BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. EAD/KS/VB/AO/146/2018-19]

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

AKG Securities and Consultancy Private Limited
[PAN: AAACA7549K]

In the matter of Shilpi Cable Technologies Limited

FACTS OF THE CASE IN BRIEF:

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') conducted an investigation for the period April 08, 2011 to April 13, 2011 (hereinafter referred to as "Investigation Period/IP'') in the scrip of Shilpi Cable Technologies Limited (hereinafter referred to as "SCTL/scrip'') which got listed on BSE on April 08, 2011. It has been observed that on BSE, on listing day, trading of the shares of SCTL, opened at Rs. 78.35 on listing day and closed at Rs. 44.85. Further, on listing day total traded volume in SCTL on BSE was 4,63,05,559.

2. It is noted from Investigation Report (IR) that AKG Securities and Consultancy Private Limited(hereinafter to as "AKG / Noticee") entered into self-trades repeatedly which created artificial volume in the scrip of SCTL, leading to false and misleading appearance of trading in the securities market. Based on the findings of the investigation, SEBI initiated Adjudication Proceedings against the Noticee under Section 15 HA of SEBI Act, 1992 for the alleged violation of the provisions of Regulations 3(a), (b), (c), (d), 4(1), 4(2)(a) and (g) of

SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003 (hereinafter referred to as "PFUTP Regulations").

APPOINTMENT OF ADJUDICATING OFFICER

3. SEBI, vide communique dated March 22, 2017, appointed the Ms. Anita Kenkare as Adjudicating Officer under Section 15 I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "SEBI Act"), read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as 'Rules') to inquire into and adjudge under Section 15HA of SEBI Act, the alleged violation of Regulations 3(a), (b), (c), (d), 4(1), 4(2)(a) and (g) of PFUTP Regulations by the Noticee. Pursuant to transfer of Ms.Anita Kenkare, Shri Suresh Gupta was appointed as Adjudicating Officer by the Competent Authority. Further, vide Communique dated April 19,2018 the undersigned has been appointed as the Adjudicating Officer in the instant matter.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. A common show-cause notice (SCN) no. SEBI / HO / EAD / EAD-6 / SILPI / AK / SP / OW / P/2017/17501/1 dated July 26, 2017 was issued to the Noticee under rule 4 of the AO Rules to show-cause as to why an inquiry should not be initiated against the Noticee and penalty not be imposed upon it under section 15HA of SEBI Act respectively for the alleged violation of Regulations 3(a), (b), (c), (d), 4(1), 4(2)(a) and (g) of PFUTP Regulations as specified in the said SCN.

5. It was alleged in the SCN to Noticee that it had repeatedly indulged into self-trades, which created artificial volume in the scrip leading to a false and misleading appearance of trading in the scrip of SCTL. The details of the self-trades entered into by the Noticee on BSE as per IR are given below:

Exchange	Entity Name	Broker (Buy & Sell Side)	Mkt Volume	Traded Volume	Traded Volume	Self - traded Qty.	No. of trades	No of days on which

			(No. of Shares)	(BUY) (No. of Shares)	(BUY) (No. of Shares)	(No. of Shares)		self-trades done
BSE	AKG Securities and Consultancy Private Limited	Adroit Financial Services Pvt Ltd	4,63,05,559	32,27,147	32,27,147	79,986	103	3

6. Mindspright Legal, an Authorized Representative(AR) of Noticee, vide letter dated November 27, 2017 filed a reply to the SCN. The AR *inter alia* made the following submissions in the aforesaid letter-

1. Please refer to your goodselfs notice bearing reference no. SEBI/HO/EAD/EAD- 6/SILPI/AK/SP/OW/P/2017/17534/1 dated July 26, 2017 vide which your goodself hasinteralia advised Our Client to show cause as to why an inquiry should not be held againstthem under Rule 4 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as "the Adjudication Rules") and Rule 4 of Securities Contract (Regulation) (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 2005 and penalty not be imposed under Section 15HA and/ or 15HB of the SEBI Act for the alleged contravention of Regulation 3(a) to (d), 4(1), 4(2)(a) and 4(2)(g) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulation, 2003 (hereinafter referred to as PFUTP Regulation) for the alleged irregularities in the scrip of Shilpi Cable Technologies Limited

2. At the outset, Our Client submits that, they do not accept or admit anything stated in your goodself's Notice except where the same is expressly admitted by them in this reply. Nothing stated herein shall be deemed to be admitted by them merely on account of non-traverse and unless the same is specifically admitted by them hereunder.

3. The major allegations levied in the captioned Notice is that Our Client has entered into 103 self trades for 79,986 shares and so has created artificial volume in the scrip of SCTL and gave a false and misleading appearance of trading in the scrip of SCTL at the Exchange.

4. Our Client submits that although there may be some quite infrequent, random and insignificant instances of self-trade while doing jobbing activities, but those were purely accidental/incidental in the ordinary course of business and not planned to be executed to manipulate trading in the scrip. The random nature of timing, quantity, dealers and partial matching with other market participants substantiates this contention. The orders are placed at the individual Terminal ID level and the orders of small quantities are placed and the average life cycle from the time of placing the order to getting converted into a trade is less than 2 seconds. The human involvement is very less for putting the parameters of orders for the day and the trading takes place through the server/CTCL ID and the orders are passed on to the BSE/NSE and the same are matched at the Exchange level. The self trades happen on account of latency in the leased lines or the satellite link to the Exchanges. The person putting the orders works on closed mechanism where he cannot know the orders which are put by the other traders, whether in the same branch or other. 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. Balance trades are not self-trades as they are mistakenly matched on other individual terminal id's which is very normal trading/jobbing/arbitrage practice.

5. Our Client submits that admittedly only those self trades, which are meant to give a false/misleading appearance of trading in the Scrip at the Stock Exchange are illegal and not otherwise. In this context, your goodself's attention is drawn to Regulation 4(2)(g), which as per the Notice is the main charging Section and which primarily needs to be violated out of the various other regulations alleged to have been violated by Our Client, in order to hold Our Client guilty for violation of all the other Regulations as alleged in the Notice. The said Regulation 4(2)(g) reads as under:

"entering into a transaction in securities without any intention of performing it or without intention of change of ownership of such security;" (emphasis supplied)

6. A bare perusal of the aforesaid Regulation makes it clear that a self trade can fit into the realm of Regulation 4(2)(g), only if it involves intention. Intention herein would mean that at the time of entering in transaction i.e. at the time of placing the order a person had deliberately with an intention to match it with the counter order placed the order, however the person at the time of placing the order did not actually wanted to buy/sell the quantity order. The plain reading of the Regulation therefore makes it clear that entering into of a few orders without actual intent of carrying out self trade would not amount to a trade in contravention of Regulation 4(2) (g). A transaction therefore could be termed to be in violation of Regulation 4(2) (g), only if the following criteria's are satisfied

i. A person places an order for buying/selling without the intention of buying/selling of underlying shares, (for e.g.- an order is placed and thereafter cancelled subsequently and the same is done repeatedly)
ii. A person places an order for buying/selling and arranges to place an opposite order for same number of shares at the same price either by himself or by another person acting on his/her instructions repeatedly. (Instance of self/ synchronised trades)
iii. In both the above cases, the intention of either not performing the transaction or performing the transaction without the change of beneficial ownership is necessary.

