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	Chandarana Intermediaries Brokers Private Limited.	Bharatiya Global Infomedia Limited	AACCC4258K
2	Marwadi Shares and Finance Limited.	Bharatiya Global Infomedia Limited	AABCM5192K

(Hereinafter collectively referred to as "Noticees")

Background

1. Securities and Exchange Board of India (hereinafter referred to as **"SEBI"**) had conducted an investigation into the affairs pertaining to the Initial Public Offer (herein after referred to as **"IPO")** of Bharatiya Global Infomedia Limited (hereinafter referred to as "the Company" or **"BGIL)** and the trading in the scrip on the stock exchanges on the listing day, i.e., July 28, 2011. During the investigation, SEBI *inter alia* noticed that Chandarana Intermediaries Brokers Private Limited (hereinafter referred to as **"Chandarana/Noticee no. 1")** had traded through SEBI registered stock broker Marwadi Shares and Finance Limited (hereinafter referred to as **"Marwadi/ Noticee no. 2")** in the scrip of BGIL on the first day of trading (listing day). It was alleged that Chandrana executed fictitious trades by way of self-trades through Marwadi for a total quantity of 1,89,459 shares on National Stock Exchange of India Limited (hereinafter referred to as **"NSE")** and the Bombay Stock Exchange Limited (hereinafter referred to as **"BSE")**, and thereby created artificial volumes in the scrip of BGIL. Further, Chandrana executed 24 self-trades on BSE and 169 self-trades on NSE through stock broker Marwadi and the orders for total quantity of shares placed from the same terminal were 22,652 on BSE and NSE. It has been alleged that quantity of 1,89,459 shares traded through self-trades created artificial volumes and misleading appearance of trading in the scrip of BGIL

on the day of listing of the scrip of BGIL. Further, Marwardi was alleged to have aided and abetted the Noticee no.1 in execution of the alleged self-trades.

2. The nature of the above stated trades of Chandrana through Marwadi were alleged to be artificial and the Noticees were 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, Marwadi, being a stock broker and registered intermediary was also 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 (**"Stock Broker Regulations")** read with regulation 7 thereof.

3. In view of the alleged violations, Adjudication Proceedings under Chapter VIA of the SEBI Act was initiated against the Noticee no. 1 and the Noticee no. 2 (hereinafter collectively referred as "**Noticees"**) and Show Cause Notices dated May 06, 2013 were issued. The Adjudicating Officer (hereinafter referred to as **"AO")**, having conducted the inquiry, found the two Noticees not guilty of the violations alleged and vide his orders dated April 30, 2014 **(**hereinafter referred to as **"the Adjudication Order")**, disposed of the proceedings by recording that violation of provisions of law alleged against the Noticees were not established. The AO has disposed of the proceedings *inter-alia* on the following grounds:

- That Marwadi executed trades for Chandrana, its registered sub-broker, which was primarily into arbitrage trading by engaging almost 76 terminals between BSE and NSE.
- That during the financial year ended on March 31, 2012, Chandrana had traded in 911 scrips through 1,35,39,445 trades involving 88,19,94,351 shares on BSE and in 891 scrips through 1,02,53,950 trades involving 92,70,74,442 shares.
- That on the day of listing of scrip of BGIL, Chandrana had traded in 415 other scrips on NSE and on BSE through 1,55,715 trades, for total volume of 1,50,37,535 shares.
- That the Noticee no.1 is in the profession of arbitrage trading and the trading pattern of the Noticee in the scrip of BGIL further substantiates the nature of arbitrage trading.
- That the volume traded in the scrip of BGIL on the day of listing on both the exchanges was as high as 8,83,04,275 shares and further out of the total volumes traded, Noticee

no. 2 had executed orders in the capacity of a broker for Chandrana, for a total quantity of 85,13,772 shares.

- That out of the total quantity of 85,13,772 shares of BGIL traded by Marwadi for Chandrana, it has been alleged in the SCN that trades carried out for 22,652 shares were in the nature of self-trades which were found to have been executed using the same terminal. These self-trades constitute 0.27% of total volume traded by Chandrana in the scrip of BGIL on July 28, 2011 and 0.03% of the total volume of shares of BGIL traded on both the exchanges, which cannot be said to have adversely impacted in creating artificial volumes in the scrip of BGIL.
- That from the total volume of 8,83,04,275 shares traded in the scrip of BGIL on both the exchanges on the day of listing, a total number of 1,89,459 shares traded by Noticee no. 1 were in the nature of self-trades, and the same constitutes only 0.21% of the total volumes in the scrip of BGIL on its listing day on BSE and NSE.
- That self-trades were executed due to matching of orders placed from different terminals used by different dealers of the Noticee No.1.
- That the quantities of shares which were getting matched, were of insignificant quantity.
- That there is no allegation of indulging in price manipulation against the Noticee no. 1.
- That evidence available on record is insufficient to hold that the trades executed by Noticee no. 1 through Noticee no. 2 were fictitious in nature and contributed to creation of artificial volumes in the scrip in as much as the contribution of the self-trades to the market volume was only 0.21% of the total volumes traded on the day of listing of BGIL.

