

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/KS/AE/2020-21/9414]

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

In respect of:

Adroit Financial Services Pvt. Ltd.

(PAN : AABCA1156D)

In the matter of The Byke Hospitality Ltd

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) conducted an investigation for the period April 08, 2011 to April 13, 2011 (hereinafter referred to as “**Investigation Period / IP**”) in the scrip of The Byke Hospitality Ltd (hereinafter referred to as “**TBHL / scrip**”) for the period from March 1, 2013 to December 31, 2013. The scrip is listed on the Bombay Stock Exchange Ltd. (BSE) as well as the National Stock Exchange of India Ltd. (NSE).
 2. It is noted from Investigation Report (**IR**) that Anant Dattaram Yalavatakar (hereinafter referred to as “**Anant**”) repeatedly entered into self-trades in TBHL scrip in BSE which created artificial volume in the scrip of TBHL during the IP, leading to false and misleading appearance of trading in the said scrip. It was further observed that Adroit Financial Services Pvt Ltd (hereinafter referred to as “**Noticee**”) was the
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broker on buy side as well as on the sell side of self-trades executed by Anant. It was, therefore, alleged that by acting as broker and counterparty broker for self-trades of Anant, Noticee failed to act with due skill, care and due diligence in the conduct of business. The Noticee was alleged to have facilitated manipulative, fraudulent and deceptive transactions, creating false market, detrimental to the investors interest, and failed to abide by the provisions of SEBI Act, 1992 and SEBI (Stock Brokers) Regulations, 2013 made thereunder. It was, thus, alleged that Noticee has violated the provisions of Clause A(2) of the Code of Conduct for Stock Brokers as specified under Schedule II read with Regulation 7 (as it stood prior to 27/09/2013) / Regulation 9(f) (with effect from 27/09/2013) of SEBI (Stock Brokers) Regulations, 2013 (hereinafter referred to as "**Broker Regulations**"), as applicable.

APPOINTMENT OF ADJUDICATING OFFICER

3. Ms. Anita Kenkare was appointed as the Adjudicating Officer, vide Order dated April 16, 2015 and Communique dated November 05, 2015 under Section 15-I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act**"), read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as "**Rules**") to inquire into and adjudge under Section 15HB of SEBI Act, the alleged violation of Clause A (2) of the Code of conduct for Stock Brokers as stipulated in schedule II read with Regulation 7 (as it stood prior to 27/09/2013) / Regulation 9(f) (with effect from 27/09/2013) of the Broker Regulations by the Noticee. Further, vide Communique dated October 04, 2017, the undersigned has been appointed as the Adjudicating Officer in the instant matter.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. A Show Cause Notice dated December 03, 2015 (hereinafter referred to as "**SCN**") was issued to the Noticee under rule 4 of the Rules to show-cause as to why an inquiry should not be initiated against the Noticee and penalty be not imposed upon it under section 15HB of SEBI Act for the alleged violation of Clause A(2) of the Code
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of conduct for Stock Brokers as stipulated in schedule II read with Regulation 7 read with Regulation 9 of the Broker Regulations as specified in the said SCN.

5. It was alleged in the SCN that at BSE, Anant executed 38 self trades on 3 trade days for 18,510 shares in the scrip of TBHL. Noticee was the broker and counterparty for aforementioned self trades. Details of self-trades of Anant are as below -

Entity Name	Broker On Both Buy & Sell Side	Total Self Trade Volume	Total Self Trade Count	Self Trade count from same terminal	No of days on which self trades done	% Of Self Traded Qty. To Market Vol.	Net LTP contribution by self trades
Anant Dattaram Yalavatakar	Adroit Financial Services Pvt.Ltd.	18510	38	38	3	0.071	0.1

6. Vide letter dated December 21, 2015, the Noticee inter alia denied the alleged violation of Clause A(2) of the Code of conduct for Stock Brokers as stipulated in schedule II read with Regulation 7 of the Broker Regulations, and sought copies of documents relied upon in the matter.
7. Thereafter, a supplementary Show Cause Notice dated September 22, 2016 was issued to Noticee elaborating through certain instances the charge set out in the SCN dated December 3, 2015. The details inter alia with respect to the Noticee are given below –

- A. The BSE analysis below reveals that:

out of **self trades** of **Mr. Anant Dattaram Yalavatakar** on **3 trade dates** through stock broker **Adroit** on both buy and sell side of the trade during the investigation period, the self trades were **100%** of his **buy/ sell trades** on one trade day and **85%** of his **buy/sell trades** on another trade day;

BSE							
Sl. No	Date	Total traded quantity in the Byke scrip on BSE	Total Self trade qty	Total buy trade qty	% of self trade qty to buy qty	Total Sell Trade qty	% of self trade qty to sell qty

BSE							
Sl. No	Date	Total traded quantity in the Byke scrip on BSE	Total Self trade qty	Total buy trade qty	% of self trade qty to buy qty	Total Sell Trade qty	% of self trade qty to sell qty
MR. ANANT DATTARAM YALAVATAKAR THROUGH STOCK BROKER ADROIT FINANCIAL SERVICES PVT. LTD. ON BOTH BUY AND SELL SIDES							
1	22-11-2013	1,69,724	10,000	10,000	100	10,000	100
2	25-11-2013	1,62,471	8,500	10,000	85	10,000	85
3	23-09-2013	1,04,299	10	10,000	0.1	10,000	0.1

B. BSE TRADE ORDER LOG ANALYSIS OF SELF TRADES

i. Mr. Anant Dattaram Yalavatkar (ADY):

Trade Log Details: The trade details of self trades executed by Mr. Anant Dattaram Yalavatkar through stock broker Adroit on both buy and sell side of the trade during the investigation period in the Byke scrip on BSE are as given below:

TRADE DATE	CLIENT NAME	CP CLIENT NAME	ORDER NO	CP ORDER NO	TRADE TIME	TRADE RATE	TRADE VALUE	TRADE QTY	MEMB NO	CPMEMB NO	TRM ID	CP TRM ID
09/23/2013	ADY	ADY	16000127133542	16000127134036	13:24:46	267.1	2671	10	3034	3034	22	22
11/22/2013	ADY	ADY	19000129246088	19000129245987	14:38:00	293.4	146700	500	3034	3034	22	22
11/22/2013	ADY	ADY	19000129246088	19000129245987	14:38:00	293.4	146700	500	3034	3034	22	22
11/22/2013	ADY	ADY	19000129246088	19000129245987	14:38:00	293.4	146700	500	3034	3034	22	22
11/22/2013	ADY	ADY	19000129246088	19000129245987	14:38:00	293.4	146700	500	3034	3034	22	22
11/22/2013	ADY	ADY	19000129246088	19000129245987	14:38:00	293.4	146700	500	3034	3034	22	22
11/22/2013	ADY	ADY	19000129246088	19000129245987	14:38:00	293.4	146700	500	3034	3034	22	22
11/22/2013	ADY	ADY	19000129246088	19000129245987	14:38:00	293.4	146700	500	3034	3034	22	22
11/22/2013	ADY	ADY	19000129246088	19000129245987	14:38:00	293.4	146700	500	3034	3034	22	22
11/22/2013	ADY	ADY	19000129246088	19000129245987	14:38:00	293.4	146700	500	3034	3034	22	22
11/22/2013	ADY	ADY	19000129246088	19000129245987	14:38:00	293.4	146700	500	3034	3034	22	22
11/22/2013	ADY	ADY	19000129246368	19000129246332	14:38:20	293.4	146700	500	3034	3034	22	22
11/22/2013	ADY	ADY	19000129246368	19000129246332	14:38:20	293.4	146700	500	3034	3034	22	22
11/22/2013	ADY	ADY	19000129246368	19000129246332	14:38:20	293.4	146700	500	3034	3034	22	22
11/22/2013	ADY	ADY	19000129246368	19000129246332	14:38:20	293.4	146700	500	3034	3034	22	22
11/22/2013	ADY	ADY	19000129246368	19000129246332	14:38:20	293.4	146700	500	3034	3034	22	22
11/22/2013	ADY	ADY	19000129246368	19000129246332	14:38:20	293.4	146700	500	3034	3034	22	22
11/22/2013	ADY	ADY	19000129246368	19000129246332	14:38:20	293.4	146700	500	3034	3034	22	22
11/22/2013	ADY	ADY	19000129246368	19000129246332	14:38:20	293.4	146700	500	3034	3034	22	22