7. It is further submitted that not every Self-Trade is fraudulent or done with the intent to manipulate the market. There are many instances when they happen unintentionally, devoid of any fraudulent purpose. Foreign portfolio investors and mutual funds often use the secondary market route to transfer holdings from one scheme to another. In these cases, the custodian on both the sell and buy side would be same, resulting in self-trades. Similarly, a dealer can place the buy and sell order for the same stock in one day to get the advantage of intra-day price movement but without knowing that the orders might get matched. It is not possible for traders to prevent self-trade from occurring altogether. Trades are executed in an exchange's order matching systems. Once an order is accepted by the trading system, it is not possible for the trader to have control over who the counter-party is at the time of matching of that trade, as the trading engine finds and matches orders based on price time priority.
Further the Adjudicating Officer, SEBI in the matter of MIC Electronics Ltd. while proceeding against Ajay Desai and Indira Securities Private Limited (Adjudication Order No. EAD/NP/JS/A0/21/2017 dated February 22, 2017), Vora Financial Services Private Limited and JMP Securities Private Limited (ADJUDICATION ORDER NO. EAD/NP/JS/ AO/23/2017 dated February 27, 2017), Samurai Securities Private Limited (ADJUDICATION ORDER NO. EAD/NP/JS/AO/26/2017 March 16, 2017) and against M/s Milkyways Mercantiles Private Limited and M/s SPFL Securities Limited (ADJUDICATION ORDER NO. EAD/NP/AS/AO/27/2017 dated March 16, 2017) discussed the practicalities in execution of trades and distinguished between intentional and unintentional self trades. It was observed that

"...However practically self-matches that can also occur unintentionally. Such trades can occur in the course of normal trading when orders of one broking firm from two independent trading strategies/terminal coincidentally interact with each other. Though completely legitimate, and without an intent to manipulate, the tioo buy-sell orders on Stock Exchange fromtwo independent dealers/terminal can end up matching with each other. Self trades are executed by jobbers or market maker. Based on the technical analysis, if certain price level is breached, it is perceived as a momentum is caught in direction of the price movement. In order to catch the momentum, jobbers put indicative orders of small quantity of shares near the trigger price on both sides and once any trade get executed, they put more orders in that direction and later at an appropriate opportunity they square off their positions to their advantage. Many times more than one jobber actively trades in

same stock through same broker but different trading terminal and sometime jobbers' orders match with each other. Such trades though originated through different terminal IDs but end up at same broker so these are also counted as self-trades Whereas, Arbitragers see opportunity in stocks traded at morethan one exchange/ Segment to encash upon price differential in one exchange/ Segment vis- d-vis another by putting corrective orders.... Therefore, a distinction needs to be made between Toilful self-trades' which is done zoith a motive to induce other to trade in that particular stock and'unintentional selftrades' which are in the nature of jobbing and had occurred due to technicalities of the anonymous trading system. Therefore, to decide whether, self-trades are fraudulent or not would depend upon case to case and no thumb rule shall apply. It would be necessary to see the intention behind such trades. Unintentional self-trade may not be manipulative whereas intentional self-trades would constitute wash trades. Further, Securities market are dynamic in nature and new trade patterns evolve from time to time....

Therefore, the necessity of 'Intent' tJie element of "fraud" should be examined as a pre-requisite in all the parts of Regulations 3 and 4 of the PFUTP Regulations. 'Fraud' lias been principally defined under Regulation 2(c), though inclusively, to mean such trades which are entered into in order to 'induce otliers'."... (emphasis supplied)

While making these observations the Adjudicating Officer, SEBI, taking into consideration the factors mentioned in Section 15 J of the SEBI Act, and in exercise of the powers conferred under Section 15-1 of the SEBI Act read with Rule 5 of the Adjudication Rules, disposed off the Show Cause Notices issued to both the Noticees.

10.In this regard, it is submitted that as aforesaid, Our Client is a jobber/arbitrager who regularly undertakes jobbing transactions of crores of rupees on any given day in multiple scrips depending on the market conditions and availability of jobbing/arbitrage conditions. Our Client's representatives give instructions based on different strategies to 8 dealers who trade through multiple terminals and therefore there is a high probability that the orders originating from these strategies interact with each other without any malicious intention. As aforesaid, the same happened with Our Client in the present case. Therefore, the allegations of fraud and manipulation resulting from self trades cannot be levelled unless they are supplemented by strong evidences/documents/information establishing intention to defraud or manipulate the market by means of self trades, which in the present case are not supplemented.

10. It is very important to mention here that on May 16, 2017, SEBI came out with its new policy (Approved Policy Number EFD/DRA-3/ON332/2017) by which it was observed that intention is a Sine quo non for establishing manipulation in case of self trades and accidental/unintentional self trades are not covered under the said regulations. Further it was observed that in all matters of Self trade an assessment has to be made regarding whether the said trade was intentional or unintentional on the basis of supporting evidence and the manipulation caused by indulging in self trades should be clearly brought out. Hence it was decided in the policy that the quasi judicial body may assess the ongoing cases involving allegations of self trade by analyzing whether any manipulation is arising out of self trade or any intention to enter into is evident from the material on record. If the manipulation or intent can be established the same may be proceeded with as approved, however, if no intention or manipulation is evident from the case and the only charge is mere occurrence of self trades then the entity may be exonerated by the quasi judicial authority. Further, while assessing the manipulative intents, the volume transacted may also be considered in addition to the other factors. The Approved Policy by SEBI is annexed and marked hereto as **"Annexure A".**

11. Thus, it can be seen that SEBI itself has made its stand that intention is a prerequisite for violation of Regulation 3 and 4 of PFUTP Regulations and unintentional self trades are not violative of Regulations 3 and 4 of PFUTP Regulations. Therefore the burden of proof on Our Client to prove its innocence is to just to prove that the trades executed in the scrip of SCTL, resulting into self trades, were not manipulative and this claim has to be corroborated with other factors such as impact of trades on market volume, nature of the transactions, in-depth analysis of self trades, and other such factors.

