

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO.EAD-5/BS/AO/87-88/2017-18]

**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 BY ADJUDICATING OFFICER) RULES, 1995**

In respect of:

Sr. No.	Entity Name	PAN
1.	Shri Kunal Dushyant Gautam	AHYPG3852D
2.	JM Financial Services Pvt. Ltd.	AAACJ5977A

In the matter of Kwalitiy Ltd.

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') conducted investigation into the alleged irregularities in the scrip of Kwalitiy Ltd. (hereinafter referred to as 'Kwalitiy') for the possible violation of the provisions of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003 (hereinafter referred to as PFUTP Regulations), SEBI (Stock Brokers and Sub Brokers) Regulations, 1992 (hereinafter referred to as Stock Brokers Regulations) by Shri Kunal Dushyant Gautam and JM Financial Services Pvt. Ltd.(hereinafter referred to as Noticee No. 1 and Noticee No. 2 respectively and collectively as the Noticees)

during the period December 10, 2009 to December 30, 2011 (hereinafter referred to as the Investigation Period).

2. Investigation examined the role of the Noticees with respect to synchronized trades, circular trades, reversal trades, self-trades, new low/ high price analysis, last traded price analysis and first trade analysis carried out by them during the investigation period. The investigation brought out self-trades executed by the Noticee No. 1 (client) through Noticee No. 2 (Stock Broker) during the investigation period.

APPOINTMENT OF ADJUDICATING OFFICER

3. Shri S V Krishnamohan was appointed as the Adjudicating Officer vide order dated January 25, 2016 to inquire and adjudge under Section 15 HA of the SEBI Act, the alleged violation of Regulations 3(a) to (d), 4(1), 4(2)(a) and (g) of PFUTP Regulations by Noticee No. 1 and under Section 15HB of the SEBI Act, the alleged violation of and Clause A(2) of Code of Conduct for Stock Brokers as specified under Schedule II read with Regulation 7 of Stock Brokers Regulations by the Noticee No. 2.
4. Subsequently, vide order dated September 15, 2017, the undersigned was appointed as the Adjudicating Officer in the place of Shri S. V. Krishnamohan.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

5. A common Show Cause Notice Nos. EAD-5/ADJ/SVKM/DS/OW/7907/4/2016 and EAD-5/ADJ/SVKM/DS/OW/7907/8/2016 dated March 15, 2016 (hereinafter referred to as 'SCN') was issued to the Noticees in terms of Rule 4 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 read with Section 15I of SEBI Act, for the violations as specified in the SCN.
6. Noticee No. 1 did not reply to the SCN. However, Noticee No. 2 sought time to file reply to the SCN.

7. Vide letter dated April 13, 2016, Noticee No. 2 filed its reply to the SCN and submitted the following:
- I. The alleged trades are actually not self trades but a genuine punching error by the concerned dealer putting through the trades on behalf of the client.*
 - II. The concerned dealer while putting through the sell orders received from Gautam through the Franchisee inadvertently put 3 buy orders instead of sell orders. There was no intention either of the client or of the dealer to match the trades.*
 - III. The said inadvertent errors can be further corroborated from the fact that both the legs of the said trades were placed from the same trading terminal at Head Office with no/very negligible time gap.*
 - IV. It's a case of genuine punching error by our concerned dealer and there was no intention to execute self-trades on behalf of the client and such was not the intention of the client as well.*
8. Subsequently vide hearing notice dated October 14, 2016, the Noticees were granted an opportunity of being heard on November 03, 2016.
9. The Authorised Representatives (ARs) of the Noticee No. 2 appeared for the hearing and reiterated the submissions made vide reply dated April 13, 2016.
10. Vide letter dated November 16, 2016, Noticee No. 2 filed additional reply to the SCN and submitted the following:
- I. Since inadvertently placed buy orders were at price higher than the sell orders already entered in the terminal, the said buy orders and the sell orders got executed when the trading commenced during the market hours.*
 - II. The last three buy orders were a genuine punching error by our concerned dealer and that there was no intention to place the buy orders in the said scrip.*
11. Vide hearing notice dated January 10, 2018, the Noticees were granted an opportunity of being heard before the undersigned on January 23, 2018. Noticee No. 2 appeared for the hearing and made submissions which were primarily in the nature of its earlier submissions.

CONSIDERATION OF ISSUES AND FINDINGS

12. I have carefully examined written submissions of the Noticee and the documents available on record. The issues that arise for consideration in the present case are :
- a. Whether Noticee No. 1 has violated Regulations 3(a) to (d), 4(1), 4(2)(a) and (g) of PFUTP Regulations?
 - b. Whether Noticee No. 2 has violated Clause A(3) of Code of Conduct for Stock Brokers as specified under Schedule II read with Regulation 7 of Stock Brokers Regulations?
 - c. Does the violation, if established, attract monetary penalty under Sections 15HA and 15HB of SEBI Act, 1992?

FINDINGS

13. The issues for examination and the findings thereon are as follows:

Issue a: Whether Noticee No. 1 has violated Regulations 3(a) to (d), 4(1), 4(2)(a) and (g) of PFUTP Regulations?

Issue b: Whether Noticee No. 2 has violated Clause A(2) of Code of Conduct for Stock Brokers as specified under Schedule II read with Regulation 7 of Stock Brokers Regulations?

