of business.

7.2. Self-trades were only incidental and unintentional.

7.3. Quantum of self-trades was not material compared to the size and nature of our business and the volume in that security as well.

7.4. The volume of self-trades from same terminal is negligible.

7.5. There is no possibility of creation of any false or misleading appearance of trading or defrauding anybody with such small quantity of unintentionalself-trades

7.6. Our case does not qualify to have violated any of the Regulations of SEBI as alleged upon us in the letter.

7.7. That in a similar matter i.e, M/s Crossseas Capital Services Private Limited in the matter of Servalakshmi Papers Limited (decided on 27.11.2013), the Adjudicating Officer has exonerated the entity on similar charges of executing self-trades.

7.8. That it executed trades in its proprietary account only.

7.9. That all the trades were carried out through algorithmic trading system which is approved by the exchanges.

7.10. That it has not applied for the shares of OCAL and had only carried outjobbing in the scrip.

7.11. That it has executed trades by using 17 dealers executing trade from theirrespective terminals and the price difference between the two exchanges prompt the dealers to take advantage of differential prices.

7.12. That it had no intention to execute self-trades.

8. Pursuant to the remand of the present case by Hon'ble Securities Appellate Tribunal vide order dated 07.08.2014 an opportunity of personal hearing on 09.09.2015 was granted to the Noticeevide letter dated 03.09.2015. Mr.SatishMaheshwari, Director of R M Shares Trading Private Limited, Advocate Ravikumar Varanasi and Advocate Deepak Rane from M/s. Ravikumar Varanasi & Co. Advocates and Legal Consultants, Authorized Representatives (ARs) appeared at hearing.(Hereinafter referred to as "**Noticee**") and submitted that they would like to submit written submission in the matter basically on the points:

   8.1. Process of trades matching on CTCL (Algo trading software system) versus Terminal trading system.

   8.2. The quantity of trade alleged in the show cause notice vis-à-vis the actual self-trades executed on each terminal level and server level.

8.3. Refer Judgments on the same issue and Judgments of Hon'ble SC/ HC on ratio ratiodecidendi and doctrine of precedent.

8.4. Hon'ble SAT Judgment on self-trades entered in Algo trading software system.

9. The Noticee vide letter dated 28.09.2015 submittedas follows:

that the self-trades are not done manually but through the algorithmic Trading Software approved by the Exchanges. The Noticee submits that the SEBI has reproduced the table pertaining to self-trade as given in the SCN and the Noticee had given the bonafide reason for self-trade in the additional reply and the same is reproduce below:

Reason for Self Trades:

9.1. The electronic trading platform of the Exchanges provides supersonic speed of broadcast and trade execution. Use of algorithmic trading applications has allowed brokers to execute transactions at a much faster speed than manual trading.

9.2. There are multiple algos running simultaneously by different dealers, wherein one algo may place buy orders while the other may place sell orders. This might even be the case for two dealers managing the algo through separate computers and user ID's.

9.3. These may result in self-trades, which are quite infrequent and random. Many a times, a small part of the large buy order of one dealer may also match partially with another dealer of our office and the balance may match with other market participants.

9.4. It may be noted that these instances of self-trades are purely incidental to the execution of the trading strategy and are not planned to be executed. The random nature of timing, quantity, dealers and partial matching with other market participants substantiate that these are unintentional and are a matter of pure co-incidence. "

Similarly the Noticee had also given the analysis of the internally match trade based on SEBI information in para 5 of the additional reply. The Noticee given in the Chart/Table in respect of self-trades on same terminal id and given by the Noticee in para 5.3 of the additional reply the said chart is reproduce below:

9.5. We submit hereunder the analysis of the internally matched trades vis-à-vis our volume and the market volume as under:

Date	*Exchange*	*Self-trades from same terminal*	*Self-trades from different terminals #*	*Total self-trades*	*Self-Trades as per SEBI*	*Gross buy quantity*	*Self-trade % as per SEBI*	*Actual self-trade %*	*Market Volume*	*Self-trade as a % of Market - SEBI*	*Self-trade as a % of Market – Actual*
17-10-11	*NSE*	*12891*	*55079*	*67970*	*67959*	*1402891*	*4.84%*	*0.92%*	*34056499*	*0.20%*	*0.038%*
17-10-11	*BSE*	*12233*	*69931*	*82164*	*82155*	*1401228*	*5.86%*	*0.87%*	*24441556*	*0.34%*	*0.050%*
18-10-11	*NSE*	*1085*	*5691*	*6776*	*6776*	*157091*	*4.31%*	*0.69%*	*4257160*	*0.16%*	*0.025%*
18-10-11	*BSE*	*1179*	*6208*	*7387*	*7387*	*157248*	*4.70%*	*0.75%*	*3694394*	*0.20%*	*0.032%*
19-10-11	*NSE*	*198*	*456*	*654*	*642*	*39362*	*1.63%*	*0.50%*	*4365707*	*0.01%*	*0.005%*
19-10-11	*BSE*	*103*	*256*	*359*	*359*	*39412*	*0.91%*	*0.26%*	*2761652*	*0.01%*	*0.004%*
TOTAL		***27689***	***137621***	***165310***	***165278***	***3197232***	***5.17%***	***0.87%***	***73576968***	***0.22%***	***0.038%***

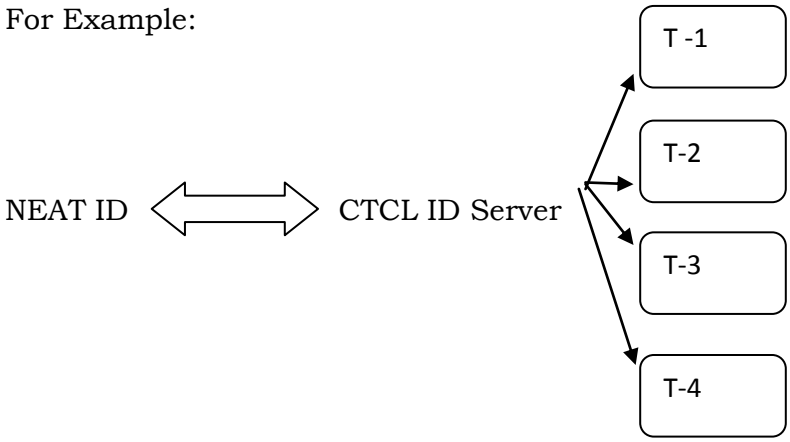
The Noticee submits that on perusal of the above Chart/Table it would be observed that the self-trades from same terminal in NSE/BSE in comparison to the self-trades determined by the Respondent is much lesser and the details of self-trades as per the Noticee based on Terminal id basis and not based on CTCL/IML id basis is as under:

Date of Trading	***Self-Trades as per SEBI based on CTCL ID/IML ID***		***Self-Trades as pre Noticee based on Terminal ID linked to CTCL ID/IML ID***	
	NSE	***BSE***	***NSE***	***BSE***
17-10-2011	*67959*	*82155*	*12891*	*12233*
18-10-2011	*6776*	*7387*	*1085*	*1179*
19-10-2011	*642*	*359*	*198*	*103*

The Noticee submits that the self-trade if considered as per terminal ID basis instead of the CTCL/IML ID basis, the self-trades are much lesser than that has been determined by Respondent. In fact, SEBI in its notice has determined the self-trade on 3 days i.e. 17, 18, 19th October, 2011 based on CTCL terminal ID basis and not on the individual terminal ID's. The Noticee states that the individual terminal ids or dealer ids

are linked to the CTCL Terminal ID which is the Server and the said Server through CTCIL ID is linked to NEAT/BOLD ID of the NSE/BSE. The Noticee states that the orders are put at the Terminal id level and many terminal id are linked to one CTCL ID/IML ID of NSE and BSE respectively.

For Example:



The Noticee submits that the Orders are placed at the Terminal ID level and the orders of small quantities (being order size of minimum 100 shares and maximum 1000 shares) are place and the average life cycle from the time of placing the order to getting converted into a trade is less than 2 seconds by using the algorithmic trading software. The human involvement is very less for putting the parameters of orders for the day and the trading take place through the algorithmic trading software connected to the server/CTCL Id and the orders are passed on to the NSE/BSE Exchanges 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. These self-trades cannot be treated as fictitious as the same are done on the Exchange approved terminals and in the normal course of business. During the hearing the Noticee Advocate had brought to the Notice of the Learned Adjudicating Officer the self-trades matched with the same terminal wherein the Order numbers were placed and matched with the other order on particular terminal. The Learned Adjudicating Officer had advised to mark certain trades in the document pertaining to "SAME TERMINALS SLF TRADE ON NSE". The said

document is annexed as Annexure – A1. The said marked trades are in respect of Terminal ID/CTCL ID are in respect of ID RMS02, RMS03, RMS04, RMS06, RMS09, RMS10. On perusal of the said transactions in the Annexure – A1 it would be observed that the Order Numbers for Buy and Sell and Trade Numbers are indicated which show that the said buy and sell have matched with the same terminal for ex. RMS02. Is on page 4 of the Volume pertaining to Self-Trades CTCL & IML ID wise mark NSE and BSE annexed as Annexure – A2. Similarly the self-trades from different terminals is annexed as Annexure – A3. The Noticee submits that the self-trades as per SEBI is based on CTCL ID which is the server of the Notice connected to the Exchanges. The Terminal Id connected to the CTCL ID i.e. server are the Ids from where the orders are placed by the Noticee which have converted into self-trades matching with the same terminal on account of latency and the said self-trades are much less than that have been determined by SEBI as mentioned in Annexure – A. Therefore, on perusal of the table above in respect of Self Trades of Noticee and that of Self Trades determined by SEBI they are much more and there is no 100 % matching of order with another order on the same terminal or other terminal or some have matched with the same terminal and some orders have matched with other terminals.

9.6. The Noticee further is giving the brief mechanism and functioning of conducting high frequency trading using NSE/BSE approved algo trading software.

9.6.1. The Noticee states that by using the approved algo trading software, orders of small quantities (being order size of minimum 100 shares and maximum 1000 shares) 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.

9.6.2. Further the concept applied by the Noticee is entering orders of low quantity at market price and to detect market inefficiency and to do a quick turnaround in the market by using the automatic algo trading software which is applied to various scrip on a given day including the scrip OCAL.

9.6.3. Further, the Noticee states that the total volume appears to be large on account of many cycles of extremely small order lots rather than trading in large quantities at any given time using automatic Algo software.

9.6.4. Further, the Noticee clarifies that the terminal ids are connected to the servers which are located in BSE and the connection to terminal id in NSE is through lease lines. There are many lease lines and servers. The self-internal match trades appears to be more in NSE on account of latency and late confirmation of orders in NSE as the lease line flow is little slow compared to BSE servers located in BSE building.

9.6.5. Further, the Noticee states that at no point of time entire orders are matched 100% so as to avoid the instances of creating artificial volumes in the scrip OCAL or any other scrip. There is partial matching happening across some orders on account of latency during the day of trading.

9.6.6. Further, the Noticee states that in the SCN the internal matching of self-trades in NSE and BSE is shown based on member/CTCL id basis by the Respondent. The Noticee submits that the basis considered for determining the alleged matched self-trades in the SCN is incorrect observation by the Respondent, since no orders are placed in member/CTCL id code but the orders are place through the algo trading software at the terminal/dealer id level. If the matching of internal trade is considered at terminal id/dealer id level then the matching is much lower and insignificant number of matched trades compare to the total trading in the scrip OCAL.

Further the Noticee vide its aforesaid letter dated 28.09.2015 has submitted additional reply elaborating the its earlier reply dated November 09, 2013 and 24.02.2014 and also relied on various judgment of Member, SEBI, Hon'ble Securities Appellate

Tribunal, Hon'ble Supreme Court, etc. in support of its reply to the Show Cause Notice, the same will be considered in the reasoning part of the this Order.

CONSIDERATION OF ISSUES, EVIDENCE AND FINDINGS

10. I have carefully perused the documents available on record, written and oral submissions made by the Noticee. The issues that arise for consideration in thepresent case are:

    10.1. Whether the Noticee has violated the provisions of regulations3(a),(b),(c),(d), 4(1), 4(2) (a),(b) and (g) of PFUTP Regulations by indulging in self-trade in the matter?.

    10.2. Do the violations, if any, on the part of the Noticee attract penaltyunder section 15HA of SEBI Act?

    10.3. If so, how much penalty should be imposed on the Noticee takinginto consideration the factors mentioned in section 15J of the SEBIAct?

11. The relevant provisions of PFUTP Regulations are as under:

PFUTP Regulations

"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;

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

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

(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are

listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made thereunder."