12. The Adjudicating Officer, SEBI in the matter of **Aster Silicates Ltd.** while proceeding against Crosseas Capital Services Pvt. Ltd. (Adjudication Order No. EAD/AO-NP/SJ/AO/50/2017 dated June 22, 2017), after analysing the policy of SEBI dated May 16, 2017 with respect to ongoing cases dealing with non-manipulative self-trades observed that

"...I find that though the Noticee has entered into self-trades on multiple occasion, yet the volume of self-trades vis-a-vis total volume in the shares of Aster Silicates Limited is miniscule. No mala fide intention behind self-trades executed by the Noticee *has been bought out*

in investigation report. ... There is no evidence in the investigation report to suggest any fraudulent intention behind execution of self-trades by the Noticee. The volume of self trades is less than 1% of the total volume in shares of Aster Silicates Limited. The impact of self-trades on LTP is also not significant on daily basis. Therefore, in compliance of SEBI policy, I am inclined to drop the adjudication proceedings initiated against the Noticee vide SCN dated May 06, 2015. While making these observations the Adjudicating Officer, SEBI, in exercise of the powers conferred under Section 15-1 of the SEBI Act read with Rule 5 of the Adjudication Rules, disposed off the Show Cause Notice.

13. In another matter of Unitech Limited (Adjudication Order No. EAD/ AO-NP/ JR/47/2017 dated June 19, 2017), the Adjudicating Officer, SEBI passed the order after doing the analysis of the Policy and stated that

> *"...Though the Noticees have entered into self-trades on multiple occasion, yet the volume of self-trades vis-a-vis total volume in the shares of Unitech Limited is miniscule. No mala fide intention behind self- trades executed by the Noticees have been brought out in investigation. Self- trades occwred when multiple jobbers are engaged by a broker for day trading.... There is no evidence in the investigation report to suggest any fraudulent intention behind execution of self trades by the Noticees. Self-trades occurred because of trading in same shares by multiple trades/ jobbers in brokers' own account. The volume of self-trade is less than 1% of the total volume in shires of Unitech Limited. The impact of self-trades on LTP is also not significant on daily basis. Therefore, in compliance of SEBI policy, I am inclined to drop the adjudication proceedings initiated against the Noticees vide SCN dated April 21, 2017."*
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> While making these observations the Adjudicating Officer, SEBI, in exercise of the powers conferred under Section 15-1 of the SEBI Act read with Rule 5 of the Adjudication Rules, disposed off the Show Cause Notice.

14. If we apply the reasoning of these cases in the impugned case the SCN issued against Our Client must be disposed off by your goodself as in the impugned case also there is no evidence in the investigation report to suggest any fraudulent intention behind execution of self-trades by Our Client. The volume of self trades is less than 1% of the total volume in shares of SCTL and is only 0.17% and as the Net LTP is 0, the impact of self-trades on LTP is also not significant on daily basis.

15. Following the principle laid down in abovementioned matter of Aster Silicates Ltd., recently the Adjudicating Officer has exonerated Our Client in the matter of Multi Commodity Exchange of India Limited (Adjudication Order **No.** RA/JP/ 184 - 188/2017 dated September 29, 2017), United Spirits Limited (Adjudication Order No. RA/JP/ 166 - 171/2017 dated September 29, 2017) and Rushil Decor Limited (Adjudication Order No. EAD-5/BS/AO/06-07/2017-18 dated October 13, 2017) from the charge of violation of provisions of PFUTP Regulations as the percentage of self trades executed by Our Client were comparatively very less than the percentage of self trades carried out in the matter of Aster Silicates Ltd., which is also the case in the instant matter.

16. Hence Our Client, by submitting the para wise reply to the notice, would demonstrate in detail that none of the self trades alleged to have been carried out by Our Client were with an intention of not transferring the beneficial ownership and will prove the genuineness of the trades by the factors as per the approved policy of your goodself.

OUR CLIENT'S PARA WISE REPLY TO ALLEGATIONS LEVELLED IN THE NOTICE ARE AS UNDER:

17. In Para 1 of the Notice it is mentioned that your goodself has been appointed as the Adjudicating Officer vide order dated February 07, 2017 to inquire and adjudge under Section 15HA and 15HB of the SEBI Act, 1992, for the alleged violations of PFUTP Regulation by the Noticees including Our Client. With regard to this, it is submitted that the appointment of your goodself is a matter of record and therefore Our Client do not have any comments to offer on the same. With regard to the alleged violation of provisions of PFUTP Regulation by Our Client it is submitted that Our Client categorically deny the alleged violations.

18. In Para 2 of the Notice, it has been observed that an investigation was conducted by SEBI in the scrip of SCTL during the period April 08, 2011 to April 13, 2011. With regard to these observations it is submitted that the investigation by your goodself is a matter of record and therefore Our Client do not have any comments to offer on the same. However it is submitted that the reason for starting the investigation in the scrip of SCTL and the reason to fix the investigation period during April 08 to April 13, 2011 has not been provided. Our Client humbly submits that there must be some basis for starting investigation in a scrip and for fixing an investigation period as the same cannot be done randomly.

19. In Para 3 of the Notice, it is stated by your goodself that SCTL issued 80,98,145 equity shares of Rs. 10/- each at a price of Rs. 69/- per equity share, resulting into aggregate issue size of Rs. 55.87 Cr. through 100% book building. The price band of the issue was Rs. 64/- to Rs. 69/- per equity share and bid period was open from March 22, 2011 to March 25, 2011. The SCTL issue was graded by CARE and was assigned "IPO Grade *1"* indicating "Poor fundamentals". With regard to these observations made by your goodself it is submitted that the same is a matter of record and so Our Client do not have anything to offer on the same except that inspite of the alleged poor fundamentals SEBI allowed the company to come with the IPO.

20. In Para 4 of the Notice, some details about the trading in the scrip of SCTL like trading volume, opening price, high price and closing price on BSE and NSE are indicated. With regard to these observations it is submitted that these trading details are a matter of record and therefore Our Client do not have any comments to offer on the same. However, it is pertinent to note that the price movement table clearly show that the scrip was volatile in nature, which prompted Our Client to trade in the Scrip.

21. In Para 5 of the Notice, it is observed that during the investigation period, Certain Noticees traded at BSE and NSE and Our Client traded at BSE in the scrip of SCTL through stock brokers Adroit Financial Services P Ltd. +With regard to these

observations made by your goodself it is submitted that the same is a matter of record and so Our Client do not have anything to offer on the same.

22. In Para 6 of the Notice, it is stated that Our Client has traded during the Investigation Period. With regard to which Our Client submits that the same is a matter of record and Our Client do not have anything to comment on the same.

