WTM/SKM//EFD1-DRAIII/ 09 /2019-20

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: S. K. MOHANTY, WHOLE TIME MEMBER
ORDER

Under Section 15-I (3) read with Section 19 of the Securities and Exchange Board of India Act, 1992

In respect of:

Noticee no.	Name of the Noticee	In the matter of	PAN
1	AKG Securities and Consultancy Limited.	Bharatiya Global Infomedia Limited	AAACA7549K
2	Adroit Financial Services Private Limited.	Bharatiya Global Infomedia Limited	AABCA1156D

(Hereinafter collectively referred as "Noticees")

Background

1. Securities and Exchange Board of India (hereinafter referred to as **"SEBI"**) conducted an investigation into certain allegation pertaining to the Initial Public Offer (herein after referred to as **"IPO")** of Bharatiya Global Infomedia Limited (hereinafter referred to as "**the Company**/**BGIL")** and into the trading in the said scrip on the stock exchanges on the day of its listing, i.e., July 28, 2011. In the course of investigation, it was noticed *inter-alia* that AKG Securities and Consultancy Limited (hereinafter referred to as "**AKG Securities/Noticee no. 1**") had traded through a SEBI registered stock broker Adroit Financial Services Private Limited (hereinafter referred to as **"Adroit/Noticee no. 2**"), on the day of its listing, in the scrip of BGIL. It was alleged that AKG Securities executed fictitious trades by way of self-trades through Adroit for a total quantity of 320 shares on National Stock Exchange of India Limited (hereinafter referred to as **"NSE**") and for 109014 shares on the Bombay Stock Exchange Limited (hereinafter referred to as **"BSE"**) and thereby created artificial volumes in the scrip of BGIL. Further, out of total quantity of 109014 shares which resulted in self-trades on BSE, 42 self-trades for a total quantity of 29924 shares were executed through the Noticee no. 2 using a single terminal, which allegedly created artificial volumes and misleading appearance

in the scrip of BGIL, hence Adroit (Noticee no. 2) has been alleged to have aided and abetted in execution of the self-trades.

2. The nature of the above stated trades of Noticee no. 1 executed through Noticee no. 2 has been alleged to be artificial and both the Noticees have been alleged to have contravened the provisions of section 12A(a), (b) and (c) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **"SEBI Act"**) read with regulations 3(a), (b), (c) & (d), 4(1) and 4(2)(a) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 ("hereinafter referred to as **"PFUTP Regulations"**). In addition to the above alleged violations, Noticee no. 2 being a stock broker and a registered intermediary of SEBI, has also been alleged to have contravened Clause A of the Code of Conduct prescribed for Stock Brokers under Schedule II of the SEBI (Stock Brokers and Sub-brokers) Regulations, 1992 (hereinafter referred to as " **Stock Broker Regulations**") read with regulation 7 thereof.

3. In view of the alleged violations, Adjudication Proceedings under Chapter VIA of the SEBI Act, 1992 were initiated against the aforesaid Noticees. The Adjudicating Officer (hereinafter referred to as **"AO"**), having conducted the necessary inquiry, found the two Noticees not guilty of the violation as alleged above and vide his order dated April 30, 2014, disposed of the adjudication proceedings by recording that the contravention of the provisions of law as alleged against the two Noticees were not established. In his order, the AO has arrived at the above conclusion *inter-alia*, on the following accounts:

- That AKG Securities is engaged in arbitrage/jobbing activities and the alleged trades were carried out in the normal course of trading as jobber.
- The scrip of BGIL was very volatile on the day of its listing and Noticee no. 1 had executed only 42 self-trades on a single terminal for 29924 shares of BGIL on the BSE platform, which was so meagre so as to be capable of creating any artificial volume and liquidity in the script of BGIL.
- Considering the liquidity in the scrip of BGIL, percentage of contribution through the alleged inter-id self-trades was not significant as the same was only 0.58% of total volume of shares of BGIL traded on BSE and 0.0012% of total market volume traded in the scrip of BGIL on NSE.