"4. Prohibition of manipulative, fraudulent and unfair trade practices

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

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

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

(b) dealing in a security not intended to effect transfer of beneficial ownership but intended to operate only as a device to inflate, depress or cause fluctuations in the price of such security for wrongful gain or avoidance of loss.

(c).....

(d).....

(e).....

(f)

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

FINDINGS

12. The first issue for consideration in the present case is whether the Noticee has violated the provisions of regulations 3(a),(b),(c),(d), 4(1), 4(2) (a),(b) and (g) of PFUTP Regulations by indulging in self-trade in the matter. From the material available on record, I note that OCAL had come out with an IPO and its share were listed on NSE and BSE on October 17, 2011. I note that

on the first day of listing, i.e., October 17, 2011, on NSE the scrip opened at Rs. 110, touched intra-day high of Rs. 174.8 and closed at Rs. 145.95. The total traded quantity was 3,40,56,499 shares i.e, approximately 10.16 times the issue size. On the next day, i.e, October 18, 2011, the scrip opened at Rs. 145.10, touched an intra-day high of Rs. 175.15 and closed at Rs. 175.15. The total traded quantity was 42,57,160 shares i.e, approximately 1.27 times the issue size. On the second day, the price of the scrip increased by about 20% (closed at upper circuit limit). On the third day i.e., on October 19, 2011, the scrip opened at Rs. 185.00 (about 5% above previous close) and it touched an intra-day high of 201.00 and closed at Rs.197.90. The total traded quantity was for 43,65,707 shares i.e, approximately 1.3 times the issue size. Thus, price of the scrip increased to 197.90 i.e, an increase of about 80%. Similar price –volume pattern was observed on BSE also.

13. It was alleged in the SCN that the Noticee had traded in the scrip on the listing day and the following two days and had indulged in self-trades wherein the buyer and the seller are the same resulting in no change of beneficial ownership and by executing such self-trades contributed to increase artificial volume in the scrip. I note that it was thus alleged in the SCN that the Noticee has violated the provisions of regulations 3(a),(b),(c),(d), 4(1), 4(2) (a),(b) and (g) of PFUTP Regulations.

14. From the material on record, I find that the Noticee who was a SEBI registered stock broker had executed self-trades in its proprietary account. The details of such self-trades executed by the Noticeewere made available to the Noticee along with the SCN as Annexure III (as contained in CD).

The table below shows the details of self-trades executed by the Noticee on NSE and BSE on the day of listing and the subsequent two days.

BSE

Client	Date	Self-trades (No. of Shares)	Gross Buy Qty	Self-trade as a % of GB	Market Volume	Self-trade as a % of market volume
RM	17-Oct-11	82155	1401228	5.86%	24441556	0.34%
	18-Oct-11	7387	157248	4.70%	3694394	0.20%
	19-Oct-11	359	39412	0.91%	2761652	0.01%

NSE

Client	Date	Self-trades (No. of Shares)	Gross Buy Qty	Self-trade as a % of GB	Market Volume	Self-trade as a % of market volume
RM	17-Oct-11	67959	1402891	4.84%	34056499	0.20%
	18-Oct-11	6776	157091	4.31%	4257160	0.16%
	19-Oct-11	642	39362	1.63%	4365707	0.01%

15. Admittedly, the Noticee has not disputed its indulging in execution ofthe above number of self-trades. However, the Noticeeis defending itself by submitting that the said self-trades were not done manually but through the Algorithmic Trading Software approved by the Exchanges which is theelectronic trading platform of the Exchanges which provides supersonic speed of broadcast and trade execution through algorithmic trading applications and has allowed brokers to execute transactions at a much faster speed than manual trading. Further, there are multiple algos running simultaneously by different dealers, wherein one algo may place buy orders while the other may place sell orders. There might even be the case for two dealers managing the algo through separate computers and user ID's. These may result in self-trades, which are quite infrequent and random. Many a

times, a small part of the large buy order of one dealer may also match partially with another dealer of their office and the balance may match with other market participants. Thus the Noticee has submitted that the alleged instances of self-trades are purely incidental to the execution of the trading strategy and are not planned to be executed. The random nature of timing, quantity, dealers and partial matching with other market participants substantiate that these are unintentional and are a matter of pure co-incidence.

16. The Noticee is alleged to have indulged in self-trades in the scrip for a total quantity of 1,65,278 shares on the BSE (89,901 shares) and NSE (75,377 shares). The Noticee in its replies has submitted that self-trades if considered as per terminal ID basis instead of the CTCL/IML ID basis, the self-trades are much lesser that that has been determined in the SCN. Further, the Noticee has submitted the analysis of the internally matched trades vis-à-vis our volume and the market volumeas brought out earlier.

17. The Noticee has contended that the self-trades if considered at a dealerId level are much less than the broker level that is one CTCL ID/ IML ID of NSE and BSE respectively. Considering the above manner of treatment, theNoticee has submitted that it had executed self-trades in OCAL for 13,515 shares in BSE and for 14174 shares on the NSE.

18. For supporting these contentions, theNoticee has relied upon the Adjudication Order dated 27.11.2013 in the matter of Servalakshmi Papers Limited in favour of M/s Crosseas Capital Services Private Limited. The Noticee submits that the issue in the said Adjudication Order is similar and in respect of self-trades done by the Trading Member/Brokers using the

Approved Algorithmic Trading Software. The Noticee submitted that the Learned Adjudicating Officer has examined the relevant data provided by the respective Trading Member/Broker and then only has arrived at the conclusion of not levying any monetary penalty. Further for supporting their contentions the Noticeehas relied upon 5 other such Adjudicating Orders dated 30.04.2014.