TRADE DATE	CLIENT NAME	CP CLIENT NAME	ORDER NO	CP ORDER NO	TRADE TIME	TRADE RATE	TRADE VALUE	TRADE D QTY	MEMB NO	CPMEMB NO	TERM ID	CP TERM ID
11/22/2013	ADY	ADY	19000129246368	19000129246332	14:38:20	293.4	146700	500	3034	3034	22	22
11/22/2013	ADY	ADY	19000129246368	19000129246332	14:38:20	293.4	146700	500	3034	3034	22	22
11/22/2013	ADY	ADY	19000129246368	19000129246332	14:38:20	293.4	146700	500	3034	3034	22	22
11/25/2013	ADY	ADY	12000107539704	12000107539689	14:44:34	294.3	147150	500	3034	3034	22	22
11/25/2013	ADY	ADY	12000107539704	12000107539689	14:44:34	294.3	147150	500	3034	3034	22	22
11/25/2013	ADY	ADY	12000107539704	12000107539689	14:44:34	294.3	147150	500	3034	3034	22	22
11/25/2013	ADY	ADY	12000107539704	12000107539689	14:44:34	294.3	147150	500	3034	3034	22	22
11/25/2013	ADY	ADY	12000107539704	12000107539689	14:44:34	294.3	147150	500	3034	3034	22	22
11/25/2013	ADY	ADY	12000107539704	12000107539689	14:44:34	294.3	147150	500	3034	3034	22	22
11/25/2013	ADY	ADY	12000107539704	12000107539689	14:44:34	294.3	147150	500	3034	3034	22	22
11/25/2013	ADY	ADY	12000107539704	12000107539689	14:44:34	294.3	147150	500	3034	3034	22	22
11/25/2013	ADY	ADY	12000107539704	12000107539689	14:44:34	294.3	147150	500	3034	3034	22	22
11/25/2013	ADY	ADY	12000107539704	12000107539689	14:44:34	294.3	147150	500	3034	3034	22	22
11/25/2013	ADY	ADY	17000121692157	17000121692081	15:05:52	294.3	147150	500	3034	3034	22	22
11/25/2013	ADY	ADY	17000121692157	17000121692081	15:05:52	294.3	147150	500	3034	3034	22	22
11/25/2013	ADY	ADY	17000121692157	17000121692081	15:05:52	294.3	147150	500	3034	3034	22	22
11/25/2013	ADY	ADY	17000121692157	17000121692081	15:05:52	294.3	147150	500	3034	3034	22	22
11/25/2013	ADY	ADY	17000121692157	17000121692081	15:05:52	294.3	147150	500	3034	3034	22	22
11/25/2013	ADY	ADY	17000121692157	17000121692081	15:05:52	294.3	147150	500	3034	3034	22	22
11/25/2013	ADY	ADY	17000121692157	17000121692081	15:05:52	294.3	147150	500	3034	3034	22	22
11/25/2013	ADY	ADY	17000121692157	17000121692081	15:05:52	294.3	147150	500	3034	3034	22	22
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Order Log Analysis: It is observed from the **Order log** below that the Orders in respect of self trades that were executed by Mr. Anant Dattaram Yalavatakar through stock broker **Adroit** on both buy and sell side of the trade during the investigation period for **10,000 shares on 22.11.2013** and for **8,500 shares on 25.11.2013** were **synchronized and were from the same terminal:**

ORDER LOG									
ORDER TIME	ORDER NUMBER	BUY/SELL	CLIENTNAME	RATE	QTY	AUD CODE	MEMBERID	LOCATION	ID
22.11.2013									
14:37:53	19000129245987	S	ANANT DATTARAM YALAVATAKAR	293.4	5000	A	3034	4000220022022090	
14:37:59	19000129246088	B	ANANT DATTARAM YALAVATAKAR	293.4	5000	A	3034	4000220022022090	

14:38:15	19000129246332	S	ANANT DATTARAM YALAVATAKAR	293.4	5000	A	3034	4000220022022090
14:38:20	19000129246368	B	ANANT DATTARAM YALAVATAKAR	293.4	5000	A	3034	4000220022022090
25.11.2013								
14:44:27	12000107539689	S	ANANT DATTARAM YALAVATAKAR	294.3	5000	A	3034	4000220022022090
14:44:34	12000107539704	B	ANANT DATTARAM YALAVATAKAR	294.3	5000	A	3034	4000220022022090
15:05:48	17000121692081	S	ANANT DATTARAM YALAVATAKAR	294.3	5000	A	3034	4000220022022090
15:05:52	17000121692157	B	ANANT DATTARAM YALAVATAKAR	294.3	5000	A	3034	4000220022022090

From the above synchronized trades placed by Mr. Anant Dattaram Yalavatakar through stock broker **Adroit** on both buy and sell side of the trade during the investigation period, it is alleged that the self trades were executed by Mr. Anant Dattaram Yalavatakar through stock broker **Adroit** with clear intention to cause artificial trades in the scrip of Byke.

