

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
(ADJUDICATION ORDER NO: AO/SBM/EAD-3/ 143/2018)

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

In respect of:

Shri Shyam Sunder Gupta (PAN- AIIPG 6981A)

*BU 209, First Floor,
Pitampura, Delhi-110034*

In the matter of

Vipul Ltd.

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**'), on receiving a reference from the Financial Intelligence Unit regarding trading done by Shri Shyam Sunder Gupta (hereinafter referred to as "**Noticee**") in the scrip of Vipul Ltd. (hereinafter referred to as "**Company**")/ "**Vipul**"), had conducted investigation into his transactions in the scrip of Vipul for the period October 06, 2008 to January 22, 2009 (hereinafter referred to as "**Period I / IP-1**") and October 07, 2009 to January 11, 2010 (hereinafter referred to as "**Period II / IP-2**"). During the course of investigation, it was observed that the Noticee had indulged in large number of self-trades in the scrip of Vipul during the above referred investigation periods. The scrip of Vipul was listed on the Bombay Stock Exchange (BSE) during the relevant period. During IP 1 , the scrip price of Vipul declined from Rs 69 (as on October 6, 2008) to close at Rs 28.10 (on

January 22,2009) and during IP 2, the price of the scrip increased from Rs 71.50 (as on October 7, 2009) to register a high of Rs 80.95 as on October 26, 2009 and closed at Rs 69.55 (as on January 11, 2010). In light of the above, it was alleged that Noticee, by repeatedly indulging in self-trades in the scrip of Vipul during IP-1 and IP-2, had created a false and misleading appearance of trading in the scrip without any change in the beneficial ownership of security and, thereby, violated the provisions of Regulations 3(a), (b), (c), (d) and Regulations 4(1), 4(2)(a) and 4(2) (g) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as “**PFUTP Regulations**”) read with Section 12A(a), (b) and (c) of the SEBI Act, 1992 (hereinafter referred to as “**SEBI Act**”). In view of the alleged violations of the aforementioned provisions of the SEBI Act and PFUTP Regulations by the Noticee, it is alleged that the Noticee was liable for penalty under the provisions of section 15HA of the SEBI Act.

APPOINTMENT OF ADJUDICATING OFFICER

2. Shri D. Ravikumar was appointed as Adjudicating Officer, vide Order dated March 25, 2014 under Section 19 read with Section 15-I(1) of the SEBI Act read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as ‘**Adjudication Rules**’) to inquire into and adjudge under the provisions of Section 15HA of the SEBI Act for the alleged violations of the provisions of PFUTP Regulations read with the SEBI Act by the Noticee. Consequent to the transfer of Shri D. Ravikumar, I have been appointed as the Adjudicating Officer in the matter vide an order dated June 22, 2015.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING:

3. Show Cause Notice No. A&E/DRK-AKS/21692/2014 dated July 23, 2014 (hereinafter referred to as “**SCN**”) was issued to the Noticee under Rule 4(1) of the Adjudication Rules, to show cause as to why an inquiry should not be held against him and why penalty, if any, should not be imposed on him

under the provisions of Section 15HA of the SEBI Act for the aforementioned alleged violation of the relevant provisions of the PFUTP Regulations read with SEBI Act, as mentioned in the SCN.

4. The SCN issued to the Noticee, *interalia*, mentioned the following:

a) *During IP-1, the Noticee executed 32 self-trades for 44178 shares which accounted for 35.76% and 8.11% of his total gross buy volume and gross sell volume respectively. These self trades contributed between 1.36% to 93.55% to day's market volume. Further, these self trades had a net positive impact of Rs. 2.60 on the last traded price although the price of the scrip decreased by Rs. 41.40 during Period I. The details of all these self-trades executed by the Noticee are as below-*

Client Name	Buy Broker Name	Sell Broker Name	Self Traded Qty	No, of Self Trades	Sum of LTP diff. (Rs.)	% of self trd qty to day's mkt vol.	% of Seif Trd Qty. to Clnts Buy Vol.	% of Self Trd Qty. to Clnts Sell Vol.
Shyam Gupta	Shri Parasram	Indiabulls Sec.	2598	2	1.40	15.01% to 68.61%	2.10	0.48
Shyam Gupta	Indiabulls Sec.	Shri Parasram	9860	14	1.25	30.40%	7.98	1.81
Shyam Gupta	Shri Parasram	Kotak Sec.	16750	7	1.45	54.67% to 93.55%	13.56	3.08
Shyam Gupta	Kotak Sec.	Shri Parasram	269	1	0.00	1.36%	0.22	0.05
Shyam Gupta	Indiabulls Sec.	Kotak Sec.	4701	4	-0.65	14.49%	3.81	0.86
Shyam Gupta	Indiabulls Sec.	Arch Fin.	10000	4	-0.85	30.83%	8.09	1.84
TOTAL			44178	32	2.60		35.76	8.11

b) *Further, during IP-2, Noticee had bought and sold 5,09,384 shares and 4,35,397 shares respectively out of which 93,544 shares were traded in 110 self -trades which was 18.36% and 21.48% of Noticee's gross buy*

volume and gross sell volume respectively. These self trades contributed between 3.67 % to 38.97% to day's market volume. The details of all these self-trades executed by the Noticee during IP- 2 are as below-