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, an SCN dated July 11, 2014 (hereinafter referred to as **"SCN")** was 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 of the 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 the alleged violation 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 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, while finding the Noticees guilty of the charges levelled, the Competent Authority, vide order dated October 13, 2015 has imposed a monetary penalty of ₹5 lakh each on above stated two Noticees. While imposing the aforesaid penalty, *inter alia* the following observations were made: (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 ids 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-trade quantity of the Noticee no.1 as against his total traded volume on BSE and NSE were 4.45% in the scrip of BGIL; and (e) 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, have 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, the Noticee no. 1 and the Noticee no. 2 have been provided with an opportunity of personal hearing. Both the Noticees have filed reply dated February 05, 2019 and were represented through

authorized representatives who made submissions on the line with their replies dated July 30, 2013 and November 18, 2013 filed during the proceedings before the AO and sought further time to file written submission. The Noticees have filed written submissions post hearing vide letter dated March 25, 2019. In their written replies, the Noticees have prayed for exoneration from the charges levelled. As per their submissions, no case is made out to proceed against them, *inter-alia* on the following grounds:

(A) Submissions on behalf of Chandrana (Noticee no. 1):

i. It had no connection with BGIL, its promoter- director in any manner whatsoever.

ii. Considering the liquidity and volumes of trades executed on the day of listing in the scrip of BGIL, self-trades executed by it is miniscule and cannot be held to be potentially enough to cause artificial volume.

iii. It is engaged in jobbing transactions and trades were executed through different dealers using different terminals/ids, therefore, in highly liquid scrip, execution of self-trades were not intentional.

iv. Matching of trades also took place due to the system settlement of the pending orders and such accidental matching of trades on behalf of the Noticee no.1, i.e., self-trades constitute only 0.27% of the total volumes of shares traded by it and only 0.03 % of the total volumes of shares traded in the scrip of BGIL on both the exchanges, on the day of its listing. 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.

v. Volatility in the scrip of BGIL on its day of listing provided congenial opportunities to jobbers to trade in large volumes 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.

vi. The Noticee no.1 had dealt in 911 scrips through 1,35,39,445 trades involving 88,19,94,351 shares on BSE and in 891 scrips through 1,02,53,950 trades involving 92,70,74,442 shares on the platform of NSE during the financial year 2011-12.

vii. On the date of listing of BGIL scrip, it had traded in 208 scrips on BSE and in 207 scrips on NSE, thus, the Noticee no.1 had in total traded in 415 scrips through a total number of 1,55,715 trades involving 1,50,37,535 shares, which demonstrates the arbitrage nature of the trading activities carried out by the Noticee no. 1.

viii. 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.

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

(B) **Submissions on behalf of Marwardi (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 its defence.

(a) The Noticee no. 2 is engaged in the business of stock broking activities for several years and has been obligated to execute trades on behalf of its clients in terms of the instructions received.

(b) The Noticee no. 2 had traded in a total of 1410 scrips on BSE and NSE on behalf of 4608 clients through 2,39,563 trades involving 2,32,76,507 shares on the day of listing of the scrip of BGIL. Considering the total numbers of shares traded on behalf of its clients, the alleged self-trades executed by Noticee no. 2 on behalf of Noticee no. 1 was very meagre so as to be capable of creating artificial volume in the scrip of BGIL.

(c) It had executed 85,624 trades involving 1,09,71,368 shares on behalf of its 710 client. Confronting with the total numbers of trades executed by Noticee no. 1 in the scrip of BGIL and the alleged self-trades of 22652 shares executed in 193 trades on the day of listing of BGIL scrip, the quantity of shares resulted in self-trades were insignificant to be held as capable of contributing in creating artificial volume in the scrip of BGIL.

(d) 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.

(e) 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 finding in the above mentioned matter 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 is aiding and abetting its client.