- Considering the high volume in the scrip of BGIL on the day of listing and matching of trades from different terminals, it is difficult to conclude that the trades were executed with any prior meeting of minds.
- There is no allegation of price manipulation and the evidence on record are not sufficient to hold the charges levelled against the Noticees.

Review of AO Order

4. Not being in agreement with the views expressed and decisions taken by the AO in his adjudication orders, SEBI, in exercise of powers conferred under Section 15-I (3) of SEBI Act, preferred to examine as to whether the orders passed by the AO were erroneous and not in the interest of the securities market. Accordingly, SCNs dated July 11, 2014 (hereinafter referred to as **"SCN")** were issued to the aforesaid Noticees asking them to show cause as to why observations of the AO and his decisions regarding the impugned self-trades executed by Noticee no. 1 with the aid and abetment of the Noticee no. 2 shall not be reviewed and held erroneous and appropriate penalty be not imposed on them for their alleged violation of provisions of Section 12A (a), (b) and (c) of the SEBI Act read with regulations 3, 4(1) and 4(2) (a) of the PFUTP Regulations read with the provisions related to Code of Conduct prescribed under stock broker regulations.

5. In pursuance of the aforesaid SCN, hearing was granted to the Noticees and after having heard the Noticees, the Competent Authority, while finding the Noticees guilty of the charges levelled, vide order dated November 13, 2014, imposed a monetary penalty of ₹ 5.00 lakh on each of the above stated two Noticees. While imposing the aforesaid penalty, the following observations were recorded: (a) Self-trades are artificial trades as they are executed without change of ownership of such security; (b) It is incorrect to limit self-trades to only those trades which were executed from the same terminal, rather all trades wherein same client id appear, both on the buy and sell side, are self-trades and all such trades, whether executed from a single terminal or using multiple terminals are required to be taken into consideration, as the economic consequences remain the same even if the terminals are different; (c) Percentage of self-trades of the Noticee no. 1 as against the total trades of the Noticee on BSE and NSE were 3% of the total trades executed by the Noticee no.1 in the scrip of BGIL; and

(d) The matching of orders by way of self-trades is not acceptable and the leniency shown by the AO would be detrimental to market discipline.

Remand of the Case to SEBI

6. Being aggrieved by the aforesaid order imposing monetary penalty of ₹ 5.00 Lakh, the Noticees preferred appeals before the Hon'ble Securities Appellate Tribunal (hereinafter referred to as "**SAT**"). I note that the Hon'ble SAT, vide order dated February 10, 2017, has disposed of the appeals by remanding the matter to SEBI for re-consideration. The order of Hon'ble SAT while remanding the matter to SEBI has noted the following:

> *"Counsel for SEBI on instruction states that SEBI has decided to have a fresh look in these matters and, therefore, the impugned orders may be set aside and restored to the file of WTM of SEBI for passing fresh order on merits and in accordance with Law."*

Personal Hearing and Reply

7. In terms of the above mentioned order dated February 10, 2017 of Hon'ble SAT, Noticee no. 1 and Noticee no. 2 have been provided with an opportunity of personal hearing. The Noticees have filed their respective replies and represented through their authorized representatives who made submissions before me on February 05, 2019, on lines of their replies dated February 01, 2019. In their written replies and arguments advanced, the Noticees have prayed for exoneration from the charges levelled, since according to them, no case is made out to proceed against them, *inter-alia* on the following grounds:

8. Submission on behalf of **AKG Securities (Noticee no. 1):**

(a) AKG Securities has been engaged in jobbing transactions and has been trading in securities on a regular basis through Noticee no. 2, i.e., Adroit for a period of more 15 years.

(b) As a jobber, its average transaction on daily basis would be around ₹ 100 crore.

(c) The Noticee no.1 had traded in 23 different scrips on their respective day's of listing in the year 2011 as the trading volumes on the days of listing

normally remains high. In the case of BGIL, the traded value of the Noticee no. 1 was as high as ₹ 43.86 crore.