19. Further for supporting their contentions, the Noticeehas submitted that the said orders have binding effect on the Adjudicating Officer as the Doctrine of Stare Decisis is to be applied as also the Doctrine of Binding Precedence is to be maintained and accepted in the interest of development of jurisprudence of law. The Noticeefor supporting his contentions relied upon Hon'ble Supreme Court Judgement in the matter of ShankerRaju V/s Union of India on 4thJanuary 2011 in writ petition (Civil) No. 311 of 2010

" 9) It is a settled principle of law that a judgement, which has held the filed for a long time, should not be unsettled. The doctrine of Stare Decisis is expressed in the maxim "staredecisis et non quietamovere", which means "to stand by decisions and not to disturb what is settled". Lord Coke aptly described this in his classic English version as " those things which have been so often adjudged ought to rest in peace." The underlying logic of this doctrine is to maintain consistency and avoid uncertainty. The guiding philosophy is that a view which has held the field for a long time should not be disturbed only because another view is possible. This has been aptly pointed out by Chandrachud, C.J. in Waman Rao v. Union of India (1981) 2 SCC 362 at pg. 392 thus:

" 40…. For the application of the rule of stare decisis, it is not necessary that the earlier decision or decisions of longstanding should have

considered and either accepted or rejected the particular argument which is advanced in the case in hand. Were it so, the previous decisions could more easily be treated as binding by applying the law of precedent and it will be unnecessary to take resort to the principle of stare decisis. It is, therefore, sufficient for invoking the rule of stare decisis that a certain decision was arrived at on a question which arose or was argued, no matter on what reason the decision rests or what is the basis of the decision. In other words, for the purpose of applying the rule of stare decisis, it is unnecessary to enquire or determine as to what was the rationale of the earlier decision which is said to operate as stare decisis."

10) In Manganes Ore (India) Ltd v.s Regional Asstt. CST (1976) 4SCC 124, at page 127, it was opined that the doctrine of stare decisis is a very valuable principle of precedent which cannot be departed from unless there are extraordinary or special reasons to do so.

11) In Ganga Sugar Corpv. State of U.P., (1980) 1 SCC 223 at page 233, this Court cautioned that, " the judgements of this Court are decisional between litigants but declaratory for the nation." This Court further observed::

" 28 …. Enlightened litgative policy in the Country must accept as final the pronouncements of this Court….

Unless the subject be of such fundamental importance to national life or the reasoning is so plainly erroneous in the light of later through that it is wiser to be ultimately right rather than to be consistently wrong. Stare decisis is not a ritual of convenience but a rule with limited exceptions."

12) In Union of India v. Raghubir Singh (1989) 2 SCC 754, at page 766, this Court has enunciated the importance of doctrine of binding precedent in the development of jurisprudence of law: "8. Taking note

of the hierarchical character of the judicial system in India, it is of paramount importance that the law declared by this Court should be certain, clear and consistent. It is commonly known that most decisions of the courts are of significance not merely because they constitute an adjudication on the rights of the parties and resolve the dispute between them, but also because in doing so they embody a declaration of law operating as a binding principle in future cases. In this latter aspect lies their particular value in developing the jurisprudence of the law. …." **Emphasis Supplied**

20. I have pursued the records available.The main allegation against the Noticee is that they had indulged in self-trades on BSE and NSE in the scrip of the company.The self-trades are trade where there is no transfer of actual beneficial ownership of share and because the buyer and seller are the same person. However the Noticee is contending that the self-trades done on 17th 18 and 19th October, 2011 through the mechanism of Algo Trading Software Platform approved by the Stock Exchanges where there is no human or manual control to avoid such trades. I find that in terms of Regulation 3 and 4 of the PFUTP Regulations there is no such exemptions such as online trading or Algo Trading Software wherein there is no human/ manual control to avoid such trade once the buy order/ sell order are entered in the system.

21. I refer the **Order dated November 13, 2014 passed by Hon'ble Whole Time Member, SEBI in respect of M/s Crosseas Capital Services Private Limited in the matter of Bharatiya Global Infomedia Limited**

(herein referred as "Crosseas Capital") wherein Hon'ble Whole Time Member has stated as follows:

".....

A 'self-trade' is a trade wherein a person places both the buy and sell orders in a scrip and such orders match resulting in a situation where the person is both the seller and the buyer in a trade. In such a case, the beneficial ownership of those traded shares do not change. In this regard, I also note these observations made by the Hon'ble Securities Appellate tribunal in the following matters with respect to 'self-trades':

(i)Order dated 23.4.2012 in Appeal no. 21 of 2012 - Systematix Shares & Stocks (India) Limited vs. SEBI:

"…. It has been held in several cases by this Tribunal that self-trades are fictitious and reprehensible. Trades, where beneficial ownership is not transferred, are admittedly manipulative in nature. ….."

*(ii)***Order dated 11.05.2012 in Appeal No. 76 of 2012 (H.J. Securities Pvt.Ltd. vs. Securities and Exchange Board of India):**

"……The appellant is a stock broker and he understands the implication of his actions well. 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 are fictitious in nature and they create artificial volume in the scrip sending wrong signal to the lay investor about trading in the scrip. ……

"We have considered the rival submissions and are inclined to agree with the view expressed by learned counsel for the Board. 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 whateverbusiness model he adopts, it is in conformity with the regulatory framework. Since thebusiness 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 ofviolating 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."*

{Emphasis supplied}

(iii) Order dated 03.12.2012 in Appeal No. 211 of 2012- Anita Dalal vs. SEBI:

"The appellant has been found guilty of self-trade as well. Self-trades admittedly are illegal. This Tribunal hasheld in several cases that self-trades call for punitive action since they are illegal in nature. In M/s. JayantilalKhandwala& Sons Pvt. Ltd. vs. Securities and Exchange Board of India (Appeal no. 24 of 2011 decided onJune 8, 2011) this Tribunal has held that "one cannot buy and sell shares from himself. Such transactions are obviously fictitious and meant only to create false volumes on the trading screen of the exchange"."

....From the above cited orders of the Hon'ble SAT, I note that –

(a) Self trades are fictitious and reprehensible;

(b) Trades where beneficial ownership is not transferred, are manipulative in nature;

(c) Self-trades create artificial volume in the market;

(d) Whatever be the business model, it should ensure that such model complies with the regulatory framework;

...As regards the case against the noticee, the following facts are important :

(a) The noticee is a stock broker and has indulged in proprietary trades in the scrip of BGIL.

(b) The noticee has employed the 'Algo Trading' Software for placing orders in the market.

(c) This algo software was also used to place orders in the scrip of BGIL on the listing day/first day of trade.

(d) Self-trades had occurred while trading in the scrip of BGIL using the algo software.

..... In terms of SEBI Circular dated March 30, 2012, Algorithmic trading is defined as follows:

"Algorithmic trading- Any order that is generated using automated execution logic shall be known as algorithmic trading." The difference between a manual trading and algo trading, orders are placed by dealers/investors who are natural persons, whereas in algo trading the orders are generated using pre-programmed computer software systems. However, all the regulations and prohibitions that govern order placement through manual means would equally apply to algo trading also.....

