BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

(ADJUDICATION ORDER NO: AO/SBM/EAD-3/128/2018)

UNDER SECTION 15-I OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995.

In respect of:

Shri Vipul Mohan Joshi (PAN ACVPJ2550R)

House No. 41, Dattani Apartment,
5/B Shivaji Road, Kandivali (West),
Mumbai-400067

In the matter of

R M Mohite Textiles Ltd.

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') had conducted an examination in the scrip of R M Mohite Textiles Ltd. (hereinafter referred to as "**Company/RMMTL**") for the period October 01, 2010 to April 29, 2011 (hereinafter referred to as **"examination period**"). During the course of examination by SEBI, it was observed that Vipul Mohan Joshi (hereinafter referred to as "**Noticee**") had indulged in self-trades in the scrip of RMMTL. It is alleged that the Noticee has executed self-trades in the scrip of RMMTL, which were manipulative in nature and therefore, had violated the provisions of Regulations 3(a), (b), (c), (d) and Regulations 4(1) and 4(2)(g) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as "**PFUTP Regulations**"). In view of the alleged

violations of the provisions of PFUTP Regulations, as aforesaid, it is alleged that Noticee is liable for penalty under section 15HA of the SEBI Act.

APPOINTMENT OF ADJUDICATING OFFICER

2. The undersigned was appointed as Adjudicating Officer, vide Order dated May 17, 2016 under Section 19 read with Section 15-I(1) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **'SEBI Act'**) read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as '**Adjudication Rules'**) to inquire into and adjudge under the provisions of Section 15HA of the SEBI Act for the alleged violations of the PFUTP Regulations by the Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING:

3. Show Cause Notice No. A&E/EAD-3/SBM-VB/21727/2016 dated July 26, 2016 (hereinafter referred to as "**SCN**") was issued to the Noticee under Rule 4(1) of the Adjudication Rules, to show cause as to why an inquiry should not be held against the Noticee and why penalty, if any, should not be imposed on him under the provisions of Section 15HA of the SEBI Act for the alleged violation of the relevant provisions of PFUTP Regulations, as mentioned in the SCN.

4. The SCN issued to the Noticee, *interalia,* alleged that he had executed 8 self-trades on 6 different days during the examination period with total self trade quantity of 11,925 shares, which allegedly created artificial volume in the scrip of RMMTL and also resulted in the creation of a false and misleading appearance of trading in the scrip in the securities market. The details of the self-trades executed by the Noticee are mentioned as under-

Name	*Total self-trades volume*	*Total self trades count*	*Self trades from same terminal*	*No. of days on which self trades executed*	*% of self traded quantity to market volume*	*Net LTP contribution by self trades*
Vipul Mohan Joshi	*11,925*	*8*	*0*	*6*	*0.11%*	*7.2*

5. Vide letter dated August 31, 2017, Noticee submitted his reply to the SCN, details of which are as under:

   a) *So far as the* allegation *of Self-Trades is concerned, it is humbly submitted that I have not executed a single Self-Trade on same terminal/bolt. All the alleged Self-Trades are executed to shift the position from one broker to another broker.*

   b) *It is further submitted that SEBI had recently come out with a Policy decision dated 16-05-2017 on Self-Trades. In this Policy Decision, it is mentioned that if the intention of executing the Self –Trade is not malafide the entity may be exonerated. It is further mentioned that while assessing the Self-Trades, the volume transacted of the Self Trade may also be considered. In the above said matter, both the contention goes into my favour. I have no malafide intention in executing the alleged Self-Trades (shifting of position from one broker to another). The quantity of the alleged Self-Trades executed be me were mere 0.11% of the market volume. It is further submitted that the Ld. Investigation Officer in the Investigation Report had not found any malafide intention for execution of alleged Self-Trade by me.*

   c) *It is further submitted that since the alleged Self-Trade (shifting of position from one Broker to another Broker) executed by me are only 0.11% of the market volume, no adverse inference should be drawn from the said alleged Self-Trades.*

6. Thereafter, in terms of Rule 4(3) of the Adjudication Rules, opportunity of personal hearing was granted to the Noticee on September 27, 2017 vide

letter dated July 31, 2017. Mr. Vikas Bengani (Authorised Representative – AR) appeared on behalf of the Noticee on the stipulated date of the hearing i.e on September 27, 2017. The AR made the following submissions on behalf of the Noticee-

a) *The AR reiterated the submissions made by the Noticee vide his letter dated August 31, 2017.*

b) *The AR requested for time to submit additional documents/reply on record. Accordingly, AR was advised to submit the additional documents/reply by October 09, 2017.*