(d) Volatility in the scrip of BGIL on its day of listing provided congenial opportunities to jobbers to trade in large volume and same is evident from the records of trading in the scrip of BGIL on its listing day, when on BSE the scrip opened at ₹81.9/-, went up to ₹83/-, stayed between ₹60-70 for some time and then plunged to ₹29.90/-, whereas on NSE, it opened at ₹84/- stayed around the ₹60-₹70 for some time then plunged to ₹30.95/-. The volatility with volume provided excellent opportunity for Noticee no. 1 to execute and undertake jobbing activities.

(e) To take advantage of the volatility, Noticee no. 1 had authorised 8 persons for instructing around 39 traders/dealers for punching order in the scrip of BGIL. Thus, buy and sale orders were placed by different traders/dealers from different terminals, based on their own independent understanding, without knowing that some of the orders placed by them may match with each other's orders i.e orders placed/trades executed by one of the dealers may match with counter orders of another dealer, engaged by the Noticee no. 1 as both dealers were placing orders on behalf of the Noticee no. 1 at the terminal of the same stock broker (Noticee no.2).

(f) The Noticee no. 1 works as jobber and trades were executed through different dealers using different terminals/ids and in a highly liquid scrip, execution of self-trades were mere accidental for the reason of deploying several people to place orders on its behalf through 39 terminals, causing inadvertent matching of trades amongst the traders/dealers.

(g) Matching of trades also took place due to the system settlement of the pending orders and such accidental matching of self-trades on behalf of the Noticee no. 1 which were executed from the same ids on NSE constituted only 0.27% of the total volumes of shares traded by it on NSE. Considering the negligible quantity as mentioned above, it would not be correct to penalise the Noticee no. 1 for creating artificial volumes, more particularly, in the absence of any other evidence or charge alleging price manipulation.

(h) Noticee no. 1 had executed a total number of 72,653 trades on the day of listing of BGIL shares, out of which 37,415 trades were executed on the

platform of BSE whereas 35,415 trades were executed on the exchange platform of NSE. Total value of trades executed by Noticee no. 1 on July 28, 2011 amounted to ₹ 43.86 crore, which was 8.6% of the total market volume traded in the scrip of BGIL on the day of listing.

(i) Although, the SCN has alleged the violation of PFUTP Regulations against the Noticees for the alleged execution of 42 self-trades involving a total quantity of 29,924 shares, which were executed using the single terminal, whereas as per Noticee's own record, only 11 trades involving a total quantity of 11 shares have become self-trades from the same terminal during the entire day and such 11 trades constitute 0.000048% of the total quantity trades by it on the floor of BSE and no self-trades executed on NSE from the same terminal.

(j) It is submitted that Noticee no.1 has employed people with expertise in jobbing transactions and had undertaken jobbing transactions in more than 200 scrips on BSE and 250 scrips at NSE generating a total turnover of ₹ 162.42 crores on a given day.

(k) Considering the high liquidity and volume of trades executed on the day of listing, self-trades allegedly executed by Noticee no.1 were in a minuscule quantity and were not enough to cause artificial volume in the scrip of BGIL.

(l) There is no allegation against the Noticee no.1 that it had indulged in price manipulation.

(m) In terms of the policy of SEBI on self-trade dated May 16, 2017 (hereinafter referred to as "**Policy**") wherein it has been decided that intention is *sine qua non* for establishing manipulation in case of self-trades, and that accidental/unintentional self-trades are not covered under the PFUTP Regulations. Therefore, the entire matter requires re-consideration in the backdrop of the above stated policy of SEBI on self-trade.

(n) Noticees have placed reliance on several orders passed by Hon'ble SAT, Whole Time Member as well as Adjudicating Officers of SEBI wherein entity has been exonerated on the ground of accidental or un-intentional self-trades.

9. Submissions on behalf of **Adroit (Noticee no. 2)-** In addition to reiterating the aforesaid submissions made on behalf of Noticee no. 1, Noticee no. 2 has advanced following additional arguments in his defence:

(a) The Noticee no. 2 is engaged in the business of stock broking activities for more than 20 years and is carrying an impeccable record.

(b) It runs its business through 182 offices across India having more than 35000 clients including AKG Securities, which is associated with it since 2002.