Client	Buy Broker	Sell Broker	Self Trade Qty.	No. of Self Trades	Sum of LTP diff. ()	% of self trd qty. to day's mkt vol	% of Self Trd Qty. to Clnts Buy Vol	% of Self Trd Qty. to Clnts Sell Vol.
Shyam Gupta	Arch Finance Ltd.	Kotak Sec. Ltd.	30900	2	-0.15	30.73% to 38.97%	6.07	7.10
Shyam Gupta	SS Corp. Sec. Ltd.	Kotak Sec. Ltd.	62644	108	-1.55	3.67% to 34.64%	12.30	14.39
Total			93544	110	-1.70		18.36	21.48

c) *In view of the above it is alleged that the Noticee has executed self trades repeatedly in the scrip of Vipul during periods I and II which had created false and misleading appearance of trading in the scrip which has led to the violation of Sections 12A (a), (b) and (c) of the SEBI Act read with Regulations 3 (a), (b), (c) and (d), 4 (1), 4(2) (a), and (g) of PFUTP Regulations.*

5. The SCN dated July 23, 2014 was served on the Noticee through his stock broker viz. Arch Finance Ltd. on August 19, 2014 and the proof of service of the SCN is on record. Thereafter, the Noticee, vide his letter dated September 04, 2014, submitted his reply to the SCN. Briefly, the submissions made by the Noticee are as follows:

a) *It is respectfully submitted that the proceedings suffer from the vice of laches and same ought to be dropped on this ground alone. Allegations pertain to period 2008 i.e. around 6 years back. There is nothing on record to indicate the reason for the unexplained and unnatural delay, in initiating the proceedings which has also caused enormous prejudice to me. The inordinate delay in commencing the proceedings has also resulted in gross violation of principles of natural justice. Continuation of*

the proceedings at this distance of time, is therefore totally unwarranted and unjustified. Definitely after more than 6 years from the date of alleged violation the proceedings cannot be initiated. It is respectfully submitted that the impugned trades were executed way back in 2008. As on date I do not have any documents pertaining to the impugned trades to support my case and substantiate my submissions. I am severely handicapped in filing an effective reply in the matter. I had never visualized that after 8 years SEBI will initiate proceedings against me qua the said trades.

- b) Since the beginning of the year 2008, there were signs of possible global economic crisis and equity markets across the world were declining sharply anticipating this reversal of the cycle. In the Indian context too, during the same year, the benchmark index Sensex had plunged around 60% i.e. from its peak of 21,000 points in January 2008 to around 8,000 in October 2008. Almost all the stocks lost a significant part of their value by the end of the year beginning 2008, and the broader markets continue to remain under pressure on the back of volatile market conditions and tightening liquidity in the system due to the weak global cues amid recessionary fears in major economies.*
- c) Most of the investors in the market were unable to continue holding their investment positions as most of the brokers too either did not have the capacity to fund these investments/trades or were not willing to fund the investments/ trades of their client any further.*
- d) At the relevant time (i.e. 2008) I was also trading in the market in various scrips and I too had suffered huge losses in the market especially during this period. Since I could not meet the payment/margin obligations towards my outstanding, in some cases, my brokers started winding up my positions. The security / margin offered by me to the broker in the form of shares were losing their value due to constant fall in their prices. It is common knowledge that for the purposes of margin the Brokers*

accept shares of various companies from their clients depending upon their discretion and value assessment of shares of a particular company. At the relevant time I had parked shares of various companies including that of Vipul as margin with various brokers for the purposes of funding /getting exposure/ sustaining the positions. When a particular broker expressed reservations in accepting the shares of Vipul as margin, I had shifted my positions in Vipul to another broker who was willing to accept the shares of Vipul as margin and fund me against the said shares. It was in these circumstances, the impugned trades, which were admittedly widely scattered as opposed to being continuous on daily basis, have taken place.

e) *At that point of time, I was in a financially precarious position and I did not have adequate resources to meet the obligations. In fact, at the relevant time, I had defaulted in meeting my financial obligations and couple of cases were also initiated against me by Lenders in Courts etc. Subsequently, I had repaid the Lenders and settled and closed the matters. It is respectfully submitted that the predominant objective behind the execution of these trades was to shift the positions with those brokers, who were willing to fund my positions. The execution of the self trades was incidental and not with the intention/ objective to create any artificial volume in the scrip. Even the data and the findings of the Investigation Report will bear out the aforesaid. In this context following be specifically noted :*

- The impugned trades are widely scattered. It is not as if the trades have taken place frequently on continuous basis.*
- There is a pattern in trading which reinforces that I was shifting my positions. In the First Period, initially (i.e. 7.10.08, 10.10.08) some of the positions in the scrip of Vipul have been shifted by me from Kotak Securities Ltd to Shri Parasram Holdings Pvt Ltd. Subsequently, in January 2009, when Shri Parasram Holdings Pvt Ltd also started*

expressing reservations in accepting Vipul shares, the positions were shifted to Indiabulls Securities Ltd from both the aforesaid brokers. Similarly, in the Second Period, I had shifted my positions from Kotak Securities Ltd to SS Corporate Securities Ltd over multiple days.