23. In Para 7 and 8 of the Notice your goodself observed that Our Client has repeateadly indulged in self trades and a total of 103 self-trades for 79986 shares were executed by Our Client leading to creation of artificial volume in the scrip of SCTL in the market, With regard to this it is submitted that the trades executed by Our Client in the impugned case were result of thousands of orders and out of the said 28069 trades at BSE, only 103 trades resulted into the alleged self trades in the account of Our Client which constitutes only 0.17% of total market volume at BSE, hence it cannot be termed as intentional self trades.

24. To corroborate the claim that the self trades executed by Our Client areaccidental, it is imperative that the brief background of Our Client aswell as the process for the execution of the orders and overall tradingstrategy in the market, including in the scrip of SCTL is considered by your goodself as it proves that the trades executed were not intended to be self trades:

(a) Our Client is a company registered under the Companies Act,1956, having its registered office at 3776/309 Nirmal Market,NS Marg, Darya Ganj, New Delhi - 110002.

(b) Our Client is basically engaged in the business of buying, selling and dealing in stocks and commodities and has been dealing in the securities market for past 14-15 years.

(c) Our Client had opened its trading account with Adroit in the year 2002 and since then, Our Client has been engaged in the business of buying, selling and dealing in stocks & commodities.

(d) It is submitted that Our Client is engaged into the business of jobbing/arbitrage in the securities market. Our Client's arbitrageurs and jobbers regularly visit Adroit's office and undertake jobbing transactions looking into the available opportunities. At this stage, it is pertinent to mention that Our Client's jobbers regularly carry out transactions of more than Rs. 100 Crores on any given day in multiple scrips depending on the market conditions and availability of arbitrage conditions.

(e) Your goodself would appreciate that in typical jobbing transactions, the number of trades carried out per day by Our Client is very large, in effect series of buy/sell trades are carried out by Our Client's jobbers within seconds and the individual decisions of buy/sell are taken by Our Client's dealers themselves.

(f) It is pertinent to note that SCTL came out with an IPO and the scrip of SCTL was listed on NSE and BSE on April 08, 2011 and opened at around Rs. 78.00/- on NSE and Rs. 78.35/- on BSE against the issue price of Rs. 69/ Its intraday high and low were Rs. 84.70/- and Rs. 45.40/- on NSE and Rs. 84.65/- and Rs. 45.45/- on BSE and it closed at Rs. 48.05 on NSE and Rs.

47.60/- on BSE. These figures explains that the scrip was very volatile, which could yield good returns in jobbing. Being a jobber, Our Client sought good jobbing opportunities in the market and therefore looking at the high volatility in the scrip of SCTL during the Investigation Period, had traded in the scrip.

(g) It may be pointed out here that Our Client had appointed 8 number of people as its authorised representatives who were entitled to trade on Our Client's behalf in the scrip of SCTL. Looking at the sheer size and the volume of the trades carried out, Our Client was allotted multiple terminals with Adroit's dealer to assist the authorised representatives to carry out their jobbing transactions. The representatives of Our Client formulated their own strategies and instructed Adroit's dealers to trade in the scrips selected by them in their own permutation and combination (the no. of dealers of Our Client to be dealt by one representative was decided by the representatives among themselves).

(h) Our Client had at all times, maintained sufficient margin with Adroit.

(i) The trading pattern followed by Our Client in the scrip of SCTL was not different from the day to day trading pattern followed by Our Client in any other scrip where Our Client had traded.

25. Before dealing with detailed submissions in relation to the self trades executed AKG through Our Client, it is pertinent to note that

(a) Our Client during the Investigation Period had carried out trades for 3227147 shares of SCTL on BSE generating a totalturnover of 19.20 crores. Our Client was trading and executing numerous jobbing transactions on daily basis in more than 100 scrips available for trading on NSE & BSE and SCTL is not the only scrip in which transactions were done by Our Client. As these transactions were being executed through multiple traders, it was practically impossible for any dealer to detect orders of other dealers before entering anyorder.
(b)It is submitted that the nature of the trades executed by Our Client were jobbing transactions and the same were executed looking at the jobbing opportunities due to higher volatility in the scrip of SCTL. The same is evident from the price movement of the scrip during the Investigation Period. Further it may please be noted that the days on which self trades were executed by Our Client were the days which witnessed high volatility in the scrip of SCTL.
(c) It is to be noted that for taking an advantage of this volatility Our Client had authorised a total of 8 representatives/jobbers to place orders on Our Client's behalf. These 8 representatives in turn were placing orders with multiple dealers on different terminals at Adroit's office based on their understanding. The alleged 103 self trades executed by Our Client were executed through multiple dealers. In order to substantiate Our Client's claim, we are annexing herewith dealer wise trading details to show that these trades in the scrip of SCTL were executed through multiple dealers sitting on different terminals. The same is annexed and marked hereto as "Annexure B" in compact disc.
(d) The aforesaid document and evidence clearly show that numerous orders were being placed simultaneously by Our Client7 s representatives in the system through various dealers on the basis of their understanding and assessment of the market conditions.
(e) The total value of all trades in SCTL executed by Our Client during the Investigation Period was Rs. 19.20 Crores i.e. a total of 2.97% of the total market volume on BSE & NSE and out of which only 0.07% of total market volume of trades have resulted into the alleged self trades. The same clearly shows that Our Client was placing orders based on their own understanding and without any sinister motive.
(f) The trading pattern followed by Our Client was not different from its day to day trading pattern followed by it in any other scrip where it has traded.

Detailed analysis of Self Trades executed in the account qfAKG

26. The only ground for alleging Our Client of acting in a fraudulent and manipulative manner to artificially inflate the volume is the execution of meagre 103 self trades involving a quantity of 79,986 shares.

27 It is to be noted that analysing the day wise details for the days when self trades executed by Our Client are as under:

Trading days	Total No of Shares in self Trades (A)	Total shares traded at BSE (B)	Percentage(A/B*100)
08-04-11	62095	3,84,98,254	0.16%
11.04.11	14475	56,54,776	0.25%
13.04.11	3416	21,52,529	0.15%

28. From the above table, it can be clearly observed that not on any single day the alleged self trades executed by Our Client contributed to more than 0.25% of the total market volume of BSE. It is submitted that even the notice states that the alleged self trades contributed only to the 0.17% of the total market volume at BSE, the same clearly shows that there was no intent to create self trades. It is further submitted to your goodself that the impact of trading is on the market as a whole and it does not mean that if one is doing trading at BSE it will have impact only at the market volume of BSE. The impact will be there on NSE as well and by taking into account the number of shares traded in both BSE and NSE on the day of the alleged self trade in the scrip of SCTL then the Percentage of Self-Traded Quantity to Market Volume will be meagre 0.07% which, by no stretch of imagination, could have influenced the price of the scrip, which leads to the deduction that there was no intention at all of Our Client to engage in the self trades.