(c) Jobbing is a duly recognised and permitted form of trading activity in the securities market. Jobbers primarily carry out transactions in large volume in liquid scrips to gain advantage of thin intra-day trading margin and to capitalise on anticipated price difference in a variety of scrips.

(d) As the scrip of BGIL witnessed high liquidity on the day of its listing and no circuit filter was in operation it provided an opportunity to jobbers to utilise it for making some profit.

(e) Historical data shows that on the day of listing of a scrip only 15-20% of the total trades executed are delivery based. The trading in the scrip of BGIL was no exception on the day of its listing, wherein the trades based on delivery was less than 10% of the total trades executed in the said scrip.

(f) The charges levelled against the Noticee would not sustain, in view of the observations made by Hon'ble Supreme Court in *SEBI vs Rakhi Trading Private Limited* ***(2018) 13 SCC 753*** and applies to the Noticee no.2 which executed trades on instruction of its client ,i.e., Noticee no.1 and no evidence has been placed in SCN to show that it has aided and abetted the Noticee no.1 in execution of self-trades.

Issues for consideration:

10. I have perused the SCN, written submission, arguments put forth during the personal hearing and other materials on the record. On examination of the same, the following issues arise for consideration:

Issue No 1- *Whether the self-trades executed by the Noticee No.1 were entered into intentionally and/or with manipulative intent and whether Noticee no. 2 can be held liable*

for aiding and abeting the Noticee no. 1 in the execution of the self-trades in the scrip of BGIL or it was executed accidentally?

Issue No. 2- *If issue no. 1 is determined in affirmative, then whether the findings made in the Adjudication Order dated April 30, 2014 are erroneous and against the interest of securities market and require invocation of powers under Section 15- I (3)?*

Issue No- 3 *In case the answer to the above are in affirmative, quantum of monetary penalty to be visited upon Noticees?*

11. Before, I proceed to examine the issues framed as aforesaid, it would be relevant to have a look at the provisions of law pertaining to the contravention as alleged against the Noticees and the same are reproduced as under:

Relevant provisions of SEBI Act, 1992:

Section 12A of the SEBI Act.

No person shall directly or indirectly –

(a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognised stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made there under;

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

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

Relevant provisions of 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 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;

Relevant provisions of Broker Regulations:

Stock brokers shall abide by the following Code of Conduct .*7. The stock broker holding a certificate shall at all times abide by the Code of Conduct as specified in Schedule II.*

Clause A of the Code of Conduct for Stock Brokers

A. General.

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

(2) Exercise of due skill and care: A stock-broker shall act with due skill, care and diligence in the conduct of all his business.

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

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

(5) Compliance with statutory requirements: A stock-broker shall abide by all the provisions of the Act and the rules, regulations issued by the Government, the Board and the Stock Exchange from time to time as may be applicable to him.

Now, I deal with the issues and answer the questions framed at paragraph 10 above, hereunder.

Issue No 1- *Whether the self-trades executed by the Noticee No.1 were entered into intentionally and/or with manipulative intent and whether Noticee no. 2 can be held liable for aiding and abetting the Noticee no. 1 in the execution of the self-trades in the scrip of BGIL or it was executed accidentally?*

12. Self-trades are classified as those trades executed in the stock market in which, both the buyer and the seller remains the same entity, meaning thereby, entity in such trades is the same on both sides, i.e., buy and sell side. Consequently, such self- trades do not result in

change in beneficial ownership of the security. Summary of the alleged self- trades executed by the Noticee no. 1 in BGIL is provided as below:

Table-1

Name of the exchange	**Self-trade quantity in the scrip of BGIL**	**Total traded quantity In BGIL scrip by Noticee no.1**	**% of self-trade to total traded quantity. of Noticee no. 1 in BGIL**	**Total traded quantity in the scrip of BGIL on the exchange.**	**% of self-trade of the Noticee no. 1 to total traded qty. on exchange**
BSE	109014	35, 34,702	3.08	4,07,25,468	0.26
NSE	320	1,08,888	0.3	4,75,78,807	0.0006
Total	109334	36,43,590	3.0	8,83,04,275	0.12