- *There is no allegation in the Notice or in the Observations of the Investigation Report, that I had manipulated the price, either upwards or downwards in any manner.*
 - *Based on the analysis of the trading pattern , involving the impugned trades, Investigation observations specifically record that ;*
 - *I have no connection with other counterparties who have traded in the scrip during the relevant period.*
 - *No adverse inference can be drawn against me considering the number of synchronized trades and the contribution to LTP.*
 - *No adverse inference can be drawn against me as the counterparties to the trades were scattered and unconnected.*
 - *There was no pattern of circular trades / reversal of trades during the period.*
- f) *It may be appreciated that allegation of creating artificial volumes cannot be leveled in vacuum. There has to be some sequitur to it or objective behind it. In the absence of any charge of price manipulation, execution of synchronized trades, execution of circular/ reversal trades, linkages with the counter parties or persons trading in the scrip at the relevant time, linkages with the promoters of Vipul, trades having nexus with corporate announcements made by Vipul, making profits in any manner (monetarily or otherwise) by executing the impugned trades etc, charge of creating artificial volumes cannot sustain. Further it is nobody's case that the volumes in the scrip increased drastically as a result of the impugned trades. Record will bear out that both the price/volumes in the scrip have remained more or less in the same range, at all points of time*

i.e. pre the impugned periods, during the impugned periods and post the impugned periods.

- g) *Without prejudice to the aforesaid, it is respectfully submitted that the trading details annexed with the SCN pertaining to the allegations qua me suffers from several inconsistencies and is highly unreliable. The purported trading data, provided to me is half baked and lacks correct analysis. On the basis of the same, no adverse inference can be drawn against me as such half baked data would only give incorrect analysis and understanding of my trading pattern. Some of the instances of inconsistencies in the trading data relied upon is set out herein below:*
- ***October 07, 2008: As per the trade details, the buyer placed a buy order for 2000 shares at a price of Rs 62.55 at 10:15:56. Subsequently, the seller places the sell order for 10,000 shares at Rs 66 at 11:20:00. The trade is executed at 11:20:00 for 1021 shares at a price of Rs 62.55.***
 - (i) *How can the order be executed at Rs 62.55 when the seller has placed a limit order of Rs 66?*
 - (ii) *Assuming without admitting that trade was executed at Rs 62.55, then why only 1021 shares (partial quantity) were executed and not 2000 (full quantity)?*
 - ***January 01, 2009: As per the trade details, the seller placed a sell order for 250 shares at a price of Rs 40.45 at 11:04:59. Subsequently, the buyer places the buy order for 1000 shares at Rs 40.35 at 11:05:13. The trade is executed at 11:05:13 for 1000 shares at a price of Rs 40.35.***
 - (i) *How can the trade match when the buyer has placed his order at lower price than the seller?*
 - (ii) *How can there be a self trade of 1000 shares when the counterparty seller was only for 250 shares as per the trade details itself?*

- **October 23, 2009: As per the trade details, the buyer placed a buy order for 2000 shares at a price of Rs 73.4 at 13:21:24. Subsequently, the seller places the sell order for 500 shares at Rs 74 at 13:22:08. The trade is executed at 13:22:09 for 500 shares at a price of Rs 74.**
 - (i) *How can the order be executed at Rs 74 when the buyer has placed a limit order of Rs 73.4?*
 - (ii) *If these sell order was placed at 13:22:08, then why did the trade got executed at 13:22:09 if they were matching orders?*
 - **November 12, 2009: As per the trade details, the buyer placed a buy order for 100 shares at a price of Rs 58.75 at 14:09:52. Subsequently, the seller places the sell order for 800 shares at Rs 66.5 at 14:10:11. The trade is executed at 14:10:12 for 800 shares at a price of Rs 66.5.**
 - (i) *How can the order be executed at Rs 74 when the buyer has placed a limit order of Rs 58.75?*
 - (ii) *How can the trade be executed for 800 shares when the buyer has placed the buy order for only 100 shares. If the traded 800 shares belongs to some other buyer, how can these 800 shares be included in alleging the self trades of the Noticee.*
 - **November 20, 2009: As per the trade details, the buyer placed a buy order for 3000 shares at a price of Rs 60.1 at 14:18:53. Subsequently, the seller places the sell order for 1 share at Rs 67.5 at 14:19:34. The trade is executed at 14: 19:34 for 250 shares at a price of Rs 60.1.**
 - (i) *How can the trade take place when the seller has placed the sell order much higher than the existing buy price?*
 - (ii) *How can the trade take place for 250 shares when the seller has placed only 1 share for sale?*
- h) *Without prejudice to my submissions that the trading data (which is the solitary basis for leveling charges) cannot be relied upon and the*

proceedings need to be dropped on this ground alone, I submit the following for your consideration:

Parawise Reply

- i) With regard to observations in Para 1 of the Notice, it is submitted that the same is a matter of record, therefore, I have no comments to offer.*
- j) With regard to observations in Para 2 of the Notice, it is submitted that the same is a matter of record, therefore, I have no comments to offer.*
- k) With regard to observations in Paras 3, 4 & 5 of the Notice, pertaining to price and volume of the scrip is a matter of record, therefore, I have no comments to offer.*
- l) With regard to observations in Paras 6 & 7 of the Notice, it is submitted that the shares bought and sold by me are a matter of record. However, I am not aware of buy and sale of other entities/ persons as stated in the Table. I may point out that at the relevant time, I was trading in the scrip of the Company in the ordinary course of business de hors sinister intent or design. Merely because I was amongst the Top 10 Buy/ Sell clients, no adverse inferences can be drawn against me.*
- m) With regard to observations in Paras 8 & 9 of the Notice, it is submitted that I am not aware of the counter parties to my trades, as set out in the para. In so far as self trades are concerned, I submit that the same was as a result of shifting of positions by me from one broker to another in the circumstances as stated hereinbefore. The idea behind shifting was never to create artificial volumes but to shift the position. It may be noted that in majority of the trades counter parties were different persons in the market, wherein I had bought the shares in the ordinary course.*
- n) With regard to observations in Paras 10 & 11 of the Notice, it is submitted that the data pertaining to my trading is a matter of record. It may be noted that number of self trades is not 32 as alleged but far less. Same would be evident from the Order numbers, wherein one side single order has matched*