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

30. Further, a detailed analysis of all the self trades of Our Client shows that the same were executed devoid of any manipulative intent. In order to substantiate Our Client's claim given below are certain facts:

(a) Our Client's total trades executed in the scrip of SCTL at BSE were 28069 for 3227147 shares giving a turnover of more than Rs. 19.20 crores. All the 103 self trades were Inter ID self trades and there were no same ID self trades.

(b) One of the most important factors which substantiates Our Client's claim that the alleged self trades executed by Our Client were unintentional self trades is that none of the self trades were complete trades. All the alleged self trades were partial trades. When the buy order quantity, sell order quantity and the traded quantity in a transaction are same then they are said to be complete trades and if any of the figure is different, then they are called as partial trades. In the instant case, all the 103 alleged self trades are partial trades, which means that they were result of split of a single order where a single order given for higher quantity matched with the counter order of low quantity. For e.g. on April 08, 2011 Order No. 16000075031269 of 5000 shares split and resulted into 29 trades out of which only 100 shares got matched with a counter order no. 22000088030243 placed for Our Client from a different terminal, and the balance shares got matched with different entities in the exchange.

(c) Not only this, but there are instances where two orders of higher quantity got matched with each other for lower quantity. For e.g. on April 08, 2011 Order No. 23000093039055 of 90 shares split and resulted into 3 trades and Order No. 14000089053703 of 500 shares split and resulted into 6 trades and both orders matched with each other for merely 2 shares.

(d) It may also be pointed out that 103 trades referred hereinbefore were not only the cases arising out of split of one single order but also in some instances 2 self or more self trades having arisen out of 1 single order. For e.g. on April 11, 2011 Order No. 15000077000261 of 3000 shares split and resulted into 21 trades out of which 1000 shares and 187 shares got matched with counter orders No. 16000073000259 and 12000095000209, and the balance shares got matched with different entities in the exchange. The abovementioned counter orders were also split orders of quantity higher than the matched quantity.

(e) Further your goodself must appreciate that it is a common market practice under Arbitrage/Jobbing activity for the dealers to place orders of 1 (one) share or small quantity at a fixed price differential of say, 10 paise, 25 paise, 50 paise etc. This is done to get the real time status of the ruling market price as sometimes the bid and offer rate prices on the Market watch window do not get refreshed on a real time basis due to connectivity and software problems. By giving the order for the quantity of one share, arbitrager or jobber are able to know in which direction the price of the particular script has moved or will be likely to move. Based on this information, arbitrager or jobber is able to take the opportunity of price difference between two exchanges and thereby do the arbitrage / jobbing business. This one share sometimes gets matched with a counter order given by the dealer itself and results into self trades. Our Client humbly submits that the instant case covers such types of instances. For e.g. on April 08, 2011 the Order No. 20000082142589 was given by Our Client's dealers for just one share to get the real time status of the ruling market price and this one share got matched with the counter order of 20000082142589 which was of 900 shares.

(f) It may be noted here that the intention of putting order of a dealer is the only measure to decipher his intention. The abovementioned facts clearly shows that the intention of Our Client was not to match the trades but to execute trades in normal course of business however incidentally/accidently during the course of execution of trades inadvertently orders got partly matched with counter orders.

(g) It also needs to be noted that there are multiple arbitrager's pairs working under our Proprietary Desk in the same company and it is quite possible that the orders from the same brokerage house are matched internally due to sheer number of terminal operators working in same security at the same time.

(h) There are two types of self trades which are evident (a) Self trade from same terminal (b) self trade from different terminals. There is a very important distinction between the two, which goes to the root of identifying whether a particular self trade is intentional or it has happened merely due to co-incidence. A self trade from the same terminal or same ID self trade is one in which buy and sell order are both put in from the same computer terminal from the same id, meaning thereby the person who is executing the buy and the sell trade is the same. However, when a self trade occurs from different terminals or different id's, although the client account in which the trade is put in is the same but the terminals from which the buy and sell orders are put for the same client are different. The difference clearly suggests a huge possibility of lack of mens rea for executing a self trade. If the trades are mistaken trade, it can be easily understood if two different individuals are putting in two different orders for the same client, however mistake for cases wherein the buy and sell trades are put in by same individual for same client would be rare.

(i) Our Client's total number of trades executed in the scrip of SCTL was 28069 out of which only 103 resulted in self trades. In these 103 self trades, there are no same ID self trades at all and all the 103 trades were inter ID self trades. This clearly shows that the intention was not to match the trades but to genuinely execute the trades in the market. It may also be pointed out that even the alleged self trades were at prevailing market price and there is no allegation of either increasing or decreasing the price of the scrip.

(j) In the instant case, the manner in which the orders have been put in and resulted into trades, it clearly shows that there was no intention on the part of Our Client to manipulate the scrip of SCTL. It may also be clarified that in cases of securities law violation the intention of parties is immaterial, however in cases of alleged fraud the intention needs to be deciphered from the actions/circumstances.

(k) It is pertinent to note that inspite of having different dealers having different terminals at BSE, there are no shares which got matched during the Investigation Period on the same terminal and that also because of partial matching of trades, the same clearly shows that Our Client's jobbers were always aware of the individual positions and always ensured that

Our Client's trades do not match in any manner, resulting into self trades. The same shows the high level of expertise and caution exercised by Our Client[7]s jobbers in executing the transactions of the company. However, owing to the frequency and speed at which the orders were being placed by the jobbers, no coordination was possible to examine if any other jobber has put in a counter order, or that a part of their unexecuted trade still remains pending and that it would match with their own trade. It can further be seen from the order quantity that each dealer was placing orders independently as the quantities in these trades had huge difference.

(l) It is to be noted that such high level of expertise was ensured despite the fact that during the Investigation Period, Our Client was dealing in more than 100 scrips on NSE and BSE, during the investigation period.

(m) It is not known to Our Client about any system available with the jobbers/arbitraguers or in the market to be installed which could rule out any self-trades altogether at the pre trade level and if there is any such system, Our Client would be the first to install the same.

(n) That the alleged self trades of Our Client constituted only 0.07% of BSE & NSE total market value in the scrip of SCTL during the Investigation Period.

(o) That the percentage of the Inter ID self trades to the total number of trades executed by Our Client in the scrip of SCTL in Adroit's office is meagre 2.47% during the Investigation Period respectively.

(p) That the percentage of the same ID self trades to the total number of trades executed by Our Client in the scrip of SCTL is meagre 2.47% during the Investigation Period respectively.