13. It is not in dispute that self-trades have been executed in the scrip of BGIL for a total quantity of 109334 shares by Noticee no.1. It is noted that out of total quantity of 109334 shares traded through self-trades, Noticee no.1 has executed self-trades in 109014 shares on the platform of BSE and remaining 320 shares have been executed on the platform of NSE. It is further noted that out of the total self-trades executed by Noticee no.1 on BSE, 42 trades for a quantity of 29924 shares have been executed using the single terminal. However, the self-trading in 320 shares of BGIL executed on the exchange of NSE were not executed using the same terminal/id. It is to be noted that though, Noticee no.1 has not disputed the execution of the aforesaid self-trades, it is contended that the aforesaid said self-trades were purely accidental in nature and executed in the ordinary course of its business and executed without any intent to manipulate price/volume or trading in the scrip of BGIL. At this stage, I note that the allegation of executing self-trades has not been denied by the Noticee No.1, and the Noticee No.1 has only attempted to attribute the reasons so as to justify the prayer for exoneration from the charges. The commission of self-trades and the allegation thereto is purely based on the factual data derived from the trading executed at the platform of stock exchanges. The data, as derived, has concretely established the execution of self-trades by the Noticee No.1.

14. Having noted that the Noticee had actually executed self-trades in the scrip of BGIL, the issue that requires consideration is whether the alleged self-trades were accidental and executed without any oblique motive or the execution of the alleged self-trades were indeed intentional in nature. It is noted that the Hon'ble SAT, based on the statement made on behalf

of SEBI has remanded the present matter for re-consideration on the backdrop of a stated policy on self-trade which envisages initiation of proceeding in case of self-trades depending on fact as to whether the alleged self-trades are intentional or mere accidental in nature. In this regard, it is a settled position of law that in the absence of direct evidence, allegation of charge would be established by inferring a logical process of reasoning from the totality of the attending facts and circumstances surrounding the allegations/charges made and levelled against a noticee. In this regard, I note that vide order dated July14, 2006, Hon'ble SAT in the matter of *Ketan Parekh vs. SEBI,* held that:

> "*...Any transaction executed with the intention to defeat the market mechanism 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 of the cases, because direct evidence in such cases may not be available*."

15. Considering the above stated policy of SEBI and observations of the Hon'ble SAT, I proceed to examine from the material available on record to ascertain as to whether the self-trades were executed intentionally or these were mere accidental self-trades. In this regard, I note that BGIL had come out with an IPO issue through book building route in the price band of ₹ 75 to ₹ 82 for 67,20,000 equity shares, constituting 42.42% of its post issue paid up capital. The issue opened for bidding on July 11, 2011 and closed on July 14, 2011. The issue had received 5,098 valid applications for 98,90,775 equity shares resulting in 1.47 times subscription. The allotment of shares took place on July 21, 2011 after which, the shares were listed and admitted for trading on NSE and BSE on July 28, 2011. On the day of listing 4,75, 78,807 shares were traded on NSE and 4,07,25,468 shares were traded on BSE. Thus, in total 8.83 crore (approx.) shares of BGIL were traded on BSE & NSE and out of the total shares traded on that day, only 6.5% of shares were traded on delivery basis. It is also noted that the Noticee no. 1 had in total traded in 36, 43,590 shares on both the exchanges. Out of 36, 43,590 shares traded on the two exchanges, SCN alleges that trading in 109334 shares resulted in self-trades. In this regard, it is further noted that out of 109334 shares transacted through self-trades, 109014 shares were traded on the exchange of BSE and only 320 shares were traded on the platform of NSE. Further, it is also noted that on BSE, 42 self-trades involving 29924 shares were executed from same terminal.