with multiple other side Orders. In any event it is not the number of trades, but the quantum involved in the trades, which is critical, since the charge is of creating volumes. Though at times, my volume as a %age of market volume may be high, but the same was as a result of genuine trading. Further, merely because the volumes in the market were low in the impugned days (resulting in my low quantity of share also resulting high volumes as a % age of market volume), I cannot be faulted with the same. Fact that there was no intention to create artificial volumes is also evident from widely scattered trading. Admittedly, there is no allegation of any price manipulation.

Period II: October 7,2009 to January 11,2010

- o) With regard to observations in Paras 12 & 13 of the Notice, it is submitted that the shares bought and sold by me are a matter of record. However, I am not aware of buy and sale of other entities/ persons as stated in the Table. I may point out that at the relevant time, I was trading in the scrip of the Company in the ordinary course of business de hors sinister intent or design. Merely because I was amongst the Top 10 Buy/ Sell clients, no adverse inferences can be drawn against me.*
- p) With regard to observations in Paras 14 & 15 of the Notice, it is submitted that I am not aware of the counter parties to my trades, as set out in the para. In so far as self trades are concerned, I submit that the same was result of shifting of positions by me from one broker to another consequent to shortage of margin. The idea behind shifting was never to create artificial volumes but to shift the position. It may be noted that in majority of the trades, counter parties were different persons in the market, wherein I had bought the shares in the ordinary course.*
- q) With regard With regard to observations in Paras 16 of the Notice, it is submitted that the data pertaining to my trading is a matter of record. It may be noted that number of self trades is not 110 as alleged but far less. Same would be evident from the Order numbers, wherein one side single order*

has matched with multiple other side Orders. In any event it is not the number of trades, but the quantum involved in the trades, which is critical, since the charge is of creating volumes. Though at times, my volume as a %age of market volume may be high, but the same was as a result of genuine trading. Further, merely because the volumes in the market were low in the impugned days (resulting in my low quantity of share also resulting high volumes as a % age of market volume), I cannot be faulted with the same. Fact that there was no intention to create artificial volumes is also evident from widely scattered trading. Admittedly, there is no allegation of any price manipulation.

- r) *With regard to observations in Para 17 of the Notice, it is denied that I have executed self trades repeatedly in the scrip of Vipul during periods I and II as alleged. It is denied that the alleged self trades had created false and misleading appearance of trading in the scrip as alleged. It is denied that I have violated the provisions of Sections 12A (a), (b) and (c) of the SEBI Act read with Regulations 3 (a), (b), (c) and (d), 4 (1), 4(2) (a), and (g) of PFUTP Regulations as alleged.*
- s) *With regard to the observations regarding imposition of monetary penalty on the Notice, it is submitted that in the facts of this case no penalty be imposed and a lenient view be taken. While considering my submissions, following factors be also taken into consideration :*
- *That the alleged violations are at the highest a technical, procedural and venial breach.*
 - *That the alleged violations are not deliberate and intentional and in contumacious disregard of provisions of law.*
 - *There is no allegation of any price manipulation etc.*
 - *That the alleged violations pertain to a very old period and the same have not caused any loss to any investor and have also not adversely affected the investors.*

- *That as result of alleged violations, I have not made any gain or gained any unfair advantage. The same has not been even alleged.*
 - *That I have a clean track record in terms of compliance. I have been trading in the securities market for a long time. Till date, my conduct has never been found to be violative of any of the provisions of SEBI Act or Regulations and no action has been taken against me by SEBI, save and except the matter under reference.*
 - *That, it is assured that I will continue to scrupulously abide by the provisions of the SEBI Act, Rules and Regulations.*
6. Thereafter, in the interest of natural justice and in terms of Rule 4(3) of the Adjudication Rules, opportunity of hearing was granted to the Noticee on September 11, 2014 vide letter dated August 20, 2014. Mr. Vinay Chauhan and Mr. Apurva Gupta, Advocates (Authorised Representatives – ARs) appeared on behalf of Noticee on the stipulated date of hearing i.e on September 11, 2014. The ARs made the following submissions on behalf of the Noticee-
- a) *The ARs reiterated the submissions made by the Noticee vide his letter dated September 04, 2014 and admitted that the trades alleged in the SCN did take place but those trades took place due to shifting of position from one stock broker to another.*
 - b) *The ARs further submitted that there were wide time differences between the alleged trades.*
 - c) *The ARs further submitted that the noticee had no intention to create artificial volume and impact the price of the scrip.*
 - d) *The ARs further submitted that the mitigating factors like price manipulation, execution of synchronized trades, execution of circular/reversal trades, linkages with the counter parties or persons trading in the scrip at the relevant time, linkages with the promoters of Vipul, trades having nexus with corporate announcements made by*

Vipul, making profits in any manner (monetarily or otherwise) by executing the impugned trades etc. are absent in the alleged trades.