8. From the available records, I note that the Noticee was granted an opportunity of personal hearing before the erstwhile AO, Ms. Anita Kenkare on May 19, 2017. Vide its letter dated May 12, 2017, the Noticee once again reiterated its earlier request regarding documents relied upon in the matter and also sought adjournment of the hearing.
9. Vide letter dated September 01, 2017, reply to the SCN and the supplementary SCN was filed by Mindspright Legal, the authorized representative (**AR**) of the Noticee. The main contentions made therein are reproduced as follows –

"We are concerned for Our Client Adroit Financials Services Private Limited (hereinafter referred as "Our Client") and on its instructions we address your goodself as under:

1. Please refer to your goodselfs Show Cause Notice bearing reference no. EAD-6/AK/VG/33525/2015 dated December 03, 2015 (hereinafter referred to as "Notice") and Supplementary Show Cause Notice bearing reference no. EAD6/AK/VG/26557/2016 dated September 22, 2016 (hereinafter referred to as "Supplementary Notice") vide which you have interalia advised Our Client to show cause as to why an inquiry should not be held against it in terms of Rule 4 (1) of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as "the Adjudication Rules") read with Section 15 I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "SEBI Act") and penalty not be imposed under Section 15HB of the SEBI Act for the alleged contravention of Clause A (2) of Code of Conduct for Stock Brokers as specified under Schedule II read with Regulation 7 of SEBI (Stock brokers and Sub brokers) Regulations, 1992 (hereinafter referred to as "Stock Broker Regulations") for the alleged irregularities in the scrip of Byke Hospitality Limited (hereinafter referred to as "Byke/ Company")

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

3. Before proceeding further with para wise submissions on the merits of the Notice, Our Clients wish to provide a brief background as well as the procedure followed by them for the execution of the orders of their clients:

(a) Adroit Financial Services Private Limited is an entity duly constituted under the Companies Act, 1956 and has been registered with Securities and Exchange Board of India as stock broker with National Stock Exchange of India Ltd. having registration no. 1NB 230853830 and with BSE Ltd. having registration no. INB011228336. They have been engaged in the business of stock broking activities for last 22 years and have an impeccable track record of securities laws compliance till date.

(b) Our Client has a total of 125 own and sub-broker offices across India and has a registered client base of 35,000 clients which includes Mr. Anant Dattaram Yalavatkar ("Anant"). Their Clients are serviced with a work force of 150 dedicated and trained employees with due diligence. It is pertinent here to point out that the client Mr. Anant was trading through one of our Sub-Broker Jilesh Naveen Chedda (hereinafter referred to as "Jilesh") having SEBI registration No. INS014692219/01-12283.

(c) As a stock broker, Our Client caters to the need of retail, corporate and high net worth individuals. They have always maintained high standards of promptitude, transparency, integrity, honesty and accountability in all their operations. The compliance track record of Our Client is impeccable.

(d) Our Client is essentially a retail broker and as such it does not advise its clients in connection with the purchase and sale of securities by them. Our Client merely executes the orders as per the instructions of its clients. Our Clients also do not enquire from its Clients the reason for trading in the shares of any company. They execute orders of the clients in accordance with their instructions following the requirements specified by SEBI/ Stock Exchanges. They only earn the brokerage out of the transactions executed through their clients.

4. Having briefly stated their backgrounds, Our Client's para-wise submissions to the allegation labelled in the Notice are as follows.

5. With regard to the observations made in para 1 of the Notice, it is submitted that the appointment of your goodself as the Adjudicating Officer under Section 15-1 of the SEBI Act is a matter of fact and record and therefore Our Client do not have any comments to offer on the same. However, they strongly deny the allegations levied against Our Client and submit that the trades carried through them in the scrip of the Byke Hospitality Ltd. (hereinafter referred to as "Byke") was on behalf of their clients, who was trading through their Sub-Broker Jilesh and were in the normal course of their trading activity and the same were genuine and de hors of any violation of the laws of the securities market. Further, we submit that Our Client is nowhere concerned with the activities of other noticees and accordingly have no comments to be made on the allegations levied by your goodself upon them.

6. With regard to the observations in para 2 of the Notice, it is submitted that the investigation period from March 01, 2013 to December 31, 2013 (hereinafter referred to as "Investigation period") for the Notice in the scrip of Byke is a matter of fact and record and the same was referred to while preparing the reply to the Notice. It is further submitted that Our Client does not understand the reason as to why

SEBI selected the abovementioned period for their investigations in the scrip of Byke, no reasons whatsoever have been provided in the Notice for justifying the same.

7. We submit that Our Clients were never informed about any investigations being carried out in the scrip of Byke. Further Our Client is yet to receive a copy of the report of the said investigation carried out by SEBI. Further, the observation that the scrip of Byke is listed on Bombay Stock Exchange Ltd. (BSE) and National Stock Exchange of India Ltd. (NSE) is a matter of fact and record.

8. With regard to the observations made in para 3 of the notice, it is submitted that Our Client only acted as a stock broker in good faith and in normal course of its business for their client including for Mr. Anant, who was trading through Our Client's sub- broker Jilesh and has no nexus other than being Stock Brokers for the same. We further submit that they neither have any nexus with Mr. Anant or any other alleged noticees for the alleged manipulation carried out either by Mr. Anant or by any other entities mentioned in the Notice.

9. It may be pointed out here that all the trades in the scrip of Byke for client Anant were executed by our sub-broker Jilesh. A sub-broker is a SEBI registered intermediary and there are separate qualifications and disqualifications against it. The very fact that a sub-broker is required to be separately registered with SEBI, implies that he is regulated independently by the Regulator. In the instant case, however the Regulator has chosen to take action against Our Client and no action appears to have been taken against the sub-broker Jilesh. Even the Notice issued to Our Client do not have sub-broker even as a co-noticee. It is submitted that simply because Our Client was acting as a stock broker and has signed a tripartite agreement with the sub-broker and client, it cannot be held responsible for the acts off a client, which needed to be monitored and regulated by Our Client's sub broker.

10. It is submitted that SEBI in the matter of price manipulation in the scrip of Shirpur Gold Refinery Limited passed an order dated May 29, 2009 in which a SEBI registered sub-broker Hacienda Investment Private Limited who was affiliated to stock broker Vyomit Shares Stock & Investments and Omniscient Securities Private Limited was held liable for the execution of synchronized trades and self trades in its proprietary account as well as for its client Abhijit Communications & Publication Private Limited and his certificate of registration was cancelled. It is pertinent to mention here that no action was taken against the stock brokers to whom the sub- broker was affiliated. Further, SEBI in the matter of Mr. Sameer S. Joshi, Proprietor, Shreesurya Investments, who was a registered Sub-broker affiliated to the stock broker, M/s Kisan Ratilal Choksey Shares and Securities Private Limited, was held liable for misusing the status as Sub-broker by soliciting and collecting money from the members of public through various fraudulent schemes promising them high returns. It was held that he has failed to maintain high standards of integrity, promptitude and fairness prescribed for a Sub-broker and so has violated Section 12(1) of the SEBI Act read with Clauses A(1), (2) and D(4) of the Code of Conduct for Sub-brokers read with Regulation 15(1) (b) of the Stock Brokers Regulations. However no action was taken against the Stock-Broker to whom he was affiliated.

11. From these cases it seems that SEBI, in order to do complete and equitable justice, make only the sub broker liable for the wrongs which it has committed and does not make the stock broker liable with whom the sub-broker is affiliated. Hence it is the request of Our Client that the same must be done in the impugned case by your goodself as this will be treated as an equitable justice. Although the sub-broker is affiliated with a stock-broker, but it is also registered with SEBI, and therefore for the wrongs committed by sub-broker, stock-broker must not be held liable if he had no part in the same or had no knowledge or control over the same.