16. From the records, I find that there is no allegation in the SCN or no finding in the investigation suggesting that Noticee no. 1 was connected with the company BGIL or its promoters/directed or other related entities in any manner whatsoever. It is also noted that the total volume of shares of BGIL traded on July 28, 2011 was as much as 8,83,04,275 in 7,12,157 trades, out of which 4,07,25,468 shares were traded on BSE (in 3,13,260 trades) and 4,75,78,807 shares were traded on NSE (through 3,98,897 trades). It is also evident from record that Noticee no. 1 has executed 72,653 trades for 36, 43,590 shares in the scrip of BGIL. It has been submitted that out of its total trades of 72,653 involving 36,43,590 shares only 109334 shares were in the nature of self-trades which included 1,09,014 shares transacted through 518 self-trades on the platform of BSE. It has also been submitted that out of the said self-trades executed on BSE, only 42 self-trades for a total shares of 29,924 were executed using the same terminal. Noticee has submitted that the aforesaid fact indicate that the quantum of transactions in the scrip of BGIL through self-trades, both through single and different trading terminals, was very small as compared to the total quantity of the BGIL shares that were traded on the listing day and such trades were not in a position to influence the volume or price of the scrip of BGIL.

17. It is noted that the present proceedings, arising out of the remand of the matter by Hon'ble SAT for re-consideration in the backdrop of the stated policy of SEBI on self- trade, hence, the materials on records and allegations made against the Noticees require examination so as to arrive at a finding as to whether the alleged self-trades were executed intentionally or those were mere accidental trades and were not capable enough to create an artificial volume in the scrip of BGIL. With this objective, I proceed to examine from the materials available in the records as to whether the self-trades executed were intentional or mere accidental. As stated earlier, that on the day of listing of BGIL scrip, more than 8.83 crore shares were traded. The total quantity of shares traded by Noticee no. 1 was 36,43,590 which is 4.12% of the 8.83 crore shares traded on both the exchanges on the day of listing of the scrip of BGIL. As regards the 109334 shares transacted by the Noticee no. 1 through self-trades on the exchanges, I find that this quantity comes to a mere 0.12 % of the total volume of BGIL shares traded on the exchanges on the day of its listing. I also note from the record that the total number of trades executed in BGIL scrip together on BSE and NSE on the date of listing were 712157 out of which Noticee no.1 which is into the business of jobbing has executed 72653 trades which

constitute to 10.2 % of the total number of trades executed in the said scrip on the day of listing. Further, when the numbers of self-trades executed by the Noticee no. 1 is compared with the total number of trades executed in the scrip of BGIL on the day of its listing, the same comes to only 0.128 %. If we further analyse the 42 self-trades of Noticee no.1 involving 29924 shares executed through the same terminal, vis-à-vis the total number of trades and total quantity of BGIL shares executed on the day of listing on BSE & NSE, it comes to meagre 0.005 % and 0.033 %, respectively. Thus, the aforesaid analysis reinforces my earlier observations that the quantum of self-trades executed by the Noticee no.1 are meagre in comparison of high volume of trades that happened in the scrip of BGIL on its listing day and accordingly it do not raise suspicion of an intentional trading behaviour to create artificial volume in BGIL scrip on its listing day. In this context the observation of Hon'ble SAT in *Smt. Krupa Sanjay Soni v. SEBI (Date of Decision*- Jan 09, 2014) is relevant, wherein Hon'ble SAT held that "*a few instances of self-trades in themselves would not, ipso facto, amount to an objectionable trades".*

18. As noted above that the Noticee no.1 is into arbitrage trading and deals in several scrips on a daily basis. The Noticee has submitted that in the course of these arbitrage transactions, it had dealt in more than 200 scrips on BSE and 250 scrips at NSE and had generated a total trading turnover of ₹ 162.42 crores on a given day. It has also been submitted that Noticee no.1 had traded in 23 other scrips on their respective day of listing and its trading volume on the day of listing was as high as up to ₹ 43.86 crores. To carry out his arbitrage business as jobbers, Noticee no.1 has employed several persons who were technically expert or possessed expertise in arbitrage trading and were operating through 39 terminals on behalf of Noticee no. 1. It has also been submitted that the instructions were given by these experts to the dealers operating at different terminals for taking arbitrage positions in different scrips including the scrip of BGIL and in this process, matching of position between one group of dealers with another group of dealers cannot be ruled out, more particularly, considering the precise time fraction within which buy-sale orders are placed while doing jobbing transactions.