.....General prohibitions are specified under the PFTUP Regulations with respect to placement of orders which result in fraudulent and unfair trades, artificial trades including self-trades, synchronized trades and structured trades. Such prohibitions would also apply to orders emanating through algo trading systems..... Further, the SEBI Circular dated March 30, 2012 on 'Broad Guidelines on Algorithmic Trading' has also clearly specified "…….. That the stock broker's systems facilitate orderly trading and integrity of the securities market……" Therefore, whatever be the business model or strategies employed by the noticee for placement of orders in the market, the same should ensure that activities that are prohibited should be avoided. The same has also been emphasized by the Hon'ble SAT in the case of H.J. Securities Pvt. Ltd. As a stock broker, the noticee has a duty to preserve the integrity and equilibrium of the securities market.

Further, persons are prohibited in the securities market from indulging in 'self-trades' where there is no transfer of beneficial ownership of the shares traded. The systems of the noticee should have taken care of such a

contingency. As observed by the Hon'ble SAT, a person adopting any business model for trading in the securities market should ensure that such model complies with the regulatory framework. The algo trading software utilized by the noticee ought to have been written in such a manner to ensure that it complies with the regulatory framework, including the avoidance of self-trades. The noticee has failed to ensure that its algo system has such a check. Accordingly, any algo system, used by a trader / stock broker, which is unable to eliminate patently fictitious self-trades, is violative of securities laws and the user of the same should be held responsible for the violations. The noticee's inability to prevent self-trades is obvious while his existence that such patently fictitious and reprehensible trades should be ignored is not only unacceptable, but irresponsible as well.

In terms of regulation 4(1) of the PFUTP Regulations, no person shall indulge in a fraudulent or an unfair trade practice in securities. Further, as per regulation 4(2)(a), a person should not indulge in an act which creates false or misleading appearance of trading in the securities market. As discussed above, self-trades are fictitious, create artificial volume in the market, manipulative and reprehensible. Considering the facts and circumstances of the case, the submissions made by the noticee, its inability to prevent self-trades while trading through its algo trading system, leads to the conclusion that the noticee has contravened such provisions of law.

The noticee is alleged to have indulged in self trades in the scrip for a total quantity of 9,20,298 shares on the BSE (4,46,660 shares) and NSE (4,73,638 shares) and executed 16 self-trades on the BSE and 1,375 self-trades on NSE from the same terminal for a total quantity of 81,436 shares

in the scrip. The noticee has contended that self-trades should be considered at a dealer/id level and not at the broker level. Considering the above manner of treatment, the noticee has submitted that it has executed self-trades in BGIL for 47,387 shares in NSE and for 509 shares on the BSE. I have considered the above submissions. It should be appreciated that self-trades are fictitious, as there is no change in the ownership of shares. The different CTCL ids belong to the same legal entity i.e., of the noticee, and matching of trade between them will have to be considered as a 'self-trade' by that entity. The Noticee therefore cannot define self-trade to suit itself.

In view of the above discussions and considering the fact that the self-trades done without change of ownership of such security are artificial trades, the manner of determination of quantum of self-trades as proposed by the noticee cannot be accepted. I also note that there is no allegation of price manipulation against the noticee. I also note from the order of the AO that on the listing day i.e., on July 28,2011, a total of 4,75,78,807 shares (on NSE) and 4,07,25,468 shares (on BSE) were traded. I have also noted that the percentage of volumes of self-trades done by noticee as against the total traded volumes on BSE and NSE is less than 2%. However, I note that percentage of self-trades as against the noticee's total trades in BSE and NSE is 9.86% and 10.45% respectively. This quantity of matching by way of self-trades is absolutely not acceptable and the leniency would convey a wrong message that the users of software programmes are not responsible for the performance of the programme. In today's age of computerized trading such wrong message would have wide implications. Therefore, I am of the considered opinion that the leniency shown by AO is misplaced.

……..”

22. I also refer to the Order of**Hon'ble Securities and Appellate Tribunal (SAT) in *ChiragTanna 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."

23. I accept the Noticee's submissions that, Doctrine of Binding Precedence and Doctrine of Stare Decisis are to be maintained and accepted in the interest of development of jurisprudence of law. The Noticee has relied on the Hon'ble Supreme Court Judgement in the matter of ShankerRaju V/s Union of India on 4th January 2011 in writ petition (Civil) No. 311 of 2010.The Noticeehas relied on the Adjudication Order passed on 27th November, 2013 in the matter of Servalakshmi Papers Limited in favour of M/s Crosseas Capital Services Private Limited where in the Adjudication Officer had exonerated that entity and did not levy any penalty in the matter. The said Adjudication Order relied upon by the Noticee is of November 2013, subsequent to which there is Order ofHon'bleWhole Time Member, SEBI which is passed in November 2014 on the same sets of facts and violation in respect of M/s CrosseasCapital Services Private Limited in the matter of Bharatiya Global Infomedia Limited.

Thus I am accepting the rule laid down in the Order dated 13.11.2014 in respect of M/s. Crosseas Capital Services Private Limited in the matter of Bharatiya Global Infomedia Limited as also the rationale brought out in the

said Order. From the said Order and the SAT Orders in this regard, I note that self-trades are illegal, fictitious and reprehensible, and are the trades where beneficial ownership is not transferred, are manipulative in nature, create artificial volume in the market.

I am also of the view that whatever be the business model or strategy, it should ensure that such model or strategy complies with the regulatory framework.