7. Pursuant to my appointment as the Adjudicating Officer in the matter, vide letter dated July 02, 2015, the Noticee was provided with another opportunity to make additional submission / produce documents, if any, and also if the Noticee desired another opportunity of personal hearing in the said matter. I observe that the said letter dated July 2, 2015 was served on the Noticee and the postal confirmation in this regard is on record. I note that till date Noticee has not made any additional submissions nor indicated his desire for another opportunity of personal hearing in the matter. In view of the above, I am inclined to proceed further in the matter on the basis of facts/material on record.

CONSIDERATION OF ISSUES AND FINDINGS:

8. I have taken into consideration the facts and circumstances of the case, the material available on record and the submissions made by the Noticee (both oral and written) in the context of the proceedings. I observe that the allegation against the Noticee is that he had entered into a total of 142 self-trades for a total of 1,37,722 shares in the scrip of Vipul on BSE and, thereby, it was alleged that Noticee has created artificial volume in the scrip of Vipul. In view of the above, it is alleged that Noticee has violated the provisions of Sections 12A(a), (b) and (c) of the SEBI Act read with Regulations 3(a), (b), (c), (d), 4(1), 4(2) (a) and 4(2)(g) of PFUTP Regulations.
9. Before moving forward, the relevant extracts of the provisions of the SEBI Act and PFUTP Regulations allegedly violated by the Noticee and as mentioned in the SCN are reproduced as under-

SEBI Act

Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.

12A. *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 recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;*
- (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 recognised 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 recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;*

PFUTP Regulations

3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

- (a) buy, sell or otherwise deal in securities in a fraudulent manner;*
- (b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made thereunder;*
- (c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;*
- (d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed*

on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made thereunder.

4. Prohibition of manipulative, fraudulent and unfair trade practice

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

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

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

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

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

11. I find that the SCN has mentioned that Noticee had purchased 1,23,550 shares and sold 5,44,544 shares of Vipul during IP-1. Noticee was the 3rd largest buyer and the largest seller in the scrip of Vipul during IP-1. Similarly, I observe from the SCN that the Noticee had purchased 5,09,384 shares and sold 4,35,397 shares in the scrip of Vipul during IP-2. It was, therefore, mentioned in the SCN that the Noticee was the largest buyer

and seller in the scrip of Vipul during IP-2. Thus, the Noticee was one of the top buyers, top sellers and top traders by volume during the entire Investigation Period. I find that the total market volume in the scrip of Vipul during IP-1 was 9,96,136 shares and in IP-2, the total market volume was 24,19,136 shares. The scrip of Vipul was by and large an illiquid scrip and the same was also observed from the very low daily trading volume that was generated in the scrip at BSE during the investigation period.

12. It is alleged in the SCN that the Noticee had indulged in 32 self-trades for a total of 11,925 shares during IP-1 and 110 self-trades for a total of 93,544 shares during IP-2, which have created false and misleading appearance of trading in the scrip without effecting any change in the beneficial ownership of the shares. I note from the SCN that the only allegation levelled against the Noticee is that he had indulged in a total of 142 self-trades in the scrip of Vipul for 1,37,722 shares during the entire investigation period, which were alleged to be fraudulent, as such trades created a misleading appearance of trading without any change in the beneficial ownership of shares during the investigation period.

13. I will first analyse the self-trades executed by the Noticee in IP-1 i.e. from October 06, 2008 to January 22, 2009 and their impact, if any, on the scrip of Vipul Ltd. I find that, during IP-1, Noticee had purchased 1,23,550 shares of Vipul which was 12.40% of the total market volume registered in the scrip at BSE. Similarly, he had sold 5,44,544 shares of Vipul amounting to 54.67% of total market volume of the scrip. The Noticee was therefore, net seller in the scrip during IP-1 and his net sell position was 420,994 shares. The Investigation report also mentions that Noticee had received 5 lakh shares of Vipul on September 19, 2008 i.e just before the commencement of IP1 by way of an off-market transaction from Essjay Viniyog P Ltd. The Noticee was therefore the third largest buyer in the scrip of Vipul during IP-1 and the largest seller in the scrip during IP-1.

14. I observe that Noticee had executed a total of 32 self-trades in the scrip of Vipul during IP-1 for a total of 44,178 shares. Upon analysis of the 32 self-trades executed by the Noticee, I find that these trades were executed by him on 6 different days between October 07, 2008 to January 14, 2009. The self-trades by the Noticee were 4.43% of the total market volume in the scrip during IP-1. The details of the self-trades executed by the Noticee during IP-1 are as under:

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

Client Name	Buy Broker Name	TRADE QTY	No. of Self Trades	Sell Broker Name
Shyam Sunder Gupta	Shri Parasram Holdings Pvt. Ltd.	2598	2	Indiabulls Securities Ltd.
Shyam Sunder Gupta	Indiabulls Securities Ltd.	9860	14	Shri Parasram Holdings Pvt. Ltd.
Shyam Sunder Gupta	Shri Parasram Holdings Pvt. Ltd.	16750	7	Kotak Securities Ltd.
Shyam Sunder Gupta	Kotak Securities Ltd.	269	1	Shri Parasram Holdings Pvt. Ltd.
Shyam Sunder Gupta	Indiabulls Securities Ltd.	4701	4	Kotak Securities Ltd.
Shyam Sunder Gupta	Indiabulls Securities Ltd.	10000	4	Arch Finance Ltd.