7. Thereafter, Noticee, vide his letter dated October 05, 2017, made additional submissions and, *inter alia*, stated that:

a) *The total number and volume of self trades done by me is as follows-*

Date	*Volume*	*Alleged Self-Trades Executed By Me*	*Total Trade Executed By Me (Buy+Sell)*
21-12-2010	*1,57,282*	*2000*	*9,000*
22-12-2010	*61,711*	*500*	*9,000*
24-01-2011	*1,37,720*	*2000*	*10,950*
04-02-2011	*91,901*	*2500*	*7,000*
07-02-2011	*68,119*	*2425*	*5000*
08-02-2011	*88,234*	*2500*	*5000*

b) *As per the trade and order log data provided by me, my trades started on 23-11 -2010 and last trade was executed on 10-05-2011.*

CONSIDERATION OF ISSUES AND FINDINGS:

8. I have taken into consideration the facts and circumstances of the case, the material on record and the submissions made by the Noticee in the matter. The allegation against the Noticee is that he had entered into eight self-trades for a total volume of 11,925 shares of RMMTL and, thereby, created artificial volume in the scrip of RMMTL during the examination period. In

view of the above, it is alleged that the Noticee has violated the provisions of Regulations 3(a), (b), (c), (d), 4(1) and 4(2)(g) of the PFUTP Regulations.

9. Self-trades are trades executed on the stock market in which the same entity is both the buyer and seller of the scrip and therefore, these trades have no business rationale and do not represent a real change in the beneficial ownership of the security. Self-trades are considered to be manipulative if they are executed with intentions to generate artificial volumes in the scrip of a company and/or done with intentions to create fluctuations in the scrip price of a security. Thus, it is necessary to establish the manipulative intent behind these trades in order to sustain the charges/ allegations of PFUTP Regulations leveled against an entity.

10. Before moving forward, the relevant extracts of the provisions of the PFUTP Regulations allegedly violated by the Noticee and as mentioned in the SCN 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 the 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 practice

(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:-

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

11. I find from the SCN that Noticee has purchased 2,02,359 shares and sold 2,03,759 shares of RMMTL during the examination period. I also find that Noticee was among the top ten buyers and sellers in the scrip of RMMTL during the examination period. It is noted that the total market volume in the scrip of RMMTL during the examination period viz. October 01, 2010 to April 29, 2011 was 1,08,40,890 shares and Noticee's contribution to the total market volume was 3.75% (out of which, his contribution through the alleged self-trades was only 0.11%). I observe from the SCN and the Investigation report that no adverse inference has been drawn w.r.t the overall trading activity of the Noticee and his role in the manipulation of volumes of RMMTL during the examination period. However, it is mentioned in the SCN and the Investigation report that the Noticee was instrumental in executing 8 self-trades in RMMTL for a total volume of 11,925 shares during the entire examination period, which allegedly created a misleading appearance of trading in the scrip of RMMTL without any change in the beneficial ownership.

12. Upon analysis of the eight self-trades executed by the Noticee, I find that these trades were done for a total volume of 11,925 shares and were

executed by the Noticee during December 21, 2010 to February 08, 2011. I also observe that during the above referred period, the scrip price of RMMTL witnessed an increasing trend till February 04, 2011 and thereafter, the scrip price of RMMTL started falling. I find from the Investigation Report that in 4 instances (out of the eight self-trades), Noticee had placed the order at the Last Traded Price (LTP) and w.r.t other 4 instances, Noticee had placed the orders above the LTP. I observe from the investigation report that there are no adverse observations that has been made against the Noticee w.r.t his role in the creation of New High Price in the scrip or executing orders in the scrip varying from the LTP. The details of the self-trades executed by the Noticee during the examination period are as under:

Table 1: Details of self-trades executed by the Noticee

TRADE DATE	MEMBER NAME	TRADE QTY	TRADE RATE	LTP Variation	CP_MEMBER_NAME
21/12/2010	RELIGARE SECURITIES LTD.	2000	225	0	ANAND RATHI SHARE & STOCK BROKERS LTD.
22/12/2010	FORTUNE EQUITY BROKERS (INDIA) LTD.	500	227	0	RELIGARE SECURITIES LTD.
24/01/2011	FORTUNE EQUITY BROKERS (INDIA) LTD.	2000	323	0.05	GUINESS SECURITIES LTD.
04/02/2011	FORTUNE EQUITY BROKERS (INDIA) LTD.	2500	351.9	0.9	ANAND RATHI SHARE & STOCK BROKERS LTD.
07/02/2011	RAGA SECURITIES & FINANCE PVT.LTD.	1425	346.75	0.75	FORTUNE EQUITY BROKERS (INDIA) LTD.
07/02/2011	ANAND RATHI SHARE & STOCK BROKERS LTD.	1000	346.75	0	FORTUNE EQUITY BROKERS (INDIA) LTD.
08/02/2011	FORTUNE EQUITY BROKERS (INDIA) LTD.	1500	350	5.5	RAGA SECURITIES & FINANCE PVT.LTD.
08/02/2011	FORTUNE EQUITY BROKERS (INDIA) LTD.	1000	350	0	ANAND RATHI SHARE & STOCK BROKERS LTD.