24. The Noticee is alleged to have indulged in self-trades in the scrip for a total quantity of 1,65,278 shares on the BSE (89,901 shares) and NSE (75,377 shares). The Noticee in its replies has submitted that self-trades if considered as per terminal ID basis instead of the CTCL/IML ID basis, the self-trades are much lesser that that has been determined in the SCN. Further, the Noticee has submitted the analysis of the internally matched trades vis-à-vis our volume and the market volume as under:

Date	*Exchange*	*Self-trades from same terminal*	*Self-trades from different terminals#*	*Total self-trades*	*Self-Trades as per SEBI*	*Gross buy quantity*	*Self-trade % as per SEBI*	*Actual self-trade %*	*Market Volume*	*Self-trade as a % of Market - SEBI*	*Self-trade as a % of Market – Actual*
17-10-11	*NSE*	*12891*	*55079*	*67970*	*67959*	*1402891*	*4.84%*	*0.92%*	*34056499*	*0.20%*	*0.038%*
17-10-11	*BSE*	*12233*	*69931*	*82164*	*82155*	*1401228*	*5.86%*	*0.87%*	*24441556*	*0.34%*	*0.050%*
18-10-11	*NSE*	*1085*	*5691*	*6776*	*6776*	*157091*	*4.31%*	*0.69%*	*4257160*	*0.16%*	*0.025%*
18-10-11	*BSE*	*1179*	*6208*	*7387*	*7387*	*157248*	*4.70%*	*0.75%*	*3694394*	*0.20%*	*0.032%*
19-10-11	*NSE*	*198*	*456*	*654*	*642*	*39362*	*1.63%*	*0.50%*	*4365707*	*0.01%*	*0.005%*
19-10-11	*BSE*	*103*	*256*	*359*	*359*	*39412*	*0.91%*	*0.26%*	*2761652*	*0.01%*	*0.004%*
TOTAL		***27689***	***137621***	***165310***	***165278***	***3197232***	***5.17%***	***0.87%***	***73576968***	***0.22%***	***0.038%***

25. The Noticee has contended that the self-trades if considered at a dealerId level are much less than the broker level that is one CTCL ID/ IML ID of

NSE and BSE respectively. Considering the above manner of treatment, theNoticee has submitted that it had executed self-trades in OCAL for 13,515 shares in BSE and for 14174 shares on the NSE. This view cannot be accepted. It should be appreciated that self-trades are fictitious, as there is no change in the ownership of shares. The different CTCL Ids belong to the same legal entity i.e., of the Noticee, and matching of trade between them willhave to be considered as a 'self-trade' by that entity. The Noticee therefore cannot define self-trade to suit itself. Hence, the submission made by the Noticee that no charges stand established against Noticee and requesting to drop the Show Cause Notice is not accepted.

26. The details of number of self-trades indulged by the Noticee are as follows:

Srl No.	Dates	Exchanges	Number of self-trades
1	17.10.2011	BSE	3615
2	17.10.2011	NSE	2867
3	18.10.2011	BSE	447
4	18.10.2011	NSE	356
5	19.10.2011	BSE	359
6	19.10.2011	NSE	38
Total			15364

I find from the table that, the Noticee has executed trades after trades on both the exchanges which are self-trades. Further, the same is repeated on the two subsequent days on both the exchanges. The number of self-trades on the first day itself were alarmingly high and the Noticee has not taken any corrective action on the succeeding two days. For example on 17.10.2011 the Noticee has executed 2867 self-trades for 55079 shares on NSE and has executed 3615 self-trades for 69931 shares on BSE. Such execution of self-trades was also done on 18.10.2011and 19.10.2011 as stated in the above table.

27. I have noted that the proportion of self-trades in terms of quantity of shares traded to total trades of the Noticee on first and second day is between 4% to 6% on both the Exchanges which is unacceptable, although quantity traded per trade is small. I have noted that the Noticee has not brought out the details of the preventive action taken by the Noticee, if any. I have noted that the time gap between the order placement and trade execution is less than 2 seconds implying that the buy and sell orders which have resulted into self-trades are placed within 2 seconds of each other. I have noted that the activity of the Noticee is of the type of jobbing/arbitrage in proprietary account and there is no 100% matching of the orders that resulted into self-trades. I have noted that the self-trades are spread over the entire trading session during the aforesaid days.The modus-operandi of the appellant in operating through the multiple jobbers from different terminals has resulted in fictitious trades/ self-trades where the buyer and the seller are the same party. If the Noticee 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 orders of small quantities have been matchedby wayof suchself-trades by itself cannot justify execution of multitude of such self-trades on all the three days on both the Exchanges. 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.

28. The Noticee in its replies had relied upon the order dated 4th September, 2013 passed by the Hon'ble Securities Appellate Tribunal in the matter of S.P.J. Stock Brokers Pvt. Ltd. In the said captioned order it was clearly stated that :-

"Mere fact that buy and sell orders between Noticee and one group (with whom no connection is attributed) within a time gap of one minute with negligible or no price difference cannot ipso facto lead to conclusion that the trades in question were executed with a view to manipulate the scrip. In absence of any circumstantial evidence to suggest that synchronized trades were executed for purpose of upsetting market equilibrium or to manipulate market, it cannot be inferred that Noticee was guilty of violating PFUTP Regulations or Broker Regulations."

I have pursued the above case cited by the Noticee and the same can be differentiated as follows:

Firstly: the allegation in the said case was of indulging in *synchronized trades whereas the case in hand the Noticee has indulged in self-trades.*

Secondly: *In case of synchronized trades two or group of persons can be involved and prima facie the connection among the person/ group is required to be proved. In the case in hand the buyer and the seller are the same person, there is no requirement to prove the connection as buyer and the seller are the same person/ entity and there is no transfer of beneficial ownership.*

Thus the case cited by the Noticee in the case in hand is not helpful to them in view of the above differences in the facts of the cases.

29. The Noticee has relied another order in the case of **Mahesh J Doshi, Member Stock Exchange Mumbai in the Matter of Morepen Hotels Ltd.**

The Learned Member of SEBI has observed as under:

"For the purpose of determining what the appropriate and fair penalty is, However, it would be inequitable to wholly disregard the ground level practical constraints, the total business volumes handled by the Broker, whether the patter of trading was patently

suspicious and other related issues. Hindsight clarity of vision should not override due consideration of these facts and circumstances.

Given the above context, and considering also that the entities who had generated volumes in the scrip, had transacted through several brokers making it difficult for the concerned brokers to easily detect any suspicious trading activity, it does not appear to be fair to assume that the broker without undue difficulty and with ordinary diligence would have been in a position to readily zero in or segregate the transactions of the said clients and quickly establish their suspicious nature. Hence I am of the view that suspension of certificate of registration granted to the said broker for a period of two months would be excessive. Given the circumstance, imposition of a penalty of warning would be adequate to meet the ends of justice."

I have pursued the above case cited by the Noticee and the same can be differentiated as followed

Firstly: Theproceeding in the above case are proceeding initiated under Section 11 read with the other corresponding Sections or Regulations as applicable in the particular cases. Whereas the case in hand is an adjudication proceeding wherein the Adjudicating Officer are governed by SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 and the applicable Sections of SEBI Act.