31. It is submitted that trading in the scrip of SCTL was harmless even though certain self trades were executed by Our Client, since these trades were not capable of causing any harm leaving aside manipulating the market. Our Client therefore pray that on this ground alone the charges levelled against us needs to be dropped. It is submitted that merely because there is no change in beneficial ownership of shares in case of self trade, the same independently does not cause any harm to anyone including the market at large. Meaning thereby if one buys and sell among one's own self it cannot impact anyone else, infact it is not even a contract since there are no two parties, which is quit essential for any contract. 32. The impact which a self trade can cause can be negative only if it involves (a) large volumes, which gives a false representation of liquidity in the scrip or on the market as a whole (b) the trade is done to change the prevailing price of the scrip. In the instant case both of the negatives have not happened, as neither there is huge contribution to market volume, nor there is significant contribution to the LTP by Our Clienf s significant self trades, and therefore no negative inference can be drawn against Our Client owing to the alleged few self trades carried out by Our Client. It may be appreciated that Our Client's total self trade volume was a meagre of 79,986 shares, which admittedly was 0.07% of the total market volume at NSE & BSE. It is submitted that the impact of the volume of self trade in order to become negative or violative of any law would entail the test that whether the volume remaining after the volume of the self trade is removed would be non- sufficient to induce any person to trade in the scrip in question. In the instant case, the same is sufficient hence, Our Client's self trades are not volatile of any law.

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

34. It is submitted that the Notice does not demonstrate the manner in which Our Client's actions led to the creation of a false market and the basis on which Our Client has been condemned for the commission of fraud. No evidence has been brought on record to establish the charge.

35. Moreover it is to be noted that Our Client has enjoyed no unfair advantage or benefit of any nature owing to the execution of the trades in question, nor has the same resulted in any kind of loss suffered by investors in the scrip of SCTL.

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

37.Even in the opinion of Hon'ble Securities Appellate Tribunal, if one or few of the orders result in self trade, it would not suffice for establishing the charge of manipulation unless the trades are exceptionally huge. The Hon'ble SAT in the case of **N.M. Lohia vs. SEBI**

(Appeal no. 108 of 2009, Decided on January 13, 2010), while holding the appellant liable for manipulation stated that in case of one or few trades, the outcome would be different. The Hon'ble tribunal observed that:

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

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

"This Tribunal has taken a consistent view that a few instances of self trades in themselves would not, ipso facto, amount to an objectionable trades."

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

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

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

40. Further the Adjudicating Officer, SEBI in the matter of Servalakshmi Papers Limited (Adjudication Order No. EAD-2/DSR/RG/08/2013 dated November 27, 2013), where the proceedings were being initiated against us, observed that

"I note from the submission of the Noticee that it executes arbitrage trades so as to benefit from the price difference on the stock exchanges and due to the nature of trading there is high volume involved and the turnover is very high. I find merit in the submissions of the Noticee that in such market situations the matching of trades from different terminals is inevitable and there may not be any meeting of minds."

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

41. Thus, it can be seen that the frequency, the time period and the state of market has to be considered before declaring a person guilty of manipulation by self trades. The trades in the present case cannot be considered huge and further, these trades did not happen due to design but merely due to the huge volume of orders and trading occurring in the scrip on the said occasions.

42.Now, considering the aforesaid and taking into account the nature of self-trades and the fact that there is a high possibility of it happening as a result of bonafide mistake devoid of any fraudulent intention, it is submitted that establishing intention/ fraudulent motive in commission of self-trades is absolutely imperative to allege anyone with fraudulent and unfair trade practice, which is also mentioned in the approved policy of SEBI. In the present case, there is no such document/information/evidence provided which establishes any such fraudulent intention. Further, as aforesaid, Our Client's self trades contributed a very meagre and negligible percentage to the total volume of the trading in the scrip of SCTL during the Investigation Period. Therefore, no such allegations, as levelled in the Notice, would stand against Our Client.

43. Further, it is submitted that the Notice has failed to consider that it is not within Our Client's control to introduce any system or mechanism to prevent/avoid the occurrence of self-trades and such an obligation cannot be imposed on Our Client as it would be that of the respective stock exchanges. It is submitted that the matching of the trades occurs at level of the exchange and therefore it would be open to the exchange to introduce a mechanism to ensure that no self-trades are allowed to occur. Stock exchanges in India have

implemented facilities and mechanisms to prevent self trades. NSE has implemented "Self-Trade Prevention" mechanism w.e.f October 12, 2015 vide circular dated October 01, 2015 and BSE has also implemented a Self Trade Prevention Check (STPC) Mechanism w.e.f March 16, 2015 vide circular dated February 11, 2015. Therefore, it has always been the responsibility of Stock Exchanges to ensure and implement appropriate mechanisms to prevent Self Trades given their statistical & technical expertise and thus Our Client should not be penalised for not able to prevent self trades from occurring, the responsibility of whose prevention has always been on the Stock Exchanges.

44. In Para 9 and 10, it is stated that Our Client has violated the provisions of Regulation 3(a) to (d), 4(1), 4(2) (a) and 4(2) (g) of PFUTP Regulations with regard to which Our Client categorically denies the violations. In this context it is submitted that

i.Our Client has neither directly nor indirectly bought or sold or otherwise dealt in the securities in any fraudulent manner.

ii. Our Client has neither directly nor indirectly used or employed, 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

iii. Our Client has neither directly nor indirectly employed 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.

iv. Our Client has neither directly nor indirectly engaged 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.

v. Our Client has not dealt in securities in a fraudulent manner or indulged in an unfair trade practice, involving fraud. Further it is denied that we have predated or otherwise falsified the records as alleged.

vi. Our Client has not indulged in any act which creates false or misleading appearance of trading in the securities market.

vii. Our Client has not entered into any transaction in securities without intention of performing it or without intention of change of ownership of such security.

45.It is submitted that the aforesaid explanations make it quite clear that Our Client has not violated any provisions of the PFUTP Regulations and therefore the directions and findings of the Notice must be quashedand set aside with immediate effect. The Notice is uncalled for and unjust since there is no justification in subjecting Our Client to such harsh and baseless allegations. It is submitted that. Our Client has not committed any wrong and no charge has been established against them prima facie, to warrant any action. Therefore it will be unfair to subject them to unwarranted directions under the SEBI Act and PFUTP Regulations.

46. Very serious allegations of fraud, price manipulations, etc. have been raised against Our Client. These allegations require a high level of proof and establishment of mens rea. Other than pointing out the fact that Our Client has carried out trades, no further proof has been provided of any wrong doing. The SCN has not stated about any profit which has been made by Our Client by engaging in these self trades or any loss which has incurred by others because of self trades.