Issues for consideration

8. 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 abetting 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?*

9. 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 proceed to determine the issues and answer the questions framed at paragraph 8 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?*

10. 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 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 the scrip of BGIL is provided as below:

Table-1

Name of the exchange	Self-trade qty.	Total traded qty. of the client	% of self-trade to total traded quantity of the Noticee no. 1	Total traded qty. on the exchange	% of self-trade to total traded qty. on exchange
BSE	96, 193	42, 26, 268	2.27	4,07,25,468	0.23
NSE	93, 266	42, 87, 504	2.17	4,75,78,807	0.19
Total	189459	85,13,772	2.25	8,83,04,275	0.21

11. It is not in dispute that self-trades have been executed in the scrip for a total quantity of 1,89,459 shares by Noticee no. 1. It is noted that out of total quantity of 1,89,459 shares, traded through self-trades, Noticee no.1 had executed 96,193 shares on the platform of BSE and 96,266 shares were executed on the platform of NSE. It is also noted that out of the total 40,133 trades executed by the Noticee no. 1 on BSE, 24 trades for a total quantity of 3328 shares were executed using the same terminal and, out of the total 27495 trades executed by Noticee no.1 on the platform of NSE, 169 trades for a total quantity of 19324 shares were executed using the same terminal. Thus, in fact the Noticee no.1 has in total through 193 self-trades, traded in for a total quantity of 22652 shares in the scrip of BGIL using a single terminal on both the exchanges. It is to be noted that though, the Noticee no.1 has not disputed the execution of the aforesaid self- trades, it has been contended that the aforesaid self-trades were purely accidental and executed in the ordinary course of its business and executed without any intent to manipulate the 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-trade 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.

12. Having noted that the Noticee No.1 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 have 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*."

13. Considering the above stated policy of SEBI and observation of the Hon'ble SAT, I proceed to examine from the material available on record whether the alleged self-trades were executed intentionally or they 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 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 in the scrip of BGIL. Thus, in total

8.83 Crore (approx.) shares of BGIL were traded on BSE & NSE and out of total shares traded on that day only 6.5% of shares were traded on delivery based. It is also noted that Noticee no. 1 had in total, traded for 85,13,722 shares through 68,628 trades on both the exchanges. Further, out of 85,13,722 shares traded, SCN alleges that 1,89,459 shares resulted in self-trades. In this regard, it is further noted that out of 1, 89,459 shares resulted in self-trades, only 22652 shares were executed using the same terminal.

14. From the records as available before me, I find that there is no allegation in the SCN or finding in the investigation suggesting that Noticee no.1 was connected with the Company BGIL or its promoters/director 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 through 7,12,157 trades, and out of that 4,07,25,468 shares were traded on BSE in 3,13,260 trades and 4,75,78,807 shares were traded on NSE in 3,98,897 trades. Considering the total quantity of shares traded in the scrip of BGIL on the day of listing, the quantity of shares traded by the Noticee no.1 in BGIL does not appear to be very significant.

15. The instant proceedings has been remanded by Hon'ble SAT for re-consideration in the backdrop of the stated policy of SEBI on self- trade, hence, the materials on record 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 the facts and findings as available in the records. 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 85,13,772, which is 9.6 % of the total shares traded on both the exchanges on the day of listing of the scrip of BGIL. I further 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 67628 trades which constitute 9.6 % 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 listing, the same comes to only 0.027 %. On further analysis, it is noted that the 193 self-trades of Noticee no.1 involving 22652 shares got executed through the same terminal, vis-à-vis total number of trades and total quantity of BGIL shares executed on the day of listing

on BSE & NSE, it comes to meagre 0.027 % and 0.025 % respectively. Thus, the aforesaid analysis reinforces my earlier observations that the quantum of self-trades executed by the Noticee no.1 being so meagre in comparison of high volume of trades that happened in the scrip of BGIL on its listing day, don't 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 (DOD*- 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".*

16. 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 total 911 scrips through 1,35,39,445 trades involving 88,19,94,351 shares on the platform of BSE and in 891 scrips through 1,02,53,950 trades for 92,70,74,442 shares on the platform of NSE during the financial year 2011-12. Further, the Noticee no.1 had traded in 415 scrips with 1,55,715 trades involving 1,50, 37,535 shares on the day of listing. In this regard, it is noted that Noticee no. 1 had traded in 208 scrips on BSE through 89246 trades involving 72,73,773 shares and 207 scrips on NSE through 66,469 trades involving 77,63,762 shares. The aforesaid trading pattern of the Noticee no. 1 advances its submission that the trades were arbitrage in nature. It is also noted from the submission advanced by the Noticee no.1 that in order to carry out his arbitrage business of executing transaction as jobbers, Noticee no.1 has employed several person who were technically expert or possessed expertise in arbitrage trading and were operating through 76 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 taken by 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.