12. As regards to the alleged self trades, Our Clients would like to submit that, during one period when the alleged manipulative orders were being placed, they neither had any knowledge that, the same would transform into self trade or the orders were placed with an intention of wash trade and/or self trade. Also since the client was trading through the office of Our Client's sub-broker (Jilesh), Our Client, instantaneously did not have any control over the trading done by Mr. Anant. Further, Our Client would like to state that they do not have any mechanism to detect on online real time basis when a particular order would result in self trade. It is further stated that Our Client's daily volume and/or turnover is more than Rs. 3000 Cr. (three thousand Crores) and owing to the same, it is practically impossible for them to monitor each and every trade/order of its client, especially when it is executed through their sub-broker with the pending orders in the system, for a client at any given point of time. It is further pointed out that Mr. Anant was introduced to Our Client through its Sub-Broker Jilesh and all the trading done by Mr. Anant was through Jilesh and as such Our Client did not have any direct relationship with Mr. Anant. Thus, it is submitted that, Our Client had no intention of creating artificial volumes in the market, by allowing wash trades/self trades and also that they do not have intention of giving a false and misleading appearance of trading in any scrip (including Byke) at the Stock Exchange as alleged.

13. With reference to the observations made in para 4 of the Notice, it is submitted that, the para provide details of the alleged self trades executed by various entities (including Mr. Anant, who was trading through Our Client's sub-broker). Our Client submits that, it would restrict its submission to the alleged self trade done through it, and nothing to offer on the self trades executed by other entities.

14. It is submitted that, the allegation against Our Client is that, they had acted as a stock broker and counter party stock broker for their client, Mr. Anant who allegedly executed 38 self trades on the platform of BSE in a period of 3 trade days, for a total volume of 18,510 shares during the Investigation period. In this regard it is submitted, Our Client denies allegations contained in the para levied against, and submits that, it has never been its practice to encourage reckless trading on the parts of its clients. It is further submitted that, owing to its huge volume contribution, and size of its operation on given day, on an approx. through more than 135 terminal Ids, multiple number of its constituents trade in as many as 358 scrips on a single day and resulted in placing of numerous orders and execution of trades, hence under such circumstances it was almost impossible for Our Client to keep track of each and every orders so punched that either translated into genuine trade or accidentally got matched and translated into a self trade.

15. Our Client further submits, that during entire the Investigation Period (which spans to more than 9 months) Mr. Anant was responsible for only 38 self trades which in itself is so miniscule that, no knowledge or intent could be imputed on Our Client and therefore they cannot be held responsible for allowing execution of self trades through their sub-brokers terminals. It may also be pointed out here that the terminal through which the alleged self trades were executed was allotted to Our Client's sub-broker Jilesh, which made further impossible for our client to detect the execution of alleged self trade, at the time of execution of these trades. In this context it may be noted that Our Client on any given day executes approx 40,000 no of trades for 3500 to 4000 no of clients and therefore it is impossible for any broker of reasonable intelligence leaving aside Our Client to detect self trades and/or wash trades, if any were being executed by an errant client.

16. Further to substantiate, Our Client wish to draw your goodself's attention, to the observations made by Hon'ble Securities Appellate Tribunal, in one of the appeal, where the Hon'ble opined that, it would not suffice for establishing the charge of manipulation unless the trades are exceptionally huge.

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

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

17. From the aforesaid it is clear that in order to show that the self trades to be irregular / violative, the quantum of trades and the quantity of trades needs to be seen and in the instant case the self trades occurred only on 3 days that too for a meagre quantity of 18510 shares in 38 no of trades and too done in span of 9 months and therefore no negative inference against Our Client can be drawn.

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

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

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

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

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

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

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

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

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

22. Our Client deny the allegations levied against it and submit that their contribution in trades carried out in the scrip of Byke during the Investigation Period was only- limited to the extent of being a stock broker for their client, who was actually trading through their sub-broker Jilesh. The same is not a violation of any laws governing the securities market.

23. Further Our Client submits that Mr. Anant had opened his account in the year 2008 and ever since his registration, he has been doing trading by placing his orders over the phone to the sub-broker (Jilesh). He has always been a regular trader and there have been no occasion for Our Clients to raise suspicion on him as, he was never held liable by SEBI or any other regulatory authority in relation to his trading & dealing in the securities market. Furthermore, Mr. Anant was not a direct client of Our Client as he was introduced to Our Client through its sub-broker Jilesh, who is working with Our Client since the year 2001, giving an extra cushion of comfort to Our Client. Thus there was no rational to allege Our Client was in cohorts with Mr. Anant, and the alleged self trades were result of some prior understanding or design.

24. Further in relation to the alleged self trades of Mr. Anant, Our Client would like to bring to your kind notice the facts and circumstances which led to the execution of the alleged self trades:

- a) Based on the experience of the client on individual basis, Our Client overviews their clients' orders and trades executed from their respective accounts, if necessary.
- b) Mr. Anant was a client introduced through Our Client's sub-broker Jilesh and the trading in his account were being carried out from the office of Jilesh.
- c) Evidently, Mr. Anant has been using Our Client's services as brokers since the year 2008 and there was no prior instance of any regulatory action against him, there was no justification on the part of Our Client to raise any suspicion on the trading done by him.
- d) Mr. Anant has traded in 134 scrips during the Investigation Period (i.e. March 01, 2013 to December 31, 2013) which have resulted in the total traded quantity of 5,481,269 shares amounting to a turnover of Rs. 34,42,30,053.79/-. Out of the same only 10 orders, which resulted into 38 trades, resulted into self trades.

25. Further, it is to be noted that Mr. Anant trading in the scrip of Byke during the Investigation Period was in the nature of dealing in bulk transactions, wherein he used to buy and sell substantial no of shares on any given day and even on the days when he executed the alleged self trades it wasn't different from his day to day trading pattern. Therefore, there was no reason for Our Client as a stock broker to suspect the trading activity being carried out by Mr. Anant.

26. Further it is pertinent to note that at the time of execution of the alleged self trades, Our Client had no mechanism or software to ascertain whether their trades were getting matched on a real time basis. Had there been any process to make them aware of such matching of trades, they would have never allowed execution of such self trades in the scrip of Byke.

27. In Para 3 and 4 of the Supplementary Notice your goodself has indicated several instances of self trades of several entities through their brokers and has raised allegations of violations of various provisions of securities law. Your goodself has noted that out of the self trades of Mr. Anant on BSE through Our Client on 3 trade days, the self trades were 100% of his buy/sell trades on one day and 85% of his buy/trades on another day. Further an observation was made by your goodself that the orders in respect of self trades that were executed by Mr. Anant through Our Client on both Buy and Sell side of the trade during the investigation period for 10,000 shares on 22/11/2013 and for 8,500 shares on 25/11/2013 were synchronised and were from same terminal.

28. With regard to this it is submitted that comparing the self trade's data with the trading data of Our Own Client is of no importance as the same could not have any impact on the market, thus the comparison is meaningless. In order to determine whether self trades are fraudulent or not, it is important to see its impact on the market volume. The reason for the same is that SEBI has formulated a Policy in which it has observed that there are two types of self trades, intentional and unintentional, out of which only unintentional self trades are fraudulent. The distinction if a self trade is intentional or unintentional is on the basis of various factors in which the most important factor is the impact on market volume.