Table 2- Volume of self trades to total Market Volume of the day during IP-1

Date	Total No. of Self-Trades	Self-Trades Volume	Total Market volume of the day	Self trades as % of total market volume
07.10.2008	4	8750	16005	54.67%
10.10.2008	3	8000	8552	93.54%
21.11.2008	1	269	19777	1.36%
01.01.2009	22	24561	32438	75.72%
13.01.2009	1	598	3984	15.01%
14.01.2009	1	2000	2915	68.61%

15. I find from the above that Noticee had executed the self-trades on 6 different days. Out of which, on 3 days i.e. November 21, 2008 and January 13 &

14, 2009, he had executed one self-trade only. I also observe that the scrip of Vipul was very thinly traded during the investigation period and the average daily trading volume in the scrip recorded at BSE was only 13,835 shares (during IP1). Further, I observe from the analysis of the details mentioned in Table 2 that the self-trades executed by the Noticee has had a significant impact when compared with the total volume that was recorded in the scrip on the days mentioned in Table above. In fact, out of the 6 days when the self-trades were executed by the Noticee, I observe that on five days, the volume generated by the Noticee through the self-trades were more than 15% of the total volume that was registered in the scrip of Vipul at BSE. I further note that, out of these 5 days, on 4 days, self-trades volume of the Noticee was more than 50% of the total market volume in the scrip, including on October 10, 2008, when the Noticee's self-trades was 93.54% of the total market volume in the scrip. I cannot lose sight of the fact that such high concentration of self-trades in the scrip of Vipul, particularly keeping in mind the illiquid nature of the scrip, has created artificial volume in the scrip during IP1. Clearly, from the above, I am of the view that the self-trades by the Noticee in the scrip during IP1 has resulted in creation/generation of artificial volumes in the scrip, which in my view could have enticed gullible investors to trade in the scrip.

16. I will now analyse the self-trades executed by the Noticee in IP-2 i.e. from October 07, 2009 to January 11, 2010 and their overall impact, if any, on the scrip of Vipul Ltd. I note that, during IP-2, Noticee had purchased 5,09,384 shares of Vipul which was 21.06% of total market volume and sold 4,35,397 shares which constituted 18.00% of total market volume in the scrip. The Noticee was therefore the largest buyer and seller in the scrip of Vipul during IP-2.

17. I also observe that during IP2, the Noticee had executed a total of 110 self-trades in the scrip of Vipul for a total of 93,544 shares. Upon analysis of the 110 self-trades executed by the Noticee, I find that these trades were

executed by the Noticee on 18 different days i.e between October 17, 2009 to January 04, 2010. I observe that the total volume generated through the self-trades was 3.87% of the total market volume in the scrip of Vipul during IP-2. The details of the self-trades executed by the Noticee during IP-2 are as under:

Table 3: Details of self-trades executed by the Noticee during IP-2

Client Name	Buy Broker Name	TRADE QTY	No. of Self Trades	Sell Broker Name
Shyam Sunder Gupta	Arch Finance Ltd.	30900	2	Kotak Securities Ltd.
Shyam Sunder Gupta	SS Corporate Securities Ltd.	62644	108	Kotak Securities Ltd.

Table 4- Volume of self trades to total Volume of the day during IP-2

Date	Total No. of self trades	Self Trades Volume	Total Market volume of the day	%
17.10.2009	1	9900	32216	30.73
20.10.2009	5	4000	75401	5.30
21.10.2009	13	4700	45276	10.38
22.10.2009	7	2499	23660	10.56
23.10.2009	7	3300	89902	3.67
28.10.2009	4	4400	50208	8.76
05.11.2009	12	8600	63553	13.53
06.11.2009	12	5821	59048	9.86
10.11.2009	7	3615	15065	24.00
11.11.2009	4	1840	10820	17.01
12.11.2009	10	5700	16887	33.75
13.11.2009	3	4000	11549	34.64
16.11.2009	4	2000	38380	5.21
18.11.2009	10	7499	71260	10.52
19.11.2009	1	1000	11076	9.03
20.11.2009	8	3000	9547	31.42
30.11.2009	1	370	9957	3.72
04.01.2010	1	21000	53881	38.97

18. I find from the above Table that Noticee had executed the self-trades on 18 different days. I further note that the scrip of Vipul during IP-2 was thinly traded wherein the average daily volume in the scrip was only 37,799