17. From the submissions as advanced by Noticee no.1, it is also noted that the Noticee no. 1 has been in the business of sub-broking for a long time and carried out trades through Noticee no. 2. Noticee no.1 had traded in several other scrips and the volume of trades executed in the scrip of BGIL on the day of listing on both the exchanges were high. Further, out of the total volumes of shares traded in the scrip of BGIL, trades executed by Noticee no.1 through Noticee

no. 2 in the scrip of BGIL were for a total quantity of 85,13,772 shares. From the allegations made in the SCN, it is noted that self-trades carried out for the quantity of 22,652 shares were executed from the same terminals, which constitutes for meagre 0.27% of the total volume traded by Noticee no.1 on July 28, 2011 in the scrip of BGIL. Further, from the total quantity of shares, i.e., 8,83,04,275 traded in the scrip of BGIL on both the exchanges on the day of listing, only 1,89,459 shares traded by the Noticee were alleged in the nature of self-trades. As evident from the record that volatility in the scrip of BGIL was very high on its day of listing. Considering the high volume of trades executed in the scrip of BGIL, the alleged self-trades executed by the Noticee no.1 in the scrip indeed do not constitute a very significant portion of the total traded volume in the scrip of BGIL. From the record as submitted by the Noticee no.1, I note that the volume of trades took place on both the exchanges on the day of listing in the scrip of BGIL are as under:

Total Trades executed on the respective exchange in the scrip of BGIL on the day of listing.

BGIL MIS (BSE CM)			**BGIL MIS (NSE CM)**		
	Total	Avg. Per Second (Total seconds: 22500)		Total	Avg. Per Second (Total seconds: 22500)
No of Trades	3,13,260	13.92	No of Trades	398897	17.73
Traded Qty	4,07,25,468	1810.02	Traded Qty	4,75,78,807	2114.61

Total Trades executed by the Noticee no. 1 in the scrip of BGIL on the day of listing.

BGIL MIS (BSE CM)			**BGIL MIS (NSE CM)**		
	Total	Avg. Per Second (Total seconds: 22500)		Total	Avg. Per Second (Total seconds: 22500)
No of Trades	40,133	1.78	No of Trades	27,495	1.22
Traded Qty	42,26,268	187.83	Traded Qty	42,87,504	190.56

18. Based on the above, on comparing the volume of trades executed on the date of listing with the volume of activity and quantity of trades executed by Noticee no. 1, following are observed:

i. 14 trades per second were concluded on BSE whereas 18 trades were concluded on the platform of NSE. Thus, total 32 trades were stood concluded per second in the scrip of BGIL on the day of listing.

ii. Average quantity of shares traded per second were 1810 on BSE and 2115 on NSE, meaning thereby more than 3900 shares of BGIL were traded per second on both the exchanges on the day of its listing. Whereas the traded quantity of Noticee no. 1 was 188 shares on BSE and 190 shares on NSE.

iii. Against the availability of 14 trades per second with corresponding 1800 shares on BSE, Noticee no.1 executed 2 trades per second for quantity of 188 shares and on NSE against the availability of 18 trades for 2115 shares, Noticee no.1 executed 1 trade per second for the quantity of 190 shares.

19. Upon analysis of the alleged self-trades executed by Noticee no.1, it is found that volume of self-trades executed by Noticee no.1 on comparison with the total quantity of shares traded in the scrip of BGIL on the day of listing, the trading quantity of 1,89,459 shares which resulted in self-trade cannot be held to be significant to have an adverse impact in the scrip of BGIL in the securities market, more particularly, considering the fact that the sole allegation made on the Noticee no.1 is indulging in self-trade. It is further found that the alleged self-trades constitutes for 0.21% of total volumes shares executed in the scrip of BGIL on the day, it got listed on the platform of NSE and execution of majority of the alleged trades were attributable to the jobbing transaction of the Noticee no. 1 and matching of trades was primarily due to trades got executed from different terminals by different dealers of the Noticee no.1.

20. Further, the Noticee no. 2 has submitted that it has been in the business of stock broking for several years and Noticee no.1 is one of his clients. Noticee no. 2 has stated that it has been executing trades on the instruction of its clients and accordingly, the arbitrage team of the Noticee no.1 used to instruct for sale and purchase in various scrips including BGIL scrip during the business hours of the day. Transactions have been executed into their system through different dealers placing order as per the instruction of clients and in the instant case, orders in BGIL scrip were executed under instructions from the different dealers of the Noticee no.1, hence, Noticee no. 2 cannot be made liable for complying with the instructions received from its client, i.e., Chandarana (Noticee no. 1).