Secondly: In the case cited by the Noticee in the said proceeding the Decision making Authority can issue various direction suspension of certificate of registration etc. however cannot impose monetary penalty. Whereas in the case in hand, the Adjudicating Officer can impose only monetary penalty considering the factors as enumerated in Section 15 J of the SEBI Actwhich 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."

The factors enumerated in section 15J in clause a to clause c which are to be taken into account by the adjudicating officer while adjudicating the matter are considered while arriving at the quantum of penalty.

30. The Noticee has relied on the judgment in respect of evidence to prove the charges;

Bareilly Electric Supply Co. Ltd. V Workman &Ors. AIR 1972. SC 330

On the question of the requirement of the Respondent producing evidence to prove the charges-when it is claimed the Evidence Act is not applicable, that does not mean that the principles of natural justice are not be complied with.

The case cited above by the Noticee is not relevant to the case in hand as there is no non-compliance of principles of natural justice in the case in hand.

31. The Noticee has relied on the judgment in respect of evidence to prove the charges;

Videocon International Vs. SEBI (2002)4 CLJ 402 (SAT)

In the absence of reasonably good evidence to support, charge of market manipulation. Which is very serious charge, cannot stick on the Appellant Company merely on surmises and conjunctures.

Regulation 4(a) of the FUTP Regulation attracts only if the transaction is made so as to induce any other person to sell or purchase securities. To attract regulation the intention of the party is relevant-and element of mensrea is also involved.

The judgment cited above by the Noticee is reversed by the Hon'ble Supreme Court of Indiain the matter of *Chairman, SEBI v. Shriram Mutual Fund* {[2006] 5 SCC 361} wherein it was held that:

"In our opinion, mensrea is not an essential ingredient for contravention of the provisions of a civil act. In our view, the penalty is attracted as soon as contravention of the statutory obligations as contemplated by the Act is established and, therefore, the intention of the parties committing such violation becomes immaterial. ……. Hence, we are of the view that once the contravention is established, then the penalty has to follow.....…".

32. The Noticee has relied on the judgment in respect of evidence to prove the charges;

Hansraj Gupta &Ors. V Dehra Dun-Mussoori Electric Tromway Co. Ltd, (AIR 1940 Privy Council 98)

Party alleging fraud must prove it by cogent evidence. The party alleging fraud is bound to establish it by cogent evidence and suspicion cannot be accept as proof. Unless therefore the proved circumstances are incompatible with the hypothesis of the person charged with fraud having

acted in good faith, they cannot be accepted as affording sufficient proof of fraud.

The judgment cited above by the Noticee is in respect of civil cases and does not includes the types of evidences emerged in securities markets.**TheHon'ble SAT in its order dated 13.12.2010 passed in Appeal No. 190 of 2010, Ajmera Associates v/s SEBI, wherein it was held that:**

"……Despite the anonymity of the system, we have seen market players and the intermediaries like the brokers executing manipulative trades by defeating the system and this is usually done by placing the buy and sell orders simultaneously for the same amount and at the same price. Such matching orders usually result in trades in comparatively less liquid scrips…….. **In such a situation one has to look to the trading pattern and if the trades match too often or if the matching of the trades is noticed day after day and trade after trade, one can infer that the matching was done not by the system but by manipulating the same. ……***The intention of the parties and the brokers will have to be gathered from the surrounding circumstances looking at the trading pattern, the frequency of trades, their volumes and such other circumstances as may be relevant for such determination. ……"*

In view of the above case the case cited by the Noticee is not helpful to them.

33. The Noticee has relied on the judgment in respect of evidence to prove the charges;

Gulabchand V Kudilal (AIR 1966 SC 1734)

The Indian evidence Act applies the same standard of proof in civil cases. It makes no difference between the cases in which charges of fraudulent or criminal character are made and cases in which such charges are not made.

But this is not to say that the court will not, while striking the balance of probability keep in mind the presumptions of honesty or innocence or the nature of the crime or fraud charged.

In view of the reasons brought out thus far, order cited by the Noticeein the case **Gulabchand V KudilalAIR 1966 SC 1734**is not supportive in the case in hand.

34. The Noticee has relied on the judgment in respect of evidence to prove the charges;

Varanasaya Sanskrit VishwaVidyalayaa&Anr. V Dr. RajkishoreTripathi&Anr.

Concept of acting in concert- using strong language not sufficient. Proof required. It is not enough to state in general terms that there was collusion "Without more particulars. General allegations are insufficient to amount to an averment of fraud or which only court ought to take notice, however strong the language in which they are couched may be, and the same applies to undue influence and coercion."

The judgment cited above by the Noticee is in respect of civil cases which does not includes the types of evidences emerged in securities markets.**TheHon'ble SAT in its order dated 13.12.2010 passed in Appeal No. 190 of 2010, Ajmera Associates v/s SEBI, wherein it was held that:**

"……Despite the anonymity of the system, we have seen market players and the intermediaries like the brokers executing manipulative trades by defeating the system and this is usually done by placing the buy and sell orders simultaneously for the same amount and at the same price. Such matching orders usually result in trades in

comparatively less liquid scrips…….. **In such a situation one has to look to the trading pattern and if the trades match too often or if the matching of the trades is noticed day after day and trade after trade, one can infer that the matching was done not by the system but by manipulating the same. ……***The intention of the parties and the brokers will have to be gathered from the surrounding circumstances looking at the trading pattern, the frequency of trades, their volumes and such other circumstances as may be relevant for such determination. ……"*

In view of the judgment in **Ajmera Associates v/s SEBI,** the case cited by the Noticee is not helpful to them.

35. The Noticee has relied on the judgment in the matter of **A. N. Parasuraman Etc. State of Tamilnadu (AIR 1990) SC 40**
(cited in the context of interpretation of regulation 25 and 26 of Stock Broker Regulations)

"It is well established that determination of legislative policy and formulation of the rule of conduct are essential legislative functions which cannot be delegated. What is permissible is to leave the delegated authority the task of implementing the object of the Act, after the legislature lays down adequate guidelines for the exercise of power, uncanalised, unlimited and arbitrary power cannot be exercised by the delegatee."

I have perused the above judgment cited by the notice in the present case. I note that for the allegation of indulging in self-trades interpretation is not required. It is well settled interpretation of Hon'ble SAT in respect of self-trades discussed in the present case.