shares. Further, the analysis of the data mentioned in Table 4 shows that Noticee's trades had large impact on the overall trading volume that was registered in the scrip of Vipul at BSE. I observe that out of 18 days when the Noticee had executed the self-trades, on 11 days, the volume of self-trades was more than 10% of the total market volume that was registered in the scrip of Vipul at BSE. I further observe that, on 5 days, the self-trade volume of the Noticee was more than 30% of the total market volume that was registered in the scrip at BSE. In view of the large number of self-trades executed by the Noticee in the scrip of Vipul, particularly when the scrip was highly illiquid, I find it very difficult to ignore such high contribution of self-trades in the scrip executed by the Noticee. The same can also be seen from the above Table whereby Noticee's volume generated through the self-trades was consistently high against the total market volume in the scrip. Keeping in mind the fact that the scrip of Vipul was illiquid and the average daily trading volume in the scrip was very low, I am of the view that such high concentration of volume generated through self-trades by the Noticee has clearly contributed to creation/generation of artificial volume in the scrip during IP-2 and such trading pattern employed by the Noticee could have enticed gullible investors to trade in the scrip. Further, I also note that the Noticee after executing 32 self-trades in the scrip of Vipul during IP1 continued with this activity during IP 2 i.e after about 10 months, when he executed 110 more self-trades in the scrip. Thus, the intentions of the Noticee to indulge in such manipulative trades so as to generate artificial liquidity in the scrip is amply clear.

19. In this context, I would like to place reliance upon the observations made by Hon'ble SAT, in the matter of Shankar Sharma vs. SEBI (Appeal No. 14 of 2009 decided on October 28, 2009), wherein it was observed as follows
- "..... It is thus clear that the appellant was on both sides. He was the buyer as well as the seller. The buy and sell orders were put into the system at almost the same time. Such trades have been executed in large*

quantities while dealing with the shares of different companies. We have no hesitation to hold that these trades were fictitious as there was no change in the beneficial ownership of the shares traded and it was the appellant on both sides of the trades. How can a person buy from himself and sell to himself. Such trades are only meant to create artificial volumes and they disturb the market equilibrium. Therefore, taking into consideration the above position of law, I am of the firm opinion that the Noticee had indulged in the said fictitious trades which are per se illegal and only meant to artificially create the volumes in the scrip."

20. Also, the similar findings were made by the Hon'ble SAT in the case of Krupa Sanjay Soni & Ors. v/s SEBI (Appeal No. 32/2013) decided on January 24, 2014, wherein SAT has observed that-

*"On perusal of pleadings and hearing the oral submissions, we note that the self trades are fictitious in nature as there is no transfer of actual beneficial ownership of share and because the buyer and seller are the same person. Such trades are injurious to a healthy market and result in the creation of artificial volumes in the scrip. This in turn gives a totally wrong signal to the members of the public who may invest in the hope of making some gains but ultimately land up with losses.**The argument advanced by the learned counsel for the Appellant Shri J.J. Bhatt, who appears with Ms. Rinku Valanju that such self trades were executed through several brokers, in no way mitigates the charge of violation of the PFUTP Regulations.** 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. However, in the case in hand a number of shares have been dealt with by executing self trades, albeit, through several brokers. Details in this regard have been supplied by the learned AO in paragraphs 17 and 18 of the impugned order. Both the Appellants have executed such self trades through various brokers at least on many occasions during the period in question".*

21. The Noticee has contended that he had executed the self-trades in the scrip only to shift his position from one broker to another broker. The Noticee also contended that he had executed the self-trades through different brokers. In this regard, I note that, as quoted above, Hon'ble SAT, in the matter of Krupa Sanjay Soni vs. SEBI, has clearly rejected this argument and had held that trading through different brokers cannot be ascribed as a valid reason to execute self-trades. I further note that Hon'ble SAT, in the matter of Anita Dalal vs. SEBI (Appeal No. 211/2012 decided on December 03, 2012) had observed that:

“The appellant has executed self trades in the shares of Bang and Confidence. There has been no convincing explanation for the self trades in the reply to the show cause notice. However, during the hearing of the appeal, an affidavit was filed stating that the self trades were for shifting of position from one broker account to another broker account. Again we cannot accept this contention. The appellant has not clarified as to why this has been put through in the form of purchase and sale instead of through proper book entries.”

22. In light of above observations, I am of the view that the argument of the Noticee that he had entered into self-trades to shift his position from one broker to another is not tenable. The said argument of the Noticee has in turn resulted in generation/creation of artificial volume in the scrip through self-trades and the market mechanism in turn, has been misused by the Noticee by indulging in self-trades. The Noticee, being a seasoned investor/trader in securities market should be aware of the consequences of creating artificial volumes in illiquid scrips. If the Noticee was genuinely keen on shifting his positions from one broker to another, he could have very well shifted his positions by way of proper book entries i.e. through off market channels rather than using the mechanism of self-trades for that purpose. Further, if the argument of the Noticee that he was only shifting

his positions from one broker to another broker has to be accepted, I am of the view that Noticee need not have indulged in multiple number of self-trades to shift the position. For example, I observe that, during IP-2, the Noticee had sold 62644 shares of Vipul from his account maintained with SS Corporate Securities Ltd. to his account with Kotak Securities Ltd. in 108 different self-trades. Therefore, I note that the large volume building exercise in the scrip of Vipul by virtue of Noticee's self trades cannot be ignored and, in my view, Noticee deserves to be penalized for such practice.

23. The Noticee has contended that the proceeding initiated against him suffers from gross delay and laches and the same should be dropped on this ground alone. In this regard, Hon'ble SAT, in the matter of Vaman Madhav Apte vs SEBI (Appeal No. 449/2014 decided on March 04, 2016), the Hon'ble SAT made the following observation:

“Argument of the appellants that the proceedings initiated against the appellants suffer from gross delay and laches and, therefore, the impugned order is liable to be quashed and set aside is without any merit, because, firstly, neither the SEBI Act nor the regulations framed thereunder prescribe any time limit for initiating proceedings against the persons who have violated the securities laws. Secondly, neither the SEBI Act nor the regulations framed thereunder provide that if there is delay in initiating proceedings, no action can be taken against the person who has committed violations of the securities laws.”