21. The Noticee no. 2 has further submitted that it had traded in a total of 1410 scrips on BSE and NSE on behalf of its 4,608 clients through 2,39,563 trades constituting trading of 2,32,76,507 shares on July 28, 2011. It has also submitted that besides BGIL, Noticee no. 2 had executed trades on behalf of its other clients in several other scrips as well. As noted above

that the total volume of shares of BGIL traded on July 28, 2011 were 8,83,04,275 and considering the huge volumes prevailed in the scrip of BGIL on its listing day, trading in 3,328 shares on BSE and 19,324 shares on NSE aggregating to 22,652 shares for and on behalf of Noticee no. 1, which have found to be executed from the same terminal/id works out to be meagre 0.025% of the total volume of shares traded in the scrip of BGIL on the listing day. Based on the findings observed above, I further find that even out of total 85, 13,772 shares traded by Noticee no. 1 in BGIL scrip on July 28, 2011, only 22,652 shares which got executed from same terminal, constituting only 0.27% of the total volume of shares traded on that day by the Noticee no. 1. I also note that Noticee no.1 had executed self-trades for a total quantity of 1,89,459 shares including matching of trades from different terminals and find that on comparing the aforesaid self-trade quantity executed by the Noticee no.1 with the total quantity of shares traded in the scrip of BGIL on the day of listing, which was 8,83,04,275 shares, the quantity of shares traded under the alleged self-trades category works out to be meagre 0.21% of total volumes of shares traded in the scrip of BGIL by the Noticee no.1 on the listing day on both the exchanges.

22. The Noticee no.2 has further submitted that the total volume of shares executed in BGIL on BSE and NSE through its membership was 1,09,71,368 shares and same were executed for and on behalf of 710 clients through 85,624 trades. Further, against the volume of shares as noted above, the trading volume of the Noticee no.1 on BSE was 42, 26,268 shares constituting 10.38% of the total volumes on BSE executed through 40,133 trades constituting 12.81% of total trades on BSE and the quantum of self- trades alleged to have been executed from the same terminal on the platform of BSE was only 3328 shares through 24 trades and 19,324 shares on the platform of NSE through 169 trades in the scrip of BGIL were insignificant. From the submissions advanced by the Noticee no. 2 and the material available on record before me, I note that the Noticee no.2 has been operating as a SEBI registered stock broker and providing broking services to thousands of its clients including the Noticee no.1, which is in business of buying and selling of shares as jobbers, carried out transaction in several scrips on routine basis on any given day. Therefore, in the course of dealing in such large trading volume, no abnormality could be noticed against the Noticee no.2 for the impugned self-trades involving 189459 shares, more so when trading in only 22652 shares were found to have been executed from the same terminal in 193 trades. Thus, no fault can be fastened on the Noticee no. 2 for allegedly non complying with the Code of Conduct prescribed under the Stock Broker Regulations, as well.

23. It is 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 clients. 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:

> "*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……..".*

24. 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.

25. 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 of having executed self- trades leading to creation of artificial volume and Noticee no.2 has been charged for allegedly aiding and

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 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 into self-trades causing misleading appearances and created artificial volume 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 such miniscule trades. It is relevant here to note that SEBI through its stated 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. I note that under the stated Policy on self-trades, 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.

26. Both 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.

27. 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 script 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.

28. 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 executed by Noticee no.2 under the instruction and on behalf of the Noticee no.1 were executed intentionally. The facts and circumstances in fact indicate the probability for the trades to be 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.

29. I, further, note that the second allegation made against the Noticee no.2 in the SCN, i.e., 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.

30. 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.

31. In view of the above 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 allegations of violation of the provisions of SEBI Act, PFUTP Regulations and the Code of Conduct under the Stock Broker Regulations by the Noticee are not established. Accordingly, I find no reason to interfere with the order dated April 30, 2014 passed by Adjudicating Officer in the matter and dispose of the proceedings against the Noticees no. 1 & Noticee No. 2 without any modification in the order dated April 30, 2014 passed by AO.

-Sd-

S.K. MOHANTY

DATE: July 24, 2019 **WHOLE TIME MEMBER**

PLACE: MUMBAI **SECURITIES AND EXCHANGE BOARD OF INDIA**