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

30. Thus, it can be seen that SEBI itself has made its stand that intention is a prerequisite for violation of Regulation 3 and 4 of PFUTP Regulations and unintentional self trades are not violative of Regulations 3 and 4 of PFUTP Regulations. Therefore the burden of proof on Our Client to prove that they are not liable for the violation of Stock Brokers Regulations, is just to prove that the trades executed by Mr. Anant in the scrip of Byke, which resulted into self trades, were not manipulative and this claim has to be corroborated with other factors and most importantly market volume. In the impugned case, as stated earlier, the alleged self trades executed from our end during the investigation period was meagre 0.071% of the total market volume on the BSE Ltd which is too less to have any impact on the market. It is further submitted to your goodself that the impact of trading is on the market as a whole and it does not mean that if one is doing trading at BSE it will have impact only at the market volume of BSE. The impact will be there on NSE as well and by taking into account the number of shares traded in both BSE and NSE on the day of the alleged self trade in the scrip of Byke then the Percentage of Self-Traded Quantity to Market Volume will be meagre 0.02% which, at no stretch of imagination, could have influenced the price of the scrip, which leads to the deduction that there was no intention at all of Mr. Anant to engage in the self trades. We further submit that as

per the Notice itself the net contribution by self trades is only 0.1 which is incapable of having any impact on the price of the scrip.

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

"...I find that though the Noticee has entered into self-trades on multiple occasion, yet the volume of self-trades vis-a-vis total volume in the shares of Aster Silicates Limited is miniscule. No mala fide intention behind self-trades executed by the Noticee has been bought out in investigation report. ... There is no evidence in the investigation report to suggest any fraudulent intention behind execution of self-trades by the Noticee. The volume of self trades is less than 1% of the total volume in shares of Aster Silicates Limited. The impact of self-trades on LTP is also not significant on daily basis. Therefore, in compliance of SEBI policy, I am inclined to drop the adjudication proceedings initiated against the Noticee vide SCN dated May 06, 2015."

While making these observations the Adjudicating Officer, SEBI, in exercise of the powers conferred under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, disposed off the Show Cause Notice.

32. If we apply the reasoning of this case in the present case then the Notice against Our Client must be disposed off as the trades executed is very much less than 1%. Hence the trades executed at our end on behalf of Mr. Anant falls in the category of unintentional self trades and so are not fraudulent.

33. Further, it is pertinent to note here that self trades can only be considered to be fraudulent when there is market manipulation, which can be done by impacting the market volume. As it has been bought to the notice of your goodself that individually Mr. Anant's share to market volume is 0.02%, which is very less, and so he cannot have any impact on the market volume. But, as there has been no connection established in the Notice of Mr. Anant with other noticees, it cannot be said that Mr. Anant had assisted other noticees in manipulating the market. Due to this reason Mr. Anant's trades cannot be considered to be as fraudulent, which means that Our Client cannot be held liable for not exercising diligence, as for doing the same it is essential to prove that the trades by Mr. Anant were fraudulent.

34. As Our Client has bought into the notice of your goodself that trades executed in the account of Mr. Anant were not intentional self trades, and so, as per the policy of SEBI, are not fraudulent. It is pertinent to note here and must also be appreciated by your goodself that, as there was nothing wrong with the trades executed in the account of Mr. Anant, Our Client cannot be held liable for not exercising due diligence and so the contravention of the Stock Brokers Regulations. Therefore as in the present case the trades executed by Mr. Anant were genuine, it cannot be said that Our Client has not exercised due diligence. Therefore it is our humble submission that we are not liable for the allegation levelled against us in the Notice and Supplementary Notice.

35. The comparison of self trades by Mr. Anant through Our Client with Mr Anant's total trades is of no relevance as it is not covered as a factor in the Policy to distinguish between intentional self trades and unintentional self trades. This is because it has no relation with the impact of self trades on market volume. It must be appreciated here by your goodself, that as per new stance taken by SEBI by the formulation of the Policy, even though all the trades executed by a person results into self trades, but if

the amount is so less that it cannot artificially inflate the market volume, then it will be treated as unintentional and so genuine trades, and therefore Our Client cannot be held liable for the execution of genuine trades. Our Client reiterates that the trades mentioned in the Supplementary Notice were executed as there is no system available with the broking concern or in the market to be installed which could rule out any self-trades altogether at the pre trade level and if it would have been there, Our Client would be the first to install the same. It may be pointed out that, since there are no mechanism available for jobbers/ arbitrageurs, SEBI itself has directed the stock exchanges to come out with a mechanism to curb the happening of self trades. NSE has implemented "Self-Trade Prevention" mechanism w.e.f October 12, 2015 vide circular dated October 01, 2015 and BSE has also implemented a Self Trade Prevention Check (STPC) Mechanism w.e.f March 16,2015 vide circular dated February 11, 2015. Hereto annexed and marked as "Annexure B" and "Annexure C" are the aforesaid NSE & BSE Circulars dated October 1, 2015 and February 11, 2015 respectively. Therefore, it has always been the responsibility of Stock Exchanges to ensure and implement appropriate mechanisms to prevent Self Trades given their statistical & technical expertise and thus Our Client should not be penalised for not able to prevent self trades from occurring, the responsibility of whose prevention has always been on the Stock Exchanges.

36. With regards to the observations made in para 5 of the notice, it is submitted that the allegations are made for the self trades executed by others on the platform of NSE.

37. Here Our Client would like to submit that your goodself has not alleged Our Client for any instances of alleged self trades on the platform of NSE and therefore they do not have any comments to offer. Further Our Client would like to submit that they do not have any nexus with any of the other noticees. Hence the contents of para 5 do not pertain to Our Client and therefore they do not have any comments on the same.

38. With regards to observations made in para 6 of the notice, it is submitted that Our Client has acted in good faith as a stock broker to their client Mr. Anant in the normal course of business. Apart from the fact that they had no common understanding with Mr. Anant, they also have no relationship / connection / nexus with Mr. Anant. Hence, they are not aware of the motive, if any, of their client Mr. Anant behind the alleged self trades. Further they are not aware of any nexus between their client and other alleged noticees, nor are they aware of the motive behind the alleged self trades conducted by other noticees viz. Maverick Share Brokers Ltd. and Anugrah Stock Broking Pvt. Ltd. for their clients.

39. With regards to the observations in para 7 and 8 of the notice, it is submitted that your goodself has alleged Our Client for creating artificial volumes, which allegedly lead to fraudulent and deceptive appearance of trading in the scrip of Byke. Our Client would like to deny the above mentioned statement as it has merely followed its client's instruction and its sub-broker Jilesh had placed orders on behalf of its client.

40. We further submit that, if Our Client as a broker would have actually been interested in allowing their client Mr. Anant, in artificially inflating the volumes of the scrip of Byke, then in such a case, they would have traded in the same scrip and made profits for themselves or in the alternative their contribution to artificial/false trades would have been quite high so that the same could have an impact on the total traded quantity in the market and not have limited its self trade quantity to a meagre of 18,510 shares and thereby they could have also increased the brokerage earned. The fact that none of these activities were carried out by them, clearly shows that they had no wrong intentions and all the trades were carried out by them in good faith and in normal course of the business. In order to substantiate our claim given below are certain facts:

(a) Out of a total number of trades executed by Our Client on behalf of their client, on BSE, in the scrip of Byke during the Investigation Period, only a total of 38 trades have resulted into the alleged self trades. These 38 trades are result of 10 orders. It is also pertinent to note that they earned a meagre brokerage of Rs. 555.30/- out of the alleged 38 self trades.