In light of the above, the argument of the Noticee that the proceedings initiated against him suffers from laches is unsustainable and devoid of any merit.

24. The Noticee has also mentioned about the inconsistencies in the trading data mentioned in the SCN. In this regard, I observe that the ARs on behalf of the Noticee had during the course of the personal hearing had categorically confirmed the correctness of the trades mentioned in the SCN and the proceedings of the hearing is on record. Hence, the argument of

the Noticee that the trading data/details mentioned in the SCN is incorrect is baseless and without any merit.

25. Clearly, from the observations made above regarding the impact of the self-trades of the Noticee vis-à-vis the overall trading volume in the scrip of Vipul during the investigation period (i.e IP1 and IP2), I conclude that Noticee's self-trades in the scrip of Vipul have led to creation of artificial volume in the scrip during the above said investigation periods and therefore, have resulted in market manipulation in the scrip. In view of the above, I am of the view that the Noticee has violated the provisions of Regulation 3(a), (b), (c), (d) and Regulation 4(1), 4(2)(a) and 4(2)(g) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003.

26. As the violations of the aforementioned provisions of PFUTP Regulations and the SEBI Act by the Noticee has been established, I am of the view that it is a fit case to impose monetary penalty on the Noticee under the provisions of Section 15HA of the SEBI Act, which reads as under:

Penalty for fraudulent and unfair trade practices.

15HA. *If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of such failure, whichever is higher.*

27. In this regard, the provisions of Section 15J of the SEBI Act and Rule 5 of the Adjudication Rules require that while adjudging the quantum of penalty, the adjudicating officer shall have due regard to the following factors namely; -

- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*
- (b) the amount of loss caused to an investor or group of investors as a result of the default;*
- (c) the repetitive nature of the default.*

28. The Noticee has contended in his reply that his conduct in the past has never been found to be violative of any provisions of SEBI Act or Regulations and no action has been initiated against him by SEBI in the past. In this regard, I find from page 13 of the Investigation report that enforcement action was initiated against the Noticee by SEBI for price manipulation in 4 scrips namely Mahanagar Telephone Nigam Ltd., Areva T&D India Ltd., Power Grid Corporation of India Ltd. and Tata Teleservices Ltd., wherein a penalty of Rs. 45 Lakh was also imposed on him by the Adjudicating Officer.
29. I find that neither the Investigation report nor the SCN has quantified the disproportionate gains or unfair advantage made by the Noticee or the loss suffered by the investors due to such self-trades executed by the Noticee. However, I cannot lose sight of the fact that Noticee had executed large number of manipulative self-trades, which resulted in the creation/generation of artificial volumes in the scrip of Vipul during the Investigation period i.e IP1 and IP2. It is on record that Noticee had indulged in such self-trades during both the periods i.e IP1 and IP2. In my view, such self-trades by the Noticee has resulted in the creation of misleading appearance of trading in the shares of Vipul and has certainly impacted the market equilibrium in the scrip of Vipul during the investigation period.
30. In this context, I note that Hon'ble Supreme Court in the matter of Chairman, SEBI Vs Shriram Mutual Fund { [2006]5 SCC 361 } had observed that *"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant....."*

31. **ORDER**

After taking into consideration the nature and gravity of the violation committed by the Noticee, the facts and circumstances of the case, the material available on record, the submissions made by the Noticee and also the factors

mentioned in the preceding paragraphs, I, in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, hereby impose a consolidated penalty of Rs 1,50,000/- (Rupees One lakh and fifty thousand) on the Noticee i.e Shri Shyam Sunder Gupta under the provisions of Section 15HA of the SEBI Act for violation of Regulation 3(a), (b), (c), (d), 4(1), 4(2)(a) and 4(2)(g) of PFUTP Regulations read with Section 12A(a), (b) and (c) of the SEBI Act. I am of the view that the said penalty is commensurate with the default committed by the Noticee.

32. The amount of penalty shall be paid either by way of demand draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, or by e-payment in the account of "SEBI- Penalties Remittable to Government of India", A/C No 31465271959, State Bank of India, Bandra Kurla Complex Branch, RTGS Code SBIN0004380 within 45 days of receipt of this order. The said demand draft or forwarding details and confirmation of e-payments made (in the format as given in the table below) should be forwarded to The Division Chief, Enforcement Department (EFD), Securities and Exchange Board of India, SEBI Bhavan, C-4A, 'G' Block, Bandra Kurla Complex, Bandra (East), Mumbai 400 051

1. Case Name:	
2. Name of Payee:	
3. Date of payment:	
4. Amount Paid:	
5. Transaction No:	
6. Bank Details in which payment is made:	
7. Payment is made for: (like penalties /disgorgement/recovery/Settlement amount and legal charges along with order details)	

33. In terms of the provisions of Rule 6 of the Adjudication Rules, copy of this order is sent to the Noticee i.e Shri Shyam Sunder Gupta and also to Securities and Exchange Board of India.

Place: Mumbai
Date: 28.03.2018

SURESH B MENON
ADJUDICATING OFFICER