Table 2- Volume of self trades to total Volume of the day

Date	Volume	Self- Trade Executed By Noticee	% of self trades to total volume of the day
21-12-2010	1,57,282	2000	1.27%
22-12-2010	61,711	500	0.81%
24-01-2011	1,37,720	2000	1.45%
04-02-2011	91,901	2500	2.72%
07-02-2011	68,119	2425	3.56%
08-02-2011	88,234	2500	2.83%

13. From the above Tables, I find that the Noticee has executed the self-trades in two patches. The Noticee has executed the first two self-trades in the scrip of RMMTL on December 21 and December 22, 2010 for a total of 2500 shares. Thereafter, after a gap of more than a month, Noticee executed the remaining self-trades in the months of January/February 2011. It is pertinent to note that the Noticee's trading in the scrip of RMMTL through the eight self-trades was only 0.11% of the total market volume in the scrip of RMMTL during the examination period. On comparison of the self-trades of the Noticee with the total market volume of RMMTL during the examination period i.e the total market volume of 1,08,40,890 shares, I find that the percentage / volume of self-trades of the Noticee in the scrip of RMMTL was minuscule/negligible as compared to the total volume in the scrip during the relevant period. Thus, in view of such negligible percentage of trading in the scrip of RMMTL through the eight self-trades, as discussed above, it would be very difficult to hold the allegations levelled against the Noticee that he has contributed to the creation/generation of artificial volumes in the scrip of RMMTL through the aforementioned self-trades.

14. In this context , I note that the Hon'ble Securities Appellate Tribunal (SAT) in the matter of Smt. Krupa Sanjay Soni vs. SEBI, vide its order dated January 09, 2014, has observed that "*a few instances of self-trades in themselves would not, ipso facto, amount to an objectionable trades*".

15. I am of the view that a charge of market manipulation should be made on the basis of strong evidence, which was lacking in this case. Clearly, from the observations made above , the negligible volumes generated through the eight self-trades would not have impacted the overall price movement or the volume in the scrip of RMMTL during the examination period. In this context, the Hon'ble SAT in the matter of KSL & Industries Ltd vs SEBI vide appeal no.9/2003 , observed that " *A wild allegation of market manipulation, in particular the charge of fraudulent action unsupported with convincing*

evidence is not sustained ……. Fraud cannot survive on mere conjectures and surmises".

16. The following observations are relevant in the context of the present proceedings:

    (a) The instances of self-trades by the Noticee were very few when compared to the total volumes in the scrip of RMMTL during the examination period. The volumes generated through these self-trades were also not significant enough to reach a conclusion that these trades by the Noticee were objectionable. Therefore, in my view, these self-trades by the Noticee could not have resulted in creating/generating artificial volumes in the scrip of RMMTL during the relevant period.

    (b) No allegation of price manipulation in the scrip of RMMTL by the Noticee has been made in the investigation report. Further, there are no allegations of other manipulative practices such as synchronized trades, reversal trades, executing orders away from LTP, generation of new price by way of first trades etc by the Noticee.

    (c) It is also pertinent to note that both the stock exchanges viz. BSE and NSE have now put in place appropriate mechanism to avoid such self-trades.

17. After taking into consideration the aforesaid observations, perusal of the observations made in the investigation report and importantly, the miniscule percentage of the self-trades by the Noticee as compared to the total market volume in the scrip of RMMTL during the examination period, I am of the view that it is difficult to conclude that the self-trades of the Noticee in the scrip of RMMTL were intentional and manipulative and therefore, I am inclined to conclude that the violations of the provisions of Regulations 3(a), (b), (c), (d) and Regulations 4(1) and 4(2)(g) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 by the Noticee do not stand established.

ORDER

18. In view of the foregoing, considering the facts and circumstances of the case and the material on record, I hereby dispose of the Adjudication Proceedings initiated against the Noticee viz. Shri Vipul Mohan Joshi vide SCN dated July 26, 2016 without imposition of any penalty.

19. In terms of the provisions of Rule 6 of the Adjudication Rules, copy of this order is sent to the Noticee viz. Shri Vipul Mohan Joshi and also to the Securities and Exchange Board of India.

Place: Mumbai **SURESH B MENON**
Date: 28.02.2018 **ADJUDICATING OFFICER**