47. In this context, your goodself's attention is invited to the decision of the Supreme Court in Union of India vs. Chaturbhai M. Pat el (AIR 1976 SC 712) which holds that fraud, even in civil proceedings, must be established beyond reasonable doubt. Thus the Order against Our Client does not meet the well settled standards of law and evidence in such a case and needs to be withdrawn. According to the decision of the Securities Appellate Tribunal in Parsoli Corporation vs. SEBI (Appeal No 146/2011 order dated 12th August 2011) where the Hon'ble SAT observed:- "...a serious charge like fraud has to be established on preponderance of probabilities and since this charge is serious, higher has to be the degree of probability to establish the same." The SAT also held in Sterlite Industries vs. SEBI (Appeal No. 20/2001 dated 22nd October 2001) that "...in tlie absence of reasonably strong evidence, even in a civil ***proceeding, a person cannot be held guilty and awarded punishment. Mere surmise, conjuncture or suspicion cannot sustain the finding of fault".*** It is seen that in the present case, the SCN is admittedly based on low preponderance of probabilities. Thus, the SCN is bad in law and so must be withdrawn and the proceedings must be dropped.

48. It is submitted that serious allegation of violation of PFUTP Regulations cannot be alleged on the basis of mere surmises and conjectures and based on the erroneous interpretation of data, as has been done in the instant case. The same is also clear from the decisions given by various courts in numerous cases.

49. ***The SAT in its order in case of*** KSL & Industries Ltd vs. SEBI ***(SAT Appeal no. 9/2003 decided on 30.09.2009) has held that "***I do not find any material on record in support of the said charge. A wild allegation of market manipulation, in particular the cliarge of fraudulent action unsupported zvith convincing evidence are not sustained. Fraud cannot survive on mere conjecture and surmises."

50. In ***Union of India vs. H.C. Geol (AIR 1964 SC 364)*** the Hon'ble Court has inter alia held that:

"the principle that in punishing the guilty scrupulous care must be taken to see that the innocent are not punislied, applies as much to regular criminal trials as to disciplinary inquiries held under the statutory rules".

51. ***In*** L.D. Jaisinghani vs. Naraindas N Punjabi (1976) 1 SCC 354: AIR 1976 SC 373 at P. 376 - ***wherein Ray, CJ speaking for the Court has observed:***

"In any case we are left in doubt ivhether the complainants version xoith which he had come forward with considerable delay was really truthful. We think that in a case of this nature, involving possible debarring of the advocate concerned the evidence should be of a

character which should leave no reasonable doubt about guilt. The Disciplinary Committee had not only found the Appellant guilty but had disbarred him permanently. (In Re An advocate AIR 1989 SC245)"

52. About the test of evidence in a civil proceeding, the following observations made by the Hon'ble Court **Razikram vs. J.S. Chauhan - AIR 1975 SC 667: (1975)** 4 **SCC 769)** is to be noted:

"It is true that there is no difference between the general rules of evidence in civil and criminal cases and the definition provided in section 3 of the Evidence Act does not draw a distinction betiveen civil and criminal cases. Nor does this definition insist on perfect proof because absolute certainty amounting to demonstration is rarely to be had in the affairs of life. Nevertheless, the standard of measuring proof prescribed by the definition is that of a person of prudence and practical good sense... The same is equally true about proof of a charge of corrupt practice which cannot be established by a mere balance of probabilities".

53. The Hon'ble Supreme Court in yet another case with reference to adjudication under the Sea Customs Act and Land Customs Act (Ambalal vs. Union of India AIR 1961 SC 264) relating to imposition of penalty on the person concerned had held:

"To such a situation though tlie provisions of the Code of Criminal Procedure or the Evidence Act may not apply, except in so Jar as they are statutorily made applicable, the fundamental principles of criminal jurisprudence and of natural justice must necessarily apply. If so, the burden of proof is on the customs authorities and they have to bring home tlie guilt to the person alleged to have committed a particular offence under the said Acts by adducing evidence"

54. Further in the case of Seth Gulabchand vs. Seth Kudilal (AIR 1966 SC 1734), the Hon'ble Court has inter alia held that:

the Indian Evidence Act applies the same standard of proof in civil cases. It makes no difference betzoeen cases in zvhich charges of a fraudulent or criminal character are made and cases in which such charges are not made. But this is not to say tliat the courts will not, while striking the balance of probability keep in mind the presumption of honesty or innocence or the nature of the crime or fraud charged.

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

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

56. With regard to Clause (a) "the amount of disproportionate gain or unfair advantage, whether quantifiable, made as a result of the default": it is submitted that the findings does not lead to the conclusion that there has been disproportionate gain or unfair advantage of Our Client as all the shares were bought and sold by us in normal course of our business. Further, Our Client has not made any profit by executing the alleged self trades.

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

58. With regard to Clause (c):- "the repetitive nature of the default." it is stated that Our Client has never been held guilty of carrying out self trades or manipulating the scrip of SCTL and therefore the issue of repetition does not arise at all. It is submitted that the instances pointed out in the notice are isolated instances and hence there is no question of repetitive nature of default.

59. Having stated the factors of Section 15J, Our Client would like to draw the attention of your goodself to a few case laws, wherein the respective courts have dealt into the aspect of penalty and factors for levying any penalty on any delinquent. In this regard your kind attention is drawn to Hon'ble Supreme Court's decision in the case of Hindustan Steel vs. State of Orissa (AIR 1970 SC 253) where it was held as follows:

An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi criminal proceeding and penalty xvill not be ordinarily imposed unless the party obliged either acted deliberately in defiance oflazv or urns guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lazoful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty zvill be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or cohere the breach flozvs from a bonafide belief that the offender is not liable to act in the manner prescribed by the statute."

60. Again, the Hon'ble Apex Court in the case of Ex-Naik Sardar Singh vs ***Union of India (1991) 3 SCC 212)*** inter alia held that:

"the penalty imposed must be commensurate zvith the gravity of the misconduct and that any penalty disproportionate to the gravity of the misconduct zoould be violative of Article 14 of the Constitution. "

61. *Further in the matter of* ***Ranjit Thakur vs. Union of India (AIR 1987 SC 2386)*** *it was held that*

:The Sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to tlie 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 tlmt 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 ivith the gravity of the misconduct and that any penalty disproportionate to the gravity of the misconduct would be violative of Art. 24 of the Constitution. The point to note and emphasis is that all powers have legal limits."