19. Further, the Noticee no.2 has submitted that it has been in the business of stock broking for around two decades and the Noticee no.1 has been its client since 2002. The Noticee no.2 states that it has been executing trades on the instruction of its clients and accordingly, the arbitrage team of AKG Securities used to instruct for sale and purchase of

various scrips including BGIL scrip during the business hours of the day. Transactions were executed into their system through different dealers placing orders as per the instructions of clients and in the instant case, orders in BGIL scrip were executed under instructions from different dealers of Noticee no.1, hence, Noticee no. 2 cannot be made liable for complying with the instructions received from its client, i.e., AKG Securities (Noticee no.1).

20. It has also been submitted that Noticee no. 2 has more than 182 offices across India providing broking services to more than 35000 clients and its client, i.e., Noticee no.1 being in business of buying and selling of shares as jobbers, carried out transactions in several scrips on routine basis and on any given day, the volume of transactions carried out by Noticee no.1 exceeded ₹ 100 crore. Therefore, in the course of dealing in such large trading volume, no abnormality could be noticed by Noticee no. 2 for self-trades involving 109334 shares, more so when trading for only 29924 shares were found to have been executed from the same terminal in 42 trades. Thus, no fault can be fastened on Noticee no.2 for allegedly non-complying with the Code of Conduct prescribed under the Stock Broker Regulations.

21. It has been further submitted by Noticee no.2 that the charges levelled against it for allegedly aiding and abetting the Noticee no.1 in execution of self- trades, are not backed any evidence. It is submitted by it that even if SEBI finds Noticee no.1 guilty for executing self-trades, Noticee no. 2 should not be held liable for the same merely for acting as the stock broker for its client. In this regard, Noticee no.2 has placed reliance on the finding recorded by Hon'ble Supreme Court of India in the matter of *SEBI vs Rakhi Trading Private Limited, (supra)* wherein the Hon'ble Court while appreciating the role and accountability of a stock broker to the trades executed on behalf of client have held as under:

> "*44 As far as brokers are concerned, we are of the view that there is hardly any evidence on their involvement so as to proceed against them for violation of Regulations 7A of the Brokers Regulations and PFUTP Regulations. Merely because a broker facilitated a transaction, it cannot be said that there is violation of the Regulation. SEBI has not provided any material to suggest negligence or connivance on the part of the brokers……."*

22. Admittedly, the provisions governing PFUTP Regulations prescribe that dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud which may include entering into a transaction in securities without intention of performing it

or without intention of change of ownership of such security. Since self-trades do not result in change in beneficial ownership, the same can come within the sweep of PFUTP Regulations. However, mere occurrence of self-trades need not be considered per se illegal in the absence of any other corroborative evidence to prove manipulation of volume or price of the scrip or intent to defraud someone as is generally seen in cases of synchronized trades. Therefore, in the matters of self-trades, an assessment has to be made as to whether the alleged trades were intentional or unintentional in nature on the basis of supporting evidence, and the market manipulation caused by indulging in self-trades should be clearly brought out before treating such trades as liable for action under PFUTP Regulations. In this respect, I note that there is no allegation of price manipulations in the BGIL scrip against the Noticees. Noticee no.1 has been charged for having executed self- trades leading to creation of artificial volume and Noticee no.2 has been charged for abetting Noticee no.1 in creation of artificial volume through execution of self -trades. In this regard, from the factual analysis of the total quantum of self-trades executed by the Noticee no. 1 as against the total volume of BGIL scrip traded on BSE & NSE on the day of its listing as depicted in the preceding paras, the self-trades executed by the Noticee no. 1 appear to be too insignificant to have any adverse influence on the trading in more than 8.83 crores shares of BGIL on the day the said scrip opened for trading. Therefore, the allegations against the Noticee no.1 of indulging in self-trades leading to artificial volumes in BGIL scrip do not appear to be substantiated by any evidence, more so when the normal market driven volume in the scrip was more than 8.83 crore shares, which itself was too huge to be further artificially inflated by injecting such small quantity. It is relevant here to note that SEBI through its Policy on self-trades had decided to re-consider the matter and the instant proceedings have been remanded for considering the facts afresh in terms of the norms laid down under the policy on self-trades. Under the said Policy, intention becomes *sine qua non* for establishing manipulation in case of self-trades and accidental/unintentional self-trades are not to be covered under definition of 'fraud' to be proceeded under the PFUTP Regulations. The Noticees have also submitted and placed reliance on a number of decision of Hon'ble SAT, Whole Time Members and Adjudicating Officers of SEBI wherein, mere self- trades have not been found to be sufficient enough to establish the charges levelled under PFUTP Regulations, unless there are other evidences implicitly or explicitly indicating the intention on the part of the Noticees to indulge in self-trades. The Noticees have also submitted that it is held by Hon'ble SAT that only manipulative 'self-trades' are punishable under SEBI Act and instances of few self- trades would not be *suo-moto* objectionable.