14. Before I proceed on the merits of the case, it is important to reproduce the aforesaid provisions which are as under:

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;

Schedule II under Stock Brokers Regulations

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

15. It is alleged in the SCN that Noticee No. 1 had traded through Noticee No. 2 who is a stock broker during the investigation period and executed self- trades at BSE wherein Noticee No. 1 was both buyer and seller in the following manner :

Exchange	Client Name	Broker on both Buy & Sell side	Self Trade Qty	No. of Self Trades	No. of days	% of self trades qty to mkt vol	Sum of LT diff. (INR)
NSE	Kunal Dushyant Gautam	JM Financial Services Pvt Ltd	13730	6	2	0.02	1.5

16. It was alleged that by entering into 'self-trades' in the above manner, Noticee No. 1 had created artificial volume in the scrip, leading to false and misleading appearance of trading in the scrip which is in violation of Regulations 3(a) to (d), 4(1), 4(2)(a) and (g) of the PFUTP Regulations.
17. It was further alleged that Noticee No. 2 being a SEBI registered intermediary, executed the above trades, and therefore, failed to exercise due skill, care and diligence in its broking business by acting as broker and counterparty broker in respect of the aforesaid self trades of Noticee No. 1 which is in violation of Clause A(2) of the Code of Conduct of Stock Brokers as specified under Schedule II read with Regulation 7 of the Stock Brokers Regulations.
18. Self-trades are trades executed on the stock market in which the same entity is both the buyer and the seller. As such, these trades do not represent a real change in beneficial ownership of the security.
19. Hon'ble Securities Appellate Tribunal (SAT) in the matter of Balwinder Singh v. SEBI (2013), observed that that self-trades(or wash-trades) are per se not allowed under SEBI Act and regulations made thereunder. In Chirag Tanna v. The Adjudicating Officer (2013), Hon'ble SAT held that self-trades are, admittedly, fictitious and create artificial volumes in the traded scrip. In Triumph International Finance Ltd v. SEBI (2007), the SAT observed that self-trades were fictitious because the buyer and the seller were the same. Further, in Systematix Shares & Stocks India Limited v. SEBI (2012), Hon'ble SAT observed that trades, "where beneficial ownership is not transferred, are admittedly manipulative in nature."
20. Considering the observations of Hon'ble SAT in various matters, though self- trades on the face of it implies no transfer of beneficial ownership, it is necessary to look into the attending circumstances of the case.
21. It is necessary to mention here that for the allegation of fraudulent activities, it is settled law by the Hon'ble SAT and well as Supreme Court of India that the same cannot be concluded merely on the preponderance of probabilities. The Hon'ble SAT

in case of Ketan Parekh v. SEBI (Appeal No. 2 of 2004) decided on July 14, 2006 had categorically held that-in order to find out whether a transaction has been executed with the intention to manipulate the market or defeat its mechanism, will depend upon the intention of the parties which could be inferred from the attending circumstances of the cases, because direct evidence in such cases may not be available

22. Further Hon'ble SAT in the matter of Angel Broking Ltd. V. SEBI held that "Self-trades and that too buying share at higher price and selling at a lower price clearly shows that the trades executed were not normal trades."
23. From the documents available on record (more specifically the Annexure 5 to the SCN, which provided the self-trades executed by the Noticee No. 1), it is observed that the Noticee No. 1 had executed the aforesaid trades through Noticee No. 2 which is already detailed in the table at para 15 of the instant order.
24. From the aforesaid table, it is observed that self-trade percentage volume of the Noticee No. 1 compared to the total market volume is 0.02% at NSE only during the investigation period which is much less than 1% of the total market volume. It is also observed that the contribution to the change in Last Traded Price (LTP) due to the self trades was miniscule viz. Rs. 1.5 to the LTP.
25. Though the Noticee No. 1 had entered into self-trades , yet the volume of self-trades vis -a-vis total volume in the shares of Kwalitiy Ltd. is not significant. No mala fide intention behind self-trades executed by the Noticee No. 1 has been brought out in investigation report. Further, no connection is also brought out vis-a vis other traders in the scrip during the investigation period. The Noticee contended that the self -trades occurred when multiple jobbers are engaged by a broker for day trading. It is also pertinent to note that NSE has now put in place a system to avoid such self-trades with effect from October 12, 2015.
26. I also note that no adverse observations regarding synchronized trading, reversal trading or executing orders varying from Last Traded Price or creation of New

High Price etc.is alleged in the investigation report. In addition to same, no fraudulent pattern / modus operandi was explained under the investigation report regarding such self-trades.

27. Self-trades are generally executed to artificially raise the volume / or to manipulate the price of a scrip by way of creating misleading appearance of trading. However, on perusal of investigation report and taking into account miniscule volume of self-trades as compared to the total market volume during the investigation period, no such malafide intention can be established in the present case.
28. Considering the facts and circumstance of the case, it is concluded that the violation of Regulations 3(a) to (d), 4(1), 4(2)(a) and (g) of the PFUTP Regulations against the Noticee No. 1 does not stand established on the basis of the material placed before me in this proceeding . 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(2) of the Code of Conduct of Stock Brokers as specified under Schedule II read with 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. Further, on the basis of material available on record, it cannot be held that Noticee No. 2 has failed to exercise due diligence in the present case.
29. Since the alleged violations against the Noticees are not established, issue (c) does not require any consideration.

ORDER

30. Accordingly, taking into account aforesaid observations and in exercise of powers conferred upon me under Section 15 I of the SEBI Act read with Rule 5 of the Adjudication Rules and after considering all the facts and circumstances of the case

and evidence on record, it is concluded that the allegations levelled against Shri Kunal Dushyant Gautam and J.M. Financial Services Pvt. Ltd. are not established.

31. Accordingly, the adjudication proceedings initiated against the Noticees Shri Kunal Dushyant Gautam and J.M. Financial Services Pvt. Ltd. vide the SCN dated November 30, 2016 stand disposed of without penalty.
32. In terms of the Rule 6 of the Adjudication Rules, copy of this order is sent to the Noticees and also to Securities and Exchange Board of India.

Place: Mumbai

DATE: 25.01.2018

BIJU. S

ADJUDICATING OFFICER