(b) Our Client further submit that they had received a total of Rs. 1,47,133.94/- as brokerage from their client Mr. Anant during the investigation period out of which the brokerage received due to the alleged self trades amounts to 0.38% of the total brokerage.

(c) Due to Mr. Ananfs transactions in the scrip of Byke during the investigation period, they earned a brokerage of Rs. 6066.36/- where as the brokerage earned due to the alleged self trades on BSE was only Rs. 555.30/-, which is only 9.15% of the total brokerage in the scrip of Byke.

(d) We further submit that they earned a total brokerage of Rs. 1,47,133.94/- from their client Mr. Ariant during the financial year 2013 - 2014 and comparing it with the brokerage of Rs. 555.30/- earned out of the alleged self trades, it would be clear that Our Client had no motivation, whatsoever to allow its client Anant to carry out the alleged self trades.

Had Our Clients' intention been to earn profits by way of brokerage by facilitating manipulative, fraudulent and deceptive transactions, the number self trades would have been higher than the alleged number of 38 trades. We further submit that, the trades carried out through Our Clients were in no manner responsible for the creation of either false market or artificial volume in the scrip of Byke.

41. Further Our Client submits that as mentioned above they have no nexus with their client Mr. Anant and hence, are not aware of his intentions of not transferring the ownership of the alleged securities. Hence, Our Client submit that there is no question of proving any common understanding between Mr. Anant and Our Client. There is no allegation in the show cause notice about their nexus and therefore the charge of manipulative, fraudulent and deceptive transactions cannot survive. It may further be pointed out that Mr. Anant used to trade through the office of Our Client's sub-broker Jilesh and he had no direct interaction with Our Client or any of their employees, either for trading, payment or for any other day to day matter.

42. We further submit that, the only ground for alleging Our Client of aiding and abetting the fraudulent and manipulative practice to artificially inflate the volumes is the execution of meagre self trades on behalf of their Client, Mr. Anant involving a quantity of 18,510 shares which constituted 0.071% of the total traded quantity of 2,60,23,351 shares on the floor of BSE during the investigation period.

43. Please note, Our Client could not have aided & abated manipulation of the market price with such negligible volume and could not have disturbed the market equilibrium because the alleged self trades were miniscule in quantity as compared to the total trading. Considering the volume of the transaction in the scrip and price fluctuation in the exchange on the days, it is clear that the said alleged self trades neither lead to price fluctuation nor created a false appearance of trading or were tending to mislead the gullible investors. By no stretch of imagination in the instant case it can be said that the alleged self trades ensured consistent matching of the order purely for the purpose of projection of the

volumes of the shares in a way that was not the market determined volumes, possibly to induce other persons to invest in the said scrip.

44. Therefore, without prejudice, it is submitted that the manner in which the said alleged self trades were executed, it only indicates that, there is good possibility that the said trades were done in a bonafide manner, however the same got matched accidentally and with any intent to manipulate the market.

45. It is further submitted that the Notice does not demonstrate the manner, how Our Client's actions have facilitated the creation of a false market and the based on which they have been condemned for aiding the commission of fraud. No evidence has been brought on record to establish such allegations.

46. Our Client reiterates that as there is no indication in the Notice about the connection of Mr. Anant with other noticees, it cannot be alleged that Mr. Anant has assisted other noticees in manipulation of the market. As SEBI's Policy requires part in the market manipulation by the person to held him guilty for executing fraudulent self trades, trades by Mr. Anant's trades cannot be treated as fraudulent as he has neither individually manipulated the market not has assisted other noticees to do so. Due to this reason alone Our Client cannot be held liable for not exercising diligence, as for doing the same it is essential that the trades by Mr. Anant were fraudulent.

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

48. Further, it can be seen that the frequency, the time period, the state of market and the trader has to be considered before declaring a person guilty of allowing self trades.

49. Our Client further likes to draw your goodself's kind attention in para 8 itself, where they have been alleged of acting as stock broker and counterparty stock broker for their client who executed self trades in the scrip of Byke during the Investigation Period leading to false and misleading appearance of trading of the scrip in the securities market and therefore it is alleged that Our Clients actions have led to the violation of Clause A(2) of the Code of Conduct for Stock Brokers as specified under Schedule II read with Regulation 7 of the Stock broker Regulations. It is important to note that even your goodself has rightly observed in the notice that our actions did not lead to the violation of any provision of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003. Not an iota of finding has been observed in this regard in the entire Notice and therefore it can be easily concluded that no role was played by Our Client in relation to the execution of the self trades which are alleged to be manipulative in nature.

50. Further in this regard it is submitted that it is a well established principle of the securities law that a broker cannot be held liable for the illegal acts committed by its clients unless it is established that the broker was aware of the intentions of the clients and has aided and participated in such illegal acts. In this context your attention is invited to the judgement rendered by this Hon'ble Tribunal in the matter of Kasat Securities Pvt. Ltd vs. SEBI (Appeal No. 27 of 2006, Decided on June 20, 2006) wherein Hon'ble Tribunal has clearly held that even if synchronization of trades is established and even if it is proved that such trades are circular or fictitious as the buying client and the selling client are the same party, the same is not sufficient to hold that the broker is in violation of any regulations or liable to any penalty unless there is material on record to establish that he was aware of the same.

Hon'ble Tribunal further held that SEBI cannot infer or assume that the broker is aware of the same and cannot jump to the conclusion that merely because the broker has acted as a broker on behalf of such a client, it ought to have known the nature of these transactions. In the instant case it was further impossible for us to know about the nature of transactions of Mr. Anant since he was trading through the office of the sub-broker of Our Client and therefore the allegation against us cannot survive at all.

51. With regard to the alleged violation of Clause A(2) of the Code of Conduct for Stock Brokers as specified in Schedule II read with Regulation 7 of the Stock Broker Regulations, it submitted that Our Client has at all times abided by the Code of Conduct. Our Client has always acted with due skill, care and diligence in the conduct of their business. It is pertinent to note that as detailed out above, it is amply clear that the execution of self trades was mere accidental in nature considering the huge volumes of transactions and thus there was no lack of due skill, care and diligence on our conduct through which the alleged self trades would have been prevented. There is not an allegation in the Notice to show that there were any circumstances which would have alerted Our Client and that they could have prevented the alleged self trades.

52. In this regard your attention to the observations made by the Hon'ble Securities Appellate Tribunal in the matter of M.G. Capital Services Ltd. vs. SEBI (Appeal No. 62 of 2012, Decided on July 31, 2012), wherein it has been observed that

"Neither the show cause notice nor the impugned order passed by the adjudicating officer indicate that by not doing so, which provision of law/rules/orders/regulations/circular issued by the Board has been violated by the appellant. It is not enough to say that the appellant had failed to exercise skill, due care and diligence in so far as transactions of Rishabh with appellant's sister concern namely FMS are concerned. We are of the view that either the Board should bring out clearly as to what a stock broker was supposed to do which it has failed to do and thus, violated a laid down norm. Due diligence would imply such care and skill as a man of ordinary prudence would exercise under similar circumstances. The finding of due diligence is to be sustained by convincing preponderance of probabilities standard."