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

7. Subsequently, the adjudication proceedings were transferred to the undersigned. The Noticee was intimated about the change in Adjudication Officer vide hearing notice dated May 18, 2018 addressed to Noticee and was granted an opportunity of hearing on June 06, 2018. During the personal hearing held on June 06,2018, the Authorized Representative appearing on behalf of Noticee reiterated the submissions made by Noticee in its reply dated November 27,2017. In view of the above, I am satisfied that the principles of natural justice have been complied with in the present matter and I now proceed further in the matter based on the available records and submissions of the Noticee

CONSIDERATION OF ISSUES

8. The issues that arise for consideration in the present case are:
   (a) Whether the Noticee has violated the provisions of Regulation 3(a), (b), (c), (d), 4(1), 4(2) (a) and (g) of PFUTP Regulations?
   (b) If yes, then do the violations, if any, on the part of the Noticee attract any monetary penalty under Section 15HA of the SEBI Act?
   (c) If yes, then what would be the monetary penalty that can be imposed upon the Noticee, taking into consideration the factors mentioned in Section 15J of the SEBI Act read with Rule 5(2) of the Adjudication Rules?

9. Before moving forward, it is pertinent to refer to the relevant provisions of the PFUTP Regulations which read as under:-

Relevant provisions of PFUTP Regulation:

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 there under;

(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 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;

(b) ……..
(c) ……..
(d) ……..
(e) ……...
(f) ……...

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

10. The first issue to be decided is whether the Noticee has violated the provisions of Regulation 3(a), (b), (c), (d), 4(1), 4(2) (a) and (g) of PFUTP Regulations?

11. Upon perusal of the reply of the Noticee and documents available on record, I find that it is not in dispute that 103 self-trades were executed by the Noticee in the scrip of SCTL at BSE for a total quantity of 3,97,328 shares on three days. The Noticee has submitted that it does jobbing and arbitrage in various scrips on BSE and NSE.I find from the IR that on BSE the total traded volume of SCTL's shares during the investigation period was 4,63,05,559 shares and self-trades done by the Noticee for a total quantity of 79,986 shares through 103 trades on 3 days and the percentage of self-trade volume of the Noticee to the total traded market volume on BSE was only 0.17%. I note from the above that the Noticee has executed self-trades on three day of Investigation period and the percentage of self-traded volume to total market volume traded on BSE is seemingly miniscule on that particular date. Therefore, I conclude that the percentage contribution as mentioned above does not suggest possibility of any manipulative intent to the extent of creating artificial volume in SCTL during the period of investigation.

12. I note that volume transacted in self-trades is one of the important factors to determine the manipulative intention, if any, of a person on the issue of self-trades. If the self-trades of the Noticee are considered in that background then it would be difficult to hold in the present matter that there was any manipulative intent on the part of the Noticee to engage in intentional self-trades as such percentage / volume of self-trades of the Noticee in the scrip of SCTL was miniscule as compared to the total trading in the said scrip during the relevant period.

13. From aforesaid such negligible percentage in the scrip, it is difficult to arrive at the conclusion that these self-trades were executed by the Noticee with an intent to create misleading appearance of trading in the securities market. It is important to note here that the motive behind executing fraudulent self-trades can either be to artificially raise the volume in a scrip / or to manipulate the price of a scrip by way of creating misleading appearance of trading so as to induce others to deal in the particular scrip. I note that the Investigation Report, *per se,* has not brought out any allegation of price manipulation attributed to Noticee's self-trades.

14. I also note that there are no adverse observations regarding other forms of market manipulation i.e. synchronized trading, reversal trading or executing orders away from last traded price or creation of new high prices by way of first trades etc. against the Noticee in the investigation Report. Also, the instances of self-trades by Noticee are not of such magnitude that can be said to have affected the rest of the market volume, if considered in the light of the amount of transactions that the Noticee had been doing on the various segments of the exchanges platform.

15. I note that Noticee has referred to, in its replies, on various Orders passed by Hon'ble Securities Appellate Tribunal(SAT) and Adjudicating Officers dealing with self trades.

16. On perusal of the overall submissions of the Noticee, I find that in the instant case

    a) The instances of self-trades in matter are very few in order to be seen as an objectionable trades.
    b) The percentage of self-trades is negligible and is not capable of creating artificial volume.
    c) Based on the records made available, it is difficult to hold the view that the self trades entered into by the Noticee are intentional and are capable to manipulate the scrip.

17. I rely on the decision of the Hon'ble Securities Appellate Tribunal in the matter of KSL & Industries Ltd v. SEBI vide appeal no 9/2003 which has also been quoted by the Noticee wherein it has been held that "*I do not find any material on record in support of the said charge. 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 conjecture and surmises."*

18. I would also like to rely on the Judgment of the Hon'ble Securities Appellate Tribunal ("**SAT**") in the matter of *Ketan Parekh Vs. SEBI* (Appeal No. 2 of 2004 decided on 14.07.2006) where it observed that,

"*.....Any transaction executed with the intention to defeat the market mechanism whether negotiated or not would be illegal. Whether a transaction has been executed with the intention to manipulate the market or defeat its mechanism will depend upon the intention of the parties which could be inferred from the attending circumstances because direct evidence in such cases may not be available. The nature of the transaction executed, the frequency with which such transactions are undertaken, the value of the transactions, whether they involve circular trading and whether there is real change of beneficial ownership, the conditions then prevailing in the market are some of the factors which go to show the intention of the parties. This list of factors, in the very nature of things, cannot be exhaustive. Any one factor may or may not be decisive and it is from the cumulative effect of these that an inference will have to be drawn*."

19. I also note that Hon'ble SAT on the Judgment in the matter of Smt. Krupa Sanjay Soni vs. SEBI (Appeal No. 32 of 2013) which has also been quoted by the Noticee wherein it observed that,

"This Tribunal has taken a consistent view that a few instances of self trades in themselves would not, ipso facto, amount to an objectionable trades."

20. After taking into account aforesaid observations, perusal of investigation report and taking into account, in particular, the miniscule percentage / volume of self-trades as compared to the total market volume during the investigation period, I am of the view that it is difficult to conclude that self-trades of Noticee in the scrip of SCTL were intentional and manipulative and I am inclined to conclude that violations of provisions of Regulations 3(a), (b), (c), (d), 4(1), 4(2)(a) and (g) of PFUTP Regulations, 2003 by the Noticee do not stand established. Since the alleged violations are not established against the Noticee, Issues No. (b) and (c) require no consideration.

ORDER

21. In view of my findings noted in the preceding paragraphs and in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby dispose off the Adjudication Proceedings initiated against the Noticee viz. AKG Securities and Consultancy Private Limited vide SCN dated July 26, 2017 without imposition of any monetary penalty.

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

Date: June 29, 2018
Place: Mumbai

K. SARAVANAN
ADJUDICATING OFFICER