23. I have noted earlier that in the instant proceedings, there is no evidence available on record or brought before me to establish that the alleged self-trades were manipulative or executed with an intent to defraud the market. The charge of creation of artificial volume in the scrip of BGIL has been levelled merely on the basis of self- trades executed by the Noticee no.1 in the scrip of BGIL on the day of listing. The quantity of self-trades executed by Noticee no.1 in the scrip of BGIL in comparison to the total quantity of shares traded by the Noticee no.1 in the scrip and upon further comparison of the same with the total volume of BGIL shares traded on that day, it is found that the same are too insignificant to disturb the market mechanism or to mislead the investors of securities market in the scrip of BGIL. I also note that the allegations made under the SCN are not clear as to how such an insignificant volume of self-trades would have created adverse impact on the securities market.

24. Therefore, considering the nature of arbitrage business of the Noticee no.1, the pattern of orders placed by it while executing its jobbing transactions, absence of any allegation regarding impact on the price of the scrip, absence of any connection with the company or its promoter/director, absence of any allegation of price manipulations in the SCN, the high liquidity in the scrip on the day of listing, coupled with SEBI's internal policy on self-trade so as to distinguish between intentional and accidental self-trades, it would be difficult to conclude that the impugned self-trades of the Noticee no.1 were executed intentionally. The facts and circumstances in fact indicate the probability that the trades were executed accidentally by the dealers of the Noticee no.1 in the course of their arbitrage transactions in the scrip of BGIL on the said day. Hence, in view of the absence of countervailing circumstances indicating that the trades were motivated by any intention, I am inclined to conclude that the impugned self-trades are accidental self-trades. Accordingly, in the absence of anything to the contrary, in my view, Noticees merit benefit of doubt in respect of the allegations levelled in the SCN.

25. I, further, note that the second allegation made against the Noticee no.2 in the SCN related to violation of the Code of Conduct of Stock Broker Regulations, is presumably based upon the alleged charge of execution of self-trades and failure of the Noticee no.2 in exercising due skill and care which allegedly resulted into violation of the code of conduct prescribed for stock brokers. In this respect, I note that since the material available on record is not sufficient

to establish that the said self-trades were manipulative in nature or have created a false or misleading appearance of trading in the securities market or have been executed for manipulating the price or volume of the scrip, there should not be any reason to draw any adverse inference with regard to allegation of violation of Code of Conduct.

26. It has already been stated above that the instant proceedings have been remanded for re-consideration of self-trades executed by the Noticee in the backdrop of the policy on self-trade dated May 16, 2017. Thus, based on my aforesaid findings and observations recorded above qua issue no.1, the consideration and adjudication for the issue no. 2 and consequently for issue no.3 also are not warranted.

27. In view of the aforesaid facts and circumstances of the case and my observations in the preceding paragraphs and after taking into account the policy on self-trade dated May 16, 2017, I am inclined to conclude that the allegation of violation of the provisions of SEBI Act and PFUTP Regulations by the Noticees as well as allegation of violation of Code of Conduct by Noticee no.2 are not established. Accordingly, I find no reason to interfere with orders dated April 30, 2014 passed by Adjudicating Officer in the matter and dispose of the proceedings against the Noticee no. 1 & Noticee no. 2 without any modification in the orders dated April 30, 2014 passed by AO.

-Sd-

S.K. MOHANTY

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA

DATE: July 24, 2019

PLACE: MUMBAI