53. A similar view was taken by the Hon'ble Securities Appellate Tribunal in the matter of Ramaben Samani Finance Pvt. Ltd. vs. SEBI, (Appeal no. 91 of 2006 decided on 22.10.2007), wherein Hon'ble Tribunal observed:

"The Tribunal has specifically observed that there has to be enough material on record to show that the broker knew about the game plan at the time of executing the trade. Therefore, if a broker has to be attributed knowledge of circular/synchronized trades, the Board must have with it some material on record from which such knowledge can be inferred. Merely because the appellant has acted as a broker it cannot lead Our Client to the conclusion that he had knowledge of the wrong doing. It is true that the trades have been found to be circular/synchronized, but there is nothing on record to show that the appellant had knowledge of the manipulative intent or mischief of the client."

54. A similar view was taken by the Hon'ble Securities Appellate Tribunal in the matter of Bipin R. Vora vs. SEBI (Appeal no. 62 of 2006 decided on 13.9.2007) wherein Hon'ble Tribunal observed:

"We do not think that the same shares could be bought and sold by the same person. The trades, on the face of it, appear to be fictitious and we shall proceed on that assumption. It is obvious that these trades were executed by the clients and the appellant acted only as a broker. If the appellant knew that the trades were fictitious then there would be no hesitation in upholding the finding of the Board that it aided and abetted the parties to execute fraudulent transactions. Having heard the learned Counsel for the parties and after going through the record we are satisfied that this link is missing. There is no material on record to show that the appellant as a broker knew that the trades were fictitious or that the buyer and the seller were the same persons. Trading was through the exchange mechanism and was online where the code number of the broker alone is known and the learned Counsel for the parties are agreed that it is not possible for anyone to ascertain from the screen as to who the clients were. This is really a unique feature of the stock exchange where, unlike other movable properties, securities are bought and sold between the unknowns through the exchange mechanism without the buyer or the seller ever getting to meet. Therefore it was not possible for the broker to know who the parties 'were. Merely because the appellant acted as a broker cannot lead Our Client to the conclusion that it must have known about the nature of the transaction. There has to be some other material on the record to prove this fact. The Board could have examined someone from KIL to find out whether the appellant knew about the nature of the transactions but it did not do so. As a broker, the appellant would welcome any person who comes to buy or sell shares. The Board in the impugned order while drawing an inference that the appellant must have known about the nature of the transactions has observed that the appellant failed to enquire from its clients as to why they were wanting to sell the securities. We do not think that any broker would ask such a question from its clients when he is getting business nor is such a question relevant unless, of course, he suspects some wrong doing for which there has to be some material on the record."

55. A similar view was taken by the Hon'ble Securities Appellate Tribunal in the matter of Ajmera Associates Ltd. vs. SEBI, (Appeal No. 141 of 2012, Decided on November 21, 2012), wherein Hon'ble Tribunal observed:

"We have heard learned counsel for the parties who have also taken Our Client through the records. We are of the view that the appeal must succeed. Clause A (2) of the Code of Conduct makes it obligatory for a stock broker to act with due skill, care and diligence in the conduct of its business. As per adjudicating officers' own findings, the trading in the shares was delivery based and ownership in the shares traded also changed. It is also a finding of the adjudicating officer that the appellant is not guilty of creating false market or that it indulged in any act detrimental to the investors' interest or that it had not maintained high standards of integrity, promptitude and fairness. Therefore, we fail to understand what other skill, care and diligence was required to be exercised by the appellant in the conduct of its business as a stock broker."

56. Our Client submits that in the instant case there is no evidence at all to establish that Our Client has failed to exercise due skill and care and have failed to abide by the Code of Conduct for Stock Brokers as specified under Schedule II read with Regulation 7 of Stock Broker Regulations and in view of the authorities cited above it is humbly submitted that the charges against Our Client should be quashed. It is further submitted that while taking a decision under this provision, the Learned

Adjudicating Officer has to take in to account Section 15J of the SEBI Act, 1992 which specifies the factors to be considered before levying any penalty, which are as under:

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

57 With regard to Clause (a):- *"the amount of disproportionate gain or unfair advantage, whether quantifiable, made as a result of the default": it is submitted that the findings does not lead to the conclusion that there has been disproportionate gain or unfair advantage to Our Client as all the shares were bought and sold on the instructions of their client. In the total trading carried out by Our Client in the scrip of Byke during the investigation period we have earned a total brokerage of Rs. 6066.36/- only while the brokerage earned in the alleged self trades is merely Rs. 555.30/- only.*

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

59. With regard to Clause (c):- *"the repetitive nature of the default" it is stated that Our Client has never been held guilty for any violation of SEBI laws and therefore the issue of repetition does not arise at all. It is submitted that the instances pointed out in the notice are isolated instances and hence there is no question of repetitive nature of default.*

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

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

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

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

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

"The Sentence has to side the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review would ensure that even on an aspect which is, otherwise, within the exclusive province of Court Martial, if the decision of the Court even as to sentence is an outrageous defiance of logic then the sentence would not be immune from correction. Irrationality and perversity are recognized ground of judicial review. The penalty imposed must be commensurate with the gravity of the misconduct and that any penalty disproportionate to the gravity of the misconduct would be violative of Art. 14 of the Constitution. The point to note and emphasis is that all powers have legal limits."

63. With regards to observations in para 9 & 10 of the notice, it is submitted that your goodself has explained the rules and regulations of the SEBI Act, 1992 and have also mentioned sections under which penalties are imposed, which have been reverted in detail hereinbefore and therefore we do not have any further comments to offer on the same.

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

65. Therefore, Our Client submits that, all trading done by Our Client in the Scrip of Bvke are devoid of any sinister intent and are genuine market transactions.

66. Therefore in the light of above it is submitted that the observation of your goodself, that the transactions entered into, are in nature of alleged self trades by Our Client on behalf of their client (Mr. Anant) is factually incorrect. It is reiterated that, the alleged self trades were bonafide normal trades which got executed in ordinary course through the terminals allotted to our sub-broker Jilesh and however due to circumstances which were beyond our control in stray instances the trades matched with each other. We reiterate that at the relevant point of time no system/ software/mechanism was made available by SEBI/ Stock Exchange to stop execution of mistaken self trades and therefore in spite of being extremely diligent, on behalf of the client, Our Client could not help the execution of the trades.

67. It is submitted that we on behalf of Our Client, reserve our right to modify and add additional grounds in these submissions. It is respectfully submitted that the allegations in the Notice do not flow out of the factual position and therefore cannot be legally sustained to warrant any penalty against Our Client. "

10. The Noticee was granted another opportunity of personal hearing on September 04, 2017, however the same was cancelled due to certain administrative exigencies.

11. Thereafter, vide letter dated April 13, 2018, additional reply was filed by the AR of the Noticee. The main contentions made therein are reproduced below -

“ ..