36. The Noticee has relied on the judgment in the matter of **State of Kerala V M. K. Krishnan Nair (AIR 1978 SC 747)**

There is ample authority for the proposition that where two constructions are possible, that one which leads to unconstitutionality must be avoided and the other which tends to take provision constitutional should be adopted, even if straining of language is necessary.

In view of the reasons brought out thus far, order cited by the Noticeein the case **State of Kerala V M. K. Krishnan Nair (AIR 1978 SC 747)** is not supportive in the case in hand.

37. The Noticee has relied on the judgment in the matter of **British Airways Plc V Union of India (AIR 2002 SC 391)**

(on harmonious construction)

It is a cardinal principle of construction of a statue that effort should be made in construing the different provisions so that each provision will have its play and in the event of any conflict, a harmonious construction should be given. The well-known principle of harmonious construction is that effect shall be given to all the provision so as to make it workable. A particular cannot be picked up and interpreted to defeat another provision made in that behalf under the statue.

I have perused the above judgment cited by the notice in the present case. I note that for the allegation of indulging in self-trades where interpretation of self-trades is not required. It is well settled interpretation of Hon'ble SAT in respect of self-trades discussed in the present case.

38. The Noticee has relied on the judgment in the matter of **Ranjit Thakur V Union of India (AIR 1987 SC 2386)**

(on quantum of penalty and bias)

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.

The factors enumerated in section 15J in clause a to clause c which are to be taken into account by the adjudicating officer while adjudicating the matter are considered while arriving at the quantum of penalty.

39. The Noticee has relied on the judgment in the matter of **Bang Entities Vs. SEBI (2003)**

(On totality of the factors responsible for price manipulations)

"The Charged that the Appellant had indulge in large trading transaction with view to depressed the market artificially in a concerted manner remains unsubstantiated. From the particulars furnished by the Respondent it is clear that the shares prices had fallen on certain days in the period covered under investigation, and the price fall was steep on 1-3-2001 and on certain days thereafter. But the Respondent has attributed the cause of such steep

price fall to the transactions effected by the Appellants. But considering the Appellants share of transactions with reference to total volume of the particular script traded at the exchanges, on those days, it is difficult to believe that such a small percentage of trade with reference to huge volume traded on the stock exchanges would have resulted in such crash in price. SEBI has not even suggested in their order as to whether others were also involved and if so there was any nexus between them and the Appellants, whether the price fall was as a result of larger conspiracy and if so who are the other players. The impugned order is silent about the other players who could have contributed to the crash of the markets. Perhaps composite investigation and a consolidated order with reference to the market upheaval witnessed during the relevant period would have been more rewarding then bringing out truncated orders. It is not the number of order that is relevant. It is the stuff of the orders that matters. In any case since the Respondent has failed to prove with reasonably convincing evidence charge of artificially depressing the market, the said charged cannot be sustained. Once the said charged itself fails, the question as to whether Bang Entities acted in concert or not becomes academic."

I have perused the above judgment cited by the notice in the present case. I note that the case in hand is for the allegation of indulging in self-trades and not price manipulation, hence, the cited order is not relevant in the case in hand.

40. In the light of the above facts, I am of the firm belief that the Noticeehad indulged in entering in self-trades which are illegal, fictitious and reprehensible, and are the trades where beneficial ownership is not transferred, are manipulative in nature and create artificial volume in the

market, and thereby has violated the provisions of Regulation 4(1) , 4(2) (a) and (g) of PFUTP Regulations, 2003 read with Regulation 3 (a),(b),(c),(d) of the said Regulations. I am also of the belief that that there is no case made out for price manipulation against the Noticee. I therefore absolve the Noticee as regards violation of provisions of Regulation 4(2) (b).

41. The Hon'ble Supreme Court of India in the matter of SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC) held that "once the violation of statutory regulations is established, imposition of penalty becomes sine qua non of violation and the intention of parties committing such violation becomes totally irrelevant. Once the contravention is established, then the penalty is to follow".

42. Thus, the aforesaid violation by the Noticee makes them liable for penalty under Section 15HA of SEBI Act, 1992 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 failure, whichever is higher.

43. While determining the quantum of penalty under section 15HA, 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."

44. In view of the charges as established, the facts and circumstances of the case and the judgments referred to and mentioned hereinabove, the quantum of penalty would depend on the factors referred in Section 15-J of SEBI Act and stated as above. Further, under Section 15-I of the SEBI Act, the adjudicating officer has to give due regard to certain factors which have been stated as above while adjudging the quantum of penalty. It is noted that no quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of such violations of SEBI PFUTP Regulations by the Noticee. Further from the material available on record, it is not possible to ascertain the exact monetary loss to the investors on account violations of SEBI PFUTP Regulationsby the Noticees.

45. I find that the execution of self-trades and the consequent violation is repetitive in nature.

46. I find that Section 15 HA of SEBI Act provides for imposition of monetary penalty of twenty-five crore rupees or three times the amount of profits made out of such failure, whichever is higher on a person indulging in fraudulent and unfair trade practices relating to securities as provided in SEBI PFUTP Regulations.

47. I further believe that investor confidence in the securities market can be sustained largely by ensuring investors protection. It, thus, becomes

imperative to impose monetary penalty. I find that Chapter VI-A of the SEBI Act provides for Penalties and Adjudication. In particular, Sections 15 HA are in the form of mandatory provisions imposing penalty in default of the provisions of the SEBI Act and Regulations. The provisions of penalty for non-compliance of the mandate in terms of theSEBI Act and Regulations,are with an objective to have an effective deterrent to ensure better compliance of the provisions of the SEBI Act and Regulations, which is crucial for SEBI in order to protect the interests of investors in securities and to promote the development of the securities market.

ORDER

48. After taking into consideration all the facts and circumstances of the case and the factors enumerated in Section 15J of the SEBI Act, I impose a penalty ofRs5,00,000 (Rs. Five Lakhs only) under section 15HA on the above Noticee which , in my view, will be commensurate with the violations committed by theNoticee.

49. 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. V S Sundaresan, Chief General Manager, Investigations Department-05, SEBI Bhavan, Plot No. C– 4 A, "G" Block, BandraKurla Complex, Bandra (E), Mumbai – 400 051.

50. 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: December 30, 2015 **Prasad P. Jagadale**
Place: Mumbai **Adjudicating Officer**