2. *The reply of Our Client in the present matter has been submitted to your goodself on September 01, 2017, and this is an additional reply in the present matter.*

3. *It is submitted that in the captioned matter the Notice has been issued to Our Client for not exercising due care and diligence as Our Client executed certain self trades on behalf of Anant Dattaram Yalavatakar (hereinafter referred to as "Anant") in the scrip of Byke.*

4. *However, it is pertinent to note here that Adjudicating Officer, SEBI in Order bearing number EAD/KS/VB/AO/111/2017-18 dated March 22, 2018 (hereinafter referred to as "Order") has exonerated Anant from the charge of executing self trades in the scrip of Byke. The copy of the order is hereby attached and marked as "Annexure A".*

5. *Hence, it is humbly submitted that the charge of executed self trades on behalf of Anant against Our Client must be dropped. This is because in order to make Our Client liable for violation of provisions of Stock Brokers Regulation, it has to be proved that the trades executed by Anant were mischievous. However, as in the present case the trades executed by Anant were genuine as held in the Oder, it cannot be said that Our Client has not exercised due diligence. Therefore it is our humble submission that Our Client is not liable for the allegation levelled against it in the Notice.*

6. *It is pertinent to note here and must also be appreciated by your goodself that, as there was nothing wrong with the trades executed in the account of Anant, Our Client cannot be held liable for not exercising due diligence and so the contravention of the provisions of the Stock Brokers Regulations.*

7. *The Adjudicating Officer, SEBI in the matter of Rushil Decor Limited (Adjudication Order No. EAD-5/BS/ AO/06-07/2017-18 dated October 13, 2017) has exonerated Our Client from the charges of violation of provisions of Stock Brokers Regulations on the ground that the violation of PFUTP Regulations has not been established against the Our Client's Client in the matter of Self Trades, It was observed that:*

"Since, the manipulation, malpractices or violation of aforesaid provisions of PFUTP Regulations are not established in this case, therefore, the alleged violation of Clause A(3) of the Code of Conduct of Stock Brokers as specified under Schedule II read ivith Regulation 7 of the Stock Brokers Regulations which are consequential to establishment of manipulative/fraudulent exercise, are also not established against the Noticee No. 2."

8. *Similar observation has been made in favour of Our Client in the matter of Prakash Constrowell Ltd. (Adjudication Order No. EAD/PM-AA/AO/3/2017-18 dated October 31,2017)*

"Since it is not established that AKG had entered into self-trades repetitively to create artificial volume in the scrip, there is no case to draw any adverse inference on the Noticee as regards its role on exercise of due skill and care under Clause A(2) of the Code of Conduct as stipulated under Schedule II read with Regulation 7 of Broker Regulations, 1992."

9. Hence, in the light of the above, it is humbly submitted that Our Client should be exonerated from all the charges against it and the Notice should be discharged forthwith."

12. From the available records, it is noted that Settlement Division of SEBI vide email dated October 7, 2020 have stated that no settlement application of the Noticee in the present matter is pending in SEBI. Further, the AR vide their email dated October 19, 2020 have stated that no settlement application has been filed by the Noticee in the present adjudication proceedings, and further requested that necessary order be passed in the present proceedings qua the Noticee.

CONSIDERATION OF ISSUES AND FINDINGS

13. I have carefully examined the material available on record, and the submissions made by the Noticee. The issues that arise for consideration in the present case are :
- a) Whether Noticee has violated Clause A(2) of the Code of Conduct for Stock Brokers as specified under Schedule II read with Regulation 7 (as it stood prior to 27/09/2013) / Regulation 9(f) (with effect from 27/09/2013) of Broker Regulations, as applicable?
 - b) If yes, then do the violations, if any, on the part of the Noticee attract any monetary penalty under Section 15HB of the SEBI Act?
 - c) If yes, then what would be the monetary penalty that can be imposed upon the Noticee, taking into consideration the factors mentioned in Section 15J of the SEBI Act read with Rule 5(2) of the Rules?

FINDINGS

14. Before I proceed with the matter, it is pertinent to mention the relevant legal provisions alleged to have been violated by the Noticee and the same is reproduced below:

Provisions of the Clause A (2) of the Code of Conduct:

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

Regulation 7 of Broker Regulations (as it stood prior to 27/09/2013):

Stock brokers to abide by 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.

Regulation 9(f) of Broker Regulations (with effect from 27/09/2013):

Conditions of registration.

9. Any registration granted by the Board under regulation 6 shall be subject to the following conditions, namely,-

...

(f) he shall at all times abide by the Code of Conduct as specified in Schedule II; and

...

15. The first issue to be decided is whether the Noticee has failed to exercise due skill and care and thereby violated Clause A(2) of the Code of conduct for Stock Brokers as stipulated in schedule II read with Regulation 7 (as it stood prior to 27/09/2013) / Regulation 9(f) (with effect from 27/09/2013) of Broker Regulations, as applicable.
16. Upon perusal of the reply of the Noticee and documents available on record, I find that it is not in dispute that Noticee acted as a broker and counterparty broker in

respect of 38 self-trades executed by Anant on BSE for a total quantity of 18,510 shares during 3 trading days of investigation period.

17. I note that the only charge against the Noticee is that it acted as a broker and counterparty broker for self-trades of Anant.
18. I find that on BSE the total traded volume of TBHL's shares during the investigation period was 2,60,23,351 shares and self-trades done by Anant was for a total quantity of 18,510 shares through 38 trades and the percentage of self-trade volume of Anant to the total traded market volume on BSE was only 0.071%.
19. I note that the trading transactions of Anant which gave rise to the present proceedings against the Noticee have elaborately been dealt with vide order dated March 22, 2018 in a separate proceedings before me against Anant wherein I noted, *inter alia*, as under:

“After taking into account aforesaid observations, perusal of investigation report and taking into account, in particular, the miniscule percentage / volume of self-trades as compared to the total market volume during the investigation period and the fact that IR has not brought out any manipulative intent on the part of the Noticee, I am of the view that it is difficult to conclude that self-trades of Noticee in the scrip of TBHL were intentional and manipulative and I am inclined to conclude that violations of provisions of Regulations 3(a), (b), (c), (d), 4(1), 4(2)(a) and (g) of PFUTP Regulations, 2003 by the Noticee do not stand established”.

20. I also note from the reply of the Noticee that BSE and NSE have now put in place a system to avoid such self-trades. NSE has implemented “Self-Trade Prevention” mechanism with effect from October 12, 2015 vide circular dated October 01, 2015 and BSE has also implemented a Self Trade Prevention Check (STPC) Mechanism with effect from March 16, 2015 vide circular dated February 11, 2015.
 21. Since it is not established that Anant had entered into self-trades repetitively to create artificial volume in the scrip, there is no case to draw any adverse inference on the
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Noticee as regards its role on exercise of due skill and care under Clause A(2) of the Code of conduct for Stock Brokers as stipulated in schedule II read with Regulation 7 (as it stood prior to 27/09/2013) / Regulation 9(f) (with effect from 27/09/2013) of Broker Regulations, as applicable. As the alleged violations are not established against the Noticee, Issue No. (b) and (c) require no consideration.

ORDER

22. In view of my findings noted in the preceding paragraphs and in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Rules, I hereby dispose of the Adjudication Proceedings initiated against the Noticee viz. Adroit Financial Services Pvt Ltd vide Show Cause Notices dated December 03, 2015 and September 22, 2016 without imposition of any monetary penalty.
23. In terms of Rule 6 of the Rules, copy of this order is sent to the Noticee and also to Securities and Exchange Board of India.

Date: October 21, 2020

Place: Mumbai

**K SARAVANAN
CHIEF GENERAL MANAGER &
ADJUDICATING OFFICER**